



# HSNC Board's Kishinchand Chellaram Law College

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**ICSSR - Western Regional Centre**

Sponsored

**National Conference**

on

**Reimagining and Resilience: A Transcend  
Societal Barriers for Envisioning Gender  
Equality in Global Era**

**11th April 2023**

**Editor-in-Chief: Dr. Kavita Lalchandani**



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Reimagining and Resilience: A Transcend Societal Barriers for  
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## **Principal's Message**

### **Greeting to Everyone!!**

We announce the publication of the conference proceedings of our National Conference with great pleasure and pride. This momentous occasion marks the culmination of our collective efforts to promote knowledge sharing and academic discourse in the field of law. The conference, held on 11.04.2023 brought together legal scholars, practitioners, and students from various institutions to engage in meaningful discussions on contemporary legal issues and emerging trends.

In today's global era, the issue of gender equality is multi-dimensional. The situation, needs and the challenges faced by the genders are different. Laws related to gender play a crucial role in promoting equality and protecting the rights of individuals, regardless of their gender identity. These laws aim to ensure equal opportunities, fair treatment, and non-discrimination based on gender. They help combat gender-based violence, harassment, and unequal access to education, employment, healthcare, and other essential services and foster a more inclusive society where everyone can thrive and contribute, irrespective of their gender. Let us continue working towards a future where gender equality is not just a goal, but a reality for all.

Now, as we release the conference proceedings, we take a significant step towards immortalizing the insights and research presented during the event. These proceedings capture the essence of the conference, encapsulating the thoughts, analyses, and innovative ideas shared by our esteemed speakers and contributors. This conference is a step towards achieving the goal of gender equality. Approximately 70 papers from all over the country were presented on various themes like sexual harassment, issues related to LGBTQ community, paternity leave, gender bias, role of media amongst many others. Selected few paper are being published in this journal.

I would like to extend my heartfelt gratitude to all the contributors who submitted their papers for consideration. Your passion, expertise, and commitment to legal scholarship have made this publication possible. I extend my heartfelt gratitude to Dr. Smita Shukla, Hon. Director, WRC – ICSSR for granting sponsorship to the National Conference.

I feel deepest gratitude for HSNC Board for their continuous support and guidance. I also acknowledge the efforts taken by the Organizing Committee in planning and conducting this conference successfully. I am sure that the outcome of this conference will have far-reaching effects for gender equality.

**Dr. Kavita Lalchandani**  
Convener of the Conference

## **President's Message**

It is a matter of privilege for K C Law College to host a National Conference on "Reimagining and Resilience: A Transcend Societal Barriers for Envisioning Gender Equality in Global Era". I am sure that the deliberations of the conference will bear fruit in the form of constructive recommendations for fulfilling the vision of Gender Equality in this Global Era. I recognize the contribution of ICSSR in the organization of this Conference through their sponsorship.

Laws related to gender play a crucial role in addressing the inequalities and discrimination faced by individuals based on their gender identity or expression. By enacting and enforcing legislation that protects the rights of all genders, we can strive towards a society where everyone feels safe, valued and respected, regardless of their gender.

It is through the various legislations that we can challenge harmful stereotypes, dismantle systemic biases, and ensure that no one faces discrimination or prejudice based on their gender. The individual effort will contribute significantly to the progress we are making as a society, and I am grateful that the articles getting published will have a positive impact on the lives of countless individuals.

I would like to take this opportunity to appreciate Principal Dr. Kavita Lalchandani for her leadership skills and untiring efforts in the betterment of the College. I also acknowledge the efforts put in by the Organizing Committee of the Conference and the Editorial Committee of the journal for their contribution in the success of the Conference and publication of selected papers.

I convey my best wishes for this Conference and all further intellectual endeavors by the College!

**Mr. Anil Harish**  
President & Trustee, HSNC Board

April 2023

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# TOWARD GENDER EQUALITY: CHALLENGES, PROGRESS, AND OPPORTUNITIES

**Avinash Pamnani**

Kishinchand Chellaram Law College

## ABSTRACT

Since beginning of the civilisation there has been gender based restrictions in the society. For centuries women / other genders have fought for their rights and equal treatment in the society. Even today the battle continues.

Persistence of gender stereotypes is one of the main obstacles to gender equality. Men and women may not have equal opportunity in the workplace and other facets of life. The gender-based violence inexplicably affects women and girls. Gender equality has made great progress in recent decades. Other measures to reduce the disproportionate burden of care work that frequently falls on women include regulations that support work-life balance, such as paid parental leave and flexible work schedules. Education is a further area where advancement is possible. Schools can contribute to the development of a more equal society by encouraging gender-sensitive teaching strategies and offering instruction that dispels gender stereotypes. Also, encouraging girls' education in particular can aid in ending the cycle of poverty and inequality that frequently hinders girls from attending school.

## 1. INTRODUCTION:

Gender equality, also known as sexual equality or equality of the sexes, is the state of equal ease of access to resources and opportunities regardless of gender, including economic participation and decision-making; and the state of valuing different behaviors, aspirations and needs equally, regardless of gender<sup>1</sup>. Gender equality is when people of all genders have equal rights, responsibilities and opportunities<sup>2</sup>. The author will explain the gender inequalities, their causes and what steps need to be taken to narrow (if not completely remove) the gender gap. The objective of the research is mentioned below. For this research, the data collection technique used is 5 point Likert scale.

## 2. OBJECTIVE:

The object of this research paper is that highlight the issue of the gender inequality and discuss the ways gender equality could be achieved. This paper is divided into three parts:

1. Challenges faced while achieving gender equality.
2. Progress achieved in area of gender equality in our country.
3. Opportunities: what needs to be done to achieve this purpose.

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<sup>1</sup> [https://en.wikipedia.org/wiki/Gender\\_equality](https://en.wikipedia.org/wiki/Gender_equality)

<sup>2</sup> <https://www.vic.gov.au/gender-equality-what-it-and-why-do-we-need-it>

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### 3. REVIEW OF LITERATURE:

#### A. CHALLENGES

Savitribai Phule, was a great personality and first person who played a pivotal role in establishing gender equality in India during the 18<sup>th</sup> century. And still our society is yet to achieve gender equality. Following are the challenges which prevents us from achieving gender equality:

##### 1. CHILD MARRIAGES:

Despite of progress and development, child marriages still happen in our society. India is estimated to have over 24 million child brides. 40% of the world's 60 million child marriages take place in India according to the National Family Health Survey<sup>3</sup>. India has the 14th highest rate of child marriage in the world, according to the International Center for Research on Women. This exposes the girls to marriage responsibilities and their education, career and development takes the toll

##### 2. CHILD LABOR

As per wiki, 31 million children are part of India's workforce, the highest number in the world. Thus they remain uneducated and hence undeveloped. In essence, it is a socioeconomic issue that is complexly connected to both illiteracy and poverty.

##### 3. TEENAGE PREGNANCY:

In 2017, an estimate of 11.8 million teenage pregnancies occurred in India. The National Family Health Survey-5 has revealed that the rates have increased from 18.8% to 21.9% in Tripura<sup>4</sup>. Further childbirth complications also contribute to deaths of such teenage mothers. Child marriage and lack of family planning is main reason for rise in teenage pregnancies.

##### 4. VIOLENCE AND SEX ABUSE:

Women, girls, and transgender are subject to violence and abuse and most of these cases go unreported.

##### 5. GIRL CHILD MORTALITY RATE:

India has the highest girl child mortality rate in the world. Lack of access to health care and penchant for male child could be the reason.

##### 6. GENDER STEREOTYPES:

Since childhood children are assigned gender based roles in the house. After they grow up, it becomes a norm for them also the society. This is a serious issue.

##### 7. LGBT+ COMMUNITY:

They are even not considered part of civilisation in our country. In case of other gender particularly transgender, they are the most silent sufferers. They do not get opportunities in education, jobs, etc due to the social stigma. Even recently the government has opposed in Supreme Court in the case of legalisation

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<sup>3</sup> <https://timesofindia.indiatimes.com/readersblog/myblogpower/child-marriage-in-india-amendment-bill-2021-37786/>

<sup>4</sup> <https://feminisminindia.com/2021/01/19/what-contributes-to-teenage-pregnancies-in-india/>

of same sex marriage. The case is referred to a 5 bench judges and still pending. The constitution does not provide any restriction on the same.

Further, there are many other gender based discrimination at workplace in terms of compensation and promotions. At times women are pressurised by their employer to leave the job coz of pregnancy. Like, Airlines company's put conditions on pregnancy on women employees. Further, women are underrepresented in workforce, parliament, judiciary, etc. Once their representation is fair, they can end the gender based discrimination.

## **B. PROGRESS:**

In recent times a lot of progress has happened to narrow the gender gap in all the sectors of life. There are various laws passed / amended to protect women and empower them.

1. **The Maternity Benefit Act, 1961:** This act provides for maternity leave for women employees for a period of 26 weeks, with the option of extending it to 8 weeks before the expected delivery date.
2. **The Protection of Women from Domestic Violence Act, 2005:** This act provides for the protection of women from domestic violence, including physical, sexual, emotional, verbal and economic abuse.
3. **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:** This act requires all employers, whether in the private or public sector, to take measures to prevent sexual harassment of women at the workplace and provide a mechanism for redressal of complaints.
4. **The Dowry Prohibition Act, 1961:** This act prohibits the giving or taking of dowry, which is a practice in which the bride's family gives money or gifts to the groom's family as a condition of marriage.
5. **The Criminal Law (Amendment) Act, 2013:** This act provides for stricter punishments for crimes against women, including acid attacks, sexual harassment, and rape.
6. **The Prohibition of Child Marriage Act, 2006:** This act prohibits the marriage of girls under the age of 18 and boys under the age of 21.
7. **The Equal Remuneration Act, 1976:** This act provides for equal pay for equal work for men and women.
8. **The National Commission for Women Act, 1990:** This act provides for the establishment of a National Commission for Women to investigate and recommend solutions for issues affecting women.

9. **Section 149(1) of the Companies Act 2013:** The Companies Act 2013 makes it mandatory for listed companies to appoint at least one woman director<sup>5</sup>.

These laws have played an important role in improving the status of women in India and protecting their rights. However, there is still a long way to go in terms of achieving gender equality and ending discrimination against women/ other gender.

### C. OPPORTUNITIES:

A lot has been done, however it is not enough. More needs to be done to end the gender gap. Since childhood, children must be sensitized about gender equality, then next generation will be gender neutral. Further, awareness of laws, fundamental rights and access to health care must be made to women, children and other gender. This will help in implementation of the laws.

### 4. RESEARCH METHODOLOGY:

The sample was randomly selected from various age group, gender and profession. There were around 15 questions. The technique used is 5 point Likert scale - Strongly Agree, Agree, Neutral, Disagree and Strongly Disagree. It is qualitative research as we cannot quantify the gender gap.

### 5. RESULTS: ANALYSIS AND FINDINGS:

The response received from the survey are as follows: (rounded off to nearest number)

Sr.No	Questions	Yes	No	May be
1	Do you believe that gender equality exists in our country?	24%	59%	17%
2	Do you think that gender stereotypes still exist in India?	87%	5%	8%
3	Do you believe that gender equality should be concern for men?	70%	13%	17%
4	Have you or anyone whom you know has experienced gender bias at home?	64%	30%	6%

Sr. no	Questions	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
1	Do you think that there is gender pay gap at workplace in India?	27%	38%	26%	6%	3%

<sup>5</sup> <https://taxguru.in/company-law/appointment-woman-director.html>

2	Do you think that there is gender inequality in promotions at workplace in India?	27%	38%	26%	8%	1%
3	Do you think that women are underrepresented in parliament and State Legislative Assembly?	13%	40%	30%	12%	5%
4	Do you think that women/ other genders have equal opportunity in education field?	24%	43%	19%	13%	1%
5	Do you believe that women/ other genders face more gender based violence compared to men?	37%	40%	11%	9%	3%
6	Do you think that women are underrepresented in Judiciary in India?	14%	37%	30%	16%	3%
7	Do you think that women/ other gender have same financial freedom as compared to men?	6%	21%	19%	37%	17%
8	Do you think that women/ other gender are given same freedom to choose their partner of choice, as compared to men?	5%	19%	33%	32%	11%
9	Do you think that LGBT+ community is treated at par in our society?	5%	6%	17%	43%	29%

10 Do you think that laws in our country are gender bias? like they favor a particular gender?

- Yes, favorable towards men – 9%
- Yes, favorable towards women – 40%
- Neutral – 33%
- No – 18%

## 6. DISCUSSION:

From the above results, we can infer that majority of the people believe that:

1. The gender inequality and gender stereotypes exists in our country.
2. 64% of the people have experienced gender bias at home.
3. There is gender pay gap in compensation as well as promotions at workplace in India.
4. Women are underrepresented in Parliament, Judiciary, etc.
5. Women/ other gender face more violence as compared to men.
6. Women/ other gender face obstacles while pursuing education, and have less financial freedom and meagre freedom to choose the partner of their choice.

## 7. CONCLUSION:

Gender equality still faces many obstacles, but there is still cause for optimism. We can build a more just and equitable society for everyone if we keep addressing these issues and seizing the chances for advancement. True gender equality will require global cooperation from individuals, communities, and policymakers, but the advantages are enormous. Since childhood, children must be sensitized about gender equality, then next generation will be gender neutral.

## 8. REFERENCES:

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2. <https://timesofindia.indiatimes.com/readersblog/myblogpower/child-marriage-in-india-amendment-bill-2021-37786/>
3. <https://feminisminindia.com/2021/01/19/what-contributes-to-teenage-pregnancies-in-india/>
4. [https://labour.gov.in/childlabour/about-child-labour#:~:text=Subsequently%20the%20act%20was%20amended,Years\)%20in%20the%20scheduled%20hazardous](https://labour.gov.in/childlabour/about-child-labour#:~:text=Subsequently%20the%20act%20was%20amended,Years)%20in%20the%20scheduled%20hazardous)
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6. <https://taxguru.in/company-law/appointment-woman-director.html>

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# ROLE OF LITERATURE AND MEDIA IN BRINGING GENDER EQUALITY

**Dr. Amita Anand Dubey**

Assistant Professor, Shree L. R. Tiwari College of Law, Mira-Bhayandar, East

## ABSTRACT

Literature and media are like mirrors to society; these not only reflect society but directly or indirectly teach how it should be also. Whatever happens in society its reflection can be seen in the literature and media of the age. The scope of literature and media covers all aspects of society and illuminates all walks of life. Patriarchy has been deeply rooted in the very existence of society and all genders have got affected by this. It has segregated genders and discriminated against other genders by declaring these inferior. After the Supreme Court's verdict on the National Legal Services Authority vs. Union of India and others case (2014) the LGBTQ community has been recognized as the 'Third Gender' and eligible for all Rights provided under the Constitution of India. Although the Constitution provides the Right to Equality under Article 14, equality is not that easy in our society. The LGBTQ community is still struggling to be accepted and lead a normal life. Several Laws e.g. Dowry Prohibition Act of 1961, the Protection of Women from Domestic Violence Act of 2005, the Prevention of Female Infanticide Bill of 2014, and Government Schemes like 'Beti Bachao, Beti Padhao' have been passed for the upliftment of women but these altogether are not capable enough to remove gender inequality. Literature and media come to the rescue in such a scenario as these although not binding but strike the chords of mind and heart. It is said that the pen is mightier than the sword; it makes people think and reflect. Literature and media connect with people and show them where they are wrong and what can be done to make them right. Be it feminist or LGBTQ literature like *A Room of Her Own*, *Colour Purple*, *My Story*, and *The Price of Salt* or movies like *Lipstick Under My Burkha*, *Thappad*, *Fire*, *Badhai Do*, *Shubh Mangal Zyada Saawdhan*, *Aligarh*, and *Chandigarh Kare Ashiqui* centered around female and LGBTQ issues, all have left a great impact on the mind of the reader and audience. These let a chance to the reader or audience put themselves in their shoes and feel the way the characters feel; how they laugh, cry, get excited, or feel the pain. It is very important to know and understand others before judging them based on preconceived notions. It is very important to shed the boundaries and let the light of life and love touch you and drench your soul. Literature and media play a great role in changing minds and can be proven the harbingers of gender equality.

**Keywords-** Gender equality, Literature, Media, Change, Acceptance.

## 1. INTRODUCTION

Literature like a mirror shows society's true and vibrant colours; whatever happens in society gets its reflection in literature. But it is not a one-sided process only; both literature and society reflect each other. Literature not only shows what is happening there in society but also shows how it should be. Literature has the power to mold and shape the thinking process accordingly. A literary person is a part of society; he/she gets affected by an event and reflects on paper and that paper, that mode of written

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communication has eminent power to make people think and rethink that particular event. This is the same with the media also: a media person is a part of society and after getting affected by any event he/she reflects and makes people think about that particular event, just the medium is different. Nowadays literature and media cannot be separated as an abundance of literary works have taken the form of movies and made these works even more accessible to people. Whenever any topic arises about gender equality it is normally centered around male-female relationships and the gender roles assigned to their genders only. We often forget about the 'Third Gender' that has fought a long battle for recognition and finally got recognized through the honourable Supreme Court of India's verdict of 2014 that provided them recognition stating: "Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature." Apart from this, the Court directed the Centre and State Governments to grant them legal identity and provide reservations in educational institutions and public employment sectors. Governments were urged to take essential measures to cope with all the issues whether legal, social, or medical to provide the 'third gender' their rightful status in society. It's good to see that literature and media have given proper recognition to the said community also and put forward their pains and problems in front of society which otherwise treats them as aliens and untouchables and no other means of direct contact was possible.

Literature or any such media has so much power over the thinking process of people that Plato, the great Greek philosopher, wanted poets to get exiled from his ideal state. Literature, not in the contemporary age only, but rather since the beginning of writing, has had a major impact on society. The age-old epics Ramayana and Mahabharata still are a great matter of discourse. Ramayana and Mahabharata can be watched on the silver screen also and these keep on influencing people. But our literature and media are not limited to the epics or religious books of various religions rather these pinpoint relevant and major subjects also. Literature of knowledge and power both have immense potential to raise discourse among people belonging to all levels. Especially it is the literature of power that reaches to the depth of our hearts and knocks on the door of our reason simultaneously. At the beginning of civilization when modern media had not come into existence it was only literature or print media that was one of the few mediums to express and share ideas. Although it is not as impactful as the modern media is still it reached a lot of people.

## 2. ROLE OF LITERATURE IN WOMEN'S UPLIFTMENT

Literature has played a very important role in the upliftment and empowerment of women. It not only talks about the day-to-day problems they are fighting with rather it tries to make them realize their potential also.

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<sup>1</sup> Supreme Court's Verdict on National Legal Services Authority vs. Union of India and others (2014) <https://main.sci.gov.in/jonew/judis/41411.pdf>

Mahesh Dattani's *Bravely Fought the Queen*, and *30 Days in September*, Ibsen's *A Doll's House*, Shaw's *Candida*, Kamla Das's *My Story*, Maya Angelou's *I Know Why the Caged Bird Sings*, Smita Agarwal's *Speak, Woman!*, Chitra Banerjee Divakaruni's *Enchanted Forest* and *The Forest of Illusionment*, Virginia Woolf's *A Room of Her Own*, Simone de Beauvoir's *The Second Sex*, Margaret Atwood's *The Handmaid's Tale*, Mary Wollstonecraft's *A Vindication of the Rights of Woman* (1792), Sylvia Plath's



*The Bell Jar*, Louisa May Alcott's *Little Women*, Eve Ensler's *The Vagina Monologues*, etc. deal with issues concerned with women. While these showcase women fighting with patriarchy and gender roles, these depict their desires, joys, pains, and sufferings also. Prof. Smita Agarwal portrays the plight of a child widow on the canvas of her poetry collection *Speak, Woman!* (2021). She shows the loneliness and hardships that the widow, now an old woman, is forced to face without any fault. She further depicts infuriated patriarchy questioning the very existence of a woman:

“How dare you think, let alone,

think better than I?

How dare you write, let alone,

write better than I?

How do you pass critical judgment,

let alone, better than I?”

Renowned Hindi poet Pushyamitra Upadhyaya invokes women to stand up for themselves as there is no one else that can help them except themselves. He says, “Suno Draupadi shastra utha lo, ab Govind na ayenge”.<sup>3</sup>

### **3. ROLE OF LITERATURE IN THE UPLIFTMENT OF THE LGBTQ COMMUNITY**

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Literature talks about the topics that society considers taboo. Many writers, some belonging to the LGBTQ community itself and some related to the other two genders, have dealt with the issues of homosexuality and tried to showcase the emotions of people who have sexual orientations that society does not approve of. It provides a stage to connect with people of other genders and make them understand that LGBTQ people are also normal and have the right to live their lives to the fullest. Siddharth Dube in his memoir *No One Else* reveals the shades of his sexuality and his journey to accept and be proud of what he really is. *Lihaaf (The Quilt)* is an Urdu short story written by Ishmat Chughtai which led to a great controversy at that time as it dealt with lesbian couples who due to loneliness and ignorance from their male counterparts turned to seek refuge in each other's company. *The Dancing Boy* by Ishani Kar Purkayastha is the story of a boy who rejoices in draping a saree and putting on make-up like girls and consequently becomes a laughingstock to neighbours and a matter of shame for his mother. All these stories give a chance to the readers to put in the shoes of the characters and feel and understand their side of the story.

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<sup>2</sup> Smita Agarwal, 2021, *Speak, Woman!* ( Patparganj, New Delhi: Red River, 2021), 37.

<sup>3</sup> <https://www.hindisahityadarpan.in>

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#### 4. ROLE OF MEDIA IN WOMEN'S EMPOWERMENT

A lot of women-centric movies can be found when one starts searching for content related to the cause of women. Many of these movies are biographies of women achievers that encourage women to uplift themselves leaving all shackles and hurdles behind. The movies which are not based on a real person knit their story around women protagonists and give a taste of their lives. Ahoot Kanya, Patita, Bandini, Bavandar, Pink, Darlings, Lipstick Under My Burkha, Astitva, Arth, Bazaar, Astha, Water, Lajja, Chak De India, Dangal, Panga, Shakuntala Devi, Mission Mangal, Rashmi Rocket, etc. provide people not only information regarding a particular incident rather pave way for discourse also. These make the audience think from a different perspective. Movies like Ram Prasad Ki Terahvi, Pagglait, Qarib Qarib Single, Water, Babul, Prem Rog, The Last Colour, Chokher Bali, etc. talk about the loneliness and hardships a widow is forced to face.

#### 5. ROLES OF MEDIA IN THE UPLIFTMENT OF THE LGBTQ COMMUNITY

Movies like Aligarh, Kapoor and Sons, Ek Ladki Ko Dekha To Aisa Laga, Bombay Talkies, My Brother Nikhil, Fire, Badhai Do, Chandigarh Kare Aashiqui, Bomgay, I Am, Margarita With a Straw, Shubh Mangal Zyada Sawdan, etc. talk about the issues related to the LGBTQ community and do not portray them as a matter of disgust like early movies. Taali is based on Gauri, a transgender activist, and portrays the positive side of a transgender's personality. Laxmi movie showcases the discrimination transgenders suffer throughout their lives. The gradual acceptance of the community can be seen in these movies. These movies portray people of the LGBTQ community as normal human beings and not as aliens or untouchables. These somehow invoke and encourage them to accept themselves before seeking acceptance from other people. These make them feel at ease and normal that they are neither culprits nor inferiors. Most of all these movies let them know that they are not alone.

#### 6. CONCLUSION

Literature and media are not just mediums of entertainment only rather these bear the great responsibility of upliftment of society also. Changes in society can be seen on these platforms also. When we compare the representation of genders in the early media it was centered around praising a male protagonist; the hero, the savior. Women were portrayed as supporting cast only and no lead roles were given to them after getting married or after a certain age. There were rarely women-centric movies and female characters were just to serve and repent. The early advertisements used to show women's roles restricted to the kitchen and washing clothes only as that was the only way to be an ideal woman at that time. Magazines were full of the achievements of males and females were treated just as objects who had to look beautiful and desirable in every condition.

But now changes can be seen in both the mediums of representation. Contemporary advertisements showcase changing gender roles and encourage people to switch roles irrespective of their gender. Magazines could be seen covering both male and female entrepreneurs and business tycoons. Representation of women has been changed and women-centric movies are in demand. Mission Mangal, A Thursday, Queen, Mardani, Gunjan Saxena, Neerja, Damini, Thappad, Highway, Angry Indian Goddesses, women players' Biographies, etc. portray very strong women protagonists. Earlier the people of the LGBTQ community were portrayed as pimps who were a matter of disgust or as laughing stocks when portrayed against the masculinity of a macho hero. But the media has taken a soft and

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understanding approach towards the community now. This approach has made a great impact on the audience especially the ones belonging to the youth. People have started to understand their pain and loneliness. An acceptance of people belonging to the community can be seen in educational institutions where they are heartily welcomed by their peers. Although the improvement is mostly restricted to the urban areas only as people in these areas are ready to change and give proper place to all genders. But gradual development can be expected in rural areas also as people greatly admire media and try their best to follow what has been portrayed on screen. With the spread of education in rural areas the reach of literature is also visible that is positively impacting the lives of people.

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# GENDER EQUALITY AND VIOLENCE AGAINST WOMEN

**Ashwini Ishwar Kankodia**

SNDT Women's University

SNDT College of Arts and SCB college of Commerce and science for Women

Department: Accountancy

## ABSTRACT

This study examined the relationship between gender inequality and violence against women, recognizing that gender equality is a fundamental human right. It is essential for societies to value women and men equally in order to create a safer and healthier environment. Women should be able to live with dignity, freedom from want and fear, as one in three women worldwide experiences physical or sexual abuse. The purpose of this study is to gain insight into the views of the public on gender equality and gender-based violence. The aim is to assess the attitudes of the public towards gender equality and the various forms of violence faced by women in society, as well as to study the actual level of gender equality and how to address the issue. Gender equality has enabled women to receive equal rights in today's society, resulting in a decrease in violence against women or no violence at all. Furthermore, women are being provided with access to quality education and opportunities in all fields. This research study has been conducted using a combination of questionnaire and survey methods, as well as other sources of information, such as articles, journal articles, websites, and published and non-published documents. Primary and secondary methods have been employed to collect the data for this study. Additionally, the internet has been utilized to facilitate the data collection process.

**Keywords:** Good Opportunities , Education, violence, equality, society

## 1.1 INTRODUCTION

Gender equality is an essential human right that should not be disregarded. Women should be able to live in dignity and be free from any form of coercion or fear. Men and women should have equal access to the same socially valued resources, opportunities, and rewards. This does not mean that men and women should become equal; rather, it should mean that both genders should have equal opportunities and choices in life. To ensure gender equality, women should be empowered to make decisions at both the public and private levels, and to have access to resources, so that both genders can be fully involved in their reproductive and productive lives. The United Nations defines violence against women as any act of sexual, physical, or emotional violence that results in physical, emotional harm or suffering.

## 1.2 SIGNIFICANCE OF THE STUDY.

This paper sought to gain insight into public perceptions of gender inequality and the prevalence of violence against women. Additionally, it presented a survey of various age groups of individuals who expressed their opinions on gender equality and gender-based violence.

## 1.3 OBJECTIVES OF THE STUDY.

In this paper the Researcher has been framed some objectives related to Gender equality and violence against women

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1. To Study what people thinks about Gender equality
2. To Study the Different kinds of violence face by the women in the society.
3. To Study how to solve the problem of violence against women.
4. To Study Opportunities for women now a days

#### **1.4 RESEARCH METHODOLOGY OF THE STUDY**

##### **A. SOURCES OF THE DATA.**

This study focused on gender inequality and violence against women, utilizing primary and secondary data sources. The data was analyzed in accordance with the objectives of the study to gain insight into a particular interference. The analysis of the data was conducted using a statistical tool, allowing for the development of relevant conclusions and recommendations.

##### **1 PRIMARY DATA.**

The researcher has done primary collection with help of the Questionnaire method, survey method and by interview method. The researcher has collected the data in related to study

##### **2 SECONDARY DATA.**

Secondary data was sourced from a variety of sources, including books, journals, articles, websites, and published and non-published documents on the topic. Data was aggregated using the internet.

##### **B. SAMPLE SIZE.**

In this research Paper, the researcher has interviewed 40 participants. There were 20 male participants and 20 female participants in the context of a study on Gender Equality and Violence against Women. The data was collected using an online questionnaire.

**Table 1.1**

##### **Sample Size**

Male	Female	Total
20	20	40

##### **C. SOURCES OF THE DATA.**

The primary data have been classified, categorized, and analyzed using the appropriate statistical tools to reach the correct conclusion. This Paper draws on primary and secondary data from a study conducted on Gender Equality and Violence against Women. The tools used include the percentage method, a bar diagram, a pie-chart, and tables. The percentage method refers to a specific type of data, which is used to compare two or more sets of data. The percentage is based on a descriptive relationship, comparing the related items and providing a basis for comparison.

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## 2. REVIEW OF LITERATURE OF THE STUDY.

A literature review examines the literature relevant to a particular topic, field of study, or theory and provides a framework for the development of a dissertation by acknowledging prior research. Existing literature assists in determining the current state of the literature, as research informs the state of the literature. It is the responsibility of dissertations authors to continue the literature review process by introducing new research and perspectives, however, it is necessary to first comprehend the existing literature in order to progress.

**2.1** In traditional patriarchal societies, women are often viewed as subordinate and subservient members of society, as evidenced by the findings of **Jogesh Das (2012)** in his exploration of gender inequality, social customs, traditions, and other elements. As stated in the 1993 WFCR, the rights of women and girls are integral to all human rights. This research emphasizes the importance of women's rights. The author draws attention to certain gender-specific violations of human rights in North East India.

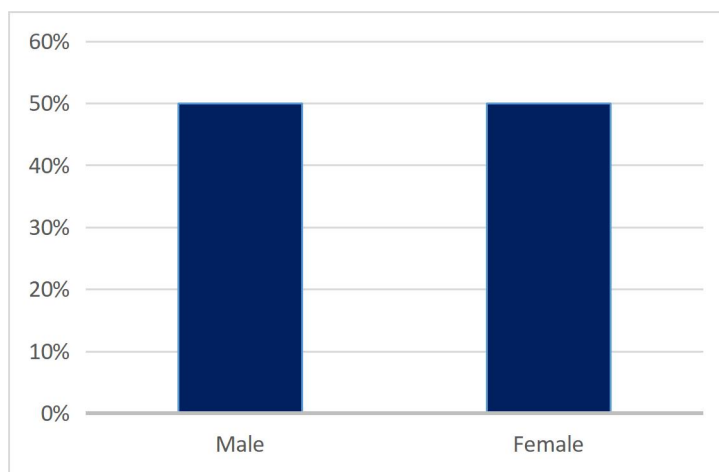
**2.2** The term "domestic violence" is commonly used to refer to violence between adult partners who are, or have been, intimate or family relations. It is most commonly associated with sexual relationships between men and women, as outlined in the 2007 book "Domestic Violence issues and perspectives" by **Michael Shenoy**. Many of us have encountered domestic violence in our own lives, or in the lives of family members, friends, or acquaintances. However, many of us mistakenly believe that our experiences of domestic violence and abuse are isolated or isolated, and that we are immune to its effects, unaware of its pervasive nature and its long-term effects.

## 3. DATA ANALYSIS AND INTERPRETATION.

In this Study the researcher has Collected the data by online questionnaire to study on Gender equality and violence against women after collecting the data, and analysed with the help of selected tools like percentage method, pie diagram, bar graph etc.

### 3.1 ANALYSIS OF THE STUDY

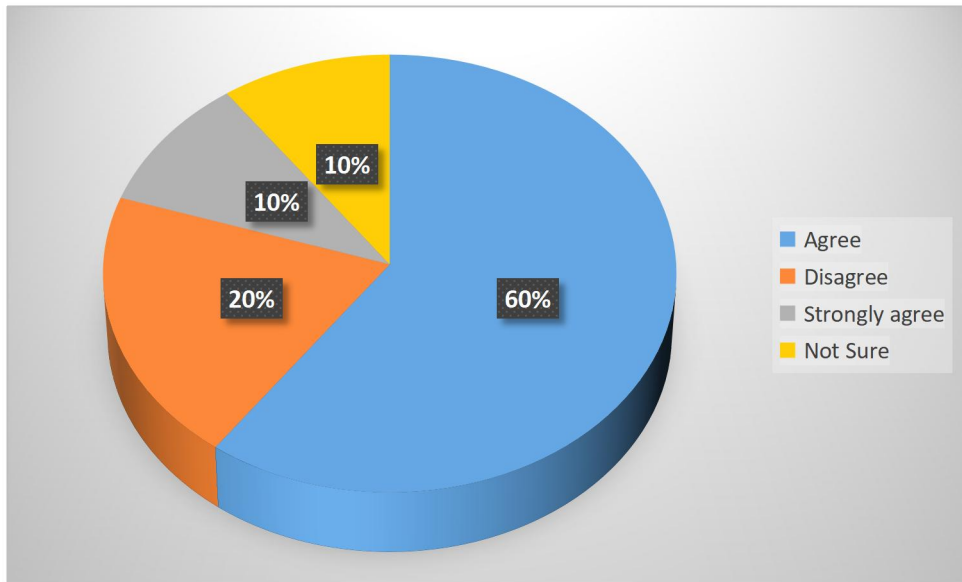
#### 3.1.1 GENDER OF THE RESPONDENTS



Violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, Violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, Violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, Violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, Violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, Violence against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of violence include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, coercion, blackmail, economic or emotional threats, and control over speech and actions.

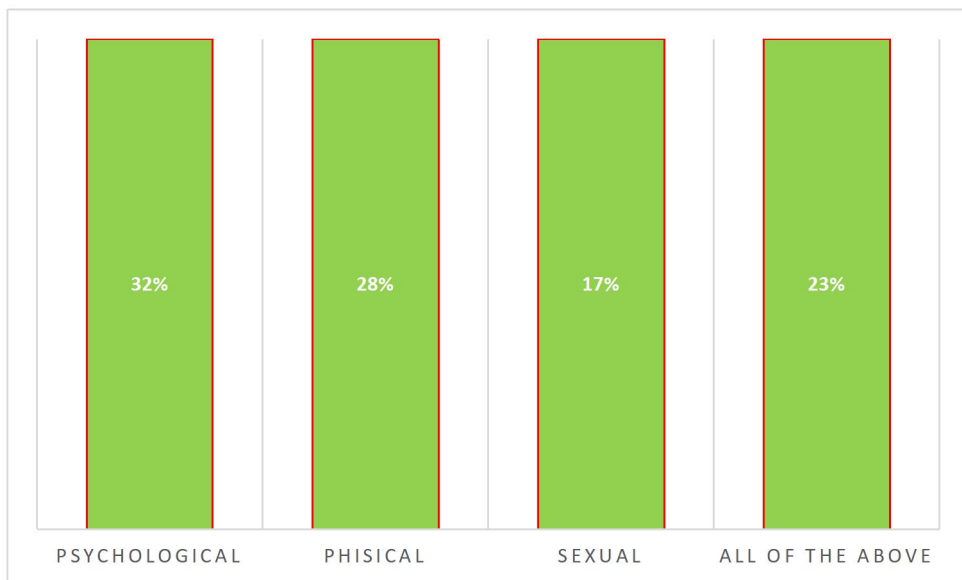
In this Research Paper there was total 40 Respondents in that 20 was Female and 20 was Male. The respondents interviewed was both the same 50 percent People are female and 50 percent of the People are male.

**3.1.2 GENDER EQUALITY IS VERY MUCH IMPORTANT IN OUR SOCIETY**



The question were asked to 40 Respondents that do they agree that gender equality is very much important in our society from that 60% respondents were Agree 10% respondents were Strongyle agree and only 20 % of respondents were not Agree and 10 % respondents were not sure about it.

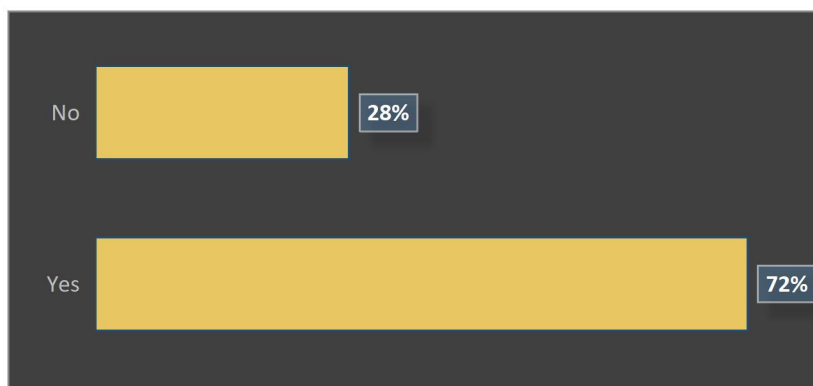
**3.1.3 VIOLENCE FACE BY THE WOMEN IN THE SOCIETY**





The question were asked to 40 Respondents that what kinds of violence face by the women in the society 32 % respondents said Psychological violence like mental torture and all 28 % respondents said Physical violence 17 % respondents said sexual violence and 23 % respondents said all of the above.

### 3.1.4 WOMEN ARE GETTING EQUAL OPPORTUNITIES IN ALL FIELD NOW A DAYS



The question were asked to 40 Respondents is that true that women are getting equal opportunities in all field now a days 72 % respondents said yes women gets equal opportunities in our society like women are there in all filed now a days like in sports, in medical field, teaching field, defense etc. But are some people who said no women are not getting equal opportunities in our society.

### 3.2 SUGGESTION

We only advocate for gender equality, but we should also take action to bring about gender equality in our society by talking to our family members and children about it so they have a clear understanding of it. People ought to encourage women to launch their own businesses so that they can achieve financial independence. We should purchase goods from businesses and organizations that support gender equality. Speaking out against gender-based violence is important. assist women who are struggling with the issue of violence.

### 4. CONCLUSIONS.

It can be inferred from the preceding research that gender equality is an essential human right and plays an essential role in society. However, gender equality only implies that the availability of opportunities and alterations in life are not contingent upon or restricted by gender. It does not imply that men and women are equal. Women face a wide range of forms of violence perpetrated by their partners or family members. However, through gender equality, women are now more empowered than ever before in all areas of life.

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## A CRITICAL ANALYSIS OF SECTION 498A HIGHLIGHTING GENDER JUSTICE ISSUES

**Dr. Aashish Borse**

Assistant Professor, Kishinchand Chellaram Law College  
Churchgate, Mumbai

### ABSTRACT:

Section 498A was inserted in the Indian Penal Code, 1860 was inserted via the Criminal Law (Amendment) Act, 1983 (Act 46 of 1983) with a view to curb the increasing menace of cruelty relating to dowry in the country in the 1970s and 1980s.

The ground reality in the nation in relation to matters pertaining to this penal provision gradually became grave and serious to the extent that it was observed that gross abuse of law and legal process was witnessed all across the country.

In 1986, two more sections (which are relevant here) were inserted by virtue of the Dowry Prohibition (Amendment) Act, 1986 for combating the menace of dowry killings, namely Section 304B (Dowry Death) in the Indian Penal Code, 1860 and Section 113B in the Indian Evidence Act, 1872.

The focus of this research paper being Section 498A, the reference to Section 304B and Section 113B shall be only contextual wherever relevant and necessary.

Eventually, Section 498A which was enacted to counter a menace, itself proved to be another menace of a kind whereby there were innumerable cases from all states reported wherein the married women and in most cases their families too were involved in filing vexatious FIRs to teach lessons to the grooms and their families.

This Paper aims to examine and explore the legal, constitutional and social issues surrounding Section 498A and its relevance and significance in relation to Gender equality concerns of the nation keeping the ground reality in our country in the backdrop.

### INTRODUCTION

Cruelty against women has always been a concern for the State and for the law enforcement agencies all over the world. The situation in India is not different from other parts of the world and is rather grimmer owing to the peculiar socio-economic conditions of the territory. The menace of dowry related harassments across the nation in the 1970's prompted the Legislature to enact amendment in the existing Penal Code, 1860 to take a tough stand on cruelty against women in their matrimonial home by the husband and relatives of the husband.

In this research paper the researcher attempts to examine various perspectives of Section 498A of the Indian Penal Code, 1860. The researcher wishes to focus upon the present day reality of the vast number of cases registered under the section 498A and the plethora of matters of gross abuse of the section by

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one section of the community who have shown to have acted with vengeance and with the sense of retaliation towards the in-laws of the women by taking refuge to criminal law and Section 498A has become a glaring example of their vengeful tendencies with reports exemplifying such tendencies from almost each and every corner of the country so much so that the apex court of the country had to intervene to take measures by formulating guidelines in all matters in which Section 498A is invoked so as to prescribe procedural safeguards to ensure vexatious complaints are not instituted.

### OVERVIEW OF RELEVANT STATUTORY PROVISIONS:

#### 1. Section 498A of the Indian Penal Code, 1860

This section makes the husband or relative of the husband of a woman who subjects her to cruelty, liable for punishment with imprisonment extendable to a term of 3 years as well as fine. Cruelty here connotes willful conduct of such husband or relative of the husband which is of such a nature and character that it has the potential to drive such a woman to suicide or is of such a nature and character so as to possess the potential causing injury of a grave magnitude or danger to her life, her limb or her health. Such danger as is contemplated herein is of such nature that is wide enough to include mental injury or physical injury or both. Additionally, harassment of the woman which is calculated towards coercing her or relative(s) of hers to fulfill the unlawful demand or demands relating to any kind of property or demand of any kind of valuable security. Lastly, the law also contemplates that a consequence of such a character is attributable to the inability of such a woman or any relative(s) of hers to satisfy such unlawful demand or demands to seek or obtain property or valuable security.

#### 2. Section 30 of the Indian Penal Code, 1860

Since valuable security is an essential element of Section 498A, it is imperative here at this juncture to visit the definition of 'valuable security' under Section 30 of the Indian Penal Code, 1860, according to which it signifies any document which is or purports to be one through which a legal right is created, extended, transferred, restricted, extinguished, released or through which there is an express acknowledgement by a person of a legal liability or that he expressly acknowledges that he does not have a particular legal right.

#### 3. Section 304B, Indian Penal Code, 1860

This legal provision creates, defines and penalizes a new offence, namely 'dowry death'. It lays down that when there is death of a married woman owing to burns or bodily injury is occasioned otherwise than under normal circumstances and such death occurs within 7 years of the date of the solemnization of her marriage it is within the meaning of 'Dowry Death'. Furthermore, this section requires that soon before the death, such woman must have been subjected to cruelty or harassment by the husband and/or his relatives. Also such cruelty or harassment must have been in relation with dowry-related demands. Section 304B prescribes a minimum of seven years' imprisonment, extendable to life imprisonment.

#### 4. Section 113A, Indian Evidence Act, 1872

A new presumption was added in the Indian Evidence Act, 1872 vide this Section. The essence of this presumption is that whenever the question before a court is when a married woman commits suicide within a period of 7 years from the date of her marriage and the question is also that whether commission

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of the suicide had been abetted by her husband or his relative(s) and that such woman was subjected to harassment or to cruelty by her husband or his relative(s), the court may presume that such commission of suicide by such married woman was abetted to by her husband or his relative(s). While so presuming the Court is bound to have regard to all the other circumstances of the case. 'Cruelty' herein is to be interpreted in light of Section 498A of the Indian Penal Code, 1860.

### **HISTORICAL PERSPECTIVES AND BACKGROUND BEHIND ENACTMENT AND INSERTION OF SECTION 498A IN THE INDIAN PENAL CODE, 1860:**

Subjugation, harassment and ill-treatment of women is not a present day phenomenon. In a predominantly male-dominated society like India, several generations of women have suffered oppression which was owing to a plethora of reasons and in a number of circumstances at all ages and across most parts of the country. Roots of dowry lie embedded deep into the Indian society and unfortunately there has been a tremendous rise in dowry related harassment and even deaths in three to four decades after India secured Independence from British Raj in 1947.

It is true that women have been historically the more disadvantaged gender. Secondly, a substantial segment of Indian population has conventionally considered girls to be a burden on their shoulders. This belief is largely attributable to their concern for their marriage and also because they need to shell out huge amounts of money for dowry, whereas on the other hand, if they have a male child, he would get property as a dowry from the new bride's family.

In the 1980's the State foresaw the necessity for this law which is an addition to the numerous women-oriented pre-existing laws of the country. Necessity was driven by the increasing and alarming menace of dowry-related offences across the length and breadth of the nation, which led to enactment of the law.

#### ***SECTION 498A VIS-A-VIS' GENDER JUSTICE ISSUES:***

Section 498A of the IPC helps the women approach the court of law and put forth their grievances against their husband and relatives of the husband in cases on which they are suffering exploitation and harassment in their matrimonial homes.

The law describes cruelty as an intentional conduct that is likely to drive a woman to commit suicide or cause grave injury or danger to her life, limb or physical health or mental well-being. The law mandated punishment for such offenders who subject the woman, with the intent of coercing her or any person related to her to meet any unlawful demand for any property or valuable security on account of her or relatives' incapacity or inability to fulfill such demand or demands.

The ground reality has been palpably grim and absolutely horrid, because in numerous cases, the Supreme Court and almost every High Court has identified the abuse of this section rather the appropriate use of this section and the Apex Court has categorized this section as a glaring illustration of a unique kind of "legal terrorism" and have criticized governments to have failed to address the issue for fear of being labelled as anti-female and consequently compromising on their substantial vote bank share comprising of almost fifty percent of the national population.

The law aims and seeks to provide for a potent shield which enables and empowers women to set the criminal law in motion against cruelty and harassment. However, the societal ground reality is

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unfortunately such that men and their relatives have been found to be the most vulnerable sections of the society and have been prone to be miserable sufferers of mental health issues than women.

The welfare-oriented motive behind enactment of this specific law was a noble cause which aimed towards empowerment of married women to seek justice for themselves. It aims that oppressed and harassed women avail the justice mechanism because one of the major advantages of including this section is that it protects exploitation or harassment of married women by matrimonial relatives including their husbands. Section 498A seeks to not only create a stern deterrent impact upon prospective offenders but also seeks to inspire women to come forward and file complaint against domestic abuse against them in their matrimonial homes committed by the husband or his relative(s). Overall, Section 498A of the Indian Penal Code, 1860 is a thought-provokingly drafted piece of criminal legislation driven by the utmost and compelling necessity of the State to nail matrimonial relatives of innocent women who silently suffer cruelty and harassment in their matrimonial homes at the hands of their in-laws.

Unfortunately, and equally ironically, the same piece of legislation has earned the dubious distinction of being one of the most grossly and widely misused section of Indian criminal law by women and their maternal relatives to pacify their ego and their innate sense of vengeance coupled with their collective desire to teach a lesson to the matrimonial relatives of the so-called helpless and oppressed woman. Some Important Landmark Judgements in relation to Section 498A, Indian Penal Code, 1860 where the Apex Court has highlighted the abuse of the law and the legal process thereby leading to victimization of men:

*Kans Raj v. State of Punjab*<sup>1</sup>

The Apex Court observed that the in-laws or any other relations cannot always be held criminally liable for dowry-driven cruelty only for the fault of the husband. In cases where such accusations are made, conduct attributed to such persons other than the husband must essentially be proved beyond reasonable doubt. Further, in their anxiety and over-enthusiasm to seek conviction for many relatives, the parents of the victim often are found taking steps and efforts towards involving other relatives which eventually leads to the weakening of the prosecution case even against the real accused

In the instant matter, the Apex court quashed the charge sheet and criminal prosecution against the in-laws of the victim.

*Sushil Kumar Sharma v. UOI*<sup>2</sup>

In this landmark pronouncement of unparalleled significance, the Apex Court emphatically ruled and vigorously affirmed that where the constitutional validity of section 498A of the Indian Penal Code, 1860 is in question before the Supreme Court of India, it is certainly not an unconstitutional provision and hence also is not ultra vires. The Court reasoned the conclusion on the ground that a mere possibility of abuse of a provision of law does not per se invalidate the law in question. It was observed that the argument advanced that Section 498A has no legal or constitutional foundation is not tenable.

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<sup>1</sup> AIR 2000 SCC 2324

<sup>2</sup> (2005) 6SCC 281

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The Court further proceeded towards examining the very object and purpose of the provision which is the prevention of the menace of dowry. Also, it was realized that many instances have come to light where the complaints are mala-fide and have been instituted with oblique motives and that in such matters, the factum of the acquittal of the accused person or persons does not in all cases automatically wipe out the ignominy suffered by him or them during and before trial. In many a matters, intentional and deliberate adverse media coverage, especially in high-profile adds to the pathos, misery and sufferings of the accused persons. Therefore, the moot question is about what remedial measures can be taken to avoid the calculated and disgraceful abuse of the well-intended legal provision. Merely because the legal provision is within the constitutional framework and intra-vires, it does not give a free license to overzealous and calculatedly unscrupulous people to find a weapon to wreck personal vendetta or unleash tendencies towards harassment and it will eventually become essentially imperative for the legislature to discover means and ways as to how the makers of frivolous complaints or allegations can be appropriately tackled. Courts have to take care of the situations within the existing legal framework, the quote further observed that a complaint under Section 498A of the Indian Penal Code,1860 was being filed based on a personal vendetta.

The Court opined that by misuse of this provision unleashes a new variant of legal terrorism. In an emphatic pronouncement of far-reaching ramifications, the Supreme Court of India issued guidelines to curb the abuse of section 498A of the Indian Penal Code,1860. The following is an account of the most important guidelines in the form of a crystallized version in a nutshell which spells the immense concern of the highest court of the country towards ensuring the curbing of the menace of the abuse of section 498A of the Indian Penal Code,1860:

‘Family Welfare Committees’ must be constituted by the district legal services authorities in every district, which must preferably comprise of 3 members. The constitution and functioning of such committees are necessarily required to be reviewed at periodic intervals and not less than once in a year by the District and Sessions judge. Social workers, paralegal volunteers retired persons, wives of working officers, public spirited citizens and such other citizens must be encouraged to take part and ensure their participation in such Committees who may be found suitable and willing for wholehearted and genuine contribution towards the purpose of the constitution of the Committees. No arrest should be made abruptly and every report needs to be taken into due consideration by the concerned investigating officer or the concerned Magistrate on its own merit. Members of the committee must be given preliminary and fundamental training which the Legal Services Authority deems necessary and appropriate as reviewed from time to time. Complaints instituted under Section 498A should preferably be investigated by designated senior investigating officer. In suitable matters, the District and Session judge (or any other person who is a senior judicial officer nominated by him in the district) to dispose of the proceedings including in appropriate matters, the closing of the criminal matters, if the concerned authority arrives at a conclusion that the dispute primarily relates to some matrimonial discordant which is not of a serious nature in light of the individual facts and circumstances of the matter.

*Social Action Forum for Maanav Adhikaar and Anr.v UoI Ministry of Law and Justice and ors.*

Some of the directions laid down in Rajesh Sharma's matter were overruled by the Apex Court in this case. The Court laid down that while proceeding with the arrest it is appropriate to direct that the investigating officer be careful and be guided by the principles state in Joginder Kumar vs State of Uttar

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Pradesh [1994 SC 260] and Arnesh Kumar state of Bihar [(2014) 8SCC 273]. One can infer that the anxiety of the Court is to ensure that there is optimal fairness, appropriate legitimacy and sufficient transparency in the process of arrest which is necessary in light of the most affront and direct attack on the personal liberty which cannot be lightly interfered with. Stringent adherence to the law laid down in both these landmark judgements must be ensured in every arrest so as to ensure that there is uniformity, consistency and specificity across the nation in following the due process of law in all matters. It is all the more imperative to adhere to milestones of exemplary judicial activism. The Court further also held that it is appropriate to direct the Director General of Police of each State to ensure that rigorous training concerning the principle stated by the Court must be strictly followed.

## CONCLUSION

Thus it is concluded that what appeared to be and indeed is an enactment made for protection and empowerment of oppressed and harassed married women, could never have been imagined by the legislators to be of an antithesis that the statistics of the nation have proved over 4 decades after enforcement. Indeed, the plight, agony and trauma of countless men and their families who suffered at the hands of vexatious wives and in-laws and other relatives, is unthinkable.

The only ray of hope is from the judiciary who has through the display of judicial intervention rather than judicial activism attempted to alleviate the situation and to bring in gender equality by introducing procedural safeguards in the arrest, custody and other relevant and connected aspects associated with the criminal procedural requirements for a case under Section 498A. This penal provision will be remembered in the history of Indian Criminal law for decades for having on one hand a purposeful and stern substantive content and context while gross abuse and vexation on the other hand, which caused unsurmountable agony to a large number of people across the nation. Hope that recent judicial developments in Indian Criminal Justice system will serve as guiding lights for protection of citizens against abusive and vengeful criminal proceedings in future.

## SUGGESTIONS

- 1) Gender Sensitization' across all ages, genders, classes and localities seems to be the most viable and prospectively impactful way to curb the menace of most of the gender-related menaces.
- 2) Mass Awareness programs must be initiated by Union and State governments towards mass education and sensitization.
- 3) Dissemination of informative events must be initiated by administrative agencies at all levels so as to educate the citizenry on the value and indispensability of gender sensitization in wake of national and global goals of our nation towards women empowerment and gender justice.

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<sup>3</sup> Rajesh Sharma v. State of Uttar Pradesh 2017 SCC Online SC 821

<sup>4</sup> (2018) 10SCC 443

- 4) From early childhood, there must be emphasis upon creation of gender equality and awareness in direction of gender sensitization so that the nation ensures that future generations emerge not as merely educated citizens but also as truly civilized citizens of India who believe in 'Zero Tolerance' for gender discrimination and gender injustice.
- 5) There should be introduction of welfare schemes as prominent initiatives by the government in collaboration with NGOs wherever feasible and possible at Union State and local administration levels, which Schemes provide for immediate mechanisms for temporary reception, protection and counselling of victims as well as their families who have faced or are likely to face the rigors of the wrath of the matrimonial relatives, irrespective of whether the victims be women or men whatsoever.



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# JURISPRUDENTIAL ENQUIRY OF ABORTIONS FROM THE STANDPOINT OF NATURAL LAW AND SOCIOLOGICAL SCHOOL OF LAW

**Mrs. Aruna Kadu**

Assistant Professor  
Late Govindrao Wanjari College of Law, Nagpur

**Dr. Bhagyashri Deshpande**

Professor  
Dr. Panjabrao Deshmukh, College of Law, Amravati

## ABSTRACT:

Abortion can be said as contentious topic as there are strong arguments for and against legalizing it. Both the sides are equally convincing. Abortion can affect the rights of both mother and the unborn child. Several nations have established various justifications for the legalization of abortion. Consequently, it becomes crucial to investigate whether or not legalizing abortion is acceptable from particular jurisprudential positions. The sociological school of law and natural law are two of these theories that have been discussed in the present article. The sociological school of law and natural law both the theories have starkly divergent perspectives on whether abortion should be made legal. Natural law, which places a greater emphasis on the moral aspects of law, passionately opposes the idea of permitting abortions, which may seem excessive. The sociological school of law, in contrast, has a more practical perspective and focuses on social engineering in an effort to improve the law. However, even the sociological school of law finds it challenging to provide a precise response. As a result it depends upon the need of the situation in which abortions are permitted on a limited number of grounds, and choosing those grounds is the responsibility of the nation's law and policy makers who have the authority to make such decisions.

**Keywords:** *Abortion, jurisprudential enquiry, natural law school, sociological school of law*

## 1. INTRODUCTION

Perhaps the most contentious and polarizing moral issue of our day is abortion. Arguments in favor of and against abortion have been made for the past three decades by organizations of all kinds. Extreme feminists to religious fundamentalists and every spectrum of view in between abortion has become a major matter of discussion in modern law. It has existed as a concept since the dawn of humankind, not as a contentious idea but as a way of life. According to Schur, "women have used abortion - the destruction or expulsion from the womb of the unborn child, the fetus, before it attains viability - to free themselves from unwanted childbearing since the very beginnings of society."<sup>1</sup> What should we debate when we disagree about abortion? It might be challenging to determine where one should begin when a subject is so enmeshed in moral intricacy. As a result, the question of whether abortion should be legal or

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<sup>1</sup> Schur, E.M. (1955). Abortion and the Social System. *Social Problems*, 3(2), 94-99.

<https://doi.org/10.2307/798708>

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not has been replaced by the questions of when and under what circumstances it should be legal. A medical-legal study conducted in 1951 found that "abortion is legally defined as the removal of the fetus from the uterus (womb) at any time before its term of gestation is complete," according to Fisher.<sup>2</sup> Abortion is divided into three categories by Fisher: spontaneous, therapeutic, and criminal. The majority of abortions are brought on by maternal sickness, either systemic or affecting the womb or its accessories, while spontaneous abortions are brought on by aberrant development or death of the ovum or its membranes. An abortion that is conducted therapeutically is one that is terminated to protect the mother's health or life. Criminal abortions are illegal abortions, in which the mother or another party ends the pregnancy.<sup>3</sup> Concerning the third category, the debate continues. Women have chosen illegal abortions as the only available means of ending their pregnancies since there are so few legal grounds for doing so. This has led many people to believe that legalizing or loosening the rules governing abortions will increase the number of abortions that are carried out. Some nations only permit abortions if they are necessary to preserve the mother's life.

## 2. NATURAL LAW PERSPECTIVES ON ABORTION

The general idea of natural law about abortion is that from the lenses of morality, abortion is something which is immoral. It strongly argues that the fetus is a natural being and that's why feticide cannot be a choice. A contemporary legal scholar, John Finnis<sup>4</sup> who belongs to the natural law theory bases his ideology of law through the values. He talks about the concept of natural rights. His ideology of seven basic values comprises life, knowledge, play, aesthetic experience, friendship, practical reasonableness, and religion.<sup>5</sup> These values are the core basic values which have no kind of preferences among them. Life is the core value given by Finnis, and it should be respected in connection with mother and fetus as well. Finnis strongly opposes the idea of abortion. Thus nowhere Finnis's theory justifies the idea of abortion.

However Ronald Dworkin,<sup>6</sup> though a natural law jurist has different views on the concept of rights. He points out that, if there is any statute which allows the abortion, it should be applicable as per the case in hand. It would be the interpretation of judges whether to allow abortion or not depending upon each case. Thus he poses much responsibility on judges in which case to allow abortion. So accordingly judge would decide if it is fit to case or it would moral to allow abortion in particular case.

In a land mark case *Roe v. Wade*<sup>7</sup> the US Supreme Court recognized the right to abortion in tune with Fourteenth Amendment of the Constitution. But as the right of the state should be prevailed over the individual right, the state is concerned with that unborn child, then in case *Planned Parenthood v. Casey*<sup>8</sup> it was overruled and a woman would get the right to abort the child only if there is any risk to fetus. The

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<sup>2</sup> Russell S. Fisher, *Criminal Abortion*, 42 J. Crim. L. & Criminology 242 (1951)

<https://scholarlycommons.law.northwestern.edu/jclc/vol42/iss2/13>

<sup>3</sup> *ibid*

<sup>4</sup> Finnis, J. (2011, first published 1980). *Natural law and natural rights*.

<sup>5</sup> Ukey, Dr. Dilip. *The Jurisprudence of Legal Theory*. (1<sup>st</sup> edn, Thomson Reuters.

<sup>6</sup> Ronald Dworkin. *Taking Rights Seriously* (1<sup>st</sup> edn, Bloomsbury Academic, 1977.

<sup>7</sup> 410 U.S. 113

<sup>8</sup> 505 U.S. 833

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rights of mother and fetus are competing rights and interest so the views of Dworkin i.e. to find the morality and principle can be applied here and he is of the opinion that abortion is not immoral per se and that, it is a matter of principle which is applied to the each case in hand.

### 3. SOCIOLOGICAL JURISPRUDENCE ON ABORTION

Sociological Jurisprudence is the functional theory of law which mainly focuses the relation of society and the law to each other.<sup>9</sup> Sociological theory expanded the horizons of jurisprudence and it would include into it every branch of human learning. Roscoe Pound<sup>10</sup> describes Sociological Jurisprudence as another line of development of the society and the law.

Emile Durkheim, a French philosopher has expressed his views on abortion beyond the individual rights as he considered social rights should be prevailed over the individual rights. He considered abortion as a social malpractice and same is to be regulated to stop the exploitation of vulnerable group. Roscoe Pound considers law as an instrument of social change. Law has to be changed to cope up with the needs of the society. The issue of abortion includes two competing interests of mother and the unborn. Thus to achieve a fair balance between these two interests Pound propounded the theory of “jural postulate” which mean ‘the method by which interest may be tested and evaluated so that the conflicts between the various interests may be resolved’. The theory of Pound seems to be more realistic as it suggests looking into the actual practice in the society before making any changes in the law.

### 4. CONCLUSION

The predicament of abortion is the matter of conflict in the society from the ancient times and it will be the issue to discuss and would be attracting the constant differences of opinion in the coming times as well. The differences of opinion whether to allow it or not, the rights of mother and child involved in it and ultimately as it would impact the society at large make it a point of plight. Again there is no strong political, sociological, legal or scientific justification for or against the application of it. Even there are differences of opinions in the philosophers or jurists belonging to the same theory of knowledge.

The jurisprudential analysis which has been discussed earlier shows the strikingly different views which are in favor and against legalizing abortion. While Finnis strongly opposes the idea of abortion basing on his theory of basic values which gives intrinsic importance to life and religion alternately Dworkin gives the prospects but does not suggest proper solution and rests all the responsibility on the shoulders of judges to make it applicable in the particular case in hand. Sociological jurisprudence relies on the practical aspects and the realistic approach for applicability of abortion according to the social reality. Thus despite all the jurisprudential theories the issue of abortion would not get a proper one time solution because it includes the conflicting interest of the both parties and thirdly the society at large so a better, satisfactory solution can be reached on by evaluating each case in hand.

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<sup>9</sup> Paranjape, N.V., Studies in Jurisprudence and Legal Theories, Central Law Publication, Ed. 2001.

<sup>10</sup> Pound R., Sociology of Law and Sociological Jurisprudence’ The University of Toronto Law Journal V 1943; (5) (1): 1,2

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# GENDER EQUALITY AND WOMEN EMPOWERMENT: CRITICAL APPRAISAL IN THE ERA OF GLOBALISATION WITH REFERENCE TO THE CONSTITUTION OF INDIA AND HUMAN RIGHTS

**Dr. Brinda Gobind Gurbuxani**

Faculty, K C Law College, Churchgate, Mumbai

## ABSTRACT

"Justice consists in the enforcement by a society of an artificial equality in social conditions which are naturally unequal" - Lester Ward<sup>1</sup>

The above words of the first President of the American Sociological Association, provides for an egalitarian view of justice, and approaches the concept of justice with a focal point of equality. John Stuart Mill English philosopher, political economist, Member of Parliament and civil servant. sees the liberation of women to a level of equality with men as a prerequisite for the improvement of mankind. Gender Equality refers to equality in terms of the social, economic and political arena, free from discrimination, stereotyping, objectification, oppression and patriarchy, promoting women's rights, and interests, focusing on earnings, and establishing equity by and for women vis a vis man, to promote the same rights, interests and opportunities. Feminism consists of moral philosophies, and social theories centering on the eradication of gender inequalities and promoting gender parity through women empowerment. Constitutional Feminism is a relationship of feminism theory to the supreme document, which governs the country. The Constitution of India has objectives of equality of status and opportunities with the dignity of a person to integrate all the masses into the mainstream of national life. The Preamble and the related articles such as 14, 15, 16, 17, 19, 21, 44, 46, 243D and 243T are intended to bring a social order for women's empowerment to break the barriers of subordination and reducing the Gender Gap. Globalization has provided the women in our society, the power to uproot the traditional submissive status, and unpaid domestic work culture to come forward for taking equal stances in economic and business activities through increased employment opportunities. But at the same time, globalization has also increased the means of their miserableness as low-paid, part-time and exploitive work cultures. The era of globalization has vanished and wiped off boundaries opening new avenues of learning, skill development, jobs and economic activities. Women's role in the family with technological advancement, higher professional education, enhanced economic status, better health, specialized child-care will improve global prospects etc. Globalization will also lead to increased prices due to open economic policies, increasing the nuclear family concept. The urban migration will force the rural women under the burden of managing the home, farming, earning and managing daily life. Migration of women to the urban areas for better economic reasons would lead to an increase in their sexual exploitation and trafficking etc. Illiteracy also hinders the promotion of women's rights, empowerment, enriching livelihood; and strengthening female participation and leadership in all spheres of life. Equal access to standard education, skill-based training and technical enrichment is the need of the hour in the

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<sup>1</sup> Lester F. Ward, Applied Sociology (Boston 1906) 22.

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Globalization era. Education, healthcare, protection from violence, population control, work opportunities, equal pay, access to economic resources, safe and secure environment, participation in all areas of decision-making and treatment with morality and pride are the key areas for improvement in the present time of a shrinking globe. This research paper aims to make an exploratory, inductive, descriptive study of gender equality and women empowerment covering the said core areas, in the era of globalization regarding the Constitution of India and Human Rights.

Keywords – Gender Equality, Constitutional Feminism, Social Order, Women Empowerment, Globalization, Recession, Subordination, Gender Gap, Affirmative, Gender Specific, Gender-Parity, Revival, Domestic Violence, Urban Migration, Organized Sector, Childcare Needs, Unpaid Domestic Work, Illiteracy, Working mother, Single Parent

## 1. INTRODUCTION:

Gender equality is a universally accepted basic human right and includes various human rights equally, with dignity. The common minimum need of rights has been adopted by almost every nation across the globe. The United Nation's efforts and International Conventions give norms, which are of significant use to aim for an equal society. The achievements and progresses in the field of gender equality and women empowerment are very varied and exceptionally unacceptable, the unpaid domestic work contributed by women is high in comparison to the Gross Net Product of underdeveloped and developing countries. The causes of gender inequality are linked directly to the household decision-making process and are grossly influenced by the market signals coupled with institutional norms, which are unable to utilise the benefits of investing in women. Lack of educational opportunities, job and industrial training, health care facilities, nutrition and limited resources available to her results in inequality, causing hurdles in economic efficiency and overall growth. The varied economic, social, geographical and religious orientation plays a crucial role in the domain of gender equality. Although the Constitution of India enshrines the principles of gender equality in its Preamble, Fundamental Rights and Directive Principles, the situational reality is far different from the Constitutional dream of an egalitarian setup. The goals enunciated in the Constitution, Legislations, Plans, Policies, Programmes and stipulated procedural mechanisms are farther from the truth. In the era of globalisation and fast-paced communication boundaries separating nations have disappeared and the globe has shrunk to our communication devices just a click away. The varied status of women across the sphere is a subject of concern worldwide, and also the multifaceted position of women in different backgrounds such as rural and urban areas in our own country is showing the real face of gender parity and needs urgent, crucial and pressing attention.

## 2. GLOBALIZATION AND ITS IMPACT ON WOMEN'S EMPOWERMENT AND GENDER EQUALITY:

Globalization is an almost a century-old term, which has been first used as an alternative to precede the term 'corporate giants'. The term 'Globalization' has been spawned with absurd, contradictory definitions by social scientists and economists and quite often wrongly assumed as synonym with capitalism. The United Nations came up with clarity to the subject and defined globalization as free trade between nations across boundaries, which includes the removal of impediments such as tariffs, taxes, duties etc to allow the free flow of capital, goods, services and labour etc. Economists view globalization as an assimilation of national economies into one world economy using tools such as Foreign Direct

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Investment, trade, migration, capital flow, mergers and acquisitions etc. Technological advancement, modern effective and instant communication and commuting systems, facilitate and encourage free trade and transactions across the globe, dissimilating the boundaries of walls and distance between nations. Globalization lays the seed and fuels the concept of capitalization utilizing laissez-faire, which asserts government control over markets is unwanted and not required and advocates government non-interference in business activities. Capitalism is slowly embraced and adopted as a means of operating businesses in the global economy formed as a result of globalization.

Globalization is a positive term with a corporate, business and economic lens and provides various effects, which prima-facie look beneficial to women's empowerment and gender equality. Globalization provides access to new cultures, spreads technological advancements, lowers the costs of commodities, enhances the standard of living, opens new economies and markets, brings opportunities for employment for talent, opens new economic avenues, and makes way for better healthcare, nutrition etc. Globalization when seen from a feminist lens is a negative concept, which is harmful to women's rights, in terms of facilitating organized exploitation of women labourers and migrant workers, increased commercial exploitation in various forms of sexual exploitation and flesh trade; and international operation of organised crime against her body and rights. The technological advancement in communication is a powerful catalyst that can be used to magnify the oppression of fairer sex, if not monitored, controlled and policed properly and adequately. Internet and social networking platforms remain largely uncontrolled and have become a marketplace for illegal activities further leading to various crimes against women. The internet knows no boundaries and crime syndicates operating over it, have transcended the national boundaries, beyond the exercise of the sovereign power of states. The nation States are basic building blocks of political power protecting human rights. Globalization has outmoded the political entity of the state, without any alternative structure to replace it. The organizations such as United Nations and World Trade Organization, etc., are inter-governmental agencies on which international treaties and mechanisms rely, but these organizations are largely bereft of power and mechanism to enforce and uphold human rights. The governments are having jurisdiction limited by boundaries, whereas the corporations have their power and presence beyond the limiting lines on the map. The corporations have their code of conduct, rules and regulations, which differ from government legislations, that are based on the theory of popular will, public interest, human rights and constitutional mandates. The corporations only represent themselves and are accountable solely to their shareholders, backed by narrow economic motives to earn profit for their investors. The boardroom analysis of sexual exploitation of women, organ trade, pleasure tourism, surrogacy, medical tourism, and exploitation of resources and labour will be very different from the legislative process in assemblies and the House of Commons.

Globalization has magnified and boosted the international solidarity for women's empowerment by bringing organizations active in this field, through the use of technology for permanent networking between women and organizations. The awareness campaigns to curb prostitution, trafficking and violations of human rights against women in the globalization era are much more effective. The UN-WOMEN<sup>2</sup> and UN peacekeeping missions<sup>3</sup> have performed exceptionally to achieve whatever we have

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<sup>2</sup> UN Women is an United Nations Entity working in the field of Gender Equality and the Empowerment of Women, founded in July, 2010.

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achieved today in this arena in a short period. Across the globe, women have got amplified opportunities to be heard through technological advancement. The International Court of Justice has played an important role by addressing subjects of violation of women's rights, affirming human rights beyond national boundaries. Globalization can provide justice beyond boundaries to women to ensure a free and equal social structure across the globe. The UN October 2000 Security Council session<sup>4</sup> provided a platform for women from war-torn countries to voice their role in the development of equal social strata. World Bank another international organization beyond boundaries has acknowledged the role of women as equal partners in achieving sustainable development.

Globalization has magnified the capabilities of a group of women, who are having access to technological advancement and also literate with access to new tools of learning, whereas others are deprived of reliable and easily accessible resources. The deprived group are left behind and the knowledge gap between the two has widened. Powerful has relatively become more powerful, and the resourceful are propelled rapidly ahead, ruthlessly leaving other ungifted women behind. Technology has played a vital role in upgrading women having fewer resources through literacy and technical training bringing them into the mainstream of the global economy.

### **3. CHALLENGES TO WOMEN'S EMPOWERMENT THROUGH HUMAN RIGHTS, IN THE GLOBAL ECONOMY:**

The immediate challenge for women's empowerment is to mobilise resources and participate in building a new political order in a world reshaped by globalization. They need participation in the new institutions working beyond the national boundaries, involve integrally and serve the cause of equality and empowerment. Women are still largely unrepresented in policy-making and implementation activities. There are only a few nations, where women have above 1/3rd representation in the legislation process. Women in some parts of the globe are still denied voting rights only based on their sex. Globalization has only provided status-quo to women's empowerment, and gender parity in the present patriarchal dynamics. The welcome step for women's empowerment in the new world without borders is still not taken by the global-women.

The international solidarity so far has performed for their masters, the private sector than the public good i.e. the Human Rights. The governments have so far failed all at the cost of the public, to organize nations collectively to divide the cartel of businesses and bargain better with corporate players to redefine power in the globalization era.

### **4. EFFECTIVENESS OF CONSTITUTIONAL PROVISIONS AIMED AT WOMEN'S EMPOWERMENT AND EQUALITY IN THE ERA OF GLOBALIZATION:**

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<sup>3</sup> An instrument developed by the UN organization as a way to help countries torn by conflict and also to create the conditions for lasting peace, founded in the year 1945.

<sup>4</sup> Landmark resolution on women, peace and security by the United Nations Security Council addressing the impact of war on civilians, especially women. It also recognised the importance of women's equal participation in the efforts for conflict resolution, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction.



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The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, set forth a vision of life in which health, education, housing, employment, and respect for the dignity of all persons are fundamental human rights to which everyone is entitled without distinction. Globalization could be the new force adopted by the United Nations with collective action capable of doing justice to the above vision of the UDHR.

The Constitution of India has ratified and adopted the principles of basic human rights for its citizen and also for others under the Golden Triangle of Articles 14, 19 and 21. The Constitution has provided for a zero-discrimination policy for women's empowerment to uphold equality under Articles 15, 16 and 17.

## 5. CONCLUSION:

Geographical boundaries have very little role to play in the era of globalization and there is a need for collective, accelerated and radical reforms in governance without boundaries through international laws to prevent all forms of violence against women, equal democratic rights, uniform participation in implementation, planning and legislative efforts across the globe. Globalization till now has only magnified the existing status of women's rights and spread the word across the globe to reach almost all women. There is a strong need for the nations to come forward and collectively frame policies, enact legislations and form procedures to implement the universal laws in the global era to protect women's rights and empower half of the earth's population for sustainable development.

## 6. SUGGESTIONS AND RECOMMENDATIONS :

More and more women should be included in international organizations, peace negotiations and forces under the umbrella organization of the United Nations, adopting the security council resolutions. World Bank also must induct more women in power roles to acknowledge the central role of women in sustainable development. Globalization must bring in the concept of international and transnational criminal justice that affirms human rights as transcendent of borders and boundaries. The new vision of justice without borders shall ensure that violence in all forms against women is recognized as gender-based persecution and violation of human rights. The communication technology advancement in the epoch of globalization shall be used to fuel the progress of the Women's movement of empowerment. The nations and organizations shall ensure that the new technology is accessible to women from all strata of social structure equally. International solidarity shall be made capable to handle the ill-effects of globalization such as capital flight etc. The governments shall organize a new political order to strengthen the existing international organizations to control globalization in democratic ways and means leading to better negotiations with large corporates spread in several countries and have a strong desire to make a profit for their shareholders at the cost of women's rights and gender equality. Globalization and democratic setup shall proceed hand in hand and the control of power shall always remain with the democratic forces to ensure the ultimate goal of the human race i.e. an egalitarian society for the sexes.

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## GENDER DISCRIMINATION AT WORKPLACE

**Basanti Devi Negi**

Research Scholar, Sharda University, Greater Noida

### ABSTRACT:

Gender Discrimination at the workplace comes in various forms commonly it means a wrong way around treatment of a job seeker or employee based on his/her gender or sexual orientation. Nature has not discriminated between men and women, but females are treated unequally in the social and political scenario even in employment opportunities. Constitution of India under Articles 14 and 15 advocates equality. Article 14 states ***“equality before the law and equal protection of the law”*** whereas Article 15 prohibits ***“discrimination based on Sex, race, caste, place of birth and religion”***. In Today’s modern era not only males but females are the sole bread earners of the family they are also well-educated, trained, and independent still they do not reach the high /repute position they deserve. One can observe Gender discrimination cases in private organizations, the Government sector, NGOs, Education institutions even in MNCs.

“India Discrimination Report 2022” shows that rural areas’ labor market indicates 100 percent inequality whereas 98 percent inequality faced by urban areas women in employment. Thus, the sexual discrimination ratio as per the Report of 2022 is an alarm for Indian organizations to reimagine/rethink their multiplicity methods and offer greater flexibility to woman employees to increase female participation in the workforce.

This paper covers the study of gender discrimination. Reasons for Gender Discrimination types/forms of gender discrimination faced by women. Various laws related to gender justice in India. Importance of female workforce in any organization and suggestions to determine gender discrimination.

**Keywords:** Workplace, Gender Discrimination, Equality, Employment, Laws for protection

### INTRODUCTION:

***No nation, no society, no community can hold its head high and claim to be part of the civilized world if it condones the practice of discriminating against one-half of humanity represented by women.” – Dr. Manmohan Singh***

“Gender” word denotes the characteristics of men and women determined by society whereas the word Sex denotes the biological aspect of the person. Sex is determined by nature whereas the role or responsibilities society determined for this sex is called Gender.

The role or responsibility determined by society for the male sex, or the characteristics determined for men is that he is Strong, can-do hard work, are Independent, are Decision Maker, Adventurous, focused, self-reliant, active, leader, and so on. The characteristic of the female sex is that she is weak, dependent, less important, supporter, fragile, incompetent, emotional, subjective, and so on...

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Gender Discrimination is a global phenomenon. In the contemporary world Females still suffer from discrimination and repression for no reason other than that she is a female. This inequality one can observe in every field be it social, economic, or political. The causes and consequences of this gender inequality differ from country to country but gender discrimination against women is steady and extensive.

### AIM AND OBJECTIVE:

This research paper has the following objectives:

- a) To understand the equality level among males and females in Employment opportunity/workplace
- b) To identify the reasons for gender discrimination.
- c) To examine the various government measures to maintain gender equality in the workplace.

### RESEARCH METHODOLOGY:

The present investigation is based on secondary data sources. The data for the study is assembled from various reports, Journals, Magazines, the Ministry of Labor and Employment, and other publications.

### REASONS FOR GENDER DISCRIMINATION:

**The mentality of society:** The mentality of a society plays a significant role in impacting gender inequality. Indian Society is a Patriarchal Society where the male is in the dominant position, they dominate females in every sphere of life. The Girl Child is treated as a liability whereas the Male Child is treated as an asset in the family. The role played by the women at home as well as at the workplace is predetermined by the males. Males don't prefer females in a superior position to them as according to the traditional mindset of society female lacks decision-making capabilities, so they are not suitable for the topmost position in the management of any organization.

**Job Discrimination:** It is a fundamental belief of most societies that men are better at handling certain jobs. Those jobs are of managerial skills belonging to a higher position in the hierarchy of the organization and well-paid jobs. This segregation of jobs results in lower income for women. Women also take up responsibilities for voluntary labor so they can also join the paid workforce, they do additional work which not ever get recognized fiscally.

**Illiteracy:** The sad reality of the Indian education system is that though the Government of India introduced a lot of education reform measures in the country girls in India are still denied learning/education opportunities. Learned women ensure that the other members of the home get a valuable education.

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1 "Are women workers really benefiting from women-centric modifications at their workspace?" Monalisa Saha: Journal of the Indian Law Institute, APRIL-JUNE 2019, Vol. 61, No. 2

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**Absence of mindfulness among the women:** Indian women are not aware of their fundamental rights and abilities. In the absence of mindfulness among women, they cannot understand how the social, economic, and political forces affect them. Due to women's ignorance of their fundamental rights and abilities, they accept the unfair practice in their family which is inherent from generation to generation under the guise of family tradition or culture.

**Employment inequality:** "*Ministry of Statistics and Program Implementation*" conducted a Periodic Labour Force Survey (PLFS) that provides data on employment and unemployment. *Report of the year 2020-21*, "*the estimated worker Population Ratio (WPR) on a normal Status basis for aged 15 years and above*" both males and females were 73.5% of males and 31.4% of females that show crystal-clear differentiation in employment participation by the males and female.

#### **FORMS OF GENDER DISCRIMINATION AT WORKPLACE<sup>2</sup>:**

On Women's Day, we showcase the achievements of Women done till date and show equality among both genders but there are gaps created in the workplace and they are:

**Salary/Pay gap:** There has been discrimination in salary between males and females in the workplace till now this gap has not been filled by Indian Society. Most Asian, as well as European countries, took efforts for equality and to promote fair competition in the workforce. If we wish to understand the reason behind this inequality, one must understand the privileges received by a girl child in India.

If a woman belongs to backward background awareness regarding her rights and ability is zero. Even privileged ones also face different issues like Married women howsoever educated have to take responsibility for their husbands and family. Late Night arrival at home from their job raised questions about her OR forced them to leave the job.

**Rural and Urban areas female workforce:** Financial Status of women in rural areas workforce has been decreasing swiftly as the rural Indian Society doesn't let them work in any sector. Males of the family don't wish to go women out for work in any sector so they can only be good housewives. Women's contribution is unseen in the agricultural sector even agricultural sector had not generated better employment opportunities for women officially. Even in the urban areas which are Industrial hubs the percentage of women employees is less than male employees. The employment ratio of females in the Indian Global labor force is ***only 27% which is too less.***

**Managerial Position in the Organizational Hierarchy:** women are capable of holding the top position in the organizational hierarchy that is upper than their male colleagues, but their strengthening power is always judged by others just being a female and taking away those good opportunities from climbing the ladders from them.

**Gender Discrimination at Entrance Level:** Barriers experienced by females during job recruitment due to their sexual orientation.

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2. Gender discrimination with women employees at workplace in India by shahida shafi

**Sexual Harassment:** Demand for sexual favors and performing activities sexual in nature to other employees and employers in restore for jobs, promotion, etc.

### **WOMEN EMPOWERMENT:**

**“Beti Bachao Beti Padhao”:** Initiation taken by the Modi Government focusing on the schooling of the Girl child so that she gets the opportunity of education/Schooling and can get employment opportunities. After this initiation by the government of India, many girl child parents who were not aware of education started sending their girl child to school for taking education. An educated female educates the whole family and thus empowering women with this affirmative policy led to one-third of the female representatives in the position of regional leadership<sup>3</sup>.

The affirmative government policies changed rural areas’ women’s participation in the social arena with political power now they are also raising their voices against crime faced by them. Female leaders are playing an important role in maintaining awareness among young females and their parents.

**Land Acquisition Rights:** Equal rights have been given to males and females for the acquisition of land in turn it will increase the educational accomplishment among the young generation and the age of marriage after career planning to reach in a good position will empower the women.

**Affirmative Government Policies increased the Labor Market position of women:** To make a mark in the global market India needs to provide equal opportunities to both genders specially to have their focus on females as their roles were ignored or unnoticed for decades. The affirmative government policy increased the labor market position in rural as well as urban areas in different sectors.

### **LGBT COMMUNITY AT THE WORKPLACE:**

Traditional Indian society’s mindset never recognized the *“Lesbian, gay, bisexual, and Transgender (LGBT)/Queer community”* and does not wish them to participate in a large number in the workforce. In 2009, *Delhi High Court* passed a landmark judgment, decriminalizing same-sex relations between approving adults provoke corporate India to *make essential variations in its multifaceted agenda*. Many Indian Companies are now challenging the old mindset. offering an open and safe work environment and guaranteeing greater opportunities for LGBT Professionals.

### **LAWS TO PROTECT THE GENDER DISCRIMINATION:**

#### **CONSTITUTIONAL PROVISIONS:**

Article 14 states equality that is two-fold equality: *“Equality before the law and equal protection of the law”*.

Article 15 prohibits discrimination *based on “Religion, Race, Sex, Caste, and place of birth. This Article cannot prevent any state from making special laws for women and children”*.

3. <https://www.lawctopus.com/academike/gender-discrimination-at-workplace-and-law-behind-it>

Article 16 advocates equal opportunities for citizens of India in Public Employment.

Article 39 states that *“men and women have an equal right to have an adequate livelihood, and there is equal pay for men and women for the same nature of work”*.

Article 42 The State shall secure *“humane conditions for work and maternity relief.”*

From the aforesaid articles Constitution has made gender equality a basic human right,

#### **LEGAL FRAMEWORK EMERGED FROM CONSTITUTIONAL PROVISIONS SPECIFICALLY TO PROTECT GENDER DISCRIMINATION IN WORKFORCE<sup>4</sup>:**

- **“The Equal Remuneration Act, 1976”**: This Act states that equal remuneration must be paid to men and women for the same nature of work by every employer. Employers should not discriminate while recruiting, training, or transferring for the same work done by males and females.
- **“Sexual Harassment of Women at Workplace Act, 2013”**: Vishaka Case of 1992 is the base of this Act where Supreme Court has issued guidelines for a safe and secure working environment for the female workforce. It ensures that women in the workplace should be safe and if any incident of harassment occurs redress mechanism is provided by the Act. Harassment of working women at their place of work violates the women’s fundamental rights guaranteed under Articles (14),(15) and (21) of the constitution of India.
- **“The Criminal Law Amendment Act, 2013”**: The Verma Committee Report recommended the Criminal Law Amendment Act. This Act added some new offenses viz Acid Attack, Sexual Harassment, Voyeurism, and Stalking in Indian Penal Code.
- **The Companies Act, 2013**: Every publicly listed company has to appoint a women director on its board is stated under this Act.
- **“Maternity Benefit Act, 1961”**: For regulating women’s employment in certain establishments for a certain period before and after childbirth to provide maternity benefits and other benefits to the female worker.
- **“The Minimum Wages Act, 1948”**: For preventing the exploitation of workers this act was enacted.
- **“Employees’ State Insurance Act”**: This Act ensures women workers get sickness benefits and disability benefits along with their male counterparts.

#### **JUDICIAL TRENDS<sup>5</sup>:**

**“Nisha Priya Bhatia Vs. Union of India 2021 case” held that “Circumstances, wherein women employees are endangered to hostility and humiliation in a routine functioning at the workplace, are constituted as part of sexual harassment.”**

*In this case, the complainant made an allegation against her colleague and how she faced undignified circumstances while handling her complaint within the department which infringed on her fundamental rights including the right to life and personal liberty.*

4. Gender Discrimination at the Workplace in India by Vedika Dhawan international journal of management & humanities [ISSN 2581-5369]

5. <https://blog.ipleaders.in/legal-provisions-gender-equality-analysis>

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***The Secretary, Ministry of Defence Vs. Babita Puniva & Ors 2020:*** This case is based on equality in promotion, rank, and pension. Supreme Court held that in Army all the women officers are equally capable to their male counterparts so the roles in commanding positions should also be given to them to serve the country against the sex stereotypes.

***C.B. Muthamma Vs. Uniion of India 1995 case:*** Women employees were discriminated against on the basis of their material status for promotion. The Petitioner has made the complaint who was the Member of Indian Foreign Services.

***Air India Vs. Nargesh Mirza case:*** In this case, Air India- “The State-Owned Aviation Company” made the rule that women would be terminated from service at their first pregnancy or attaining the age of 35 years was discriminatory in nature. It was held by the Hon’ble Court that employment cannot be denied to any person on the grounds of sex.

***Vishakha Vs. State of Rajasthan 1992*** case wherein Hon’ble Supreme Court has issued guidelines for Protecting working women from sexual harassment.

#### **Recommendations to prevent Gender Discrimination at workplace:**

***For equal employment opportunity*** irrespective of gender there should be a proposed Equal Employment Opportunities Commission under the State Government that would deal with unfair opportunities in employment.

***Representation of women in decision-making frames:*** Women’s representation should be better in decision-making frames/bodies to strengthen their ability for better working conditions.

***Supportive Legal System:*** A better and strengthened legal system has to be provided that will support to women in raising their voices against discrimination.

***Gender-neutral Policy:*** In every organization, there should be gender neutral policy in place to provide a culture where gender should be respected.

***Gender Sensitization Training:*** It should mandate to all organizations to conduct gender sensitization training for both males and females and to address the issue of sexual harassment in the workplace.

***Employers should be updated with Discrimination laws applicable to their organization:*** Employers should acquire complete information about discrimination laws of the Country that are applicable to their organization and establish a committee/board to implement an anti-discrimination policy. Committee/Board should cure all sorts of discrimination like color, gender, productivity, religion, seniority, and salary /pay gap.

***Transparency:*** Human Resources policies should be transparent while **recruiting, promoting, or demoting employees** in the organization.

***Victims of gender discrimination report the same:*** Women victims of Gender Discrimination must come forward to report it to the appropriate authority in their organization. They themselves should try to know and be aware of gender discrimination and circulates awareness among other women employee also.

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## ETHICS OF ABORTION AND WOMEN'S RIGHT

**Ifra Shaikh**

Student of Shree L.R. Tiwari College of law  
Mira-Bhayandar, Maharashtra

### **INTRODUCTION:**

Around the countries formal laws and policies are extremely important indicators of government for commitment to promoting reproductive rights. Every woman has the absolute right over her body. In most of the countries the practice and accessibility to safe and legal abortion is restricted in laws or by laws. Due to lack of proper medical facilities and lack of proper infrastructure women often have limited access to opt abortion. In many countries and in their jurisdiction, abortion is allowed atleast to save life of women or where the pregnancy is a result of rape. Abortion is highly psychological and emotional subject and one that excites variety of opinions. However, giving fair and equal access to safe and legal abortion or pregnancy termination is the first and foremost of the human right. When the abortion is done by illegal and unsafe means, women are forced to carry unwanted pregnancies and suffer serious health issues and consequences, and sometime it even causes death.

### **CONTEXT:**

Abortion in India is legal but not a women's right; a woman has fundamental right to make choice for herself regarding her body. Abortion is women's right and in broader spectrum it is connected to human rights.

Winston Nagon has classified opinions which have as central element "abortion" in two major categories. Firstly, the opinion that the priority element is represented by fetus and his entitlement to life and secondly the opinion which focuses around women's rights.

After independence it has been seen that there was rapid growth of illegal and unsafe abortion. Government of India introduced Medical Termination of Pregnancy Act, 1971 to stop unsafe abortion and secure women's life by providing such rights. Before enactment of this act, Abortion was illegal and punishable in India under the Section 312 and 313 of Indian Penal Code.

**Section 312 of Indian Penal Code** states that even the women who cause herself to miscarriage is also punishable.

**Section 313 of Indian Penal Code** states that in the offence under the section 313 of I.P.C., if there is no consent of pregnant woman is taken for abortion, the person who causes the abortion is punishable and not the woman. Prior to this enactment, abortion was allowed only to those women whose life was in danger.

Reason behind the enactment of Medical Termination Pregnancy Act was substantial increase in the abortion rates majorly due to female foeticide, increase in the maternal mortality rates due to unsafe abortion. From 1971 till now there have been 2 amendments in MTP Act. The first amendment was done in 2003 which says the consent given by the pregnant woman for the termination of her pregnancy shall

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be placed in an envelope which shall be sealed by the registered medical practitioner. The second amendment was done in 2021, which talks about unwanted pregnancies as result of 'marital rape'. The Court held that in such cases married women could seek abortion service.

The termination of pregnancy can be done via medical or surgical method. There are certain conditions under which the abortion is legalized. The MTP Act does not differentiate between married and unmarried women. This act only applies to the age group above 18 years old, then only it will be legalized. Under the amendment of 2021 the MTP Act was classify into two groups: the first group states about 20 weeks of pregnancy, while the second group states about 24 weeks of pregnancy. There are certain conditions that are applicable for termination of both 20 and 24 weeks of pregnancies. In case of upto 20 weeks of pregnancy atleast one registered medical practitioner's permission is required and in case of upto 24 weeks of pregnancy two registered medical practitioners' permission is required.

The conditions which applies for pregnancy termination are the failure of birth control measure, pregnancy which is outcome of rape, pregnant lady who is below 18 years old, pregnant lady who is mentally unstable, she is married but marital condition is changed, forced pregnancy, pregnancy in Humanitarian setting, disaster, or emergency. These conditions apply for both 20 weeks and 24 weeks of pregnancy.

**Failure of birth control measure:** When drug, device, or practice which are used to prevent a woman from becoming pregnant results in failure then under the MTP Act the woman who is pregnant upto 20 weeks can opt for termination of her pregnancy in case of failure of 'contraceptive method'. The Bill allows both married and unmarried women to terminate their pregnancy under this measure.

**Pregnancy is outcome of rape:** Rape is the legal ground for termination of a pregnancy under Section 3 of the MTP Act upto 20 weeks. In case of exceeding 20 weeks, abortion is permissible under Section 5 of the MTP Act; if the practitioner or provider gives the opinion that termination of pregnancy is necessary to save the life of women. Married women may also form the part of the class of survivors of sexual assault or rape and hence the Act also undertakes them.

Under the amendment of 2021 in MTP Act, Right to Protection and Privacy is also added in Section 5A which says that medical practioner cannot reveal woman's identity whose pregnancy is terminated except the person who is authorized by the law and authority.

If he or she violates the rule, in that case the person who violates will be charged by 1 year of imprisonment and fine.

**Pregnant lady is below 18 years age:** In normal case only the consent of woman, whose pregnancy is terminating is required. But in case of a minor, i.e. female below 18 years, it also includes women with mental illness, the consent of guardian or person who is taking care of that minor is required.

**Pregnant lady who is mentally unstable:** The special categories of women are also allowed to abort or extent time for abortion. It includes those women who have physical or mental disabilities, cases of foetal malformation because it puts a substantial risk of getting a child physical or mental abnormality.

**She is married, but now her marital condition is changed:** In India women have right to abortion. All women irrespective of their marital status are entitled to get safe and legal abortion in both 20 and 24

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weeks of pregnancy under the MTP Act. This act recognizes reproductive autonomy of every woman and give her right to choose medical intervention for pregnancy termination. It also includes forced pregnancy. Abortion is illegal after revealing the sex of the fetus. In India prenatal sex determination of the fetus is banned. If any one violates any of these laws, under the Pre-conception and Prenatal Diagnostic Techniques Act, 1994, he or she will be conspired by 3 years of imprisonment and 50,000 fines.

**Pregnancy in Humanitarian setting, disaster, or emergency:** In a pregnancy in Humanitarian setting, disaster, or in emergency situation, women have right to choose, and pregnant women are allowed to terminate their pregnancy under the MTP Act.

After the amendment of 2021 in MTP Act the duration for abortion which was of 20 weeks has now been extended to 24 weeks. Now even 24 weeks pregnant women can also opt for pregnancy termination. If the pregnancy exceeds the time period of 24 weeks, in that case permission for diagnosis approval is required from the State Medical Board. It will only be approved when there is a serious abnormality in fetus, because viability rate of fetus crosses after 24 weeks.

‘Mifepristone’, ‘misoprostol’, ‘methotrexate’, etc. are the drugs and pills which are used for abortion. Mifepristone is used with misoprostol to terminate the pregnancy in less than 70 days. These pills stop the supply of hormones that maintain interior of the uterus. Without these hormones’ uterus cannot support the pregnancy and the fetus is expelled from uterus. Misoprostol is also an effective drug, it is prior to first-trimester surgical abortion. It is recommended especially for those women who have 12 and 14 weeks of gestation, adolescents, and for women in whom cervical dilation is expected to be difficult due to patient factors.

Medical abortion with medicines like mifepristone and misoprostol is a very safe option for termination of the pregnancy. If it is consumed under proper medical supervision and care its success rate increases substantially. The MTP Act permits that abortion pills should be prescribed only by registered medical practitioner and not by non-allopathic doctors or by pharmacists. Inspite of clear guidelines, recommendations, rules, and laws self-administration of these drugs by pregnant women for pregnancy termination without any medical consultation or supervision has become highly prevalent due to availability of these drugs over the counter and on pharmacy without any prescription.

## **RIGHTS OF WOMEN:**

The right to abortion is vital for gender equality. The right to abortion should be part of an assortment or set of pregnancy right that enables women to make a truly free choice whether to end a pregnancy. The right to get an abortion, to terminate an unwanted or unsafe pregnancy safely and legally and freely for a woman, is a right that should be protected by the state, as all human rights should be. Women, like all human, are intellectual creature with the ability to reason, consider, and challenge their own ideas and those of others. Advocating for the criminalization of women’s reproductive health is fundamentally disrespectful of women as human beings. The right to abortion is not shameful act, it’s a necessary medical option that is allowed in a free country like India. Many women with unwanted pregnancies depend on medical abortion and consider this method for pregnancy termination. The over consumption of these drug and pills can led to severe side effects. And due to illegal availability of these drugs and

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pills people consider this as an extremely safe option for termination of pregnancy. The side effect of these drugs can be life threatening also e.g. excessive hemorrhage, sepsis, and even death.

The women should have the choice regarding their pregnancy because pregnancy is not just physically conceiving but it also involves emotions. For termination of pregnancy only woman's consent is required (married) under the MTP Act of 1971. The provision of the MTP Act infers with the reproductive rights of women. The right to make reproductive choice is a part of women's personal liberty and it is also recognized by the Supreme Court.

Safety of abortion depends on awareness, attitude, and acceptability for it. Women should be given proper treatment so that they can conceal their past obstetric where the area of medicine connected with the birth of child which could lead to untoward complications. Mass media should be made more informative and effective regarding safe abortion, usage of emergency contraception, mifepristone, and misoprostol for early abortion and for the prevention in delay in decision making for MTP.

### **CONCLUSION:**

Though India has progressive laws for abortion and women privacy (in case of unmarried), India's medical and legal infrastructure need improvement for proper facilities. The policies, laws and Acts can only be implemented when the government and the society come together and help to improve the law. There is largely need of awareness in context of sexual and reproductive health, integrating strategies and also to intervention with the value system. Women should be motivated to overcome socioeconomic and religious barriers and adopt more effective contraception. "For me, reproductive justice is consistent with women's commitment to ensuring. I believe unequivocally in a women's right to choose."

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# A STUDY ON THE ROLE OF MEDIA IN BRINGING GENDER EQUALITY

**Fatima Kolsawala**

Commerce Department, Jai Hind College  
(M.COM) – Advanced Accountancy

## ***ABSTRACT***

Gender equality is a fundamental right that is essential for the full development of individuals and society as a whole. Despite significant progress over the last few decades, gender inequality remains a pervasive. Women and non-binary continue to face barriers to accessing leadership positions and often experience gender-based discrimination and harassment. Gender representation in the media has been a subject of debate for several decades, as it plays an important role in shaping gender attitudes and behaviour. Gender equality and media are two interconnected aspects of modern society. Media has the power to form perceptions towards gender roles and identities, which can either reinforce or challenge existing gender inequalities. The role of media in bringing gender equality has been a topic of interest for researchers and scholars for many years. This paper aims to review the existing literature on the subject; and to identify the different ways in which media can be used to promote gender equality, including the representation of women in media, the use of media to raise awareness about gender issues and the use of media to promote gender equality in education and employment. The paper also highlights some of the challenges associated with using media to promote gender equality, such as the perpetuation of gender stereotypes and the lack of diversity in media representation.

## ***1. INTRODUCTION***

Gender equality is a significant issue in India, where women and girls continue to face various forms of discrimination, violence, and oppression. India has a patriarchal society, where men have traditionally held positions of power and authority, and women have been relegated to secondary roles. Despite the constitutional guarantee of gender equality, women's rights continue to be violated, and their opportunities for education, employment and political participation are limited. According to the World Economic Forum's Global Gender Gap Report 2022, India ranked 135th out of 146 countries in terms of gender equality. This highlights the urgent need for action to promote gender equality in India. Research has shown that media is one of the essential tools which can be used to promote gender equality. Media has the power to influence public opinion and attitudes towards gender equality. The role of media in promoting gender equality is a subject of ongoing research and debate. Numerous studies have examined the ways in which media representations of gender can both reinforce and challenge existing power imbalances, stereotypes, and social norms. One 2019 study published in the Journal of Communication examined how news coverage of the # ME TOO Movement influenced public perceptions about sexual harassment and gender equality.

Another study published in the International Journal of Communication in 2020 examined the representation of women in popular music videos. The study found that the majority of videos featured

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male artists as the central figures and that women were often depicted in objectified and subordinate roles. The study argued that such representations contribute to the perpetuation of gender inequalities and may serve to normalize the objectification of women.

Some studies have looked at how social media may be utilized to promote gender equality. A 2018 research published in the Journal of Gender Studies looked at how feminist activists in India used Twitter. According to the study, Twitter provides a venue for feminist activists to question prevailing gender narratives and rally support for gender equality.

Overall, research reveals that the media may play a significant influence in affecting public attitudes and views of gender and that it can be utilised to promote gender equality. Yet, it is critical to note that media is not a monolithic entity and that the influence of various kinds of media may vary based on factors such as audience demographics, media consumption patterns, and cultural context

### **REPRESENTATION OF WOMEN IN MEDIA**

The representation of women in media is an important aspect of promoting gender equality. However, women are often underrepresented or misrepresented in media, particularly in positions of power or authority. This lack of representation can reinforce gender stereotypes and contribute to the marginalization of women in society. To address these issues, there have been a number of initiatives aimed at increasing the representation of women in media, including the use of quotas and targets, the development of diversity and inclusion policies, and the creation of female-led media projects. These efforts have had some success in increasing the visibility and empowerment of women in media, but there is still much work to be done to achieve true gender equality.

### **THE USE OF MEDIA TO RAISE AWARENESS ABOUT GENDER ISSUES**

One of the most effective ways to use media to raise awareness about gender issues is through social media platforms. Social media can provide a platform for people to share their stories and experiences, which can help to raise awareness about the gender-based discrimination and inequality that they face on a daily basis.

Media can also be used to challenge gender stereotypes and promote positive representations of women and men. This can be achieved through the use of advertising campaigns, TV shows, movies, and other forms of popular culture.

In addition, media can also be used to promote education and awareness about gender issues. This can be done through the use of documentaries, podcasts, and other forms of educational media that provide information and insights into gender-based discrimination and inequality.

## **2. THE USE OF MEDIA TO PROMOTE GENDER EQUALITY IN EDUCATION AND EMPLOYMENT**

Media can also be used to promote gender equality in education and employment. For example, educational television programs can help to challenge gender stereotypes and promote the importance of equal access to education for girls and boys. Similarly, media campaigns can be used to raise awareness

about gender discrimination in the workplace and promote the importance of equal pay and equal opportunities for women.

### **3. CHALLENGES ASSOCIATED WITH USING MEDIA TO PROMOTE GENDER EQUALITY**

Despite the potential benefits of using media to promote gender equality, there are also a number of challenges associated with this approach. Some of the most significant ones include:

1. **Stereotyping:** Gender stereotypes are frequently perpetuated in the media, which can lead to gender inequity. Women, for example, are frequently presented as caregivers, whilst males are portrayed as breadwinners. Such images perpetuate gender stereotypes and can limit women's potential.
2. **Objectification:** Women are frequently objectified in the media, which contributes to a culture that appreciates women largely for their physical beauty rather than their qualities or accomplishments. Sexual harassment and gender discrimination may result as a result of this.
3. **Lack of Representation:** Women and other oppressed groups are frequently underrepresented in the media. This can restrict their exposure and ability to influence public conversation.
4. **Limited influence:** While the media may be a strong vehicle for promoting gender equality, its impact can also be limited. Certain audiences may be resistive to messages supporting gender equality, or standard media routes may not reach them.

### **4. CONCLUSION**

According to different studies and research, the media has an important influence in moulding society's perspective of gender equality. Because the media has such a large influence on our society and conventions, it is critical that gender equality be appropriately represented in the media.

By displaying strong female characters and depicting men and women in non-stereotypical ways, media may be a powerful instrument for questioning and breaking down gender preconceptions. The media may also help raise awareness about gender-based violence, discrimination, and harassment.

However, the media itself can be influenced by the prevailing gender stereotypes and biases, leading to gender imbalances in representation and portrayal. Therefore, media organizations need to be aware of their biases and ensure that they promote gender equality through their reporting, representation, and policies.

In conclusion, the media has a significant role to play in promoting gender equality. It can help shape public opinion, break down stereotypes, and create awareness about genderbased issues. Media organizations need to be responsible and ensure that their reporting is fair, and accurate, and promotes gender equality.



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## GLOBALISATION AND HUMAN RIGHTS

**Dr. Purba Ganguly**

Asst. Prof. K.C. Law College

### INTRODUCTION

It's an old adage that "*The World Is a Small Place*". Today's world is one in which it is impossible to imagine the isolated existence of any civilized state whenever it may be located in the world. Moving to large scale international development, growth and multifarious advancement in every sphere of human existence and greater communication facilities as well as the ease of convenient transportation, the world has actually become a small place to live and indeed globalisation has become a universal phenomenon.....

In its simplest analysis globalisation refers to the integration of the economy of the nation with the world economy it is essentially the collective consequence of the collection of strategies of multiple entities which are focused towards transforming the world towards much more interdependent and meaningful integration. Undoubtedly and essentially, globalisation is a multifaceted phenomenon and includes not only the active creation of pursuits but also the creation of networks which collectively result in transformation of social economical and geographical barriers.

Today India stands proudly on the international platform as a strong aspiring dynamic state actor with a tremendous potential for global contribution in every walk of life including science, technology, researched, art, politics, law and much more.

Human Rights and Globalisation are very closely related phenomena.

Human rights are producing the basic feature of morality that needs to be endowed by all the humans. Human dignity is being built up through these rights.

### **OUR GLOBALIZED WORLD**

#### ***(INTERDEPENDENCE BETWEEN HUMAN RIGHTS AND GLOBALIZATION)***

In the age of globalisation, the struggle to defend human rights and affirm human dignity has become more challenging and complex. Even if nations and international organisations like the United Nations are passing more laws to defend human rights, gross violations of those rights are also becoming more frequent. The financial might of the globe is becoming more and more consolidated, and corporate institutions and the financial elite are holding more and more of the world's wealth. It is become more and harder to define and achieve social and economic rights, especially when it comes to ending hunger and unemployment. The advent of the Constituent Assembly (which was an erudite body of Indian scholars who created the Constitution of India) was contemporaneous with the international body of thinkers and human rights activists who had congregated on a global platform to create the Universal Declaration of Human Rights. It is therefore apparent that the Indian Constitution is phenomenally influenced by the UDHR.

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The international rights and peace in the world can be maintained and human rights can be enjoyed by everyone, only when all the nations are political strong and there exists moral values among the citizens. This will curb down all the insanity and impurity from the society. For the citizens to completely know about their socio-economic, cultural and political rights, they need to be trained with several workshops and seminars. Each individual should strive to meet the basic requirement of the human kind that lies in employment opportunities for all, clean and pure drinking water, three meal a day, basic education and atleast a simple standard of living that an individual needs.

All human rights are founded on the fundamental principle of human dignity. It is both innate and born. The only thing we must do to uphold human dignity is to acknowledge and affirm each individual who possesses it. Each individual reflects God in their sense of dignity. The totality of all human rights is human dignity.

The foundation of human dignity is found in human rights. They are interconnected and indivisible. It is a love gift from God to everyone. Human rights are indivisible and interconnected because they represent the totality and fullness of human dignity. Affirmations and declarations of human rights, as well as treaties, conventions, regulations, and statutes, are the results of battles to uphold and realise life's completeness and fullness. Protections increase when more rights are identified, acknowledged, and safeguarded by individuals and governments, but they also approximate and strive towards human dignity. However, human rights do not just apply to people.

Globalization is thus desirable and is rather, inevitable and has thus eventually contributed to world's oneness and integration. Human rights cannot be upheld in an environment that is broken and dying. The state of the earth and the entire cosmos has a direct impact on human health. The fundamental idea of human dignity upholds each individual's distinction while also celebrating the diversity of the communities to which they belong and the wide range of demographic identities that each person represents, including cultural variance.

#### ***GLOBALIZATION VIEWED FROM INDIA'S BINOCULARS:***

- As a proud signatory to most of the international documents of human rights protection and as an obligatory to fulfilment of her constitutional duties under Article 253<sup>1</sup> India has always strived to ensure that it embraces all sections of the society and keeps herself at the forefront of development, amelioration and emancipation of all classes of her citizenry in harmony with her constitutional vows and the demands of increasing Globalization.

Here the researcher seeks to explore and examine the position of specific sections of the citizenry whose interests appear to have been affected owing to Globalization.

#### ***SPHERES FOR HUMAN RIGHTS WORK IN CONSONANCE WITH GLOBALISATION:***

The organisations and actors that represent the unprecedented globalisation we are witnessing, if not actively participating in, add to the complexity of the current global environment. We observe a surge in the number of peoples' and citizens' organisations that are promoting the development of fair, inclusive,

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<sup>1</sup> The Constitution of India

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and sustainable communities at the same time that local and global processes are changing swiftly. These are the areas where a peaceful and human rights-abiding culture will thrive. At all governmental levels—local, national, regional, and global—globalization is being resisted in a number of ways thanks to the presence and work of nonprofit organisations and other civic community formations. There are large number of people and institute who are protecting the human rights in the society. Such group of people needs to be protected and supported by the civilians so that law and order can be maintained.

### ***HUMAN RIGHTS OF VICTIMS OF ARMED CONFLICTS AND THE IMPACT OF GLOBALIZATION ON SUCH VICTIMS***

Small guns proliferation and easy availability have a terrible impact on our kids. Guns must never be accessible to or available to children. Children who are killed or injured by small guns are both victims of a violent culture that disregards human rights, ends the value of human life, and degrades human dignity. Children in times of strife and war put our dedication to the future to the test. When children are put in danger, something is wrong with our moral sensibility. No child should be deployed to the front lines of a war, a struggle, or a conflict. The battlefield cannot take the place of the playing field. Wargames are not toys for kids. Children need to be supported with the playareas and not the war fields.

### ***GLOBALIZATION AND ITS IMPACT ON HUMAN TRAFFICKING: WHETHER THE GLOBAL MENACE OF HUMAN TRAFFICKING IN INDIA HAS GROWN LEAPS AND BOUNDS AS AN OFFSHOOT OF GLOBALIZATION***

Human trafficking is the illicit trade of people for purposes such as forced labour, commercial sexual exploitation, or a contemporary version of slavery. Children need to be shielded in particular from the dangers that a booming international sex business promotes.

The Indian Constitution sternly prohibits and deprecates human trafficking in all forms and it places protection against trafficking in the Part III (Fundamental Rights). For child labour, prostitution, forced marriage, sexual slavery, use as child soldiers, and even the organ trade, girls and boys are recruited and trafficked. These predatory behaviours ought to be prohibited. All countries must actively pursue the United Nations Convention against Transnational Organised Crime, which contains the Trafficking in Persons, Especially Women and Children (also known as the Trafficking Protocol) Protocol.

### ***HUMAN RIGHTS OF MIGRANT WORKERS IN LIGHT OF GLOBALIZATION IN INDIA:***

Girls and boys are recruited and trafficked for use in child labour, prostitution, forced marriage, sexual slavery, child soldiers, and even the organ trade. These predatory actions need to be outlawed. The United Nations Convention against Transnational Organised Crime, which includes the Trafficking in Persons, Particularly Women and Children (also known as the Trafficking Protocol) Protocol, must be vigorously pursued by all nations.

In addition to destroying livelihoods, this epidemic also contributed to unsustainable development in underdeveloped nations, driving millions of workers to look for work abroad. In particular, migrant workers who are illegal in their host nations continue to face discrimination and abuse. Particularly when they hold gender-specific employment that subject them to various sorts of sexual, domestic, and menial

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labour, women migrants are particularly vulnerable to exploitation. According to studies, the bulk of migrants are uprooted because there aren't enough jobs at home or because those occupations offer pitifully little money. Even in nations where the government has set a minimum wage, employees' earnings have been kept low and below a living wage despite the fact that globalisation has increased capital and productivity. Human rights include those of migrants. When immigrants' rights are violated in their new host countries in addition to being abused in their home countries, it is terrible. The purpose of the Convention on the Rights of Migrant Workers is to defend, uphold, and guarantee migrant workers' and their families' human rights. Economic, Social, Cultural, Environmental and Political justice are the five pillars of development justice and are mutually exclusive. These pillars have both a global and local perspective. <sup>2</sup>

***IMPACT OF GLOBALIZATION ON THE LIVELIHOOD AND OTHER SIGNIFICANT HUMAN RIGHTS OF INDIGENOUS PEOPLES OF THE INDIAN SUBCONTINENT: TOWARD SELF-DETERMINATION IN THE ERA OF GLOBALIZATION.....***

In this contemporary world, the rights of the indigenous people in terms of their philosophy regarding self-determination are threatened. For the development purpose on and off the Government and the private bodies are acquiring the lands of the people, forcing them for migration. This has ruined their native culture, environmental resources and traditional artistic knowledge. Native Americans fight back against industries that encroach on their sacred areas. In the face of organised efforts to eradicate them, they are battling for control over their ancestral territory. They experience demographic shifts, compelled relocation, and assimilation, frequently as a result of large business's aggressive growth objectives. The rights of indigenous people to their culture, spirituality, language, traditions, organisational structures, modes of knowing and doing, and intellectual property must be respected. India is home to hundreds of communities of tribals and other classes of indigenous people most of which are inhabitants of north east and Andaman and Nicobar Islands as well as the mainland of the nation. Their concerns are indeed grave and significant.

***HUMAN RIGHTS AND THE IMPACT OF GLOBALIZATION ON POVERTY IN INDIA.***

The incapability of a person to take benefit of the prospects in the world and marketplaces that are supposed to be booming and rising is considered poverty in the current era of globalisation. The earth and its resources, if not even humans, who wind up acting as pawns in the process of economic production, are commodified by the globalisation process, which also elevates the market. In this era of globalisation, one's worth and dignity are determined by their ability to contribute to the benefits of the market. In this age of globalization, the maximum suffers are those who are weak, poor, hungry, do not have Governmental support, economically backward people. These are the people whose human rights are distorted.

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<sup>2</sup> [https://en.wikipedia.org/wiki/Migrant\\_Workers\\_\(Supplementary\\_Provisions\)\\_Convention,\\_1975](https://en.wikipedia.org/wiki/Migrant_Workers_(Supplementary_Provisions)_Convention,_1975)

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Impact of Globalisation on poverty in India has been of a dual kind. Fortunately, the positive aspect is that poverty has witnessed some decline owing to greater job opportunities and need for cheap labour.<sup>3</sup>

### ***GLOBALIZATION AND CHALLENGES FOR SUSTAINABLE DEVELOPMENT IN THE ERA OF HUMAN RIGHTS IN INDIA***

According to Ban Ki-moon, U.N. Secretary General, the meaning of Sustainable development and difficulties with that can be stated as “Our globalized world is marked by extraordinary progress alongside unacceptable and unsustainable levels of want, fear, discrimination, exploitation, injustice and environmental folly at all levels. We also know, however, that these problems are not accidents of nature or the results of phenomena beyond our control. They result from actions and omissions of people, public institutions, the private sector and others charged with protecting human rights and upholding human dignity.”

### ***CONCLUSION***

During the phase of Globalization, the attempt of the policy makers and the Government to endow the human rights and make them functional have been a difficult task. Respect for human rights requires government to protect, promote and fulfill obligations. The right to development is versatile and promotes global responsibility for globalization. The protection of rights requires a legal system that is effective and credible. Requirement is there to strengthen the weak states, to enable them to protect human rights. Although it is the duty of the Government to ensure the promotion and security of human rights, developed states stands at a crucial role in the progress of the human rights legislation. Therefore, a state's legal responsibility is to ensure that the cooperation of governments, financial institutions, multilateral organisations, transnational corporations make a crucial and effective global effort to win respect for the inherent dignity of all people.

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[https://www.researchgate.net/publication/343775509\\_Globalisation\\_and\\_Human\\_Rights\\_An\\_Overview\\_of\\_its\\_Impact](https://www.researchgate.net/publication/343775509_Globalisation_and_Human_Rights_An_Overview_of_its_Impact)

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## AN ANALYSIS OF PATERNITY LEAVE POLICY: A NEW DAWN FOR PROGRESSIVE INDIA

**Dr. Kavita Lalchandani**

Principal, K. C. Law College

**Ms. Megna Devkar**

Faculty, K. C. Law College

### INTRODUCTION

The Oxford dictionary defined "Paternity Leave" as "a period of time during which the father of a new child is authorised to be away from work." According to Merriam-Webster, Paternity Leave means "the period taken off by the father after the birth of the newborn child". Paternity leave is a right granted to fathers to take time off work after the birth of their kid. Paternity Leave is when a father is working as an employee and is given time off to care for his new-born child<sup>4</sup>.

Paternity benefit is a concept that has gained traction in recent times, particularly in Western countries, as a means to provide financial and social support to new fathers during the early months of their child's life. While India has traditionally been a society that places a greater emphasis on the mother-child bond, the government has recently taken steps to provide support to fathers as well.

Paternity leave serves as a crucial tool for addressing gender dynamics in both professional and domestic spheres. Promoting shared family responsibilities necessitates the equal involvement of both mothers and fathers. However, it is essential to recognize that the significance of paternity leave often goes unnoticed within the Indian legal framework. This oversight becomes more apparent considering that even the International Labor Organization has yet to thoroughly discuss the concept. In January of year 2021, Indian captain Virat Kohli took a paternity leave and decided to forego the India-Australia test series. Paternity leave has been the subject of ongoing debates and discussions since then. Paternity leave has not always been considered socially acceptable in the workplace. Men were expected to provide for their families, while women were expected to look after them. As our world becomes more contemporary, the concept of paternity leave is becoming increasingly acceptable for fathers to take.

### LAW RELATING TO PATERNITY LEAVE IN INDIA

Article 42<sup>5</sup> of the directive principles of state policy in our Constitution provides for maternity leave. The State has enacted many laws and regulations which have been put in place to safeguard the rights and welfare of women in the workforce during their period of maternity leave. Unfortunately, women's participation remains much below the global norm, and women in our country are still discriminated

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<sup>4</sup> Gavett G., Brave Men take Paternity Leave, Harv. Bus. Rev., July 14 2014, at Pg. 3

<sup>5</sup> Article 42 of Constitution of India - Provision for just and humane conditions of work and maternity relief- the state shall make provision for securing just and humane conditions of work and for maternity relief.

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against or placed in disadvantaged positions at work<sup>6</sup>. In the Constitution of India there is no mention of the paternity benefit. But it is pertinent to note that The Central Civil Services (Leave) Rules provide for paternity leave to male employees working in the central government. Rule 43-A of the CCS (Leave) Rules deals with Paternity leave for a male government employee<sup>7</sup>. For the paternity leave the employee is required to submit an application for paternity leave along with a copy of the child's birth certificate or medical certificate of the wife's pregnancy. The leave is granted with full pay and allowances, and the employee is also entitled to medical benefits during the period of leave. These rules apply only to male government employees and not to those working in the private sector. Further, Rule 43-AA of CCS (Leave) Rules deals with Paternity Leave for Child Adoption<sup>8</sup>. It is only the CCS (Leave) Rules that allow paternity leave but only to a government employee. But the private company's male employees are not covered under the said rules. Hence, there are various private companies who have made their own policies for paternity benefit. Various companies that offer paternity benefits are<sup>9</sup>:-

Microsoft: 12 weeks of Paternity Leave.

Facebook: 17 weeks of Paternity Leave.

Starbucks: 12 weeks of Paternity Leave.

TCS: 15 days of Paternity Leave.

Deloitte: 16 weeks of Paternity Leave.

Zomato (Indian Food Delivery App): 26 weeks of Paternity Leave

Moreover, the International Labour Organization (ILO) has established various conventions that aim to ensure equal opportunities for men and women within the labor sector, prohibiting all forms of discrimination. Within this context, it is crucial to acknowledge that the concept of maternity leave necessitates a corresponding paternity leave to foster father-child bonding. Moreover, this approach

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<sup>6</sup> Municipal Corporation of Delhi v. Female Workers - (2000) 3 SCC 224

<sup>7</sup> **Rule 43 – A of CCS (Leave) Rules** - (1) A male Government servant (including an apprentice) with less than two surviving children, may be granted Paternity Leave by an authority competent to grant leave for a period of 15 days, during the confinement of his wife for childbirth, i.e., up to 15 days before, or up to six months from the date of delivery of the child. (2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. (3) The paternity Leave may be combined with leave of any other kind. (4) The paternity leave shall not be debited against the leave account. (5) If Paternity Leave is not availed of within the period specified in sub-rule (1), such leave shall be treated as lapsed.

<sup>8</sup> **Rule 43 – AA of CCS (Leave) Rules** - (1) A male Government servant (including an apprentice) with less than two surviving children, on valid adoption of a child below the age of one year, may be granted Paternity Leave for a period of 15 days within a period of six months from the date of valid adoption. (2) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave. (3) The paternity leave may be combined with leave of any other kind. (4) The Paternity Leave shall not be debited against the leave account. (5) If Paternity leave is not availed of within the period specified in sub-rule (1) such leave shall be treated as lapsed.

<sup>9</sup> MEHROTRA, C. and SONI, H.K., PREVALENCE OF PATERNITY LEAVE IN OFFICE GOING PERSONNEL ANJALI SHARMA, ASHNAB KHAN, AYUSHI CHATURVEDI.



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emphasizes that care-giving and nurturing responsibilities should be regarded as equal opportunities, and such equality can be achieved in the workplace by implementing paternity leave policies. One noteworthy convention addressing these issues is the 1981 Convention on Family Responsibilities. This convention highlights two key aspects: the development of childcare facilities and the importance of promoting social awareness to eliminate stigmatization and generalization of gender roles. Notably, this convention was the first to prioritize childcare and development, emphasizing the significant need for parents, particularly during the early stages of a child's life, to be able to care for their offspring.

### **ROLE OF JUDICIARY**

A request for paternity leave has been brought to the attention of the judiciary on multiple occasions, but no unified policy has been developed. In *Chander Mohan Jain v. N.K Bagrodia Public School*<sup>10</sup>, the petitioner challenged the defendant's denial of his paternity leave request and income reduction for caring for his wife and new-born kid. Despite the lack of restrictions, the Delhi High Court determined that all male employees of unaided accredited private schools are entitled to paternity leave in this case. As a result, private-sector professors can take advantage of paid leave because they are under the Director of Education's control. In *Rakesh Malik v. State of Haryana*<sup>11</sup>, the petitioner requested paternity leave, which was denied. In his challenge, he asked the Court to formulate such policy under the terms of Article 226. Furthermore, the DTC driver filed an original suit in *Vijendra Kumar V. DTC*<sup>12</sup>, but the Court dismissed the appeal, noting that the DTC had no paternity leave provisions and that the CCS Paternity Leave standards had not been adopted.

### **ANALYSIS OF PATERNITY BENEFIT BILL, 2017**

In 2017, the Indian government introduced the Paternity Benefit Bill, which seeks to provide fathers with a minimum of 15 days of paid leave upon the birth or adoption of a child. This bill, which is still pending approval, has been seen as a positive step towards addressing the issue of gender equality in the workplace.

The bill would apply to all private and public sector employees and would be funded through a contributory scheme, with employers required to make a contribution towards the scheme. The proposed amount of paternity benefit would be equivalent to the employee's average daily wage for the period of leave.

The key provisions of the Paternity Benefit Bill, 2017 were:

1. It proposed to provide 15 days of paternity leave to all working fathers in India, which could be taken within six months from the date of childbirth.
2. The Bill proposed that the leave should be paid at a rate equivalent to the daily wage of the employee.
3. It also proposed that employers should not be allowed to terminate or alter the conditions of the employee's employment during the paternity leave.

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<sup>10</sup> (2009)163DLT 1

<sup>11</sup> (2013) SCC OnLine P&H 3546

<sup>12</sup> 2015 SCC OnLine CAT 3012

4. The Bill sought to apply to all establishments, including those with less than 10 employees.

The introduction of the Paternity Benefit Bill, 2017 was a significant step towards promoting gender equality in India by recognizing the role of fathers in child-rearing. The Bill aimed to address the social stigma surrounding paternity leave and encourage more fathers to take an active role in caring for their children.

The aim of the bill was for providing paternity leave to all working fathers in India. However, the Bill lapsed after the dissolution of the 16<sup>th</sup> Lok Sabha in 2019, and no further action has been taken on it since then.

## CONCLUSION AND SUGGESTIONS

Despite the fact that the Constitution of India has many articles and provisions ensuring gender equality, various laws have been passed to implement the ideal of a just and gender-neutral society with various incentives and positive discrimination for women. But there is no legislation for the purpose of paternity. There are challenges to the implementation of paternity leave in India. One major challenge is the lack of awareness among employers and employees about the benefits of paternity leave. Additionally, there is a perception among some that paternity leave is a luxury that only a few can afford.

Overall, paternity leave is an important step towards achieving gender equality in the workplace and promoting healthy family relationships. While the implementation of the Paternity Benefit Bill may still be some time away, the increasing number of private companies offering paternity leave is a positive sign that attitudes towards fatherhood and parenting are changing in India.

## SUGGESTIONS:

1. Article 42 of the Directive Principles of State Policy, cannot be overstated, since it obligated the state to pass different legislation for women, eg. Maternity Benefit Act of 1961. As a result, it is suggested that Article 42 of the Constitution of India be amended to include paternity leave in addition to maternity relief, in light of the need for and relevance of paternity leave in today's Indian society.

2. The private member bill i.e. Paternity Benefit Bill, 2017 was a good step towards sharing the parenthood. In today's time the government should understand that the responsibility of the child is not only of the mother but equally with the father. And hence the government should bring a new legislation for the said purpose.

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## ROLE OF JUDICIARY IN SHAPING UP OF RIGHTS OF LGBTQ'S: A STEP TOWARDS GENDER EQUALITY AND PROGRESSIVE LEGISLATION

**Ritu Rajkumar**

Research Scholar, Dr. Ambedkar Law College,  
Deekshabhoomi, Nagpur

### ABSTRACT

This research paper throws light on the role of Indian Judiciary in shaping up of the rights of LGBTQS. The author also discusses about how significant the judicial pronouncements have been in the enactment of a progressive Legislation and establishing the gender equality. The rights of LGBTQ have never been given utmost importance until the movement and parades by gay in the city of Mumbai, Delhi and Bangalore held in July, 2008. The broad theme of this paper revolves around the important precedents of the various courts which finally lead to the passing of Transgender Persons (Protection of Rights) Act, 2019. The paper would also critically examine the acceptance of the judicial pronouncements by the society at large and its effectiveness in improving the life of the LGBTQ Community. The LGBTQ have always been out of the main social structure of the families and denied the basic human rights to which they were entitled to for being an individual. This community has never been accepted with respect and dignity. The author focuses on the existence and acceptance of this community in Indian history. One needs to go back to the history and scriptures where the evidences of the existence of transgender could be found. Transgenders are also human beings like others and they deserve all the rights which the other humans enjoy being an individual. Being the marginalized group, they must be given all the benefits and reservations which other social and educational backward classes are given. The author begins the paper by defining the term and a brief historical background makes this more clear that the said community has always been a part of the society even before the Vedic period. Transgenders gradually lost their recognition and considered to be against the nature, society and even religion. The question arises as to why a person shall behave in such a manner when he knows that most of the people in the society would not accept them and they would be taken just as a laughingstock? There is something very natural in them and the society needs to recognize that. Despite being the largest democracy in the world, Indian society has been a failure to recognize the rights of LGBTQ. Indian Judiciary has played a vital role in recognizing the rights of this community but political Parliament has not done much except enacting a few laws about which the public is not aware and they continue to treat this community differently. The purpose of the paper is to keep the reader up to date with the recent legal developments. The judiciary has set up the precedents in the case of National Legal Services Authority v. Union of India and Navtej Singh Johar v. Union of India by recognizing the rights of transgenders. The author wishes to limit her study by looking into the pronouncements made by the honourable courts and the legislations based on such pronouncements. The Author does not wish to extend the scope of the paper by pondering in the issue of legalising same -sex marriages which has been pending before the apex court and must be argued on April 18<sup>th</sup>, 2023. However the study may touch upon the issue incidentally.

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## 1. INTRODUCTION

The framers of the Indian Constitution has embodied the principle of equality in the Preamble, A.14,15,16,17 wherein all persons are treated equally before law.<sup>1</sup> Indian Constitution contains provisions not only for the human beings but also for the animals.A.15 contains the special provisions regarding women and children's.<sup>2</sup> The backward class, schedule class and schedule Tribes are also given privileges under A.16<sup>3</sup>.India, being the largest democracy in the world still has not accepted the LGBTQ with full heartedly and they are still out of the main structure of family. They in fact, being the marginalized group are still deprived of many privileges to which the other groups are entitled to. (Mentioned earlier by the author). The role of movements by LGBTQ, changing social circumstances and judiciary undoubtedly, cannot be denied in the development of the above said community, but the Indian society at large still reluctant in recognizing them as a third gender. The discussion on the rights of LGBTQ has recently gathered everyone's attention after the judgment in the case of *Navtej singh Johar Union of India*. The judgment was very much welcomed and most celebrated judgment as a victory for human rights of the LGBTQ+ community in India and around the world. The author would like to answer the few Research questions under the various sub-sections of the research paper, which generally comes to one's mind eventually and even raised by the society at large.

## 2. RESEARCH QUESTIONS:

1. What exactly the term refers to and who all come within the purview of the definition of Transgenders?
2. Whether LGBTQ+ were a part of the Ancient India?
3. How the judicial pronouncements helped in passing of Tran genders Persons Act 2019?
4. What are the obstacles in achieving gender equality?

## 3. DEFINITION OF THE TERM LQBTQ+:

LGBTQIA+ is a terminology which is commonly used now a days. But very few people know the what the terminology exactly refers to and who all are included under this acronym. Before we start to discuss about the plight and vulnerability of this class, one need to have an understanding about the terminology in order to have a fruitful outcome of this research. As the term itself is enough confusing, it is more difficult to understand it for those who do not belong to this community. The Transgender Persons (Protection of Rights) Act, 2019 defines a transgender person as one whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra.<sup>4</sup> Intersex are also

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<sup>1</sup> A.14 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>2</sup>A. 15(3) Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>3</sup> (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

<sup>4</sup> S.2(k), The Transgender Persons (Protection of Rights) Act, 2019

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defined under the Act. <sup>5</sup>The definition is too vague and ambiguous. The commonly and widely accepted definition of this terminology is discussed here.

L - lesbian: a woman who is having her sexual intimation to other women.

G - gay: a man who is having his sexual /emotional intimation/ to other men.

B - bisexual: a person who is attracted to both men and women.

T - transgender: a person who feels his/her gender identity different from the sex assigned to them on their birth certificate.

Q - queer: some people want to reclaim the word, while others find it offensive.

I - intersex: a person whose body is not definitively male or female.

A - asexual: a person who is not attracted in a sexual way to people of any gender. They can be attracted emotionally to others but not sexually.

#### 4. PREVALENCE AND ACCEPTANCE OF LGBTQ + COMMUNITY IN INDIAN HISTORY:

Indian history is known for its rich culture and we have been taking pride for the same since time immemorial. Having a glance on Indian religious text will reveal that LGBTQ + have always been a part of Indian culture and contributed towards building up its prosperous history. Acceptance was the inalienable and prominent feature of the ancient India. The author wishes to cite some evidences which proves the existence of homosexuality in Indian Hindu Mythology.

- The great Indian Epic Mahabharata, written by Ved Vyasa, reveals the story of Shi Khandi who was a daughter of Dhruvad but was raised as a son and became the reason of Bhishma's death. Also, Arjuna, as Brihanlala, shows that giving and recognizing the rights of Transgender's is not a new concept but always inherent our culture.<sup>6</sup>
- In another great Indian Epic Ramayana, Lord Hanuman while returning from Lanka saw two Rak Shashi who were kissing to each other.
- The Rigveda: One phrase in Rigveda states Vikriti Evam Prakriti which means what seems unnatural is also natural.
- Chapter nine of Kamasutra by Vatsyayana converse about homosexuality and sexual activities among transgender persons.<sup>7</sup> It talks about "Swarinis", the lesbians who often married each other and raised children together.

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<sup>5</sup> Intersex variations is defined to mean a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes, or hormones from the normative standard of male or female body.

<sup>6</sup> The Mahabharata of Krishna-Dwaipayana Vyasa Translated into English Prose from the Original Sanskrit Text by Kisari Mohan Ganguli [1883-1896]

<sup>7</sup> The Kama Sutra of Vatsayayana, Sir Richard Burton, translator. [1883]

One can't deny the evidences of homosexuality present in the Khajuraho temple of Madhya Pradesh, built in the 12th century, known for their sculptures showcasing the existence of sexual activities between homosexuals.

Not only in Hindu Mythology and scriptures reveals the acceptance and respect for the transgenders, but even Muslim Literature was also not untouched from the homosexuality.

- Babur, the founder of the Mughal Empire, wrote in Babar Nama about his inclination towards a boy named Baburi who met him in Urdu Bazar. This shows that bisexuals faced no disapproval during Mughals periods too.<sup>8</sup>
- In another instance, Mubarak, son of Alauddin Khalji who ruled The Delhi Sultanate between 1296 and 1316, was in a relationship with one of the noblemen in his court. The above stated evidences clearly shows that Ancient India was quiet liberal towards the LGBTQ+ people. It was only under the British Rule that Homosexuality was made a criminal act. To punish the homosexual people, the colonized India inserted s.377 in IPC which was the most backward law of that time.

## 5. ROLE OF JUDICIARY IN RECOGNIZING THE RIGHTS OF LGBTQ:

A writ petition was filed by an Indian NGO named as Naz Foundation. It was argued that Section 377 of the Indian Penal Code was unconstitutional and violated the fundamental rights guaranteed under Articles 14, 15, 19 and 21 of the Constitution of India. The petitioner, the Naz Foundation, asserted that Section 377 of the Indian Penal Code affected the rights of the gay and transgender community in India, including the right to equality, the right to non-discrimination, the right to privacy, the right to life and liberty, and the right to health. The court dealt with the case from two angles. It asserted that right to life cannot be enjoyed without right to dignity and privacy. The High Court firstly recapitulated the test as set out in *Maneka Gandhi v. Union of India*<sup>9</sup> that there must be a procedure and it must be tested against some of the rights enshrined under Article 19 which are applicable. Further moving to the present case, right to privacy has not been explicitly mentioned under Indian Constitution. However, the Supreme Court has interpreted such a right on the basis of protecting freedom of expression and movement and protecting the right to life and liberty<sup>10</sup>. The Court referred to United States jurisprudence, including the case of *Planned Parenthood v. Casey*<sup>11</sup> which was a famous case regarding abortion wherein the Supreme Court of United States upheld the constitutional right to have an abortion which was earlier established in the case of *Roe v. Wade*<sup>12</sup>. It then went on to consider the development of this right in India referring to the case of *Kharak Singh v. The State of U.P.*<sup>13</sup> which traced the right to privacy in India to the right to 'life' in Article 21 of the Constitution. To sum up, the Court declared that Section 377 of the Indian Penal Code violates Articles 21, 14 and 15 of the Constitution, and should be decriminalized, However the amendment could be made only by Parliament. The matter went to appeal to the Supreme Court of India in *Suresh Kumar Koushal and another v NAZ Foundation and*

<sup>8</sup> (Baburnama, Vol. 1, pg 120)

<sup>9</sup> AIR 1978 (1) SCC 248

<sup>10</sup> The Constitution of India, art. 19 and art 21

<sup>11</sup> 505 U.S. 833 (1992)

<sup>12</sup> 41 US 113 (1973)

<sup>13</sup> (1964) 1 SCR 332

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*Others*<sup>14</sup> where the Supreme Court struck down the decision of the High Court by stating that homosexuality is a criminal offence and can only be decriminalized by Parliament. Furthermore, the court went to state that the right to privacy cannot be extended to such an extent that it commits another offence. This judgment was criticized by many international organizations and labelled it a backward step for India. The issue of the transgender's rights was again raised in *National Legal Services Authority v. Union of India*<sup>15</sup> wherein the issue was that the Indian laws does not recognize trans -gender's rights .SC stated that under Article 14 every person's rights are protected including transgender and under Article 15 gender biased discrimination is prohibited. Further Article 19 protects privacy, integrity, and gender identity. The age-old principle laid down in *Corbett v. Corbett*<sup>16</sup> that an individual's sexual orientation is fixed at birth and cannot be changed was rejected by Supreme Court. The Hon'ble Supreme Court went on to prefer the "psychological test" instead of "biological test". It stated that people don't realize the discrimination faced by this group and psychological trauma caused to the them in our society. This case helped the transgender to disclose their self-identity and gender identity as the multi facet rights of trans -genders were legally recognized.

*K.S. Puttaswamy v. Union of India*<sup>17</sup> The case commonly known as Aadhar case. Retired Justice Puttaswami filed a petition in SC against Govt application of Aadhar in social welfare schemes like Mid-Day Meal, MGNREGA etc as Aadhar cannot be made compulsory for these schemes and this is the violation of right to privacy. The nine judges Bench unanimously held that "the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution" The most celebrated judgment of 2019 was *Navtej singh Johtar v. Union of India*<sup>18</sup> wherein the five Judges bench upheld the judgement of Delhi High Court given in Naz Foundation case. The Supreme Court asserted that to criminalize homosexual act between two adults is neither based on a valid differentia nor a rational nexus under Article 14. The morality test must be given away as it is ambiguous and based on subjective test. Supporting Article 15, the supreme Court followed the approach of Delhi High Court in Naz Foundation Case and held that sex does not only includes biological sex but also sexual orientation. The Supreme Court threw a light on Article 19 and Article 21. Supreme Court said that Article 19 cannot be interpreted in a narrow sense and discrimination against LGBTQ is unconstitutional. Right to expression includes right to express one's own identity. Further right to privacy, dignity and autonomy is an integral part of Article 21. The court unanimously declared the law unconstitutional in so far as it criminalises consensual homosexual conduct between two adults. However, the other provisions of Section 377 such as rape and bestiality would remain in force.

**6. LEGISLATIVE MEASURES AND THEIR IMPLEMENTATION:** For the improvement in the condition of Transgenders, a private member bill, was introduced in the Rajya Sabha in 2014. The bill focused on the health, education, and skill development of the Transgender's. The government introduced its own bill in Lok Sabha in 2016 which was referred to a Standing committee. Unfortunately, the bill got lapsed due to the dissolution of 16<sup>th</sup> Lok Sabha. The standing committee suggested its

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<sup>14</sup> Civil Appeal No. 10972 OF 2013(sc)

<sup>15</sup> (2014) 5 SCC 438

<sup>16</sup> (1970) 2 All ER 33

<sup>17</sup> (2017) 10 SCC 1

<sup>18</sup> (2018) 10 SCC 1



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recommendation such as defining the various categories under LGBTQ+. Finally, after a struggle over several years, Transgender Persons (Protection of Rights) Act, 2020 was enacted for the protection of rights for transgender, their welfare and recognition. This legislation recognized the rights of this community first time. It prevents discrimination against this community in healthcare, education, employment. Though this legislation was not very welcomed by the transgender community for some of its provisions were considered contrary to gender equality. The Act was criticized for not having the strict penal provisions as other legislations of the country contains strict punishments when it comes to a male or female. Also, they need to show a certificate issued by the District Magistrate to be recognized as a Transgender and this was taken as the most discriminatory provision of the Act. Nevertheless, the Act has given the community a well-deserved recognition and right to dignity. Prior to this, there was no such law in existence. The Act was followed by The Transgender Persons (Protection of Rights) Rules, 2020 which deals with the procedural aspect and gives clarity to the Act.

## 7. CONCLUSION AND SUGGESTIONS:

Undoubtedly, the judiciary has played a significant role in shaping the rights of LGBTQ+ by passing the historic judgements which have not only been celebrated by this community but also by some elite and educated class of society. However, the judgements have not changed the mindset of the people towards the community. The hostile behaviour of the general public towards the community makes them more vulnerable. The society needs to be educated about the rights of the community through awareness programmes and campaigning. The social media can be used as a platform to spread awareness, being a great influencer at present time. Legislature owes a duty towards the community and they can perform it by passing more laws in favour of LGBTQ+. To include this community in the main stream of social structure, Legislature may come up with the Same Sex marriage Bill, wherein they can also live like other couples. The author is well-aware of the fact that our personal Laws are very complex and to include homosexuals may make them more complex but the community simple can't buy this argument for not including them in the personal laws. Decriminalizing s.377 and passing of the legislation won't do any good unless they are accepted, recognized as heterosexuals. Legalising the Same-Sex marriage, could be a game changer in giving them adoption, maintenance and other rights. The apex court has recognized the community as a third gender but the legislature is still reluctant to pass a law which can have the similar provisions as personal laws. Neither there is a separate law to give them the bundle of rights nor they are a part of our personal laws. Certainly, India is moving towards gender equality but we still have a long way to go in achieving and recognizing all the rights of this community.

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# WHETHER ABORTION LAW IS MOVING TOWARDS A PROGRESSIVE GENDER EQUAL SOCIETY IN INDIA: AN OVERVIEW

**Dr. Rajeshri Varhadi**

Professor, Department of Law and I/C Director UMLA,  
University of Mumbai

**Dr. Kiran Sharma**

Assistant Professor, K.C. Law College

## 1. INTRODUCTION:

**“It seems to be clear as daylight that abortion would be a crime”**

**Mahatma Gandhi <sup>1</sup>**

Safe and legal abortion leads to a dignified life for any woman. However, unfortunately a very few countries across the world permit abortion as a constitutional or a legal right. Recently, a landmark judgement in the most developed country in the world - the United States of America, has shocked the entire world where the 1973 landmark judgement, which secured the right to abortion as a constitutional right, was upheld by the Supreme Court of America. Due to a recent amendment in 2021 in the Medical Termination of Pregnancy (MTP) Act, 1971 and the proactive role of the judiciary in India, now all women including single or married, can have safe and legal abortions on certain grounds up to 24 weeks. India is moving forward to achieve economic equality and that will surely reduce the inequality in the protection of health. Through a landmark Supreme Court judgement, India has reaffirmed its commitment to women's reproductive autonomy and puts India on the world legal map as a leader in securing equal opportunities and quality to women on equal footage as men.

## 2. OBJECTIVES:

The main objective is to critically analyse whether abortion law is progressive and meets the needs of today's societal requirements, to protect reproductive rights and also the protection of health of women. Also, to evaluate the challenges and issues in India, with respect to exercising the right to a safe abortion and make suggestions and recommendations to overcome these issues and challenges.

## 3. RESEARCH METHODOLOGY:

The research is descriptive, analytical and comparative in nature and the researcher will critically analyse the Medical Termination of Pregnancy (MTP) Act, 1971, amendments and judicial trends and compare Indian Laws with those of the United States of America on the chosen topic of the research. Information has been collected from reference books, research papers, from various newspapers, websites, government publications, etc. and based on secondary data .

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<sup>1</sup> <https://www.legalserviceindia.com/legal/article-1691-constitutionality-of-abortion-laws-in-india.html>

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#### 4. LEGAL MEASURE IN INDIA : ABORTION

##### HISTORICAL PERSPECTIVE OF RIGHT TO ABORTION :

Abortion was considered to be a sin in ancient India. In 1920, abortion was legalised in Russia, which is considered to be the first country to legalize abortion in the world<sup>2</sup>. Most of the countries across the globe have permitted abortion on very limited grounds. The law which was enacted by the Britishers, the Indian Penal Code (IPC)1860, penalises abortion as a crime. IPC punishes mothers and abortionists except if the abortion was saving the mother's life. Since India is a patriarchal society and has an inherent liking to having a son for various religious and illogical reasons, it has resulted in a lot of unsafe abortions and death of mothers due to lack of health facilities and trained doctors. Therefore, for the protection of pregnant women's health, emotions and lives, the Central Government constituted Shanti Lal Shah Committee in 1960, to suggest a law for legalization of abortion in certain cases.

##### CONSTITUTION OF INDIA:

Article 21<sup>3</sup> of the Constitution of India protects the right to life and personal liberty. Due to liberal interpretation of Article 21, a plethora of rights are a part of this, such as the right to sleep, right to dignity, reproductive choice, right to privacy, right to health and right over the body. Right to abortion is not a separate fundamental right in our constitution, however it is recognised as a part of right to privacy which is a part of right to liberty. In reality, right to abortion is dependent on the opinion of the medical practitioners in India<sup>4</sup>.

##### MEDICAL TERMINATION OF PREGNANCY ACT, 1971:

In a very landmark move, the Indian Parliament enacted the Medical Termination of Pregnancy Act, 1971 with the basic objective to provide termination of certain pregnancies by registered medical practitioners. This Act is an exception to the provision of the Indian Penal Code - Sections 312<sup>5</sup> and 313<sup>6</sup>. Section 3 provides two conditional circumstances under which pregnancies can be terminated - when it is up to 12 weeks, the opinion in good faith of a medical practitioner is required and when it exceeds 12 weeks, up to 20 weeks - then not less than two medical practitioners' opinion is required for the termination of such pregnancies. The opinion can be formed by the medical practitioner on certain

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<sup>2</sup> <https://www.reuters.com/article/uk-britain-abortion-law-factbox-idUKL2280334020080425>

<sup>3</sup> No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India.

<sup>4</sup> As per the Medical Termination of Pregnancy Act, 1971

<sup>5</sup> According to section 312 of Indian penal code, Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>6</sup> Causing miscarriage without woman's consent.—Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

grounds<sup>7</sup>. However, termination of pregnancy for the mentally ill and women less than 18 years of age requires permission from the guardian<sup>8</sup>. This Act also specifies the place for termination of pregnancy - either hospitals established or maintained by the government, or a place approved by the government for the purpose of the act<sup>9</sup>.

Despite the various provisions, illegal abortions of unwanted pregnancies continued, which were indeed detrimental to women and their healths were badly affected. To come out of the deficiencies in the Act, it was amended in 2003 and 2021, where significant changes were brought about. The amendment in the Medical Termination Act in 2021, is considered as the most progressive amendment in abortion laws with respect to the reproductive rights of women. The changes through this amendment are historical and protect the right to dignity, safety and security of women which are very much essential tools for the empowerment of women. Some significant changes under these amendments are as follows:

- Abortion was extended from 20 weeks to 24 weeks on specified grounds and conditions including rape survivors and other susceptible women.
- Some special categories of women were allowed to terminate pregnancy after the consent of doctors, between 20 weeks to 24 weeks.
- Even after 24 weeks, if significant fetal abnormalities are detected on evaluation of the State Medical Board, abortion can be allowed.
- Only Experts like obstetricians and gynaecologists are allowed to perform abortions, as earlier there have been a significant number of cases where women have died during the process of abortion. So this move will definitely protect the health of women.
- The right to privacy has been protected through this amendment, as disclosure of identity of women whose pregnancy is aborted is prohibited, except to the appropriate authorities. Right to privacy is also part of right to life and liberty under Article 21 of the Indian Constitution.
- Pregnancy by rape and more than 24 weeks of pregnancy requires filing a writ petition for abortion request.
- In a path breaking change, an unmarried woman is also allowed to abort pregnancy up to 20 weeks, on the grounds of contraceptive method or device failure, like married women.

There is no doubt that the above changes will bring about wellbeing and raise the health standards of women in the society.

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<sup>7</sup> Section 3, Medical Pregnancy Act, 1971, Involve risk of life, causing grave injury to physical or mental health, grave risk when the child was born and medical abnormalities.

<sup>8</sup> Section 3 (3) Medical Pregnancy Act, 1971,

<sup>9</sup> Section 4 Medica Pregnancy Act, 1971.

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## 5. INTERNATIONAL HUMAN RIGHTS PERSPECTIVE: ABORTION

The Universal Declaration of Human Rights, 1948 proclaims “All are born free and equal in dignity and rights”<sup>10</sup> and all rights are available to all irrespective of colour, race, origin or place of birth”<sup>11</sup>. These rights proclaim universality of human rights. Under the umbrella of the United Nations norms, denial of safe abortion services is considered as a violation of human rights. The United Nations International Conference on Population and Development, 1994, plan of action recognises reproductive rights.

International Convention on Elimination of all forms of Discrimination against Women, (CEDAW)1979, protects the right to health, right to autonomy of body and reproductive rights, specifically Article 16, which states women’s rights about number and spacing of their children<sup>12</sup>. As per the World Health Organization,<sup>13</sup> abortion is still criminalized in various countries and most countries authorise abortion on certain grounds and around 20 countries do not permit abortion<sup>14</sup>. As per the researcher's view, international legal measures regarding the human right to abortion have not been addressed properly by the United Nations Organizations.

## 6. ROLE OF THE JUDICIARY WITH RESPECT TO ABORTION:

The Judiciary has played a vital and progressive role in ensuring a safe right to abortion. In one of the judgements, <sup>15</sup> the court held the necessity of abortion, on the grounds of risk to life or grave injury to physical and mental health to pregnant women.

In one of the judgements, <sup>16</sup> the supreme court on the basis of ‘best interests’ test and consent of pregnant women, protected the reproductive rights of a woman and held that the right to reproductive choice is a part of liberty , enshrined in Article 21 of the Indian Constitution.

The nine judges constitutional bench reaffirmed the right to privacy as a fundamental right under the Indian Constitution<sup>17</sup>. The reproductive right has been held as a part of the right to privacy in the earlier judgements.

The supreme court<sup>18</sup> created history when the right to abortion was extended to unmarried women up to 24 weeks on the basis that equals cannot be treated unequally .

As per the researcher's view, as compared to various other countries of the world, specifically the most developed country - the United States of America, Indian abortion law is very much progressive. The biggest surprising legal news which had shaken the world, was reversing the historical judgment of Roe

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<sup>10</sup> Article 1 ,Universal Declaration of Human Rights, 1948

<sup>11</sup> Article 2 , Universal Declaration of Human Rights, 1948

<sup>12</sup> Article 16 (e), CEDAW, 1979

<sup>13</sup> <https://news.un.org/en/story/2022/03/1113612>

<sup>14</sup> Ibid

<sup>15</sup> Nand Kishore Sharma V Union of India ,AIR, 2006, Raj 166

<sup>16</sup> Suchita Srivastava & Another v. Chandigarh Administration (2009) 11 S.C.C. 409

<sup>17</sup> **KS Puttaswamy and other v Union of India and others, 10, SCC , 2017**

<sup>18</sup> Swati Agarwal & Ors. v. Union of India, 2009, SCC

V Wade<sup>19</sup> and holding the right to abortion as unconstitutional by the USA, Supreme Court in 2022. The Indian Judiciary is moving towards liberalising the abortion laws.

## 7. CONCLUSION AND SUGGESTIONS :

As per the State of the World Population Report<sup>20</sup>, 2022 , due to unsafe abortions , eight maternal deaths take place every day and 67% abortions are unsafe in India, however, India's maternal mortality ratio has decreased. It is evident from the above, that abortion laws in India are moving forward to cater to the needs of the society as per today's requirement. Safe abortions will ensure women with good health and economic empowerment which will fetch gender equality in society. However, the Medical Termination of Pregnancy Act, 1971, is not properly implemented in India due to various issues and challenges as follows :

- Right to life enshrined under Indian Constitution confers a bundle of rights like right to health, privacy, dignity, etc. As per the presumption of the researcher, maximum abortion cases in India are unsafe and unreported, specifically in rural areas. The right to life can not be enjoyed unless health is protected and therefore, the right to abortion should be a separate fundamental right under the Indian constitution, to protect the health of women and to control illegal or unwanted abortions effectively.
- Due to scientific and technological advancements, safe abortion is possible even just before 9 months of gestation and so, the Indian judiciary and the legislature should think in that direction like Canada, where no time limit is decided by law.
- There is a lack of awareness among the people about MTP, Act specifically under the rural areas. Therefore, government, non-governmental organization, media and common people should come together to spread awareness about the abortion right.
- Due to medical infrastructural deficiencies in India, proper abortion facilities are not available. Therefore, government must take appropriate measures for the same.
- There should be only two reasons for abortion as physical and mental health of the women so there is a need to amend MTP, Act for the same.
- Getting the permission from the medical practitioner (s) on specified grounds is very much time consuming and procedure is very lengthy therefore in the opinion of researcher there should be maximum 24 hours to be given to the medical professionals to decide about the abortion and if the health of women requires urgent abortion to save her life, then decision must be taken immediately.
- There should be separate budget allocation by the government to for abortion services.

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<sup>19</sup> U.S. SC , 1973

<sup>20</sup> <https://india.unfpa.org/en/seeing-unseen>

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# GENDER EQUALITY FOR SUSTAINABLE DEVELOPMENT: A MULTIDIMENSIONAL PERSPECTIVE

**Dr. Rita Bansal**

Assistant Professor

D.T.S.S. College of Law

Kurar Village, Malad (East), Mumbai – 400 097

## ABSTRACT:

Gender equality and sustainable development are two interconnected and mutually reinforcing concepts. The article provides a comprehensive review of existing research evidence on the relationship between gender equality and sustainable development. The review synthesizes empirical studies, theoretical frameworks and policy analysis to shed light on the various dimensions of this relationship and its implications for achieving sustainable development goals. The article explores the critical relationship between gender equality and sustainable development from a multidimensional lens. Drawing upon empirical research, theoretical frameworks and policy analysis, it examines the interconnectedness between gender equality and various dimensions of sustainable development. By analyzing the economic, environmental and social aspects, the article emphasizes the significance of advancing gender equality in achieving sustainable development goals. It also highlights the importance of addressing challenges and finding out ways to promote gender equality within sustainable development agendas. Through this multidimensional perspective, the article contributes to a deeper understanding of the role of gender equality in driving sustainable development outcomes. By adopting a multidimensional perspective, this research article offers a comprehensive analysis of the complex relationship between gender equality and sustainable development. It highlights the interconnectedness between economic, environmental, and social dimensions, emphasizing the need for holistic approaches to advance gender equality. The article provides a valuable resource for policymakers, practitioners, and researchers seeking to promote gender equality within sustainable development agendas, ultimately contributing to a more inclusive and sustainable future.

*Key words: women, gender, equality, development, sustainability.*

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## INTRODUCTION:

Gender equality and sustainable development are two crucial global issues that have gained increasing recognition in research, policy and practice<sup>1</sup>. Gender equality refers to the equal rights, opportunities and treatment of individuals regardless of their gender identity, while sustainable development entails meeting the needs of the present without compromising the ability of future generations to meet their own needs. These two concepts are deeply intertwined, and their effective integration is essential for creating a just and sustainable world<sup>2</sup>.

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<sup>1</sup> [www.un.org/sustainabledevelopment/gender-equality/](http://www.un.org/sustainabledevelopment/gender-equality/)

<sup>2</sup> [www.unwomen.org/en/news-stories/explainer/2022/02/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected](http://www.unwomen.org/en/news-stories/explainer/2022/02/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected)

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There is an interconnectedness between the two, emphasizing the need for a multidimensional perspective that recognizes their interdependence and mutual reinforcement. This multidimensional perspective acknowledges that gender equality is not only a goal in itself but also a means to achieve sustainable development across economic, environmental and social dimensions<sup>3</sup>.

Economic development is a fundamental pillar of sustainable development, and gender equality plays a critical role in driving inclusive economic growth. Research has consistently demonstrated that closing gender gaps in economic participation and employment can lead to enhanced productivity, increased Gross Domestic Product (GDP) and reduced poverty rates. Moreover, promoting women's economic empowerment through access to financial resources, education and entrepreneurship opportunities contributes to more equitable and sustainable economic systems<sup>4</sup>.

Environmental sustainability is another key dimension of sustainable development that is intricately linked to gender equality. Women often bear the disproportionate burden of environmental degradation and climate change impacts due to their roles as primary caregivers, natural resource managers and farmers. Recognizing and empowering women as agents of change in environmental conservation, sustainable agriculture and climate change adaptation is crucial for achieving resilient and sustainable ecosystems<sup>5</sup>.

Social development, encompassing aspects such as education, health, political participation and social inclusion is also influenced by gender dynamics. Gender equality in education and health not only promotes individual well-being but also contributes to broader societal advancements. Women's empowerment and political participation are essential for inclusive decision-making processes and effective governance. Addressing gender-based violence and promoting social inclusion are critical components of sustainable development efforts that promote social justice and equality<sup>6</sup>.

**OBJECTIVES:** The main objective of the research is:

1. To examine the interconnectedness between gender equality and sustainable development across economic, environmental and social dimensions.
2. To highlight the importance of advancing gender equality in achieving sustainable development goals.
3. To explore the economic benefits of gender equality including the reduction of gender gaps in economic participation and employment and its impact on poverty alleviation.
4. To examine the gendered impact of environmental degradation and the role of women in natural resource management and climate change adaptation.
5. To identify policy approaches and strategies for promoting gender equality within sustainable development agendas, such as gender mainstreaming targeted gender polices and programs and partnerships with stakeholders.

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<sup>3</sup> [www.weforum.org/agenda/2015/03/why-gender-equality-is-integral-to-sustainable-development/](http://www.weforum.org/agenda/2015/03/why-gender-equality-is-integral-to-sustainable-development/)

<sup>4</sup> [www.unstats.un.org/sdgs/report/2020/Goal-05/](http://www.unstats.un.org/sdgs/report/2020/Goal-05/)

<sup>5</sup> [www.iisd.org/articles/gender-equality-and-sustainable-development](http://www.iisd.org/articles/gender-equality-and-sustainable-development)

<sup>6</sup> [www.iisd.org/articles/gender-equality-and-sustainable-development#Legal%20Innovations%20For%20Women%20in%20Contract%20Farming](http://www.iisd.org/articles/gender-equality-and-sustainable-development#Legal%20Innovations%20For%20Women%20in%20Contract%20Farming)

6. To contribute to a deeper understanding of the multidimensional nature of the gender equality-sustainable development nexus and its implications for achieving a more inclusive and sustainable future.

The objectives collectively aim to provide a comprehensive and nuanced analysis of the relationship between gender equality and sustainable development, informing policy and practice to foster gender equality as a critical component of sustainable development efforts.

#### **RESEARCH QUESTION:**

Whether gender equality can enhance societal well-being, help in reducing poverty and increase economic growth thereby resulting in sustainable development?

#### **RESEARCH METHODOLOGY:**

The research primarily focuses on the analysis and interpretation of legal provisions within different statutes to address the specific issue at hand, thereby obtaining legally significant information. Additionally, it explores the concept of gender equality and sustainable development by examining various case laws and the role of the judiciary. Furthermore, a comprehensive range of sources, including websites, newspapers, government publications, and books, have been utilized to gather relevant information for the study. As such, secondary data has been relied upon.

#### **CONCEPTUALIZING GENDER EQUALITY AND SUSTAINABLE DEVELOPMENT:**

**Gender Equality:** It refers to the equal rights, opportunities and treatment of individuals regardless of their gender identity. It involves ensuring that both women and men have equal access to resources, power and decision-making processes and that they can fully participate and contribute to social, economic, and political spheres. Gender equality recognizes that gender-based discrimination and stereotypes can limit individuals' potential and hinder societal progress<sup>7</sup>.

**Sustainable Development:** It is a holistic approach to societal progress that seeks to meet the needs of the present without compromising the ability of future generations to meet their own needs. It encompasses three interconnected dimensions: economic, environmental and social. Sustainable development recognizes the interdependencies between these dimensions and seeks to balance economic development with environmental preservation and social justice<sup>8</sup>.

**Intersecting Gender Equality and Sustainable Development:** Gender equality and sustainable development are closely intertwined. Advancing gender equality is not only a matter of social justice but also a pre-requisite for achieving sustainable development goals. Gender equality is essential for promoting inclusive economic growth, reducing poverty and enhancing productivity. Women's

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<sup>7</sup> [www.un.org/sustainabledevelopment/blog/2022/03/gender-equality-fundamental-prerequisite-for-peaceful-sustainable-world/](http://www.un.org/sustainabledevelopment/blog/2022/03/gender-equality-fundamental-prerequisite-for-peaceful-sustainable-world/)

<sup>8</sup> [www.weforum.org/agenda/2015/03/why-gender-equality-is-integral-to-sustainable-development/](http://www.weforum.org/agenda/2015/03/why-gender-equality-is-integral-to-sustainable-development/)

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empowerment and equal access to education, employment and entrepreneurship opportunities contribute to economic development and prosperity<sup>9</sup>.

**Integrating Gender Perspectives into Sustainable Development Agendas:** It is essential for promoting gender equality and ensuring that the benefits of sustainable development are realized by all individuals, regardless of their gender. Gender mainstreaming involves integrating gender perspectives into all stages of policy development, implementation and evaluation. It requires systematically considering the different needs, experiences and priorities of women, men and gender-diverse individuals in all sectors and areas of sustainable development. Improving the availability and quality of gender-disaggregated data is crucial for understanding gender dynamics and assessing progress towards gender equality and sustainable development goals. It is important to strengthen national statistical systems to ensure gender-responsive data collection, analysis and reporting<sup>10</sup>.

### LEGISLATIVE PROVISIONS, POLICIES ETC. FOR GENDER EQUALITY IN INDIA:

In India, several legislative provisions and policies have been implemented to promote and ensure gender equality. These measures aim to address gender disparities, empower women and create a more inclusive society. Here are some key legislative provisions and policies related to gender equality in India:

1. *The Constitution of India:* The Constitution provides a strong foundation for gender equality by guaranteeing fundamental rights and prohibiting discrimination based on gender. Article 15 prohibits discrimination on grounds of sex, while Article 14 ensures the Right to Equality before the Law.
2. *Protection of Women from Domestic Violence Act, 2005:* This Act aims to protect women from domestic violence by providing them with legal remedies and support. It covers physical, emotional, sexual and economic abuse within a domestic relationship.
3. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:* This Act addresses the issue of sexual harassment at workplaces and mandates the establishment of Internal Complaints Committees (ICC) to handle complaints. It provides a mechanism for redressal and seeks to create a safe working environment for women.
4. *The Maternity Benefit Act, 1961:* This Act ensures maternity benefits for women employees, including paid leave, medical benefits and job protection during pregnancy and childbirth.
5. *Prohibition of Child Marriage Act, 2006:* This Act prohibits the marriage of girls below the age of 18 and boys below the age of 21 years. It aims to prevent child marriage and protect the rights of children, particularly girls.
6. *National Policy for Empowerment of Women, 2001:* This policy focuses on the economic, social and political empowerment of women. It aims to eliminate gender-based violence, enhance women's access to resources and opportunities and promote gender mainstreaming in various sectors.

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<sup>9</sup> [www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2016/DPS-Gender-equality-sustainable-development.pdf](http://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2016/DPS-Gender-equality-sustainable-development.pdf)

<sup>10</sup> [www.iisd.org/articles/gender-equality-and-sustainable-development](http://www.iisd.org/articles/gender-equality-and-sustainable-development)

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7. *Beti Bachao Beti Padhao (save the daughter, educate the daughter) Campaign:* It was launched in 2015, and this campaign aims to address the declining child sex ratio in India and promote the importance of education for girls. It encourages the empowerment of girls through various initiatives and awareness programs.

These are just a few examples of the legislative provisions and policies in India that seek to promote gender equality and protect women's rights. The government continues to work towards strengthening these measures and addressing the challenges that persist in achieving true gender equality.

**Key Challenges and Barriers:** Gender equality and sustainable environment face several challenges and barriers that hinder their effective integration. Deep-rooted gender stereotypes and discriminatory social norms limit opportunities for women and girls, perpetuating gender inequalities. Gender disparities in access to and control over resources, such as land, finance and technology, pose significant challenges to achieving gender equality and sustainable development. Gender based violence, including domestic violence, sexual harassment and trafficking, remains a pervasive challenge that undermines gender equality and hampers sustainable development efforts<sup>11</sup>. Violence against women and girls not only violates their human rights but also restricts their ability to fully participate in society, education and the workforce. Insufficient gender-disaggregated data and limited measurement tools pose challenges to monitoring progress and assessing the impact of gender equality interventions within the sustainable development framework<sup>12</sup>. Resistance to change, both at individual and institutional levels, impede progress towards gender equality and sustainable development. Overcoming resistance to gender transformative approaches requires raising awareness, promoting dialogue and fostering a supportive environment for gender equality initiatives<sup>13</sup>.

Addressing these challenges and barriers requires concerted efforts from government, civil society organizations, international actors and individuals. It necessitates the implementation of gender-responsive policies, awareness-raising campaigns, capacity building programs, legal reforms and the promotion of women's empowerment at all levels<sup>14</sup>.

#### **ANALYSIS OF RESEARCH PROBLEM:**

*Whether gender equality can enhance societal well-being, help in reducing poverty and increase economic growth thereby resulting in sustainable development?*

Yes, gender equality can indeed enhance societal well-being, help reduce poverty and increase economic growth, leading to sustainable development. Here's an explanation of how gender equality contributes to these outcomes:

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<sup>11</sup> [www.iucn.org/news/gender/202001/gender-and-environment-what-are-barriers-gender-equality-sustainable-ecosystem-management](http://www.iucn.org/news/gender/202001/gender-and-environment-what-are-barriers-gender-equality-sustainable-ecosystem-management)

<sup>12</sup> [www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2016/DPS-Gender-equality-sustainable-development.pdf](http://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2016/DPS-Gender-equality-sustainable-development.pdf)

<sup>13</sup> [www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/EGM-Tackling-global-challenges-to-equality-and-inclusion-en.pdf](http://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2019/EGM-Tackling-global-challenges-to-equality-and-inclusion-en.pdf)

<sup>14</sup> [www.iucn.org/news/gender/202001/gender-and-environment-what-are-barriers-gender-equality-sustainable-ecosystem-management](http://www.iucn.org/news/gender/202001/gender-and-environment-what-are-barriers-gender-equality-sustainable-ecosystem-management)

1. *Enhanced Societal Well-being*: Gender equality fosters a more inclusive and just society where individuals have equal opportunities, rights and access to resources. When gender-based discrimination and stereotypes are challenged, it leads to improved well-being for both men and women. Gender equality promotes positive social norms, healthier relationships, and reduced violence against women. It also facilitates better mental and physical health outcomes for individuals, resulting in overall societal well-being.
2. *Poverty Reduction*: Gender equality plays a crucial role in poverty reduction efforts. Women constitute a significant portion of the world's poor and addressing gender disparities in access to education, healthcare, employment and resources can help break the cycle of poverty. When women are empowered economically and have equal access to opportunities, they can contribute more effectively to their families' well-being, lift themselves out of poverty and positively impact their communities. Gender equality also helps in reducing income inequalities, which is vital for sustainable poverty reduction.
3. *Increased Economic Growth*: Gender equality is closely linked to economic growth. When women are given equal access to education, employment and entrepreneurship opportunities, it leads to increased labour force participation and productivity. This expanded talent pool and diversity of perspectives in the workforce can drive innovation, creativity and overall economic growth. Studies have shown that closing the gender gap in employment and entrepreneurship can significantly boost national economies. Gender-inclusive policies and practices that support women's economic empowerment can unlock substantial economic potential.
4. *Sustainable Development*: Gender equality is a fundamental component of sustainable development. The United Nations' Sustainable Development Goals (SDGs) recognize the importance of gender equality (Goal no. 5) as a cross-cutting theme that is critical for achieving the other goals. Gender equality contributes to social, economic and environmental sustainability. It helps in reducing inequalities, promoting inclusive societies, and ensuring equal access to resources and opportunities for all. Gender-responsive policies and programs are essential for creating sustainable and resilient communities.

Thus, gender equality is not just a matter of social justice but also a key driver of societal well-being, poverty reduction, economic growth and sustainable development. By empowering women, challenging gender biases and promoting equal rights and opportunities, we can create a more equitable and prosperous future for all.

## CONCLUSION & SUGGESTIONS:

In terms of environmental sustainability, gender dynamics play a significant role. Women often bear a disproportionate burden of environmental degradation and climate change impacts, primarily due to their roles as caregivers, natural resource managers and farmers<sup>15</sup>. Recognizing and empowering women as agents of change in environmental conservation, sustainable agriculture and climate change adaptation is critical for achieving resilient and sustainable ecosystems. Moreover, gender equality is crucial for social development. Ensuring equal access to quality education and healthcare for all, promoting women's

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<sup>15</sup> [www.org/2022/07/we-cant-fight-climate-change-without-fighting-for-gender-equity](http://www.org/2022/07/we-cant-fight-climate-change-without-fighting-for-gender-equity)

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political participation and leadership and addressing gender-based violence and discrimination are integral to achieving socially sustainable societies<sup>16</sup>.

Challenging and transforming gender stereotypes and harmful social norms is vital for achieving gender equality within sustainable development agendas. Efforts should focus on promoting positive and non-discriminatory gender roles and expectations, fostering inclusive attitudes and encouraging the equal participation of women and men in all spheres of society<sup>17</sup>.

Achieving gender equality requires addressing systemic barriers, promoting women's empowerment and challenging societal norms and biases. Gender equality fosters social inclusion, enhances well-being and contributes to more effective and equitable governance. Conceptualizing the intersection of gender equality and sustainable development involves recognizing their interdependence and understanding the need for integrated approaches that address gender disparities and promote women's empowerment across economic, environmental and social dimensions. It requires acknowledging the systemic barriers and biases that hinder progress and developing policies and strategies that promote gender equality as a fundamental aspect of sustainable development efforts. By embracing this conceptualization, societies can work towards a more equitable, inclusive and sustainable future<sup>18</sup>.

Collaborative efforts involving governments, civil society organizations, private sector actors and other stakeholders are essential for advancing gender equality in sustainable development. By integrating gender perspectives into sustainable development agendas, societies can foster inclusive and equitable development that addresses the diverse needs and aspirations of all individuals. It ensures that gender equality becomes a central consideration in policy formulation, implementation and evaluation leading to more effective and sustainable outcomes. It is essential to foster multi-stakeholder collaborations and partnerships to address these challenges collectively and create an enabling environment for gender equality and sustainable development.

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<sup>16</sup> [www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected](http://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected)

<sup>17</sup> [www.oecd.org/environment/gender-and-the-environment-3d32ca39-en.htm](http://www.oecd.org/environment/gender-and-the-environment-3d32ca39-en.htm)

<sup>18</sup> [www.unstats.un.org/sdgs/report/2020/Goal-05/](http://www.unstats.un.org/sdgs/report/2020/Goal-05/)

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# “A STUDY OF GLOBALIZATION AND ITS IMPACT ON INDIAN WOMEN'S RIGHTS”

**Rekha Yadav**

SNDT Women's University

SNDT College of Arts and SCB college of Commerce and science for Women BMS

## ABSTRACT

This research paper focuses on the study of globalization and its impact on Indian women's rights explores how the process of globalization, characterized by increased interconnectedness and integration of economies, societies, and cultures worldwide, has affected the status and rights of women in India. It investigates how globalization has influenced women's participation in the labor force, access to education, healthcare, and political representation, and the emergence of new gender norms and cultural values.

The study examines the various ways in which globalization has both positively and negatively impacted women's rights in India. On the positive side, globalization has created new opportunities for women to participate in the workforce, access education and healthcare, and challenge traditional gender roles. On the negative side, globalization has also resulted in the displacement of women from traditional occupations, increased economic inequality, and the exploitation of women's labor in low-wage jobs.

The study concludes that while globalization has brought about significant changes in the lives of Indian women, its impact has been uneven and has not been able to address the deep-seated patriarchal norms and structures that perpetuate gender inequality. Therefore, there is a need for policies that can address the root causes of gender inequality and provide women with greater access to economic, social, and political opportunities

**Keywords:** Globalization, gender, equality, rights, education women empowerment, women and society

## I. INTRODUCTION

Globalization encompasses a complex set of economic, political, cultural, and geographic processes that have transformed the world into a global and interconnected system. It involves the movement of capital, organizations, ideas, discourses, and people across borders, leading to the spread of businesses, services, and technologies on a global scale. Within this context, globalization has had significant implications for women's empowerment.

International firms have increasingly directed their factories towards developing countries in search of cost-effective labor, often employing women in industries that offer lower wages. While this aspect of globalization has been criticized for perpetuating gender inequalities and labor exploitation, it has also created employment opportunities for women, contributing to their economic independence and empowerment.

Proponents of globalization argue that it can foster faster economic growth and improve living standards for individuals. The integration of economies and the influx of foreign investments can bring economic

benefits to developing nations, offering women increased access to education, employment, and resources. This, in turn, can contribute to their empowerment and ability to exercise their rights.

Globalization has also played a pivotal role in raising awareness about women's rights. Governments, international organizations, and numerous initiatives have been developed to educate women about their rights, both at the national and global levels. Globalization has facilitated the dissemination of information and the use of communication technologies, enabling women to connect, share experiences, and advocate for their rights on a larger scale.

As a result of globalization, there has been a notable increase in the representation of women in various industries worldwide. Women have successfully entered fields traditionally dominated by men, such as sports, business, and the film industry. This trend not only challenges gender stereotypes but also provides women with opportunities for personal and professional growth.

However, it is crucial to acknowledge that the impact of globalization on women's empowerment is multifaceted and varies across regions and socio-economic contexts. While globalization can create opportunities, it can also pose challenges such as increased competition, income disparities, and cultural homogenization. To ensure that the benefits of globalization are equitably distributed, it is important to address these complexities and promote inclusive policies and practices that empower women in all aspects of society.

### **1.1 DEFINITION OF GLOBALIZATION:**

Globalization is a complex concept with varying interpretations among academics and economists. Broadly speaking, it refers to the integration of world economies through the removal of trade barriers and the facilitation of the free movement of foreign investments, capital, and labor across national borders. The underlying principles that underpin the theory of globalization can be summarized as follows:

1. **Sustained Economic Growth:** The pursuit of continuous economic growth, as measured by gross national product, is considered a fundamental pathway to human progress.
2. **Free Markets:** The belief in the efficacy of free markets, where government intervention is minimal, is based on the notion that such markets lead to the most efficient and socially optimal allocation of resources.
3. **Economic Globalization:** The process of economic globalization involves eliminating barriers that impede the free flow of goods and capital worldwide. This fosters competition, generates employment opportunities, improves economic efficiencies, reduces consumer prices, expands consumer choices, and ultimately contributes to overall economic growth, benefiting society as a whole.
4. **Privatization:** Transferring functions and assets from the government to the private sector is viewed as a means to enhance efficiency in resource allocation and improve overall economic performance.

These principles form the foundation upon which the theory of globalization rests, shaping the policies and practices that aim to promote interconnectedness and economic development on a global scale.

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However, it is important to acknowledge that globalization is a multifaceted phenomenon with both positive and negative impacts, and its effects can vary across different contexts and regions.

## II. OBJECTIVES OF THE STUDY

- To study is to understand the impact of globalization on working environment for female.
- To study the opportunities available for women after globalization in India.
- To study about the impact of globalization on gender equality.

## III. RESEARCH METHODOLOGY

The authors have collected information required for the study from the different sources.

The secondary data of the above study is collected by referring to various books, journals, relevant articles of newspaper, magazines, published reports and research papers.

## IV. LIMITATION

One limitation of this study is its reliance on secondary data, which may affect the accuracy and comparability of the findings when compared to primary data sources.

## V. THEME OF THE PAPER

“A STUDY OF GLOBALIZATION AND ITS IMPACT ON INDIAN WOMEN'S RIGHTS”

## VI. THE IMPACT OF GLOBALIZATION ON WORKING ENVIRONMENT FOR FEMALE.

In addition to challenging preconceived notions about gender roles, globalisation has helped to reshape women's identities and responsibilities. Due to the expansion and demand in the service sectors over the past 20 years, women have joined the workforce all over the world. Nonetheless, due to financial restrictions, the desire to become independent, and the desire to experience personal autonomy, there has been an overall increase in the number of women working in the economy. Of course, the rise in employment cannot be taken as proof of a trend towards greater equality on its own. Women's involvement in all aspects of life strengthens their position in the process of economic development.

### WOMEN'S EMPLOYMENT PARTICIPATION RATE (FWPR)

The Women's Employment Participation Rate (WEPR) serves as a vital indicator of women's economic empowerment within society, reflecting their level of engagement in the workforce. The economic status of women is intricately linked to their access to opportunities for economic involvement, with education acting as a powerful catalyst for empowerment when combined with their active participation in the labor market. Notably, there has been a significant advancement in the inclusion of women across diverse professional fields.

In the year 2022, the overall national women's labor force participation rate stood at 56.8 percent. It is noteworthy that age groups ranging from 25 to 34 years, 35 to 44 years, and 45 to 54 years exhibited participation rates surpassing 75.0 percent, with the 25 to 34 age group demonstrating the highest participation rate at 77.6 percent. These figures highlight the increasing trend of women's engagement in the workforce, indicating positive strides in their economic empowerment.

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## ENGAGEMENT OF WOMEN ACROSS SECTORS

An essential distinctive element in the growth of the state economy is the structural change of the sectors. Agriculture is the main source of food in the Primary sector. Women in the rural have worked in agriculture since the dawn of time, either as hired help or on their own property. In rural places, women are required to work to reduce labour expenses and complement the meagre incomes of men. In fact, rural women make contributions in a variety of ways, including as housewives handling a variety of customary non-productive domestic chores and as workers, laborer's, producers, and traders. Jobs in the industrial sector in contemporary Indian society are generated according to the location and hours of the employer, which is one of the reasons why women make up only a third of the world's officially recognized labour force. Major developments in agriculture and industry have had a significant impact on the growth of the service sector, and their diverse production and consumption features have also played a role. Trade, transportation, banking, tourism, catering, and other services are among this sector's primary offerings. According to the table's sector structure on women in India, there is a positive trend towards more women working in the elementary, secondary, and tertiary sectors.

## WOMEN AND IT SECTOR

The relentless progress of the information technology revolution has profoundly influenced the realms of knowledge and communication, playing a pivotal role in facilitating global interconnectedness. Globalization, driven by this technology, has bestowed upon women a distinct identity, financial autonomy, freedom of expression, and an elevated societal status. The symbiotic relationship between the IT sector and globalization is widely recognized, with information and communication technology (ICT) acting as a catalyst for the globalized world we inhabit today.

In a research study conducted by NASSCOM in June 2005, the experiences of women working in India's IT sector were explored, revealing a prevailing presence of self-assured, resilient, and highly skilled professionals who have made indelible marks within their respective organizations. This further reinforces the potential for women to thrive in the IT sector, wherein they can carve out rewarding career paths.

The pervasiveness of information technology has sparked substantial transformations in the aspirations of individuals, particularly women. Even in remote rural areas, a strong desire for a higher standard of living and an improved quality of life is palpable. To gain a deeper understanding of the challenges faced by women in their professional progress, the selection criteria of the respondents were carefully examined. Statistical analysis demonstrates marginal changes in women's representation over the past few years, with managerial roles witnessing greater female participation compared to decision-making positions held primarily by software engineers. Despite the significant presence of women in software engineering roles, key leadership positions remain largely unrepresented. The analysis and data findings indicate a serious underrepresentation of women in decision-making capacities, possibly attributed to factors such as limited experience, lower job ranks, and limited access to resources. Challenges related to maternity, child-rearing, household responsibilities, and societal expectations contribute to these disparities.

Additionally, women encounter obstacles such as inadequate training opportunities, work pressures, the impact of marriage and childbirth, physical discomfort, mental stress, and hierarchical dominance.

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Consequently, there is a minimal presence of women in higher-ranking positions, which further hampers power distribution and diversity.

It is essential to recognize these challenges and work towards creating a more inclusive and supportive environment for women in the IT sector. Addressing issues related to training, work-life balance, gender biases, and promoting diversity and equal opportunities are crucial steps in empowering women and maximizing their contributions in this evolving technological landscape.

## VII. THE OPPORTUNITIES AVAILABLE FOR WOMEN AFTER GLOBALIZATION IN INDIA.

The process of globalization has resulted in a significant rise in cross-border migration, granting women increased opportunities, financial independence, and elevated social status within their home countries. Women are now exploring options to relocate abroad, whether for pursuing higher education or seeking employment. While globalization has led to a substantial expansion of the job market, the benefits have not been evenly distributed for women. However, for many women, it has opened doors to more lucrative employment opportunities.

Since 1980, there has been a noteworthy increase in female workforce participation in every region of the world, with the exception of Africa. In India, for instance, the number of female workers was 72 million in 2001, showcasing the growing trend of women engaging in activities outside the home. This economic independence has allowed women in developing countries to contribute financially to their families, postpone marriages and childbirth, and even liberate themselves from oppressive marital situations. The ability to secure employment has empowered Third World women in unprecedented ways.

Despite these advancements, gender pay gaps persist. Even in highly developed countries like the United States, women continue to face unequal compensation for performing the same work as men. This disparity serves as a stark reminder that there is still progress to be made in achieving gender equality in the workforce.

It is imperative to recognize and address the systemic biases and barriers that contribute to unequal pay and hinder the full realization of women's economic potential. Efforts to promote pay equity, provide equal opportunities for career advancement, and challenge societal norms that perpetuate gender-based discrimination are essential steps towards achieving true gender parity in the global workforce.

Globalization has created various opportunities for women in India, particularly in the fields of education, employment, and entrepreneurship. Some of the opportunities available for women after globalization in India include:

- **Increased access to education:** Globalization has led to an increase in educational opportunities for women, allowing them to acquire the necessary skills to participate in the global economy. Women are now pursuing higher education in greater numbers and achieving higher levels of education.
- **Greater participation in the workforce:** Globalization has created job opportunities in various sectors such as information technology, finance, and retail, which have traditionally been male-dominated. Women are now entering these fields in larger numbers and occupying positions of leadership.

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- **Entrepreneurship:** Globalization has created opportunities for women to become entrepreneurs and start their own businesses. Women-owned businesses are now more prevalent in India than ever before, and the government has implemented various policies and schemes to support women entrepreneurs.
  - **Access to finance:** Globalization has led to the availability of microfinance and other financial services, which have made it easier for women to start and grow their businesses.
  - **Empowerment:** Globalization has given women greater access to information, and social media has allowed them to voice their opinions and connect with other women's rights activists worldwide.

Despite these opportunities, women in India still face various challenges, including gender-based violence, discrimination, and limited access to resources. It is important to continue working towards creating a more inclusive and equitable society where women have equal opportunities to succeed.

## VIII. THE IMPACT OF GLOBALIZATION ON GENDER EQUALITY

Gender inequality refers to the unequal treatment and opportunities given to individuals based on their gender, with women typically being the disadvantaged group. It is the result of social norms, attitudes, and beliefs that have been ingrained in societies for generations. These inequalities manifest in various aspects of life, such as education, employment, political representation, and access to resources and decision-making power.

### EXAMPLES OF GENDER INEQUALITY INCLUDE:

**Unequal pay:** Women often earn less than men for doing the same job.

**Limited job opportunities:** Women are often denied access to certain job opportunities or face discrimination when trying to advance in their careers.

**Discrimination in education:** Girls may be denied access to education or given fewer educational opportunities compared to boys.

**Lack of political representation:** Women are often underrepresented in political positions of power and decision-making.

**Gender-based violence:** Women are more likely to experience violence, including domestic violence, sexual harassment, and assault.

Gender inequality has a significant impact on individuals, communities, and society as a whole. It limits women's potential and contributes to social and economic inequalities. Addressing gender inequality requires a shift in societal attitudes, policies, and practices towards greater equity and inclusion for all genders.

**Gender equality** refers to the principle that all genders should have equal rights, opportunities, and treatment, without discrimination based on their gender. It aims to create a society where all genders have the freedom to make choices and live their lives without limitations based on their gender. Gender equality is not just about women's rights; it also includes addressing issues related to men, non-binary individuals, and other marginalized gender identities. It is an essential element of human rights and is crucial for creating a just and equitable society.

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Gender equality can be achieved through various means, including:

- Eliminating gender-based discrimination in all aspects of life, such as education, employment, and political representation.
- Ensuring equal pay for equal work, regardless of gender.
- Creating policies and laws that promote gender equality and protect individuals from gender-based violence and harassment.
- Addressing social norms and attitudes that perpetuate gender inequality and gender-based violence.
- Providing equal access to education, healthcare, and other essential resources for all genders.
- Encouraging and supporting the participation of all genders in decision-making processes at all levels of society.

Gender equality benefits everyone, as it promotes social, economic, and political stability and contributes to a more just and equitable society. It is a critical element of sustainable development and is essential for achieving the United Nations' Sustainable Development Goals.

### **POSITIVE IMPACT OF GLOBALIZATION ON GENDER EQUALITY**

Globalization has had a positive impact on gender equality, fostering significant changes in various aspects. Here are key points to consider:

1. **Enhanced Economic Opportunities:** The expansion of trade openness and advancements in information and communication technologies have opened up a multitude of occupations for women, providing them with stronger connections to markets. This increased access to economic opportunities has led to a rise in women's salaries relative to men's in several countries and industries.
2. **Global Costs of Gender Inequality:** In a globalized society, gender inequality carries greater costs. Nations with substantial female employment and export potential for goods and services may become less competitive in the global market if gender disparities persist. Moreover, with heightened international awareness of women's rights, gender inequality can negatively impact a nation's reputation on the global stage. These factors serve as motivations for global policy initiatives aimed at promoting gender equality.
3. **Influence on Attitudes and Behaviors:** Increased access to information has allowed people in developing nations to gain insights into the customs and ways of life of other cultures, particularly regarding women's roles. This exposure to diverse perspectives has the potential to shape attitudes and behaviors, leading to evolving gender norms. Women's economic empowerment has also played a significant role in enabling and sustaining changes towards more equal gender roles and customs.

It is crucial to recognize the positive outcomes of globalization in advancing gender equality, while also acknowledging that there is still work to be done to address persistent challenges and ensure that these positive trends continue to flourish on a global scale.

### **NEGATIVE IMPACTS OF GLOBALIZATION ON GENDER EQUALITY**

- **Gendered division of labor:** Globalization has reinforced the gendered division of labor, with women predominantly employed in low-paying, low-skilled jobs, while men are more likely to occupy higher-paying, high-skilled jobs.

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- Exploitation: Globalization has also led to the exploitation of women workers, particularly in the informal sector, where women are often employed in precarious and unsafe working conditions.
  - Access to resources: Women in the Global South have less access to resources than men, which limits their ability to participate in the global economy.

While globalization has created some opportunities for women, it has also reinforced gender inequalities and created new challenges. Therefore, it is important to promote policies that ensure gender equality is at the center of the global economic agenda.

## IX. SUGGESTIONS AND RECOMMENDATIONS

Based on the findings of the study on globalization and its impact on Indian women's rights, the following suggestions and recommendations can be made:

1. Increase access to education: To ensure that women have the necessary skills and knowledge to participate in the workforce and become economically empowered, there is a need to increase access to education, particularly in rural areas where girls are less likely to attend school.
2. Promote gender equality: Policies that promote gender equality, such as affirmative action programs, need to be implemented to address the systemic gender inequality that exists in India.
3. Address discrimination and violence against women: Measures to address discrimination and violence against women need to be strengthened, including the implementation of laws that criminalize violence against women, and the establishment of support services for survivors of violence.
4. Encourage women's political participation: Greater efforts need to be made to encourage women's political participation and to ensure that they have equal representation in political decision-making bodies.
5. Address the negative impact of globalization: Policies need to be developed to address the negative impact of globalization on women's rights, such as ensuring that women have access to decent work and fair wages, and protecting their rights as workers.
6. Engage men and boys: It is important to engage men and boys in efforts to promote gender equality and challenge harmful gender norms, as they play a crucial role in creating a more gender-equal society.
7. Foster international cooperation: International cooperation is crucial in addressing the global dimensions of gender inequality and in promoting policies that can improve the lives of women worldwide.

Overall, addressing the deep-seated patriarchal norms and structures that perpetuate gender inequality in India requires a comprehensive and coordinated approach that involves policymakers, civil society, and other stakeholders.

## X. CONCLUSION

In conclusion, the study of globalization and its impact on Indian women's rights has highlighted the complex and multifaceted nature of the relationship between globalization and gender equality. While globalization has brought about significant changes in the lives of Indian women, it has also had negative impacts, particularly on vulnerable groups such as women in low-wage jobs.



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The study has shown that gender inequality is a persistent challenge in India, and despite some progress, women continue to face discrimination and barriers to accessing economic, social, and political opportunities. Furthermore, the study has underscored the need for policies that address the root causes of gender inequality, such as patriarchy, and that provide women with greater access to education, healthcare, and political representation.

Overall, the study highlights the importance of adopting a comprehensive and coordinated approach to address the complex and intersecting challenges that women face in India. This approach should involve policymakers, civil society, and other stakeholders and should prioritize the promotion of gender equality as a fundamental human right and a key driver of sustainable development.

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## AN INTROSPECTION INTO THE GENDER INEQUALITIES IN SURROGACY LAW IN INDIA

**Dr. Sandhya Balakrishnan**

Assistant Professor, K. C. Law College, Mumbai

### INTRODUCTION:

The fundamental partnership in every culture is marriage. Marriage is the foundational relationship for all of society and is one of the most significant institutions through which a couple conceives a child in contemporary culture. Our society places a high value on begetting a child to complete the family tree and family without children is extremely difficult for Indian culture to comprehend. In Indian culture, it is quite challenging to envision a family without children. When a couple is childless adoption was the remedy available. The idea of a surrogacy has emerged as the most appealing alternative to infertile couples who wish for a child of their own. Technological advancements in assisted reproductive techniques (A.R.T.), such as donor insemination and embryo transfer techniques has given chance for childless couples to have a child.

### MEANING OF SURROGACY:

The Latin word "surrogatus," which means to "put in another's place" or "to substitute," is the source of the English word "surrogate." An arrangement whereby a woman conceives and delivers a baby on for a person who is unable to have children. A woman who bears a child for another woman is referred to as a "surrogate mother." She may use one of her own eggs or allow a fertilized egg from another woman to be implanted in her womb. An unborn child that is not her own but rather belonged to another family is carried by a surrogate mother voluntarily. There are two ways for carrying out this procedure. A woman who has been artificially inseminated with a father's sperm is a typical surrogate under traditional surrogacy. There are two ways to apply this process. A woman who is artificially inseminated with a father's sperm and reproduces with her own egg is said to be a typical surrogate under traditional surrogacy. The second alternative is gestational surrogacy, which is a process in which the surrogate mother uses an embryo made of the biological (intended father's) sperm and the biological (mother's) egg. The egg from the surrogate is not used.

### DEFINITION OF SURROGACY:

According to Black's Law Dictionary, 'an agreement wherein a woman agrees to be artificially inseminated with the semen of another woman's husband'. 'Surrogate motherhood' is the practice in which a woman bears a child for the couple to produce children in the usual way.<sup>1</sup>

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<sup>1</sup>"SurrogateMotherhood." ChildDevelopment.RetrievedMarch20,2023fromEncyclopedia.com: <https://www.encyclopedia.com/children/applied-and-social-sciences-magazines/surrogate-motherhood>.

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In Medical parlance surrogacy means using of a substitute in place of natural mother. It allows any “willing” woman to be a surrogate mother and proposes that widows and divorced women can also have benefit from its provisions to have a child, besides infertile Indian couples.

The Surrogacy (Regulation) Act, 2021 defines “surrogacy” as a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth;<sup>2</sup>

### **KINDS OF SURROGACY:**

Altruistic surrogacy<sup>3</sup>:

Altruistic surrogacy is where the surrogate receives no monetary incentive for her pregnancy or the relinquishment of the child, although usually all expenditures related to the pregnancy and birth are paid by the intended parents, such as medical expenses, maternity clothing, accommodation, diet, and other related expenses.

Commercial Surrogacy<sup>4</sup>:

A gestational carrier gets paid to carry a child until birth in her womb in an arrangement known as commercial surrogacy. All forms of commercial surrogacy, including the donation of human gametes and embryos, are illegal.

### **RESEARCH METHODOLOGY:**

The research method has been designed to fit the main objectives of the study. The study is purely doctrinal and from secondary sources. The relevant data has been collected from various books, journals, articles, news-papers, internet, and judicial decisions.

### **SCOPE AND LIMITATION OF THE STUDY:**

In this research paper, the researcher mainly focuses on the gender inequalities in surrogacy law in India. The paper is limited to The Surrogacy (Regulation) Act, 2021

### **OBJECTIVE OF THE STUDY:**

The research paper's fundamental objectives are: -

To overview Surrogacy (Regulation) Act 2021.

To understand the gender biased provisions in the Surrogacy Act.

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<sup>2</sup> S2(ze), The Surrogacy (Regulation) Act, 2021

<sup>3</sup> S2(b), ibid

<sup>4</sup> S2(g), ibid

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**HYPOTHESIS:**

Eligibility criteria for surrogacy in India is gender biased and there by leads to the infringement of fundamental rights.

**THE SURROGACY (REGULATION) ACT, 2021 VIS-À-VIS- THE CONSTITUTION OF INDIA:**

The Constitution of India emphasise the importance of fundamental rights which gives importance to every person to uphold their freedom and individuality. State though protector of fundamental rights, at the same time has the right to impose reasonable restrictions on individual liberty. Freedom and liberty are the basic concepts which helps in the growth of intellectual, moral and spiritual wellbeing of a person. They are necessary for a person to reach their full intellectual, moral, and spiritual potential and to have a life more than animal existence.<sup>5</sup>Fundamental rights protect citizens' freedoms and liberties and prevent authoritarian and totalitarian rule from taking hold in a country. The procedure for judicial review is described in Article 13 of the Indian Constitution. It requires the State to uphold and carry out the fundamental right. Additionally, it gives power for the court to declare a statute or other action invalid if it violates fundamental rights. The court has a crucial role in protecting the rights guaranteed by the constitution.

The Surrogacy Act of 2021 aspires to make surrogacy more efficiently monitored, prohibit commercial surrogacy, and encourage moral surrogacy. In addition, it prevents abuse of surrogate mothers and the children born of surrogacy. Even if the law is intended to stop this abuse, a number of its provisions appear to line up with the Constitution's objectives. This test verifies the equality of rights, freedom, and liberty; it aims to ensure that the fundamental rights of individuals are not violated. In addition, the right to life encompasses the freedom from interference with reproduction, including the right to procreation and parenthood.<sup>6</sup>

**RIGHT TO EQUALITY:**

Every individual is guaranteed equal treatment under the law and equality before the law under Article 14. The core principle of Article 14 prohibits class legislation while permitting for reasonable classification. The court specified two requirements that must be fulfilled while crafting any legislation. There should be a nexus between the law made and the object of the law. Classification must be based on an understandable distinction that separates persons or things for whom the law is made from others outside that group. The distinction must have a reasonable connection with the purpose that the relevant rules seek to achieve. The connection between the basis for classification and the subject matter of the considered right is required; this makes it vital. The distinction will be stripped of its constitutional validity if its classification is improper and has nothing to do on the outcome that is wanted. The Act's classification is arbitrary and would conflict with an acceptable classification under Article 14 of the Constitution as it is based on marriage and only permits married couples. Especially when single parents or unmarried person are allowed to adopt children<sup>7</sup>. The law did not recognize Supreme Court ruling that

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<sup>5</sup> Francis Corolie Mulin V Delhi Administration 1981 SCC (1) 608

<sup>6</sup> Suchita Srivastava &Anr V/S Chandigarh Administration (2009) 14 SCR 989,

<sup>7</sup> Section 57, Juvenile Justice Care And Protection Act,2015

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decriminalized consensual sexual relations between two adults of any gender identity<sup>8</sup>. The law therefore denies homosexual (cis-gender) couples the right to have a child and refuses to recognize these couples as legitimate. In the case of National Legal Services Authority v/s Union of India<sup>9</sup>, the Supreme Court of India ruled that transgenders were also treated as a third gender and this gives them equal power with men and women. However, the law does not guarantee the equality of these fundamental rights for all sexes. The Surrogacy Act of 2021 now in effect establishes extremely particular requirements for obtaining surrogacy and prohibits transgender persons from doing so. Equal protection under the law is ensured by Article 14 of the Indian Constitution. The inclusion of "any person" in the clause ensures that any person residing on Indian territory can take use of Article 14's provisions, in addition to citizens. However, this rule prohibits foreigners of Indian descent from using surrogates and only enables Indian citizens to do so. The law's main goals are to stop surrogacy abuse and to safeguard women against exploitation. However, this could be detrimental because residence-based altruistic surrogacy opens up the possibility to corruption and abuse, driving the practice into the hands of unethical individuals. This could make it possible for surrogacy to be exploited secretly. As a consequence, the lawfulness of these provisions is not proven.

#### **RIGHT TO TRADE AND PROFESSION:**

The law violates Article 19(1)(g), which guarantees the freedom of trade and profession. Article 19(6) lists a few situations in which the aforementioned right may be justifiably limited because it is not an absolute right. One of them involves restrictions in the greater public's interest. The act fails even though it seems to be in the public's best interests because it excessively or arbitrarily restricts a person's freedom beyond what is required for the general good. The Act completely rejects personal freedoms by prohibiting commercial surrogacy and falls short of accomplishing the needed harmony between social control and individual liberties.

#### **RIGHT TO LIFE AND PERSONAL LIBERTY:**

Article 21 of the Indian Constitution proclaims right to life and personal liberty. It plays a vital part in every person's life. It establishes the concepts of the life, liberty, and human dignity. The term life was subject to a wide interpretation several times by the Judiciary. Through various decisions by the apex court the concept of life is inclusive of every aspect which allows a person to have dignified life. Right to Work, right to clean environment, right to food, right to work etc are all minute components of right to life. The right to life encompasses the right to reproductive autonomy, which includes the freedom to procreate, have a family, and have children. In *Devika Biswas v. Union of India*,<sup>10</sup> the Supreme Court held that right to reproduction in an important component of the Right to Life under Article 21. These reproductive rights of women include the right to carrying a baby, giving birth, and raising children. They also include rights to privacy<sup>11</sup>, dignity, procreation<sup>12</sup> and integrity of one's body. Unfortunately,

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<sup>8</sup> Navtej Singh Johar V. Union Of India AIR 2018 SC 4321

<sup>9</sup> AIR 2014 SC 18

<sup>10</sup> AIR 2016 SC 4405

<sup>11</sup> K S Puttaswamy v Union of India (2017) 10 SCC 1

<sup>12</sup> B.K. Parthasarathi v/s Government of Andhra Pradesh AIR 2000 AP 156.

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the Act only permits heterosexual couples and widowed or divorced women within a certain age limit to use surrogates to have children. Article 21 is violated when elderly people, single, and LGBT couples are not granted the opportunity to have children, rendering such discrimination gender-biased. The concept of Art 21 revolves around the word “No Person”. Constitution prohibits depriving life and personal liberty of any person. By restricting only, a class of person to have the benefit of this act is violation of fundamental rights. According to the Constitution, the state may not interfere with the prerogatives of any individual, whether the child is born naturally or through surrogacy. The State interferes in the decision-making process in this statute, despite the fact that the right to decide about having children is essentially a very private and personal choice that should be made by women and controlled by their bodies. If a woman wishes to aid a poor couple by producing a child of her own or by offering one's womb, the state cannot intervene; rather, such gestures should be encouraged. The Surrogacy Act violates the 'right to livelihood' by outlawing commercial surrogacy, which threatens a crucial source of income for disadvantaged women.

#### **GENDER BIASED PROVISIONS:**

- There are only two groups to whom the Act pertains. First, the Act includes people who have been legally married and who have been issued an infertility certificate. Widowed or divorced people between the ages of 35 and 45 who fall under the second category are eligible for this therapy.
- The Act is not applicable to certain categories of people, especially single women who wish children but are unable to have any.
- The Act embraces modernity while retaining the long-standing taboo against conceiving children before marriage.
- Every woman is not allowed to use surrogacy services in case she wants to have the child and is not able to bear it due to many reasons.
- The non-binary and the same-sex couple are unable to experience motherhood, despite their desire to do so. The Act permits only a legally married man and woman to have children through this way.
- Gay/lesbian couples are not covered by this Act because same-sex marriage is still illegal in India.<sup>13</sup>
- Because the Act only includes a man and a woman, it is stated as heterosexual couples are the only ones who qualifies to utilize this facility. Accepting the LGBTQ community is vital to attaining equality in society.
- In the case of *Baby Manji Yamada v. Union of India*<sup>14</sup>, the Supreme Court had to consider the matter of surrogacy for the first time. The court considered having a child through a surrogate as a means for a gay couple or a single parent to embrace parenting. But this right has been totally denied by the latter. As a result, it is important to grant heterosexual couples, gay couples, and non-binary individuals the legal right and opportunity of having children and living the lives of their choice. The court viewed surrogacy as a method of embracing parenthood, with either a homosexual couple or a single parent as the parents. The latter, however, has been entirely denied of this right. Therefore, it

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<sup>13</sup> Supriyo @ Supriya Chakraborty v Union of India WRIT PETITION (C) No. 1011/2022

<sup>14</sup> (2008) 13 SCC 518

is pertinent to provide heterosexual couples, as well as homosexual couples and non-binary people, the status and privilege of having children and to have a life of their choice.

### **CONCLUSION:**

The law is unconstitutional since it fails to preserve gender balance. Commercial surrogacy is illegal and there are regulations for how it has to be done. This Act does not serve the interests of the people as it discriminates against single fathers, LGBT couples, and live-in partners by denying them equal chances and legal protection. The institution of heterosexual marriage will be used as the foundation for parenting, despite what might appear to be benevolent and carefully thought-out methods towards safeguarding surrogate mothers. This goes against the fundamental rights of the LGBTQ+ community, single men, and women. Therefore the Act failed to imbibe in itself the concept of gender biased society as foreseen by the constitution.

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# SAME-SEX MARRIAGES AND EFFECTS ON SOCIETY IN ACHIEVING GENDER EQUALITY

**Sarvesh Vishwakarma**

DTSS College of Law

## **ABSTRACT:**

Nature is very much unpredictable, and so are its norms. No two branches of the same tree receive the fruits at the same time. Human is the greatest creation of nature among the rest, not because of their physical appearance but because of their rational ability.

In India, Section 377 of the Indian Criminal Code, 1860, criminalized homosexual behavior. Nonetheless, it was known that "homosexuality" is a typical kind of human sexual behavior, as demonstrated by several clinical studies. Following that, the homosexual community and organizations working for the rights of homosexuals began to advocate for the legalization of such relationships. Both homosexuality and same-sex weddings are now accepted in many nations.

In India, the societal framework did not help to support this vulnerable group. India saw a similar rise with the dawn of the twenty-first century as a result of international movements opposing discriminatory attitudes and subjugation. Finally, the Supreme Court of India decriminalized same-sex relationships with the historic Navtej Johar case and established a strong foundation for the community to advance their rights and identity with the privacy judgment.

The creator of the Kama Sutra understood that displaying affection, being intimate, and having sex is an art form. The Kamasutra affirms and recognizes same-sex relationships, some Hindu temples feature carvings that show both men and women indulging in homosexual practices, and several Hindu texts have described the homosexual experience as natural and pleasant.

To leave no stone unturned about every possible dimension of same-sex marriages. Secondly, how the law has turned the environment hostile for a few people. What this section has achieved over the period and the man-made laws, against and for them across the country.

**Keywords:** LGBTQ, Same Sex, Homosexuality, Section 377, Same Sex Marriages.

## **1. AIM AND OBJECTIVE:**

This research paper has the following objectives:

- a) To get a glance at ancient Indian text or any kind of visual acknowledging Homosexuality.
- b) How and Why Homosexuality Was Criminalized.
- c) The Struggle of Queer Community for their human rights.
- d) Present societal status of Homosexuality.



## 2. MODUS OF RESEARCH:

Secondary data sources were used to create the current study. The data for the study is obtained from numerous reports, Journals, Magazines, and other publications.

## 3. INTRODUCTION:

### THE MAJORITARIAN VIEWS AND POPULAR MORALITY CANNOT DICTATE CONSTITUTIONAL RIGHTS.

Every biological species is born with Gender identity as Male, Female, and Transgender. Orientation of the human depends upon compatibility with another gender, such as heterosexual, bisexual, or homosexual. Heterosexual is the sexual activity between individuals of opposite gender whereas homosexual is the sexual activity among the same gender these two activities are in society since human beings evolved. Traces of homosexuality can be found in history from sacred text to mythology.

Ignorant toward homosexuality is an international issue though the ratio of homosexuals is not substantial across the human community still they are part of civilization. Their rights just can't be curtailed or overlooked.

Being regressive towards other orientations just makes society suffer.

## 4. HISTORY OF HOMOSEXUALITY

India has been a contributor to society in every aspect of life from livelihood to intellectual. One of the significant contributions to society is the Kamasutra the ancient Indian text on the art of lovemaking. The actual date of the Kamasutra is unknown, historians have placed it in the second century<sup>1</sup>. The text and image in Kamasutra define the art of lovemaking not only in the heterosexual form but also in the homosexual form where the individual of the same gender is enjoying one of the pleasurable activities of life. The epic story of India such as Ramayana and Mahabharata also describes the few events where homosexuality is acknowledged not looked upon as any filthy act.

The Valmiki the author of Ramayana share an event where the close confidant of lord Rama, Hanuman witnessed the rakshasa women kissing<sup>2</sup> and embracing each other.

As this ancient text and story provide a peep into ancient homosexuality few other texts show their existence but in the negative form such as narada purana which classifies homosexuality as an offense but it displays that the practice of homosexuality still exists during that time. Manusmirit the law code even provided the punishment for homosexuality such as if any two girls are seen performing the sexual activity then they are liable to punishment of two hundred coins and ten whiplashes if any mature woman performs the sexual activity on any girl then their head should be shaved and two fingers are amputated, whereas the woman is made to ride donkey with a shaved head. In the same law code book if any men are seen depicting sexual activity as an act of homosexuality then they tend to lose the caste.

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<sup>1</sup> [https://en.wikipedia.org/wiki/Kama\\_Sutra](https://en.wikipedia.org/wiki/Kama_Sutra)

<sup>2</sup> <https://www.indiatoday.in/india/story/10-instances-of-homosexuality-among-lgbts-in-ancient-india-1281446-2018-07-10>

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punishment establishes how people were reluctant to wipe out the practice of homosexuality but they failed to acknowledge that homosexuality is normal human behavior like any other.

### **THE STORY OF VARUNA AND MITRA**

The famed "same-sex couple," Varuna and Mitra, were frequently seen riding sharks or crocodiles or seated side-by-side on a golden chariot in the ancient Indian literature known as the Rig Veda.

They depict the two half-moons, according to the Shatapatha Brahmana, a literary work that describes Vedic ceremonies, history, and mythology.

With all text, scripture, and sensory images, the portrait shows how ancient India was an inclusive society with few odds.

### **5. CRIMINALIZATION OF HOMOSEXUALITY IN INDIA.**

As it was said there was no sunset for Britisher as its rule extends to many countries. During the colonization era the white people not only bring the ruling skills but they tried to impart their culture and moral values to the native land and their people. Though many European homosexual examples could be found easily in history such as King Edward II of England (1284-1327).

When Henry VIII was the monarch in 1533, the English Parliament approved the Buggery Act. The term "buggery" refers to anal sex and encompasses bestiality. The first statute in England to transfer sodomy from the courts of the church to the state was the Buggery Act of 1533. It described buggery as a deed against God's will.<sup>3</sup>

The British forced the idea that homosexuality is perverse and abhorrent upon India.

The principles and values of the Church inspired and shaped Victorian legislation. As a result, the British upheld Victorian ideals that strongly appropriated Christian notions of sin.

They took action to chastise Indians because they believed that they were persons who only sought pleasure. They sought to imbue the colonial populace with a European mentality.

According to Christian principles, having intercourse is done for reproductive purposes. Any sexual behavior that wasn't intended for reproduction was therefore forbidden. Because a man and a woman are required for procreation biologically, sex for pleasure was therefore seen as morally wrong.

This idea contradicts how sex was seen in traditional Indian culture, as there were many instances of same-sex relationships being accepted in pre-colonial India.

In addition, there were significant differences between how "queer" people were treated in Britain and India before the British conquest of that country.

Homosexuality was more accepted and permissive in Indian society. On the other hand, though, Britain made buggery a capital offense. Due to this, many people in Great Britain attempted to flee Victorian civilization by traveling to India because they did not want to be sexually restrained.

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<sup>3</sup> <https://edition.cnn.com/2018/09/11/asia/british-empire-lgbt-rights-section-377-intl/index.html>

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The British decided to force their morality of penalizing buggery upon India at that point. Soon this became the norm.

The British introduced the Indian Penal Code to India in 1860. The code was a collection of the British penal codes in effect at the time. The IPC's Section 377 was based on the Buggery Act, a statute from the 16th century.

## 6. STRUGGLE FOR THE QUEER COMMUNITY

The Naz Foundation, an NGO that campaigned to fight HIV, filed a petition against Section 377, claiming that it infringed on the fundamental rights to health, equality in privacy, and freedom of expression. In addition to taking legal action, the Naz Foundation and a few other groups organized the queer community and established grassroots LGBTQIA+ advocacy.

The Naz Foundation's filing was a significant and conspicuous legal move toward the decriminalization of Section 377. In light of this, the petition requested that S. 377 not apply to acts of consensual private sex.

The government objected to the petition, claiming that the petitioner lacked standing to challenge the statute. The High Court ultimately agreed with the government's position and dismissed the lawsuit in 2004. The Court also denied a request for a review of the order.

After the initial setback, the Naz Foundation appealed the decision in the Supreme Court, which remitted the issue back to the High Court in 2006 and instructed them to hear the case on its merits.

The High Court's bench, which included Justice A.P. Shah, who was then Chief Justice of the High Court, and Justice Muralidhar, expanded the scope of constitutional rights and strengthened the queer community in a 105-page ruling.

The court struck down S. 377, saying that it violated Articles 14 (Equality), 15 (Non-Discrimination), and 21 (Dignity and Health) of the Indian Constitution by excluding homosexuality from its purview.

The Naz Foundation v. NCT of Delhi and Others judgment from the Delhi High Court in 2009 <sup>4</sup>was a significant milestone in safeguarding the sexual liberty of the gay community. However, the Indian judicial system didn't officially accept queer love for almost eight years.

Justice Indu Malhotra apologized to the gay community on behalf of "history" in the 2018 ruling Navtej Singh Johar v. Union of India<sup>5</sup>, and rightfully so. The preceding parts discussed the flaws in India's colonial past; this section will focus on how those flaws were corrected in the Navtej judgment.

It is even more crucial to cite and emphasize the components that made the Navtej judgment distinctive and transformational because it has become a part of the larger gender discourse for projecting inclusivity through the Constitution. S. 377 was declared to be unlawful by the Supreme Court since it related to consensual intercourse between adults of the same sex.

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<sup>4</sup> <http://164.100.69.66/jupload/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>

<sup>5</sup> [https://main.sci.gov.in/supremecourt/2016/14961/14961\\_2016\\_Judgement\\_06-Sep-2018.pdf](https://main.sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf)

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## 7. PRESENT STATUS OF HOMOSEXUALITY IN INDIA

### SAURABH KIRPAL<sup>6</sup>

Kirpal, the son of the late chief judge of India, B N Kirpal, studied physics at St. Stephens College in Delhi. He later received a scholarship and attended Oxford University to study law before receiving a master's degree from Cambridge University.

Before returning to India in the 1990s, he briefly worked for the United Nations in Geneva. Since his return to India, he has been working as a lawyer in the highest court and participating in several significant cases, most of which were criminal, commercial, civil, and constitutional. Additionally, he served as a junior advocate in the office of the late Mukul Rohatgi, the attorney general. In March 2021, the 31 justices of the Delhi High Court unanimously decided to promote him to senior attorney status.

In India, Kirpal has been a major force in the campaign for LGBTQ rights. He represented two significant petitioners in the case that led to the Supreme Court's historic decision to decriminalize homosexual sex in 2018.

Due to his foreign heritage, the government had

labeled Kirpal's spouse as a "potential security risk"<sup>7</sup> following a background investigation. According to media accounts, Kirpal refuted the assertion and stated he thought it was more likely his sexual orientation that was impeding his nomination.

Kirpal will become the nation's first openly gay judge after receiving approval from the Central government, a significant development for LGBTQ rights in India.

### **VIVEK KATJU:**

My daughter and her partner ( The Indian Express Article).<sup>8</sup>

## 8. CONCLUSION:

Every society prospers when it grows and develops inclusively. Constitution right is available for everyone and everything. The majority cant be guardians of society they just can be part of and beneficiaries of it like any other.

Fundamental rights (14)(15) and (21) can't be denied arbitrarily. Not only government and judiciary must safeguard them for everyone but also it is the duty of society too.

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<sup>6</sup> <https://thewire.in/law/saurabh-kirpal-appointment-supreme-court-collegium-reiterate>

<sup>7</sup> <https://www.business-standard.com/about/who-is-saurabh-kirpal>

<sup>8</sup> <https://indianexpress.com/article/opinion/columns/my-journey-has-made-me-a-better-person-a-better-hindu-a-father-writes-on-accepting-his-daughter-finding-himself-8544734/>

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# GENDER JUSTICE IN THE LIGHT OF RECENT JUDICIAL PRONOUNCEMENTS

**Ms. Sarita Samel**

Assistant Professor, K. C. Law College

## ABSTRACT:

The Indian Judiciary has always played a proactive and decisive role as the protector of the rights of the people and has zealously and consistently been harmonising conflicting interests in the society. In India, where patriarchy has been predominant from generations and women have been discriminated and kept back from progressing by suppression, harassment, exploitation and discrimination, the Judiciary has played a crucial and commendable role in the emancipation of women.

This paper examines recent judicial pronouncements on gender justice in India and how they have helped in uplifting the status of women in the patriarchal society in India. The paper discusses various Constitutional safeguards for protection of rights of women and the proactive role of judiciary in interpreting these rights, expanding their horizons seeking the goal of gender justice.

The paper contends that the dynamic role of judiciary tremendously helped in promoting gender equality. The paper also emphasises on the continued efforts undertaken through judicial activism for creating a society in which women can live with pride, dignity and self-respect.

## 1. INTRODUCTION:

Gender justice connotes equal treatment and non-discrimination for individuals of all genders. They equally have access to all opportunities, resources, enjoy the same rights and all are treated with dignity and respect. There is no sex-based discrimination in education, employment, access to health care or any other area. Gender discrimination in society will ultimately hinder the progress of the society as it will withhold approximately 50% of the individuals, that is women, from exploring their potentials and blocking development.

For generations India has had a male dominated society and women were subjugated, suppressed, ill-treated and exploited. After independence, founding fathers of our Constitution incorporated certain provisions in the Constitution of India for promoting gender equity. Also, laws were made for protecting women. However, through judicial pronouncements, these provisions were given life. By analysing the recent judicial decisions on issues related to gender justice, this paper aims to evaluate the extent to which these judgments have helped in improving the lives of women and ensuring gender justice.

## 2. HYPOTHESIS:

Recent judicial pronouncements in India have led to a significantly and considerably progressive society by upholding the rights of women and thus ensuring gender justice.

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### 3. CONSTITUTIONAL PROVISIONS:

India has been a male-dominated society for many decades, and women have been selectively oppressed, abused, and exploited. Following Independence, the architects of our Constitution included a number of measures that would advance gender parity in the Indian Constitution. All people, including women, are guaranteed equality before the law and equal protection under the law by Article 14. Discrimination on the basis of sex is prohibited under articles 15 and 16. The government may also establish particular measures for women and children under Article 15(3). Reservations can be established for women in both job and educational settings. Forced labour and human trafficking, particularly that of women and children, are both prohibited by Article 23. Under Article 39, the State is required to ensure the right to a livelihood and equal compensation for equal effort. In accordance with Article 42, women are entitled to maternity leave and just and humane working conditions. Article 243D and Article 243T of the 73rd and 74th Amendments guarantee seats for women in panchayats and municipalities.

### 4. JUDICIAL PRONOUNCEMENTS:

Widening the contours of Article 21, the Supreme Court, in *Maneka Gandhi v. Union of India*<sup>1</sup> declared that right to life is not restricted only to animal existence but right to life means right to live with human dignity. This interpretation paved way for various rights that could be included under Article 21 to live a life with dignity and respect.

In *C. B. Muthamma v. Union of India*<sup>2</sup>

Supreme Court held as unconstitutional the Service rules that were discriminatory to married women in their joining and continuation in public services. The impugned laws required women to seek permission in writing from government before solemnization of her marriage and further that she had to resign if her services were found dissatisfactory after marriage. Also, that no woman could as of right be entitled to appointment at service

*Air India v. Nargesh Meerza*<sup>3</sup>

*Air India Regulations* that provided for retirement from service on first pregnancy or at the age of 35 which could be extended by one year at a time till the age of 45 at the discretion of the managing Director were struck down as arbitrary and violative of Articles 14 and 21.

*Neera Mathur v. LIC*<sup>4</sup>

Court held that questionnaire requiring information on menstrual period dates and past pregnancies was violative of right to privacy of women.

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<sup>1</sup> AIR 1978 SC 597

<sup>2</sup> AIR 1979 SC 1868

<sup>3</sup> AIR 1981 SC 1829

<sup>4</sup> AIR 1992 SC 392

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Vishaka<sup>5</sup> v. State of Rajasthan AIR 1997 SC 3011

Supreme Court held that women have fundamental right against sexual harassment at workplace. Court also framed detailed guidelines against Sexual Harassment due to absence of legislation making workplaces safer to work.

Githa Hariharan v. RBI<sup>6</sup>

Supreme Court held that mother can act as natural guardian even when the father is alive.

Young Lawyers Association v. The State of Kerala<sup>7</sup>

The Supreme Court lifted the ban on the entry of women of menstruating age into the Sabarimala Temple in Kerala. The Court held that the ban was discriminatory and violated the constitutional rights of women.

Mukesh v. State of Delhi<sup>8</sup>

The Supreme Court upheld the death penalty for the four convicts in the Nirbhaya gang rape case. The Court observed that the case was one of the rarest of rare cases where the death penalty was warranted.

Shayara Bano v. Union of India<sup>9</sup>

The Supreme Court declared the practice of instant triple talaq (divorce) among Muslim men as unconstitutional and illegal. The Court held that the practice was discriminatory and violated the right to equality and dignity of Muslim women.

Independent Thought vs Union of India<sup>10</sup>

In this case, the Supreme Court held that sexual intercourse with a wife below 18 years of age would amount to rape, even if the wife consented to it. The Court observed that the exception to rape under the Indian Penal Code, which allows sexual intercourse with a wife between 15-18 years of age, was arbitrary and violated the right to dignity and bodily integrity of the girl child.

Joseph Shine vs Union of India<sup>11</sup>

In this landmark judgment, the Supreme Court struck down Section 497 of the Indian Penal Code, which criminalized adultery. The Court held that the provision was unconstitutional and violated the right to equality and dignity of women.

As a responsible member of the International community, India has always been proactive and responsive to most of the international conventions and instruments, especially those which have been

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<sup>5</sup> (1997) 6 SCC 241

<sup>6</sup> AIR 1999 SC 1149, (1999)2 SCC 228

<sup>7</sup> (2017) 10 SCC 689

<sup>8</sup> (2017) 6 SCC 1

<sup>9</sup> (2017) 9 SCC 1

<sup>10</sup> (2017) 10 SCC 800

<sup>11</sup> (2018) 10 SCC 443



created for upliftment and emancipation of the women. Keeping true to its international obligations and the national constitutional duty under Article 253 of the Constitution, Indian government has incorporated the internationally recognized principles of non-discrimination through several statutes. Nonetheless the constitutional courts of the country have been instrumental in upholding and protecting rights of women and this has been a hallmark of the Judiciary's contribution to the emancipation of women from all walks of life. Constitutional mandates as envisioned by the Constitutional forefathers of the nation have been upheld, protected and glorified by the constitutional courts on numerous occasions. The Supreme Court of India which is often referred to as the 'Sentinel on the qui vive' or the 'Watchdog of the Constitution' has played its parental role by expanding the horizons of several Constitutional provisions and by beneficent interpretation of Constitutional and statutory provisions at numerous instances with a view to ameliorate the conditions of women across the nation. The jurisdiction was invoked in a number of matters which the Apex Court considered as of grave imminence and therefore necessitating prompt intervention. Some of these matters were directly related to gender justice and equality.

There have been significant number of matters wherein hyper technical interpretations would have thwarted the course of justice. However, in order to do complete justice (which is enshrined as a Constitutional obligation of the Court under Article 142), the Apex Court has gone beyond the techniques of procedural law and enabled the course of justice to be unbridled by technical considerations and hindrances.

The Apex Court has stood true to the oft quoted adage that the ends of justice are greater than the ends of law. Law is never for the sake of Law. It is always for the sake of justice.

## 5. CONCLUSION

The researcher would want to remark that although there has been considerable epoch-making contribution by the Indian judiciary to the cause of gender justice, the ground reality is far from satisfactory. There are several issues, concerns, grievances and instances which need to be addressed even today. The tremendous vastness of the nation coupled with the numerous peculiarities of Indian society does not permit permeation of court's intervention in some situations owing to ignorance, poverty and several other obstacles which disable any kind of judicial intervention. Therefore, the constitutional courts must widen the scope, ambit and frequency of suo moto cognizance of matters. This will expand the horizons of the remedial actions of the constitutional courts.

Apart from this and despite the numerous developments in all spheres in India, systemic barriers and societal attitudes continue to undermine the achievement of true gender equality in the country.

Furthermore, judicial action can only address individual cases. It cannot address the underlying attitudes and beliefs that lead to discrimination against women. If a woman is sexually harassed in the workplace, a court may be able to hold the harasser accountable, but it cannot change the sexist attitudes and beliefs that led to the harassment in the first place. Changing those attitudes requires a broader societal effort.

To achieve gender justice, society as a whole must recognize the value of treating women as equals. This requires a change in attitudes and beliefs towards women. It requires recognizing that women have the

same rights as men, and that those rights should be protected and respected. It also requires challenging gender stereotypes and norms that reinforce gender inequality.

This change in attitude can be achieved through education, awareness campaigns, and advocacy efforts. For example, schools can teach children about gender equality and the harms of gender stereotypes. Media can highlight positive depictions of women in leadership roles and challenge negative stereotypes. Advocacy organizations can work to change laws and policies that discriminate against women.

Lastly, while judicial action is an important tool for achieving gender justice, it is not sufficient on its own. A change in the attitude of society towards gender justice is also necessary. This requires a broader effort to challenge gender stereotypes and norms, and to educate people about the value of treating women as equals. Only then can we achieve true gender justice.

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# DECLINING FEMALE LABOUR FORCE PARTICIPATION RATES (FLFPR)

**Dr. Shilpi Jha**

Asst. Prof.G. J. advani Law College, Mumbai

## 1. INTRODUCTION

"Where are the Indian working women?" The Times of India published an article written by Mitali Nikore in October 2019 that expressed worry about India's declining female labour force participation rate (FLFPR).<sup>1</sup> The FLFPR is at its lowest level since independence, according to 2017 National Sample Survey Office (NSSO) statistics. Even though there was no pandemic quarantine in 2017 FLFPR was declining. After three national statistics showing similar trend, the Center for Sustainable Employment at Azim Premji University in India, published a report named "State of working India 2021" which revealed that the employment and income has not recovered to Prepandemic levels even in late 2020. About women workforce the survey stated that only 19% of remained employed and 47% suffered a permanent job loss during the lockdown and these women have not returned to work even by the end of 2020.<sup>2</sup> This suggests that post Covid -19 pandemic quarantine the FLFPR has decreased more than it did in 2017. The World Bank's Unemployment, Youth Female (% of Female Labor Force Ages 15-24) (Modeled ILO Estimate) data, which was published in June 2020, confirmed the decrease and showed that the female employment rate in India dropped to 20.3% in 2020.<sup>3</sup> The World Bank report's finding that decline is witnessed in young urban women is concerning. The above report indicates that in urban areas the FLFPR has dropped down to as low as 18.7% percentage of female worker population ratio (WPR).<sup>4</sup> Young urban girls have better employment prospects, even then FLFPR is declining, this fact requires ponderance and action. Even National Statistics Office (NSO) reports that from January to March 2021, the unemployment percentage for women fell to 11.8% and the percentage of female worker population ratio (WPR) in Urban areas, is as low as 18.7% in January-March 2021. <sup>5</sup> A recent LinkedIn research released by the newspaper "Mint" on April 12th 2022, reveals that 7 out of 10 women

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<sup>1</sup> Mitali Nikore, Where are India's working women?, Irrational Economics, Lifestyle, TOI, October 14, 2019

<sup>2</sup> Azim Premji University (2021) State of Working India 2021: One year of Covid-19, Centre for Sustainable Employment, Azim Premji University

[https://cse.azimpremjiversity.edu.in/wpcontent/uploads/2021/08/SWI2021\\_August\\_WEB.pdf](https://cse.azimpremjiversity.edu.in/wpcontent/uploads/2021/08/SWI2021_August_WEB.pdf)

<sup>3</sup> Unemployment, youth female (% of female labor force ages 15-24) (modeled ILO estimate) | Data (worldbank.org) <https://data.worldbank.org/indicator/SL.UEM.1524.FE.ZS>

<sup>4</sup> [Unemployment, youth female \(% of female labor force ages 15-24\) \(modeled ILO estimate\) | Data \(worldbank.org\) https://data.worldbank.org/indicator/SL.UEM.1524.FE.ZS](https://data.worldbank.org/indicator/SL.UEM.1524.FE.ZS)

<sup>5</sup> Press Note On Periodic Labour Force Survey (PLFS) Quarterly Bulletin [January-March 2021] National Statistical Office Ministry Of Statistics And Programme Implementation Government Of India [463213b4-2d29-61f3-7811-d318ef2a78a3 \(mospi.gov.in\)](https://mospi.gov.in/463213b4-2d29-61f3-7811-d318ef2a78a3)

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intend to leave their current work owing to a lack of flexibility.<sup>6</sup> The LinkedIn research report expresses worry that women abandoning their employment may result in a decrease in workplace diversity.

In this background the current article is an attempt to understand in a transitioning society like India whether social factors are responsible for the falling participation of the female population in the workplace.

## 2. ANALYSIS OF SOCIAL FACTORS FOR DECLINING RATE OF WOMEN EMPLOYMENT IN THE WORKPLACE.

Women all over the world have always been acknowledged as providers of love and emotional strength to the family.<sup>7,8</sup> This may be because childbearing is a privilege available only to the women. Her body undergoes a lot of changes after giving birth to the child still she provides all kinds of care and love to her child. Family is the unit of society and Indian society has always given importance to the family. Hence it is the responsibility of her surroundings like the family, society, workplace and government to give importance to her and her family's health and wellbeing.

The website of the Government of India, Ministry of Labour and Employment while writing about women labour begins with the statement "Women form an integral part of the Indian workforce."<sup>9</sup> Several Laws and initiatives have been taken by the Government to provide favourable conditions for women at workplace. The Constitutional principles guarantees women equal rights as men.<sup>10</sup> Sexual Harassment of women in the workplace (Prevention, Prohibition and Redressal) Act and Rules, 2013 provides for the prevention prohibition and redressal of the sexual harassment of women in the workplace. The Maternity Benefit Act, of 1961 has been amended in 2017<sup>11</sup>. In the 1961 Act, the woman was entitled to be paid twelve weeks of leave after the day of her delivery<sup>12</sup> which has been increased to paid leave for twenty-six weeks.<sup>13</sup> In 2021 the Government of India has passed four Labour Codes: The Code of India, 2019; the Industrial Relations Code, 2020; the Occupational Safety, Health, and Working Conditions Code, 2020; and the Code on Social Security, 2020. Initiatives like Mahil E-haat<sup>14</sup> Sakhi Scheme<sup>15</sup> Working Women Hostels<sup>16</sup> Swadhar Greh<sup>17</sup> help women to work. These laws are progressive

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<sup>6</sup> Devina Sengupta, Return of office work spells misery for women workers,

<https://www.livemint.com/industry/human-resource/return-of-office-work-spells-misery-for-women-workers-11649703032873.html>

<sup>7</sup> Committee on Family Caregiving for Older Adults; Board on Health Care Services; Health and Medicine Division; National Academies of Sciences, Engineering, and Medicine; Schulz R, Eden J, editors. Families Caring for an Aging America. Washington (DC): National Academies Press (US); 2016 Nov 8. 3, Family Caregiving Roles and Impacts. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK396398/>

<sup>8</sup> Women at the core of the fight against COVID-19 crisis, OECD (2022), <https://www.oecd.org/coronavirus/policy-responses/women-at-the-core-of-the-fight-against-covid-19-crisis-553a8269/> (last visited Mar 14, 2022).

<sup>9</sup> <https://labour.gov.in/womenlabour/about-women-labour>

<sup>10</sup> Article 14, 16, 39, 42, 243D (2) (3) of the Constitution of India

<sup>11</sup> No.6 of 2017

<sup>12</sup> No. 53 of 1961, Sec. 5 & 6(4)

<sup>13</sup> No.6 of 2017, Sec.3

<sup>14</sup> Scheme to support women entrepreneurs, [www.mahilaehaat-rmk.gov.in](http://www.mahilaehaat-rmk.gov.in)

<sup>15</sup> One-Stop Centers are established at various locations in India to provide shelter, legal help, medical help etc.

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and a testimony of the fact that Governments in India are keen to improve participation of women in the workplace. In spite of Governments inclination to provide better working condition there are some snags that FLFPR is declining. One of the reasons may be inadequate allocation of budget by the Government to implement gender-related policies support, resulting in laws remaining as dead words in the statutes. Responsibility of the Government doesn't end by making laws how would those laws be applicable without the infrastructure it requires for society like ours.

Even though the government has passed laws granting reproductive rights to women, Indian Society may not find those laws sufficient enough to maintain the proportion of women in the work force. There are some real issues that seek attention. For instance, the Maternity Benefit Act of 1961<sup>18</sup> sets rules for women's work during specific times before and after childbirth as well as for maternity benefits.<sup>19</sup> Time to time the Statute is being amended to meet the changing nature of women employees. Paid leave after the day of her delivery has been increased in 2017<sup>20</sup>. The 2017 Act grants the woman the right to take a nursing break and care for her child's requirements while still at work. The 2017 Act provides for crèche facilities within a prescribed distance.<sup>21</sup> The woman is allowed to visit the crèche four times a day.<sup>22</sup> The 2017 Act has also introduced a provision wherein an employer may permit a woman to work from home if the nature of work assigned to the woman allows so.<sup>23</sup> The Maternity Benefit (Amendment) Act of 2017's disadvantage is that it places the entire financial weight of women's leave on employers. Employers are discouraged from hiring women in particular age groups in the formal sphere as a result.

Projects, legislation, and policies are like favours granted to her by the government. These laws, programs, and initiatives fall short of recognising how crucial women is to the expansion of the country's economy. Her job is treated as secondary and unproductive, yet if productivity were measured in terms of money, she would rank among the most productive workers in the country. Rather than having her contributions recognized, she, receives assistance to develop and fit into predetermined criteria to measure someone's contribution.<sup>24</sup> Our culture undervalues of the leadership, gut instinct, and decision-making abilities of women. She is viewed as shy and frail. Even today, the primary responsibility of a bread winner is with the man of the family. She and her contributions are regarded as supplementary care. Priya A. Sondhi in her paper titled "Gender Sensitiveness in Disaster Law Regime of India," addressed the issue of gender sensitivity in Indian disaster management law. She has examined how women are particularly vulnerable to disasters and how they are often overlooked as resources in post-disaster and catastrophe relief efforts.<sup>25</sup> Similar to this, her contribution to the nation's economic advancement

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<sup>16</sup> To promote safe and conveniently located accommodation for working women.

<sup>17</sup> For rehabilitation of women living in difficult situations

<sup>18</sup> No. 53 of 1961

<sup>19</sup> *Id*, Preamble

<sup>20</sup> No.6 of 2017

<sup>21</sup> No. 53 of 1961 Sec 11 A

<sup>22</sup> *Id* Sec 11 A proviso

<sup>23</sup> *Id* Sec 5(5)

<sup>24</sup> Indian surveys follow ILO standards

<sup>25</sup> Priya A. Sondhi, Gender sensitiveness in disaster law regime of india, *ILI Law Review*, Special Issue 2020 ; Oxfam and NIRAPAD, Handbook- Women Leadership in Disaster Risk Management (Oxfam 2011), available at:

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remains unnoticed and unacknowledged. She has been treated as a subject of development rather than a contributor to development.

Her work is typecasted as stereotypical role of women. Many women break that stereotype and considered as participating in workforce.<sup>26</sup> However, these look like nominal theoretical shifts, in practice, she can't shed away her role as mother wife and caregiver. The workplace and household responsibilities cause a lot of stress and impacts her physical, mental and psychological health.<sup>27,28</sup> To meet household responsibilities of nursing, tutoring her children taking care of elderly etc women avoid working outside the home for employment and earning.<sup>29</sup> We must acknowledge and value the work that she does as her contribution whether at home or outside home.

The type of work that women in India do varies based on the rural versus urban setting, level of education, and household income. The unorganised sector, which includes domestic assistance, construction workers, and agricultural work, are not mentioned as women's employment. Many women launch enterprises and food stands in theirs. Nowadays, a number of women create YouTube videos. These ladies run their own businesses and excel at the aforementioned jobs. If noticed these works may be some of the best startup initiatives.

The institutions doing survey must change their parameter of work and acknowledge the work that women do in raising children and families as her contribution to the development of nation.<sup>30</sup> Those who want to go out of home and be employed, for such women working conditions like flexible working hours, childcare leaves, arrangements for chreche', lesser workload and a cordial work environment (avoiding constant comparison) may help women to continue with her employment.<sup>31</sup>

### 3. CONCLUSION

Just because surveying agencies don't consider or calculate women's work in terms of money doesn't mean they are not participating in workforce. Surveying agencies devalue jobs like taking care of the family, watching over the kids, and providing for the elderly. One of the reasons why Indian society is in the confused state about status of women is copying of western ideologies as standards for her worth. Respecting and acknowledging her worth that fits personality of an Indian women will make her more confident. Families are withering because of this mindset. If the surveying agency calculate the women's

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<http://www.preventionweb.net/files/submissions/19919makeup2englishfinal.pdf>; Meenakshi Thorat, "Gender Budgeting in Disaster Relief: Need for a New Methodology" (43) 17 EPW 73-76 (2008);

<sup>26</sup> Chadda, R. K., & Deb, K. S. (2013). Indian family systems, collectivistic society and psychotherapy. *Indian journal of psychiatry*, 55(Suppl 2), S299–S309. <https://doi.org/10.4103/0019-5545.105555>

<sup>27</sup> *Supra* 7

<sup>28</sup> *Supra* 1,2,3,4

<sup>29</sup> Naznin Tabassum and Bhabani Shankar Nayak, Gender Stereotypes and Their Impact on Women's Career Progressions from a Managerial Perspective, in.sagepub.com/journals-permissions-India DOI: 10.1177/2277975220975513

<sup>30</sup> Social Infrastructure and Employment: big tent, chapter 6

<https://www.indiabudget.gov.in/economicsurvey/doc/eschapter/echap06.pdf>

<sup>31</sup> *Ibid*

contribution in terms of money that can be calculated as saving that the family makes and that can be calculated as her participation in the workforce. When circumstances require it and leaving the work is an option, women typically decide to stay at home and take care of household duties. We must appreciate her decision to prioritise her family over her career because it takes guts to take such decision. In order to recognise the participation of women in workforce, the NSO and other surveying agencies must change their standards by reconsidering the nature of the work they used as a criterion when compiling their data. Despite no economic gain relentlessly women provide their services to their family and society. Surveying agencies showing decline in female labour force participation is disrespectful towards Indian women. There is no decline in female labour force participation there is inadequate parameters of defining labour force.

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## MEDIA AS AN AGENT OF CHANGE: EXPLORING ITS ROLE IN PROMOTING GENDER EQUALITY

**Mr. Sanyog Shantaram Padelkar**

TY LL.B. Student

Vasantdada Patil Pratishthan's Law College, Sion Mumbai, India

### ABSTRACT:

*The purpose of this research paper is to investigate the role that the media plays in working for gender equality. The study argues that the media has a substantial impact on the attitudes and actions of individuals and society, and that it has the potential to be a strong agent of social change. The portrayal of women in the media, on the other hand, has often contributed to the perpetuation of gender stereotypes, spawned a feeling of fear and unhappiness among women, and enhanced the gender prejudices that already exist in society.*

*This study investigates how the media has contributed to the image-making of women by showing them as objects of entertainment or as attractive things, as well as the influence such pictures have had on society's understanding of gender roles and the responsibilities that men and women should play in it. In addition to this, it analyses the ineffectiveness of the media as a vehicle for social transformation, specifically how the media has evolved into a vehicle for propagating existing patriarchal society norms, restrictions, and expectations as well as gender stereotypes.*

*The research detailed in this piece underscores the pivotal role the media should adopt in advocating for gender parity through enlightening the public, fostering efficient institutions, and generating content that acknowledges and is conducive to gender differences. It underscores the urgency of implementing systemic modifications within the media landscape to mitigate societal gender prejudice and reconceptualize the traditional gender responsibilities attributed to both genders. Furthermore, it suggests a paradigm shift in the approach of the feminist movement to promote women's empowerment without alienating men.*

*This study stress the importance of fostering a society where relationships are characterized by mutual cooperation and equality, offering individuals equal opportunities for progress and personal growth. The media can act as a catalyst for change in the pursuit of gender equality by dismantling existing gender cliches, challenging entrenched societal norms and traditions, and featuring women as leaders and authorities on a wide spectrum of subjects.*

**KEYWORDS:** Gender Equality, Media, Patriarchal Society, Women Empowerment

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### INTRODUCTION:

In its most basic terms, gender equality signifies equal privileges, chances, and treatment for everyone, irrespective of their gender. It is an essential human right and forms the bedrock for both sustainable progress and the pursuit of fairness in society. Over the past few decades, international organizations, governments, and civil society groups have made concerted efforts to advance gender equality, resulting

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in significant advancements in several areas, including education, political representation, and economic empowerment. Despite progress, gender disparities persist across many parts of the world. These inequalities often present themselves through prejudiced laws, societal customs, and practices that curtail the rights and potential of women and girls.

The media, which includes print, broadcast, and digital platforms, is a potent socialization agent, shaping public opinion and influencing societal values and attitudes. Given its pervasive presence in people's lives, the media can be essential in promoting gender equality by challenging and deconstructing stereotypes, increasing awareness of gender issues, and nurturing positive attitudes and behaviours toward gender equality.

### OBJECTIVE:

The primary objectives of this research paper are as follows:

- ✓ To elucidate the concept of Gender Equality.
- ✓ To examine the legal framework pertaining to Gender Equality in India.
- ✓ To explore the role of media in fostering Gender Equality.
- ✓ To propose recommendations for leveraging media in the pursuit of Gender Equality.

### REVIEW OF LITERATURE:

**Yige Fu (2022)**, titled their research study "Research on the Influences of Social Media to Gender Equality"<sup>1</sup>. This research examines how social media affects gender equality in society. The researchers surveyed 81 online friends of the investigator who used both conventional and social media. Social media enabled LGBTQ representation, according to the findings. Social media offered a new public forum. The study reveals that gender equality talks on social media may raise knowledge and understanding, fostering a more inclusive and equitable society.

**Miss. Mali N.S. and Dr. Patankar P.S. (2015)**, titled their research study "Role of Media in Prohibition of Gender Discrimination"<sup>2</sup>. This research paper addresses gender inequality in India, its existence in sports, education, politics, the film industry, and the media's role in combating it. The Indian constitution outlaw discrimination based on religion, ethnicity, caste, sex, or place of birth, yet gender prejudice persists, the authors note. They suggest that the media can raise social awareness, fight gender-based violence, promote cooperation, and enhance gender capability. The document also urges the media to offer qualitative research, be attentive to severe incidents, shift perspectives on equal worth, show self-control before disseminating messages, and support curricular improvements that promote gender equality.

### RESEARCH METHODOLOGY:

The research utilizes primary and secondary data to investigate gender equality and related issues. The researcher conducted interviews and discussions with various professionals, including media personnel, attorneys, retired judges, and educators, to acquire primary data. The researcher used secondary data

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<sup>1</sup> Yige Fu (2022), "Research on the Influences of Social Media to Gender Equality"

<sup>2</sup> Miss. Mali N. S. and Dr. Patankar P.S. (2015), "Role of Media in Prohibition of Gender Discrimination"

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from the Human Development Report 2021-2022 to analyse gender inequality in India. The research study delivers the key conclusions from this exploration, providing meaningful understanding into the intricate nuances of gender equality within the framework of Indian society.

### **DEFINING GENDER EQUALITY:**

Before delving into the primary investigation of this research paper, it is crucial to establish a firm grasp of the terms 'Gender' and 'Gender Equality.' According to United Nation Entity for Gender Equality and Empowerment of Women, the term 'Gender' and 'Gender Equality' is defined as follows:

*“Gender<sup>3</sup> refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context. Other important criteria for socio-cultural analysis include class, race, poverty level, ethnic group and age.”*

*Equality between women and men (Gender Equality)<sup>4</sup> refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centric development.*

### **LEGAL PROVISIONS RELATED TO GENDER EQUALITY IN INDIA<sup>5</sup>:**

The Indian Constitution improved the situation for women by guaranteeing them equal rights. The Preamble, Fundamental Rights, Fundamental Responsibilities, and Directive Principles of State Policy all reference gender equality in the Constitution. Women's equality and empowerment are guaranteed under the Constitution, and the State is encouraged to take different steps in that direction.

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<sup>3</sup>Defined by United Nation Entity for Gender Equality and Empowerment of Women - <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

<sup>4</sup>Defined by United Nation Entity for Gender Equality and Empowerment of Women - <https://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

<sup>5</sup> <https://blog.ipleaders.in/legal-provisions-gender-equality-analysis/>

S. No.	Legal Provisions	Remark
1.	Constitutional Provisions <sup>6</sup>	The essential role of various articles in the Constitution, such as Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), and 42, is to uphold equality in terms of gender and other aspects within the nation. Here are some of the important articles included in this category:
a.	Article 14	Article 14 of the Indian Constitution focuses on the principle of equal treatment under the law or equality of status. It ensures that all individuals are treated equally in the eyes of the law, and the government is prohibited from denying this fundamental right.
b.	Article 15	Article 15 of the Indian Constitution prohibits discrimination on the grounds of religion, race, caste, sex, place of birth, or any other social factor. However, it also allows for the enactment of specific measures by the state to provide special provisions for women and children, without contradicting the principles of non-discrimination.
c.	Article 16	Article 16 of the Indian Constitution guarantees equal opportunities in employment and appointment to all citizens of India. It ensures that individuals are not discriminated against based on factors such as caste, religion, gender, or any other criteria, when it comes to opportunities in the public sector.
d.	Article 39	Article 39 of the Indian Constitution mandates that the government must ensure equal rights for both men and women to attain a decent standard of living. It emphasizes the importance of equal pay for both genders, prevents the accumulation of wealth in the hands of a few, and advocates the equitable distribution of material resources for the collective welfare of society.
e.	Article 42	Article 42 of the Constitution stipulates that the state shall ensure humane working conditions and maternity leave.
2.	Legal Provision	In addition to these constitutional provisions, the following statutes have emerged directly from these

<sup>6</sup> Constitution of India, 1949

		constitutional provisions:
<b>i.</b>	<b>Crimes Identified under Special Laws</b>	
<b>a.</b>	<b>The Equal Remuneration Act 1976<sup>7</sup></b>	As per this legislation, it is required for employers to offer equal compensation or remuneration to both men and women for performing identical work. It is prohibited for any employer to engage in gender-based discrimination during recruitment, training, transfer, or any work-related activities between individuals of different genders.
<b>b.</b>	<b>The Criminal Law Amendment Act 2013<sup>8</sup></b>	Implemented on February 3, 2013, the Criminal Law Amendment Act, 2013 came into force based on the suggestions made by the Verma Committee Report. Notably, this act introduced several additions to the Indian Penal Code, namely acid attack, sexual harassment, voyeurism, and stalking, all of which were incorporated as new offenses.
<b>c.</b>	<b>Sexual Harassment of Women at Workplace Act 2013<sup>9</sup></b>	The matter initially gained prominence through the Vishaka case in 1992, where the focus was on addressing workplace sexual harassment and introducing appropriate legal measures. Engaging in acts of harassment against women in their workplace is a violation of the fundamental rights guaranteed to women by Articles 14, 15, and 21 of the Indian Constitution.
<b>d.</b>	<b>The Women Reservation Bill<sup>10</sup></b>	The Women's Reservation Bill, also known as the Constitution's 108th Amendment Bill, is a forthcoming legislation in India aimed at reserving 33 percent of seats in the Lok Sabha (the Lower house of the Indian Parliament) and state legislative assemblies for women. Currently, the Rajya Sabha (Upper House of Parliament) has yet to cast its vote on this proposed bill.
<b>e.</b>	<b>The Hindu Succession Act,</b>	In 2005, an amendment was made to the Hindu Succession Act of 1956, which resulted in the removal of discriminatory clauses. This amendment grants

<sup>7</sup> The Equal Remuneration Act, 1976

<sup>8</sup> The Criminal Law Amendment Act, 2013

<sup>9</sup> Sexual Harassment of Women at Workplace Act, 2013

<sup>10</sup> The Women's Reservation Bill

	<b>1956<sup>11</sup></b>	women full ownership rights to all property acquired before or after the enactment of the amendment. Consequently, it abolishes the classification of women as "limited owners" under the Act.
<b>f.</b>	<b>The Maternity Benefit Act 1961<sup>12</sup></b>	In 2017, an amendment was introduced to the Maternity Benefit Act of 1961, resulting in significant changes. The amendment extended the duration of paid maternity leave for women with less than two surviving children from the initial twelve weeks to twenty-six weeks. Additionally, it granted working mothers who adopted a child below three months of age the right to avail 12 weeks of maternity leave starting from the date of receiving the child. Depending on their mode of employment and employer's agreement, they were also given the option to work from home after completing 26 weeks of maternity leave.
<b>g.</b>	<b>The Special Marriage Act, 1954<sup>13</sup></b>	The Special Marriage Act of 1954 permits a unique form of marriage that is not restricted by the religion or faith of either party involved. This legislation replaced the previous Old Act of 1872.
<b>h.</b>	<b>The Dowry Prohibition Act 1961<sup>14</sup></b>	The mentioned legislation makes it illegal to exchange or accept dowry as a consideration for marriage. Demanding or offering dowry is subject to penalties, including imprisonment for a maximum of six months, a fine of up to Rs. 15,000 or the value of the dowry, or a prison term of up to five years.
<b>ii.</b>	<b>Crimes Identified under the Indian Penal Code<sup>15</sup></b>	Rape (Section 375); Kidnapping and abduction (Section 363-373); Molestation (Sec 354); Sexual Harassment (Section 509); Importation of a girl (up to 21 years of age); Torture (Section 498A); Dowry Deaths (Section 304B).

<sup>11</sup> The Hindu Succession Act, 1956

<sup>12</sup> The Maternity Benefit Act, 1961

<sup>13</sup> The Special Marriage Act, 1954

<sup>14</sup> The Dowry Prohibition Act, 1961

<sup>15</sup> Indian Penal Code 1860

## GENDER EQUALITY SCENARIO IN INDIA<sup>16</sup>:

As India steps into its role as G20 president this year, it has committed to focusing on inclusive growth and development, with a special emphasis on amplifying women's empowerment and representation within G20 dialogues. This is a pertinent goal considering the notable gender imbalances present in many G20 countries, particularly India, and the country's overall profile in terms of human development. In 2021, UNDP positioned India at 132<sup>nd</sup> out of 191 countries in the Human Development Index (HDI) rankings, a drop from its position in the previous year. Even though the pandemic caused a universal downturn in HDI values, a more extensive data analysis suggests India's HDI performance began to falter even prior to the Covid-19 outbreak. Reduced female participation in the workforce coupled with their significantly lower pay for equivalent work, are principal factors contributing to India's underperformance in the pre-pandemic era.

India's Human Development Index (HDI) for females (0.57) is considerably lower than that for males (0.67). Over the last thirty years, the gap in male HDI between India and the rest of the world has reduced by 41%, whereas for females, the gap has lessened by 30%. Consequently, it's not unexpected that India's HDI rank for females (131) is below its HDI rank for males (119). The main factor driving India's inadequate HDI performance is gender inequality.

Gender inequality in India is noticeable in two of the three components that make up the Human Development Index (HDI): income and education, as shown in **Table 1 and Graph 1**. If a specific indicator has a ratio exceeding 1, it indicates unfavourable outcomes for women compared to men, and the reverse is also true. Although women surpass men in life expectancy (under the health category) and in Expected Years of Schooling (a forecast of the populace's future educational attainment), they fall behind in terms of Mean Years of Schooling (an assessment of society's current educational achievements), their earned income, and rate of participation in the labour force. Gender disparities in education, income, and labour force involvement are prevalent in several countries comparable to India, but these disparities are markedly more severe in India. For example, in India, men earn Rs. 4.6 per day, compared to women who earn only Rs. 1 per day. Similarly, while 35 men are employed, only 10 women have employment. Such wage and employment imbalances are not observed among India's competitor countries.

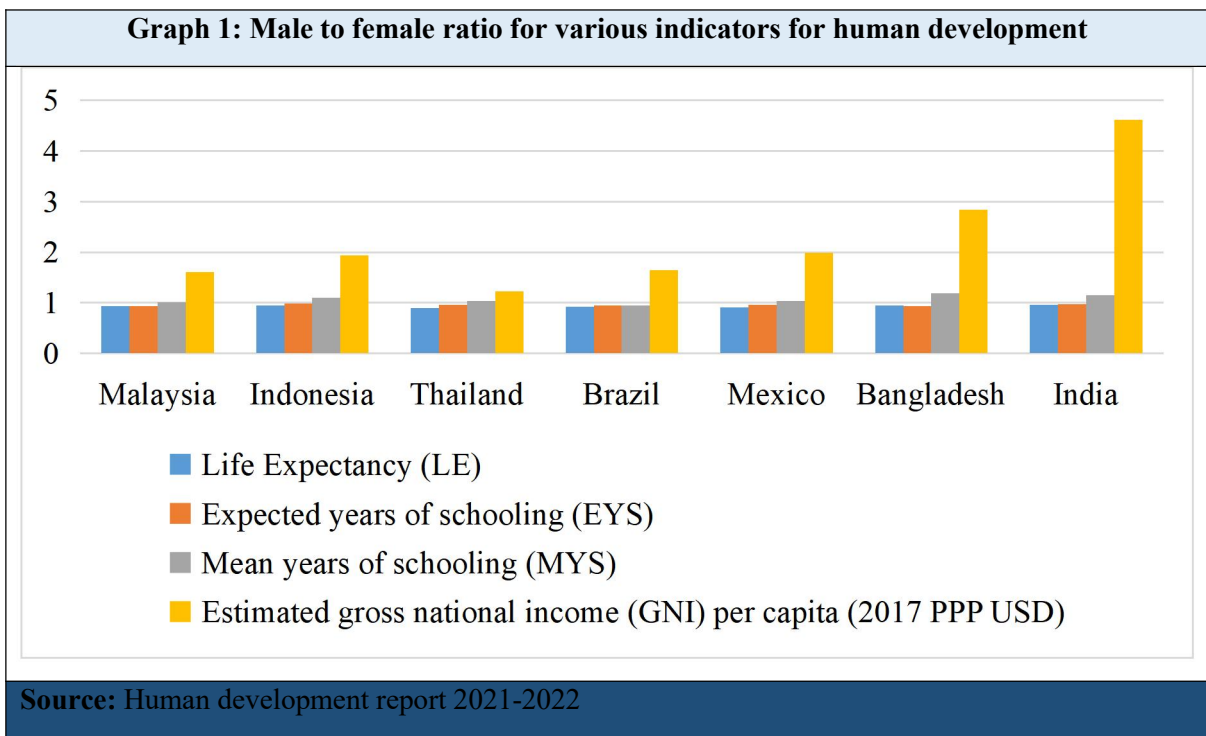
**Table 1: Male to female ratio for various indicators for human development**

Country	Life Expectancy (LE)	Expected years of schooling (EYS)	Mean years of schooling (MYS)	Estimated gross national income (GNI) per capita (2017 PPP USD)	Labour force participation rate (LFPR in %)
Malaysia	0.938	0.938	1.014	1.611	1.504
Indonesia	0.943	0.988	1.095	1.934	1.529
Thailand	0.894	0.958	1.031	1.226	1.279

<sup>16</sup> Human development report 2021-2022

Brazil	0.920	0.945	0.947	1.647	1.352
Mexico	0.914	0.954	1.033	1.982	1.725
Bangladesh	0.941	0.929	1.194	2.839	2.203
India	0.960	0.969	1.156	4.616	3.458

**Source:** Human development report 2021-2022



Over time, there has been a noticeable decrease in gender inequality in the education sector. The male-to-female ratio for Expected Years of Schooling (EYS) has dropped from 1.43 in 1990 to 0.989 in 2021. Likewise, for Mean Years of Schooling (MYS), it has decreased from 1.02 to 1.156. Regrettably, gender disparities in income, represented by the ratio of Gross National Income (GNI) earned by men relative to women, have been consistently broadening since the early 2000s, along with workforce participation (see **Table 2 and Graph 2**). This trend indicates that improved access to education is not leading to a corresponding increase in employment opportunities for women. Not only are fewer women engaging in the workforce, but they are also earning lower wages, which further discourages women from joining the labor market.

**Table 2: Male to Female Ratio of Per Capita EYS, MYS, and GNI**

YEAR	EXPECTED YEAR OF SCHOOLING (EYS)			MEAN YEAR OF SCHOOLING (MYS)			GROSS NATIONAL INCOME (GNI) (2017 PPP\$)		
	FEMALE	MALE	RATIO	FEMALE	MALE	RATIO	FEMALE	MALE	RATIO
1990	6.537	9.353	1.431	1.793	3.621	2.019	748.410	2764.057	3.693
1991	6.609	9.340	1.413	1.841	3.780	2.053	740.615	2729.998	3.686
1992	6.682	9.327	1.396	1.890	3.940	2.085	767.739	2820.927	3.674
1993	6.756	9.313	1.379	1.938	4.100	2.116	792.563	2898.672	3.657
1994	6.830	9.300	1.362	1.986	4.260	2.145	834.208	3031.562	3.634
1995	6.906	9.287	1.345	2.034	4.419	2.172	883.341	3202.295	3.625
1996	6.978	9.268	1.328	2.296	4.632	2.017	935.612	3383.357	3.616
1997	7.079	9.239	1.305	2.558	4.845	1.894	957.923	3455.760	3.608
1998	7.151	9.234	1.291	2.821	5.058	1.793	1000.383	3600.491	3.599
1999	7.223	9.228	1.278	3.083	5.271	1.710	1072.175	3849.845	3.591
2000	7.295	9.223	1.264	3.345	5.484	1.640	1092.835	3914.737	3.582
2001	7.371	9.210	1.249	3.284	5.566	1.695	1137.134	4031.829	3.546
2002	7.649	9.320	1.218	3.223	5.647	1.752	1172.122	4113.613	3.510
2003	8.613	9.583	1.113	3.162	5.729	1.812	1252.675	4351.967	3.474
2004	8.897	9.828	1.105	3.102	5.811	1.873	1341.179	4613.349	3.440
2005	9.182	10.073	1.097	3.041	5.892	1.938	1435.304	4889.596	3.407
2006	9.466	10.318	1.090	3.179	5.983	1.882	1485.663	5237.450	3.525
2007	9.750	10.564	1.083	3.318	6.073	1.831	1537.808	5614.457	3.651
2008	9.989	10.578	1.059	3.456	6.164	1.784	1515.706	5734.682	3.784
2009	10.227	10.592	1.036	3.594	6.254	1.740	1565.894	6142.704	3.923
2010	10.534	10.916	1.036	3.733	6.345	1.700	1706.135	6508.156	3.815
2011	11.018	11.297	1.025	4.045	6.526	1.613	1702.890	6844.049	4.019
2012	11.788	11.262	0.955	4.358	6.707	1.539	1693.858	7178.310	4.238
2013	11.893	11.227	0.944	4.670	6.888	1.475	1764.422	7556.965	4.283

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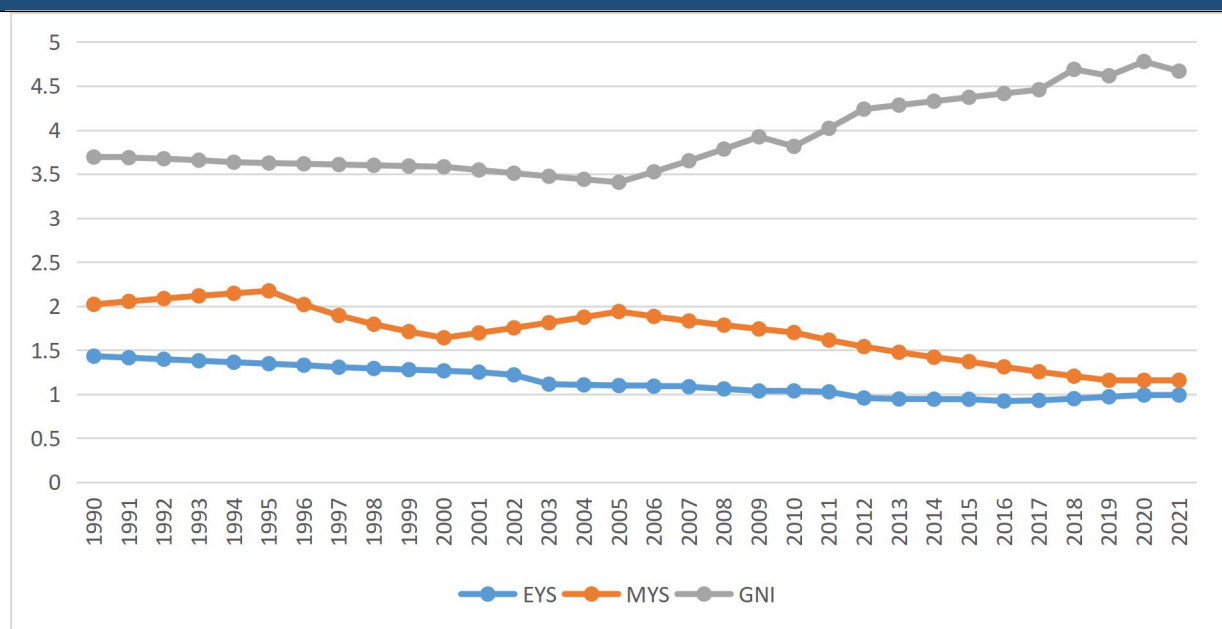
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2014	12.242	11.531	0.942	4.983	7.069	1.419	1859.342	8046.441	4.328
2015	12.331	11.603	0.941	5.295	7.250	1.369	1969.744	8611.231	4.372
2016	12.881	11.861	0.921	5.534	7.245	1.309	2073.847	9155.967	4.415
2017	12.640	11.734	0.928	5.773	7.239	1.254	2194.915	9785.093	4.458
2018	12.147	11.514	0.948	6.012	7.234	1.203	2219.470	10407.975	4.689
2019	11.654	11.293	0.969	6.252	7.229	1.156	2318.929	10705.071	4.616
2020	11.942	11.813	0.989	6.252	7.229	1.156	2069.811	9889.767	4.778
2021	11.942	11.813	0.989	6.252	7.229	1.156	2277.266	10632.933	4.669

**Source:** Human development report 2021-2022

**Graph 2: Male to Female Ratio Per Capita EYS, MYS & GNI**



**Source:** Human development report 2021-2022

India has struggled not only with transforming women's educational achievements into fruitful employment but also with delivering sufficient educational opportunities to women. There's an urgent requirement to bolster women's engagement in the workforce and to guarantee that they receive equal pay for equivalent work. Prioritizing social expenditures in a way that eradicates existing inequalities and enhances women's standing in society is critical.

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## MEDIA'S SHORTCOMINGS IN ADVANCING GENDER EQUALITY:

Media plays a vital role in our society, serving as a primary source of information about global and local events and promoting awareness of social and political concerns. Media, frequently regarded as the fourth pillar of democracy, enables citizens to express their concerns and resolve pressing issues. The relationship between media and gender, specifically the representation of gender across various media platforms, is an area where the media's influence is perceptible. Both male and female correspondents have established themselves in the news channels of contemporary media, with women now appearing on more news programs and in more debates than ever before. It is a significant improvement over traditional media, which males dominated.

Nevertheless, despite progress, gender inequality persists in many areas, with women frequently given fewer opportunities to demonstrate their skills and talents. The entire media industry is not immune to perpetuating gender inequality. For instance, in television and film, women often appear as caregivers responsible for domestic duties, while men are primary breadwinners. This depiction reinforces traditional gender roles and perpetuates the notion that women are inferior to males.

Some industries compensate women less than men, contributing to the gender pay disparity. In 2021, the gender pay disparity in India was 21.42 percent. This inequality is evident in the workplace and home, where women may be denied an education or forced into marriage at a young age. Similarly, advertising frequently hypersexualizes conventionally attractive women.

By challenging and altering societal perceptions of women, the media can play an essential role in advancing gender equality. Traditional and new media can reshape public opinion and dismantle gender stereotypes. In promoting gender equality, the media must address these issues and advocate for a more balanced representation of women across all aspects of society.

## STRATEGIES FOR MEDIA TO FOSTER GENDER EQUALITY:

The media in India holds a significant responsibility in advocating for gender equality, by focusing on concerns pertaining to women and amplifying public consciousness on these matters. The media can have a positive effect in the following ways:

1. **Equal Representation:** Assure that men and women are represented equally in all forms of media, including news, entertainment, and advertising, demonstrating their abilities, expertise, and perspectives.
2. **Challenging Stereotypes:** Work actively to challenge and break gender stereotypes by depicting men and women in various roles and situations, highlighting their strengths, abilities, and unique qualities.
3. **Promote Positive Role Models:** Feature the inspiring tales and accomplishments of individuals, regardless of gender, who challenge traditional gender norms and advocate for equality.

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4. **Equal Opportunities:** Ensure parity for both men and women within media entities, inclusive of leadership and decision-making roles, to encourage the inclusion and representation of varied viewpoints.
  5. **Gender-Sensitive Language:** Avoid reinforcing stereotypes and promote a culture of equality by using inclusive, gender-neutral language in media content.
  6. **Responsible Reporting:** Adopt ethical guidelines for reporting on gender-related issues, including violence against women and gender-based discrimination, to raise awareness while respecting the dignity and privacy of the individuals involved.
  7. **Encourage Public Discourse:** Create platforms for open discussions and debates on gender equality, such as interviews, panel discussions, and opinion articles, to promote understanding and dialogue on the subject.
  8. **Highlight Gender Equality Initiatives:** Report on and support initiatives, policies, and organizations striving for gender equality, highlighting their successes and societal impact.
  9. **Media Literacy Programs:** Implement media literacy programs to educate the public on identifying and challenging gender stereotypes and biases, cultivating critical thinking and consumer awareness.
  10. **Collaboration with NGOs and Activists:** Collaborate with NGOs, activists, and gender equality experts to ensure accurate information and representation and amplify their media voices and efforts.
  11. **Ongoing Monitoring and Evaluation:** Assess the portrayal of gender in media content regularly to identify areas for improvement and to ensure adherence to established guidelines and best practices for promoting gender equality.
  12. **Support Gender-Equal Policies:** Advocate for policies and regulations that promote gender equality in the media industry, such as equal pay and equitable employment practices, and encourage other sectors to follow suit.

## CONCLUSION:

Gender Equality is an essential human right and a necessary condition for sustainable progress. The Indian Constitution has made significant advancements in promoting gender equality, with numerous legal provisions protecting and empowering women's rights. However, India's performance on gender equality indicators, as measured by the Human Development Index, is unsatisfactory, with persistent gender disparities in education, income, and labour force participation. The media plays a crucial role in promoting gender equality by ensuring equal representation, challenging stereotypes, promoting positive role models, offering equal opportunities, using gender-sensitive language, reporting responsibly, encouraging public discourse, highlighting gender equality initiatives, implementing media literacy programs, collaborating with NGOs and activists, and supporting gender-equal policies. To promote

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gender equality, the media must be cognizant of existing gender biases and take measures to promote a more balanced representation of women in all aspects of society. Thus, the media can considerably contribute to the advancement of gender equality and the promotion of a more equitable and just society for all.

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# “ETHICS OF ABORTION AND WOMEN'S RIGHTS”

**Dr. Shelar Shivani S**

Associate Professor, New Law College, Mahim, Mumbai.

## 1. INTRODUCTION:

The issue of abortion is a complex and controversial one that involves a wide range of ethical, moral, and legal considerations. At the heart of the debate is the question of whether a woman has the right to choose whether or not to terminate a pregnancy.

From an ethical standpoint, there are several different arguments that can be made in favor of or against abortion. Some people argue that a fetus is a human being with a right to life from the moment of conception, and therefore abortion is morally wrong. Others contend that a fetus does not have the same moral status as a fully developed human being and that a woman has the right to control her own body and make decisions about her own reproductive health.

From a women's rights perspective, the issue of abortion is closely tied to the broader issue of reproductive rights. The ability to control one's own reproductive health is a fundamental right, and access to safe and legal abortion services is an important aspect of that right. Women should have the right to make decisions about their own bodies, without interference from the state or other external forces.

However, it's also important to recognize that the issue of abortion is not a simple black-and-white matter, and that there are many different factors that can influence a woman's decision to terminate a pregnancy. In many cases, women who choose to have an abortion are facing difficult circumstances, such as poverty, lack of access to healthcare, or domestic violence, and they may feel that terminating a pregnancy is the best option available to them.

Ultimately, the question of abortion and women's rights is a complex and deeply personal one, and it's important for individuals to engage in respectful and thoughtful dialogue about the issue in order to find a path forward that respects the rights and autonomy of women, while also acknowledging the ethical and moral concerns surrounding the issue.

## 2. LEGAL PROVISION:

Under the Indian Penal Code, abortion is allowed in certain circumstances. Section 312 of the Indian Penal Code makes it a criminal offense to cause a woman to miscarry or intentionally cause an abortion without the woman's consent.

However, Section 313 of the Indian Penal Code allows for the termination of pregnancy if it is necessary to save the life of the woman. This means that if the continuation of the pregnancy would endanger the woman's life, the pregnancy can be terminated.

Furthermore, the Medical Termination of Pregnancy Act, 1971 (MTP Act) provides for the conditions under which a pregnancy may be terminated by a registered medical practitioner. The Act allows for the termination of pregnancy up to 20 weeks of gestation, subject to certain conditions.

The MTP Act permits abortion in cases where the continuation of the pregnancy would pose a risk to the physical or mental health of the woman, where there is a risk of fetal abnormalities, where pregnancy is a result of rape, or where there is a failure of contraception.

It should be noted that the law regarding abortion varies from state to state in India, and some states have more restrictive laws than others.

### **3. RIGHTS OF FETUS IN MOTHER'S WOMB:**

In India, the rights of a fetus in the mother's womb are not clearly defined or recognized under the law. The Indian Constitution guarantees the right to life and personal liberty to all persons, including the unborn, but it does not provide any specific legal protection for the fetus.

However, there are laws in India that regulate abortion and protect the health and rights of women who seek to terminate a pregnancy. The Medical Termination of Pregnancy (MTP) Act of 1971 provides for the conditions under which abortion can be legally performed in India. Under the MTP Act, a woman has the right to terminate a pregnancy up to 20 weeks gestation if the continuation of the pregnancy would pose a risk to her life or physical or mental health, or if the pregnancy is the result of rape or incest.

In addition, the Indian Penal Code criminalizes causing the death of an unborn child, but this provision is typically applied in cases of deliberate harm to the fetus, such as causing a miscarriage or stillbirth through physical violence or other means.

### **4. RIGHT TO CHOOSE IN THE MATTER OF PREGNANCY AND ABORTION:**

In India, women have the right to choose in the matter of pregnancy and abortion. The Medical Termination of Pregnancy (MTP) Act of 1971 provides for the conditions under which abortion can be legally performed in India and recognizes the right of women to make decisions about their own bodies and reproductive health.

Under the MTP Act, a woman has the right to terminate a pregnancy up to 20 weeks gestation if the continuation of the pregnancy would pose a risk to her life or physical or mental health, or if the pregnancy is the result of rape or incest. The decision to terminate a pregnancy must be made by the woman in consultation with a registered medical practitioner, and the procedure must be carried out by a qualified medical professional in a registered medical facility.

The MTP Act also recognizes the right to privacy and confidentiality of women seeking abortion services, and prohibits discrimination against women seeking abortion services.

### **5. CASES ON ISSUES OF ABORTION:**

There have been many notable legal cases in the United States and around the world that have addressed issues related to abortion. Here are a few examples:

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***Roe v. Wade***<sup>1</sup>: This landmark 1973 case from the U.S. Supreme Court established a woman's right to choose to have an abortion. The case centered around a Texas law that banned abortions except to save the life of the mother. ***The Court ruled that such laws were unconstitutional and that a woman's right to privacy included the right to make decisions about her own body and reproductive health.***

***Planned Parenthood v. Casey***<sup>2</sup>: This 1992 case also came before the U.S. Supreme Court and dealt with a challenge to a Pennsylvania law that imposed restrictions on abortion, such as requiring a waiting period and requiring minors to obtain parental consent. ***The Court upheld the right to choose to have an abortion but allowed states to regulate the procedure as long as those regulations did not place an "undue burden" on women seeking abortions.***

***Gonzales v. Carhart***<sup>3</sup> This 2007 U.S. Supreme Court case addressed a federal law that banned a certain type of late-term abortion procedure, known as intact dilation and extraction or "partial-birth abortion." ***The Court upheld the ban, despite objections from abortion rights advocates who argued that it did not provide adequate exceptions for the health of the mother.***

***Whole Woman's Health v. Hellerstedt***<sup>4</sup> In 2016, the U.S. Supreme Court struck down a Texas law that imposed strict regulations on abortion providers, such as requiring doctors to have admitting privileges at nearby hospitals and requiring clinics to meet the same standards as ambulatory surgical centers. ***The Court ruled that these regulations placed an undue burden on women seeking abortions and did not provide any medical benefit.***

In addition, the Supreme Court of India has recognized the right to safe and legal abortion as a fundamental right under the right to life and personal liberty guaranteed by the Indian Constitution.

## 6. CRITICISM ON LAW OF ABORTION IN INDIA

The law on abortion in India, particularly the Medical Termination of Pregnancy (MTP) Act of 1971, has been subject to criticism and debate. Some of the criticisms include:

**Limited gestational age**: The MTP Act allows for abortion only up to 20 weeks of pregnancy. Some critics argue that this is a restrictive time frame and that women should have the right to choose abortion at any point in the pregnancy, particularly if there is a risk to their health or if the fetus is not viable.

**Lack of accessibility**: Access to safe and legal abortion services can be limited in certain parts of India, particularly in rural areas. This can result in women seeking unsafe and illegal abortions, putting their health and lives at risk.

**Stigmatization**: Despite legal protections, abortion is still stigmatized in Indian society, which can lead to women facing discrimination and shame for seeking abortion services.

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<sup>1</sup> 410 U.S. 113 (1973)

<sup>2</sup> 505 U.S. 833 . 1991.

<sup>3</sup> 550 U.S. 124 (2007)

<sup>4</sup> 579 U.S. (2016)

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**Gender bias:** Sex-selective abortion is a significant issue in India, and some critics argue that the MTP Act does not adequately address this problem. They argue that the law should be strengthened to prevent the use of abortion as a means of sex selection.

**Lack of education and awareness:** Some critics argue that there is a lack of education and awareness about reproductive health and abortion rights in India, which can lead to women being unaware of their options and their rights.

While the law in India recognizes the right to safe and legal abortion, there is ongoing debate and discussion about the need for reform to better protect the health and rights of women seeking abortion services.

## 7. CONCLUSION:

The law in India prioritizes the rights and health of the mother over the rights of the fetus. However, there is ongoing debate and discussion about the need to balance the interests of the mother and the unborn child, and some advocates are calling for stronger legal protections for fetuses in India,

Overall, the law in India recognizes and protects the rights of women in abortion matters, including the right to make decisions about their own bodies and reproductive health, the right to access safe and legal abortion services, and the right to privacy and confidentiality in seeking abortion services.

## 8. SUGGESTIONS -

1. Educating women and girls about their reproductive health and abortion rights is important in empowering them to make informed decisions about their bodies and their health.
2. Access to safe and legal abortion services should be expanded, particularly in rural areas where access may be limited. This will help reduce the number of unsafe and illegal abortions, which can put women's lives at risk.
3. Efforts should be made to address gender bias and discrimination in Indian society, including the practice of sex-selective abortion. This will help to ensure that women have the right to choose abortion without facing discrimination or stigma.
4. Laws and policies related to abortion should be strengthened to ensure that women's reproductive rights are protected. This could include expanding the gestational age limit for abortion, providing greater protections for women seeking abortion services, and increasing access to contraception and family planning services.
5. A culture of respect for women's autonomy and bodily integrity is essential for ensuring that women have the right to choose what happens to their bodies. This could include promoting gender equality, supporting women's rights organizations, and increasing awareness about the importance of women's rights and reproductive health.

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## POSH AT WORKPLACE

Adv. Sumedha Kokate

In earlier times, women were not afforded an opportunity to education and remained illiterate where they were left with taking care of their homes, children and family. They were denied opportunities to work and hence were left financially dependent on their parents and later on their husband's post marriage.

Today women are equally educated as their counterpart males and hence get job roles of similar nature to them. The scope of work has tremendously increased which demands more travel, higher focus and demands time. The expanding boundaries of work of women at office has increased the number of working women that has increased difficulties faced by women at workplace amidst cut throat competition between the genders.

**Gender discrimination** encompasses various forms of inequality with respect to certain employee or even a job application being differently treated or considered less favourably due to its gender, sexual orientation or gender identity. In such cases the person may be evaluated harshly, given more tough jobs, may be harassed or even paid lesser, etc.

According to survey conducted by **Pew Research Centre**<sup>1</sup>, 4 out of 10 working women (42%) in the United States claim that they have faced gender discrimination at their workplace due to their gender. Even in today's world of 21<sup>st</sup> century women are facing poor conditions at workplace and are forced to either change or quit their jobs.

**Sexual harassment** has become rampant and is increasing by the day making it difficult for the genders to cope up with the workplace stress which may lead to various health problems may it be mental, physical or even emotional in nature. It becomes extremely difficult to express oneself putting the person in awkward situations with other colleagues. It is important to curb such deteriorating and vulnerable situations.

**There were** reported incidents of women being harassed continuously at workplace and thus was a need to have a strict and stringent legislation in place. The provisions in the Indian Penal Code with respect to women i.e. S. 354 (outraging modesty of woman) and amendments in criminal law S. 375 IPC (rape – one of the most common crimes against women) are not sufficient to protect women in hostile situations at office.

*Vishakha v. State of Rajasthan (AIR 1997 SC 3011)* has been instrumental in paving path for the POSH Act and the provisions are similar to that of the guidelines given in this landmark judgement more than 20 years ago.

Various **International Conventions and Instruments** mandate protection of **Universal Human Rights** that includes protecting women sufficiently against sexual harassment. Women must be provided with good and healthy environment as per right to work with dignity according to United Nations Convention

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on Elimination of all Forms of Discrimination<sup>2</sup> against women – Recommendation 19, ratified by India in 1993 along with 50 other countries in the world.

**The enactment of POSH Act, 2013<sup>3</sup>** had become the need of the hour for ensuring safety of women at workplace and protect their fundamental human rights in general. POSH Act: Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 was basically introduced to put an end to harassment of women at workplace and to facilitate them with apt redressal forum for women who have faced such an issue. Introduction of the Act has made women feel safe and secure at their workplace.

**The POSH Act, 2013** was enacted because there was gross violation of Fundamental Rights of women guaranteed by the Constitution of India in **Article 14 and 15** – guarantees **Equality**, **Article 21** – guarantees Right to Life and Right to Live with dignity. It also includes Right to Practice any profession, or practice any occupation, profess any trade or business. It should include right to safe environment which is free from sexual harassment.

**Every organization** that has more than 10 employees should form ICC – Internal Complaints Committee. **The ICC should** listen, entertain and investigate in complaints of sexual harassment given by their employees. Also, the organization must have an external complaints committee to monitor and keep a check on the Internal Complaints Committee so that sexual harassment cases don't go unreported due to hands-in-glove situation between the employees and ICC, ensuring safety and justice for all. The business should have an Anti-Harassment Policy and employees of the organisation must have attended training workshops to have knowledge about the same.

POSH Act defines two important terms as follows –

**1. Sexual Harassment as:**

Any unwelcome sexually tinted behaviour whether directly or by implication includes –

- a. Physical contact and advances
- b. Demand or request for sexual favours
- c. Making sexually coloured remarks
- d. Showing pornography
- e. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

**2. Aggrieved woman as:**

- a. A woman of any age
- b. Whether employed or not
- c. Who alleges to have been subjected to any act of sexual harassment
- d. The woman does not necessarily need to be an employee, customer or client who may be subjected to sexual harassment can also seek redressal under the POSH Act

**POSH ACT IN SECTIONS 16 STATES THAT:**

*“Prohibition of publication or making known contents of complaint and inquiry proceedings. – Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of*

*the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action was taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:”*

**Conclusively, POSH Act strives to eliminate hostile environment and create equal opportunities** among genders for recruitment and promotion at workplace. Thereby eradicate health and safety problems that may arise due to such harassment incidents. But it is indeed a double-edged sword in case of false and frivolous complaints given by the women or if they complaints are mis-interpreted by the Complaints Committee or the woman goes unheard due to ulterior motives of the Complaints Committee due to favouritism, nepotism, etc. in the organisation.

Also, the POSH Act is **not gender neutral** and at large the community fails to understand that even men face sexual harassment at workplace. The Act is highly influenced by culture and understanding of gender equality which is different in different countries. It is noticed that the Act also completely ignores third gender people (Trans-genders) who identify themselves as women thereby leaving space for apt interpretation of women related laws including POSH Act, 2013 and more amendments in the coming time.

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## GENDER DYNAMICS AND DEVELOPMENT

**Tushar Khatri**

Student of SYLLB

Kishinchand Chellaram Law College

### ABSTRACT:

This paper emphasizes “Gender Dynamics and Development.” Gender dynamics refer to the social interactions and power relations between men, women, and other genders in society. The concept of gender is a socially constructed differentiation of the attributes related to masculinity or femininity. Gender dynamics is a crucial factor in development planning and implementation because it influences the opportunities and outcomes of individuals. The purpose of this paper is to examine the impact of gender dynamics on development, exploring the gender-based inequalities that arise in different areas through various social categories. The paper also discusses the changing approach to gender dynamics in development from a Western-centric modernization approach to an inclusive and gendered perspective.

### INTRODUCTION:

"Gender equality is not only a human right, but also a necessary foundation for a peaceful, prosperous and sustainable world." - United Nations Secretary-General António Guterres.

"Gender is not just a women's issue, it's a human rights issue that affects us all." - Emma Watson, British actress and UN Women Goodwill Ambassador.

Gender dynamics and development refer to the ways in which gender roles, relations, and inequalities shape development processes and outcomes. It recognizes that gender identity, norms, and power dynamics are integral to shaping the social, economic, and political factors that influence development.

Gender dynamics impact development in various ways. For example, unequal access to education and health care, discriminatory laws, and policies, and limited economic opportunities for women can hinder development progress. Similarly, gender-based violence, such as domestic abuse and sexual harassment, can have severe physical, psychological, and economic consequences for individuals and communities.

Therefore, a gender-sensitive approach to development requires recognizing and addressing the different needs, perspectives, and experiences of women, men, and gender non-conforming individuals. This involves promoting gender equality and empowering women, challenging gender norms and stereotypes, and ensuring that development initiatives do not reinforce or perpetuate gender inequalities.

Efforts to promote gender equality and address gender dynamics in development have become increasingly central to global development initiatives, including the United Nations Sustainable Development Goals.

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## **ORIGIN OF GENDER DYNAMICS AND DEVELOPMENT:**

The origins of gender dynamics and development can be traced back to the 1970s and 1980s, when feminist scholars and activists began to critique the mainstream development paradigm for its failure to address gender inequalities. Prior to this, development was largely seen as an economic and technical issue, and gender was not considered a relevant factor in development.

Feminist scholars and activists argued that development policies and programs often reinforced gender inequalities by ignoring or marginalizing the experiences and perspectives of women. They pointed out that development interventions often focused on economic growth and infrastructure development, but did not address the underlying power relations that perpetuated gender-based discrimination and inequality.

These critiques led to the emergence of the gender and development (GAD) approach, which recognized the need to consider gender as a central aspect of development. The GAD approach emphasized the importance of addressing the underlying power relations that perpetuated gender-based discrimination and inequality, and advocated for promoting gender equality and women's empowerment as key development goals.

Since then, the gender dynamics and development approach has continued to evolve and expand. It has become increasingly recognized as a critical aspect of sustainable and inclusive development, and has been integrated into global development frameworks such as the United Nations Sustainable Development Goals.

## **SIGNIFICANT ROLE BEHIND GENDER DYNAMICS AND DEVELOPMENT**

The significant role of gender in gender dynamics and development lies in recognizing that gender is not only a social construct that shapes individuals' identities, but also a critical factor that influences access to resources, opportunities, and decision-making power. Gender dynamics and development recognizes that gender inequalities are not only a social justice issue, but also a barrier to sustainable and inclusive development.

The role of gender in gender dynamics and development includes:

- **Recognizing the diversity of gender identities:**

Gender dynamics and development recognizes that gender is not binary and that individuals may identify as male, female, or non-binary. It also recognizes that gender intersects with other social identities, such as race, ethnicity, class, and sexuality, and that individuals may experience multiple forms of marginalization.

- **Addressing gender-based discrimination and violence:**

Gender dynamics and development recognizes that gender-based discrimination and violence, such as domestic violence, sexual harassment, and trafficking, are serious barriers to gender equality and women's empowerment. Addressing these issues requires addressing the underlying power relations that perpetuate gender inequalities.

- Promoting women's economic empowerment:

Gender dynamics and development recognizes that women often have limited access to resources, training, and opportunities, which limits their economic participation and contributes to poverty and inequality. Promoting women's economic empowerment involves addressing the structural barriers that limit women's access to economic resources and opportunities.

- Increasing women's political participation:

Gender dynamics and development recognizes that women often have limited political representation and influence, which limits their ability to shape policy and decision-making processes. Increasing women's political participation involves promoting women's leadership and representation in political institutions and addressing the barriers that limit women's access to political power.

Overall, the significant role of gender in gender dynamics and development is to recognize the complex ways in which gender influences development outcomes and to promote gender equality and women's empowerment as critical development goals. By recognizing and addressing gender inequalities, development initiatives can become more effective, equitable, and sustainable.

## **GENDER DYNAMICS AND DEVELOPMENT**

Gender dynamics and development are interrelated because gender-based differences and inequalities can exacerbate or perpetuate inequalities, leading to an unsuccessful development process. Development involves addressing poverty, inequalities, and ensuring sustainable development for all individuals. However, development interventions that fail to address gender dynamics may overlook the needs and experiences of certain groups, leading to unequal outcomes. Gender-based inequalities are numerous and manifest in different areas like education, health, political representation, and economic opportunities. Addressing gender dynamics requires a broader and holistic approach that considers the diverse needs, aspirations, and experiences of men, women, and other genders.

### Education

Education is a crucial factor in development because it is linked to economic growth and social mobility. However, gender dynamics can limit access to education, leading to inequality in opportunities and outcomes. Patriarchal societies may prioritize the education of boys, leading to disparities in literacy rates between genders. For instance, in sub-Saharan Africa, girls' primary school enrolment was 11 percentage points lower than boys in 2019, and the gap increases in secondary education. The lack of access to education and vocational training limits women's ability to access formal employment, leading to a loss of human potential, diminishing economic growth.

### Health

Gender dynamics influences health outcomes in different but substantial ways. Women have different health needs than men, and gender norms can restrict access to and utilization of health services. For instance, women in some societies face taboos or lack of information on sexual and reproductive health, leading to poor maternal and infant health outcomes. Moreover, gender dynamics can impact men's mental health, reducing their ability to access mental health services due to stigma or limited resources.

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The global pandemic, COVID-19, has highlighted the gender impacts and the importance of gender analysis in health interventions. Women are more likely to experience economic insecurity and carry a disproportionate burden of unpaid care work, leading to an increased risk of experiencing violence, limited access to health care, and other social determinants of health.

### Political Representation

Gender does not limit political participation, but gender dynamics can influence the opportunities available to individuals. Women's political representation is low, with 22.5% of all national parliamentarians being women in 2020. Several factors contribute to women's limited political representation, including institutional, cultural, and socioeconomic barriers. Institutional barriers include electoral systems that favour men and political parties that do not promote women's candidacies. Cultural barriers include gender-based expectations and stereotypes, leading to limited social acceptance for women in political leadership roles. Socioeconomic barriers arise when women have limited access to education and economic opportunities, limiting their ability to participate in politics.

### Economic Opportunities

Gender dynamics influences economic opportunities and outcomes, leading to gender-based economic inequalities. Women globally experience a gender wage gap, earning less than men in comparable occupations. The wage gap is due to several factors, including occupational segregation, hours worked, and discrimination. Moreover, patriarchal societies limit women's access to formal employment, leading to a disproportionate reliance on informal work or unpaid care work. Such gender-based economic inequalities can limit women's economic empowerment, reducing their ability to achieve economic independence and contribute to sustainable development.

## **THEORIES OF GENDER DYNAMICS AND DEVELOPMENT:**

There are several theories that have been developed to explain the gender dynamics and development.

Here are some of the key theories:

### ➤ Gender and Development (GAD) Theory:

This theory emerged in the 1980s and emphasized the need to consider gender as a central aspect of development. GAD theory recognizes that development policies and programs often reinforce gender inequalities, and it advocates for addressing the underlying power relations that perpetuate gender-based discrimination.

### ➤ Intersectionality Theory:

This theory recognizes that individuals have multiple social identities, such as gender, race, class, and sexuality that intersect and interact with each other to shape experiences of inequality and discrimination. Intersectionality theory emphasizes the need to consider the unique experiences of individuals who hold multiple marginalized identities.

➤ Feminist Theory:

This theory focuses on the ways in which gender inequalities are rooted in patriarchal social structures and norms. Feminist theory advocates for challenging these structures and promoting gender equality through collective action and political mobilization.

➤ Social Constructivist Theory:

This theory posits that gender identities are socially constructed through cultural and historical processes. Social constructivist theory recognizes that gender norms and identities can change over time, and it emphasizes the importance of challenging and transforming these norms to promote gender equality.

Overall, these theories offer different perspectives on the gender dynamics and development and provide useful frameworks for understanding the complex and interconnected factors that shape these processes.

➤ Impact of Gender Dynamics and Development:

The impact of gender dynamics and development has been significant in promoting gender equality and empowering women in the context of development. Here are some of the key impacts:

a) Increased women's economic empowerment:

Gender dynamics and development has led to increased access to resources, training, and opportunities for women in many contexts. This has enabled women to participate more fully in economic activities and has contributed to poverty reduction and economic growth.

b) Improved access to education and healthcare:

Gender dynamics and development has led to increased access to education and healthcare for women, which has contributed to improved health outcomes and increased educational attainment.

c) Increased women's political participation:

Gender dynamics and development has led to increased political participation by women, both at the grassroots and national levels. This has led to greater representation of women in political institutions and increased attention to gender issues in policy-making.

d) Challenging gender norms and stereotypes:

Gender dynamics and development has helped to challenge gender norms and stereotypes that perpetuate gender-based discrimination and violence. This has contributed to increased awareness of the impact of gender on development outcomes and has helped to shift social attitudes towards gender equality.

e) Improved development outcomes:

Gender dynamics and development has contributed to improved development outcomes by recognizing the importance of addressing gender inequalities in all aspects of development. By promoting gender equality and women's empowerment, development initiatives have become more effective, equitable, and sustainable.



Overall, the impact of gender dynamics and development has been significant in promoting gender equality and empowering women, and has contributed to improved development outcomes. However, there is still much work to be done to address the complex and interconnected factors that perpetuate gender inequalities and discrimination.

## CHANGING APPROACH TO GENDER DYNAMICS AND DEVELOPMENT

Development approaches have changed from a Western-centric modernization approach to an inclusive and gendered perspective. The modernization approach aimed to promote economic growth without considering the social dimensions such as gender dynamics. The approach led to unequal outcomes, with women disproportionately affected. The Gender and Development (GAD) perspective emerged in the 1980s, advocating for gender analysis in development planning, implementation, and evaluation. The GAD perspective aims to address social, cultural, economic, and political barriers that limit gender equality. The GAD perspective strives to incorporate gender concerns in all aspects of development policy and practice.

### Research Methodology for Gender Dynamics and Development:

The research methodology for gender dynamics and development should be guided by the principles of gender-sensitive and participatory research, which recognize the importance of engaging with diverse perspectives and experiences and of addressing power dynamics in research.

Here are some key considerations for the research methodology for gender dynamics and development:

Engage diverse perspectives:

Gender dynamics and development research should engage with diverse perspectives and experiences, including those of women, men, and non-binary individuals, and should take into account the intersectionality of gender with other social identities such as race, ethnicity, class, and sexuality. This can be achieved through participatory research methods that involve community members and stakeholders in the research process.

### ❖ Address power dynamics:

Gender dynamics and development research should address power dynamics, both within the research process and in the broader social context. This includes recognizing and addressing power differentials between researchers and participants, as well as the structural power differentials that contribute to gender inequalities.

### ❖ Use mixed methods:

Gender dynamics and development research should use mixed methods that combine quantitative and qualitative data collection and analysis methods. This can provide a more comprehensive understanding of the complex social, economic, and political factors that contribute to gender inequalities and can help to identify effective strategies for promoting gender equality and women's empowerment.

❖ Apply a feminist lens:

Gender dynamics and development research should apply a feminist lens that recognizes the ways in which gender is shaped by and contributes to power relations and social structures. This involves questioning assumptions about gender and power, and recognizing the diverse and complex experiences of women, men, and non-binary individuals.

❖ Ensure ethical considerations:

Gender dynamics and development research should ensure ethical considerations, such as informed consent, confidentiality, and protection of participants' rights and welfare. This involves recognizing and addressing the potential risks and benefits of the research, and engaging in ongoing reflection and dialogue with participants and stakeholders.

Overall, the research methodology for gender dynamics and development should be guided by the principles of gender-sensitive and participatory research, and should strive to engage with diverse perspectives and experiences, address power dynamics, and use mixed methods to provide a comprehensive understanding of gender inequalities and effective strategies for promoting gender equality and women's empowerment.

## CONCLUSION

Gender dynamics is a crucial factor in development interventions because it influences opportunities and outcomes for individuals. Gender-based inequalities are numerous and manifest in different areas like education, health, political representation, and economic opportunities. The global pandemic has highlighted the importance of gender analysis in health interventions, with women being disproportionately affected. Development approaches have changed from a Western-centric modernization approach to an inclusive and gendered perspective, such as the GAD perspective. The GAD perspective strives to address the social, cultural, economic, and political barriers that limit gender equality. Therefore, development interventions must address gender dynamics to achieve sustainable development for all individuals.

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4. "Gender, Development, and Identity: An Ethiopian Study" by Andrea Cornwall and Deborah Eade
5. "Gender and Development: Concepts and Definitions" by Caroline Sweetman
6. "Gender and Development: A Practical Guide" by Janet Mommsen

These resources provide a range of perspectives and approaches to understanding and addressing gender dynamics in development.

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# ROLE OF FEMINIST JURISPRUDENCE AND GENDER EQUALITY

**Swati Sharma**

K. C. Law College, Mumbai - 400020

## **ABSTRACT:**

This research paper explores the role of feminist jurisprudence in promoting gender equality in India. Feminist jurisprudence is a theoretical framework that recognizes the historical and social context of women's experiences and seeks to eliminate gender bias in the law. In India, feminist jurisprudence has played a critical role in addressing the unequal treatment of women in the legal system and in advocating for their rights. The paper examines the historical and cultural context of gender inequality in India. It discusses how norms and practices have shaped the legal system and how these biases have contributed to the marginalization of women in society. It also considers the social and economic factors that contribute to gender inequality, such as the prevalence of dowry practices and the lack of access to education and employment opportunities. The paper then explores the principles of feminist jurisprudence and how they have influenced the development of gender-sensitive laws in India, like the 2021 amendment to Medical Termination of Pregnancy Act, 1971. Feminist legal theorists have argued that the law must be responsive to the lived experiences of women and address their unique needs and concerns. This has led to the development of laws that aim to protect women from domestic violence, sexual harassment, other forms of discrimination and the challenges in implementing these laws, such as lack of resources and political will. It then turns to the role of feminist jurisprudence on the Indian legal system. It examines the role of feminist legal activists in advocating for gender-sensitive laws and challenging discriminatory practices. It also considers the impact of feminist legal education in India and how it has contributed to a greater awareness of gender issues among legal professionals. Finally, the paper considers the future of feminist jurisprudence in India. It discusses the ongoing challenges and the need for continued advocacy and activism. It also considers the potential for feminist jurisprudence to influence other areas of law and promote social justice more broadly.

## **1. INTRODUCTION**

Gender inequality refers to the disparities between women and men in the society in terms of their access and opportunities in the social, economic, and political spheres and their share in decision-making power across all social levels<sup>1</sup>. Gender Gap Index<sup>2</sup> benchmarks gender parity across four key dimensions — economic participation and opportunity, educational attainment, health and survival, and political empowerment. It measures scores on a 0-100 scale, interpreted as the percentage of the gender gap that has been closed. India ranks 135 among 156 countries, which is a poor indicator of gender equality in India<sup>3</sup>. Feminist jurisprudence offers a critical lens to understand and challenge gender inequality. It provides a framework for analyzing the legal system's role in perpetuating gender norms and stereotypes and offers strategies for creating legal reforms that promote gender equality.

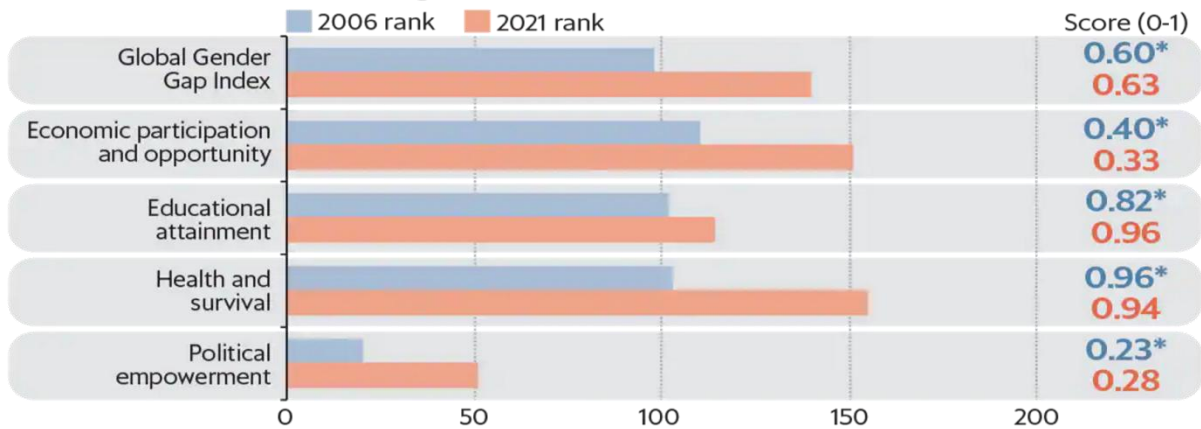
## INDIA'S REPORT CARD

Index/sub-index	2022 (146 countries)		2021 (156 countries)	
	Rank	Score	Rank	Score
<b>Global Gender Gap Index</b>	<b>135</b>	<b>0.629</b>	<b>140</b>	<b>0.625</b>
<b>Political empowerment</b>	<b>48</b>	<b>0.267</b>	<b>51</b>	<b>0.276</b>
<b>Economic participation &amp; opportunity</b>	<b>143</b>	<b>0.350</b>	<b>151</b>	<b>0.326</b>
<b>Educational attainment</b>	<b>107</b>	<b>0.961</b>	<b>114</b>	<b>0.962</b>
<b>Health and survival</b>	<b>146</b>	<b>0.937</b>	<b>155</b>	<b>0.937</b>

Source: World Economic Forum

### Mind the gap

India has slipped 28 places in the World Economic Forum's Global Gender Gap Report 2021, and is now one of the worst performers in South Asia. It is now ranked 140th among 156 nations.



\* Figures closer to 1 indicate greater parity between men and women.

Source: World Economic Forum

### Historical and Cultural context of gender equality in India

India's history of gender inequality is deeply rooted in its cultural and social norms. The patriarchal nature of Indian society has led to the marginalization of women and girls in various aspects of life, including education, employment, and politics.

- Prevalent practice of dowry:** The transfer of wealth, usually in the form of cash, goods, or property, from the bride's family to the groom's family, has been a major cause of gender discrimination in India. It leads to the financial burden on the bride's family, which has resulted in various forms of

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exploitation, like forced domestic work in place of education, harassment, and violence against women and even many dowry death cases (6753 deaths in 2021<sup>4</sup>).

2. **Deeply ingrained gender stereotypes and norms:** Traditionally assigned roles of caregivers and homemakers for women, while men are expected to be the primary breadwinners. These stereotypes have contributed to the low status of women in society and their limited access to education and employment opportunities. Women are often discouraged from pursuing higher education or entering the workforce, which leads to their economic marginalization and dependence on men, causing further exploitation including domestic violence.
3. **The caste system:** The hierarchical social structure that assigns individuals to different social groups based on their birth has traditionally favored women from upper castes, while women from lower castes have faced multiple forms of discrimination and oppression. Dalit women, for example, are at a higher risk of experiencing violence, exploitation, and sexual abuse.
4. **The practice of female infanticide and selective abortion:** These practices have been prevalent in certain parts of India and have contributed to the skewed sex ratio in the country (929/1000 at birth - National Family Health Survey 2021). The cultural preference for sons over daughters has also contributed to the marginalization and neglect of girls, particularly in terms of healthcare and education.
5. **Child marriage:** India has the highest number of child brides in the world, with an estimated 27% of girls being married before the age of 18 (National Crime Records Bureau). Child marriage is associated with a range of negative outcomes, including increased risk of domestic violence, poor health outcomes, and limited opportunities for education and employment.

Thus, the historical and cultural context of gender inequality in India is complex and deeply entrenched. Addressing these issues requires a multi-pronged approach that involves changing cultural attitudes, addressing social and economic inequalities, and advocating for gender-sensitive policies and laws.

## 2. ROLE OF OF FEMINIST JURISPRUDENCE IN DEVELOPMENT OF LAW

Feminist jurisprudence has played a crucial role in advocating for gender-sensitive laws and addressing the unequal treatment of women in the legal system. The principles of feminist jurisprudence that have influenced the development of gender-sensitive laws in India include:

1. **Recognition of gender bias in the law:** Feminist legal theorists have argued that the law has traditionally reflected a male-centric worldview, which has led to the marginalization of women. The principle of recognition of gender bias in the law has led to the development of laws that address discrimination against women, such as the Prevention of Domestic Violence Act, the Prevention of Sexual Harassment (POSH) of Women at Workplace (Prevention, Prohibition and Redressal) Act, and the Dowry Prohibition Act.
2. **Intersectionality:** Feminist legal theorists have argued that gender is not the only axis of oppression that women face. Other social identities, such as caste, class, religion, and sexuality, also play a role in shaping women's experiences of discrimination. The principle of intersectionality has led to the

development of laws that address the specific needs and concerns of marginalized women, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Protection of Transgender Persons Act, 2019.

3. **Empowerment of women:** Feminist legal theorists have emphasized the importance of recognizing the agency of women in the legal system. The principle of empowerment of women has led to the development of laws that aim to promote women's participation in various spheres of life, such as the Equal Remuneration Act, 1976, the Maternity Benefit Act, 1961, and the Protection of Women from Domestic Violence Act, 2005.
4. **Recognition of women's lived experiences:** Feminist legal theorists have argued that the law must be responsive to the lived experiences of women and address their unique needs and concerns. The principle of recognition of women's lived experiences has led to the development of laws that address issues such as sexual harassment, dowry-related violence, and acid attacks.

The influence of feminist jurisprudence on the development of gender-sensitive laws in India can be seen in the various legislative and policy measures that have been enacted over the years. However, the implementation of these laws remains a challenge, and further advocacy and activism are needed to ensure that women's rights are protected and promoted in India.

The Supreme Court of India has recognized the principles of feminist jurisprudence in several landmark judgments, such as the Vishakha case<sup>5</sup>, which led to the development of guidelines for preventing sexual harassment at the workplace and enacting of POSH Act in 2013. Similarly, the National Commission for Women has been instrumental in advocating for gender-sensitive policies and laws, such as the Medical Termination of Pregnancy Act, 1971. The 2021 amendment to the MTP Act (which extended the gestational limit from the current 20 weeks to 24 weeks, decentralized permission process, confidentiality of victim information), has been hailed as a significant step towards ensuring women's reproductive rights and health in India.

### **3. ROLE OF FEMINIST LEGAL ACTIVISTS IN ADVOCATING FOR GENDER-SENSITIVE LAWS**

Feminist legal activists have played a critical role in advocating for gender-sensitive laws in India. These activists have been at the forefront of the struggle for gender equality and women's rights, working tirelessly to bring about legal and policy changes that address the systemic discrimination and violence faced by women in India.

1. One of the key contributions of feminist legal activists has been to bring attention to the gender biases and gaps in existing laws and policies. These activists have used a range of strategies, including research, litigation, and advocacy, to highlight the ways in which laws and policies perpetuate gender-based discrimination and violence against women.

For example, feminist legal activists were instrumental in pushing for the inclusion of the concept of sexual harassment in the workplace in Indian law. In 1997, a group of activists filed a public interest litigation (PIL) in the Supreme Court of India, arguing that sexual harassment at work was a violation of

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women's fundamental rights. As a result of their efforts, the court passed guidelines that defined sexual harassment and provided a mechanism for redressal.

2. Feminist legal activists have also played a key role in advocating for laws that address violence against women, such as the Protection of Women from Domestic Violence Act, 2005, and the Criminal Law (Amendment) Act, 2013, which strengthened the penalties for sexual assault and introduced new offenses such as acid attacks.
3. In addition to advocating for legal changes, feminist legal activists have also worked to raise awareness and build support for gender-sensitive laws and policies. They have organized public campaigns, awareness-raising workshops, and other activities to engage communities and policymakers on issues such as gender-based violence, reproductive rights, and discrimination in the workplace.

Like instant Triple Talaq, before it was declared unconstitutional by the Supreme Court, several feminist organizations, including the Bharatiya Muslim Mahila Andolan, the Bebaak Collective, and the All India Muslim Women Personal Law Board, were actively involved in the campaign against instant triple talaq in Shayara Bano case<sup>6</sup>. They conducted awareness-raising campaigns and provided legal and emotional support to women who had been affected by this practice.

4. Feminist legal activists have also played a crucial role in ensuring the effective implementation of gender-sensitive laws and policies. They have monitored the implementation of laws, provided legal aid and support to women, enabled implementation of compensation schemes<sup>7</sup> for victims and pushed for reforms where there have been gaps or failures.

There are many feminist legal activists in India who have played important roles in advocating for gender-sensitive laws and policies, like Flavia Agnes (Domestic Violence Act), Indira Jaisingh (Vishakha Guidelines), Kirti Singh (Concept of Marital rape in Criminal Law), and many more. Their tireless efforts have helped to bring about important legal changes, raise awareness and build support for gender equality, and ensure that women's rights are protected and promoted in practice. Their work is essential to ensuring that women in India can live free from discrimination, violence, and inequality.

#### **4. ROLE OF FEMINIST LEGAL EDUCATION AND ONGOING CHALLENGES IN INDIA**

Feminist legal education has had and will play a significant role in raising awareness about gender issues among legal professionals.

1. It has contributed to a greater understanding of the ways in which gender intersects with law and has helped to develop a more critical approach to legal analysis.
2. One of the key contributions of feminist legal education has been to challenge traditional legal concepts and categories that have historically excluded women and other marginalized groups.
3. Feminist legal scholars and educators have sought to re-examine legal principles and frameworks from a gender-sensitive perspective, highlighting the ways in which law can reinforce or challenge gender-based discrimination and inequality.

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4. Feminist legal education has also helped to create a space for dialogue and collaboration between legal professionals and women's rights activists. This has led to a greater recognition of the importance of interdisciplinary approaches to legal issues and has helped to bridge the gap between legal theory and practice

Feminist legal education has helped to create a more inclusive and responsive legal system, one that is better equipped to address the diverse needs and experiences of all members of society, regardless of gender.

## 5. THE FUTURE OF FEMINIST JURISPRUDENCE IN INDIA

Feminist jurisprudence in India has come a long way in the past few decades, but there is still much work to be done. Looking to the future, there are several key areas in which feminist jurisprudence is likely to play an increasingly important role in advancing gender equality and justice in India.

1. **Intersectionality:** One of the key challenges facing feminist jurisprudence in India is the need to address the multiple and intersecting forms of discrimination that women face, including those related to caste, class, religion, and sexuality. Moving forward, feminist legal scholars and activists are likely to place a greater emphasis on intersectionality, both in terms of analyzing legal issues and in developing strategies for advocacy and reform.
2. **Technology and the Law:** As technology continues to transform the social and economic landscape in India, feminist jurisprudence is likely to play an important role in shaping legal responses to issues such as online harassment, privacy, and data protection. Feminist legal scholars and activists will need to stay abreast of developments in this area and work to ensure that the law remains relevant and responsive to the needs and experiences of women in the digital age.
3. **Global Perspectives:** Feminist jurisprudence in India has traditionally been rooted in local and national contexts, but there is growing recognition of the importance of global perspectives in addressing gender-based discrimination and inequality. Feminist legal scholars and activists are likely to continue to engage with international legal frameworks and institutions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Criminal Court (ICC), in order to advance the cause of gender justice and equality.
4. **Institutional Change:** Finally, feminist jurisprudence in India is likely to play an increasingly important role in driving institutional change within the legal profession and the broader society. This may involve efforts to increase the representation of women in the judiciary and legal profession, to promote gender-sensitive legal education and training, and to challenge patriarchal norms and attitudes that underpin gender-based discrimination and inequality.

One example of the potential for feminist jurisprudence to influence other areas of law is in the area of criminal justice. Historically, criminal justice systems have been designed and implemented in ways that disproportionately impact women and other marginalized groups. For example, women who are victims of sexual assault or domestic violence may be re-victimized by the criminal justice system due to biases and stereotypes held by police officers, prosecutors, and judges. Feminist jurisprudence can help to challenge and transform these systems by advocating for greater sensitivity to the needs and experiences



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of women who come into contact with the criminal justice system. This may involve reforms to laws and policies related to sexual assault and domestic violence, as well as changes to the ways in which law enforcement officials are trained and held accountable.

Another recent example has been the Indian Young Lawyers Association v. State of Kerala (Sabarimala case) 2018<sup>8</sup>, which played an important role in promoting gender equality in India by challenging traditional beliefs and practices that excluded women from certain public spaces, upholding constitutional guarantees of equality and non-discrimination, and raising public awareness about the importance of women's rights and gender equality.

Despite significant progress in recent years, there are still several challenges in promoting gender equality in India. These challenges include gender-based violence, economic inequality, Lack of political representation, discrimination against marginalized women, digital gender divide. Addressing these challenges will require continued advocacy and activism to promote gender equality in India. This can include legal activism to ensure that laws and policies promote gender equality and protect the rights of women, as well as efforts to change cultural norms and attitudes towards gender. It is also important to ensure that women have access to education, economic opportunities, and political representation. By working together, the government, civil society, and the private sector can promote gender equality and empower women in India.

Overall, the future of feminist jurisprudence in India is likely to be characterized by ongoing engagement with a range of complex legal and social issues, as well as a continued commitment to advancing gender justice and equality through the law. While progress may be slow and uneven, the work of feminist legal scholars and activists will remain critical in shaping the legal landscape and promoting greater social and economic empowerment for women in India.

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# GENDER EQUALITY VIS-À-VIS LGBTQ + COMMUNITY: AN EXPLORATION OF INTERSECTIONALITY AND SOCIAL PROGRESS IN INDIA

**Ms. Tahira Siddique**

Research Scholar, Himalayan University, Itanagar, Arunachal Pradesh.

## ABSTRACT:

*Gender Equality and LGBTQ+ rights are interconnected social issues that require attention and action. Discrimination and prejudice against the LGBTQ+ community are often rooted in gender stereotypes and norms, making it difficult for LGBTQ+ individuals to achieve gender equality. Intersectionality theory suggests that social inequalities such as race, gender, class and sexuality are interconnected and mutually reinforcing. LGBTQ+ people face unique challenges in higher education, including discrimination, harassment and a lack of support from peers and faculty. These challenges can impact their academic performance and mental health, making it difficult for them to achieve their full potential. Higher education leaders must take steps to create a safe and inclusive environment for LGBTQ+ students, including providing resources and support services. Such inequalities tend to limit their career opportunities and impact their mental health.*

*Gender equality and LGBTQ+ rights are two critical aspects of social justice that have gained significant attention in recent decades. While progress has been made in advancing gender equality and LGBTQ+ rights independently, the intersectionality between these two issues remains a subject that requires further exploration. This research article aims to investigate the interconnectedness of gender equality and LGBTQ+ rights, in the Indian context, highlighting the challenges faced by the LGBTQ+ community, particularly in relation to gender identity and sexual orientation. It also examines the importance of inclusive policies and practices to ensure the realization of true equality for all individuals, regardless of their gender or sexual orientation.*

**Keywords:** LGBTQ+, gender, equality, development, rights.

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## INTRODUCTION:

India, with its diverse cultural and social fabric, has witnessed significant progress in the realm of gender equality and LGBTQ+ rights in recent years. However, it is important to recognize that there are still significant challenges and gaps that need to be addressed.

India has a complex history when it comes to gender equality. Traditional gender roles and patriarchal norms have influenced societal attitudes and practices, resulting in gender-based discrimination and inequality. Women in India have faced various forms of discrimination, including limited access to education, restricted economic opportunities and violence against women, such as domestic violence and sexual assault.

Efforts towards gender equality in India can be traced back to the country's independence movement in the mid-20<sup>th</sup> century. The Indian Constitution, adopted in 1950, guarantees fundamental rights and

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equality before the law for all citizens. The Constitution prohibits discrimination based on gender and provides affirmative action measures to address historical disadvantages faced by women.

Over the years, India has implemented several legislative and policy measures to promote gender equality. These include the Equal Remuneration Act of 1976, the Protection of Women from Domestic Violence Act of 2005, and the Maternity Benefit Act of 2017, among others. Additionally, campaigns and initiatives aimed at raising awareness about gender issues and empowering women have gained traction in both urban and rural areas.

LGBTQ+ rights in India have been a topic of considerable debate and transformation. Historically, same-sex relationships were criminalized under Section 377 of the Indian Penal Code, a colonial-era law. This law criminalized “unnatural offences” and was often used to target and discriminate against LGBTQ+ individuals.

In a significant milestone, the Indian Supreme Court, in a landmark judgment in 2018, decriminalized consensual same-sex relationships by striking down Section 377. The Court recognized that sexual orientation is an essential attribute of privacy and upheld the right to equality for LGBTQ+ individuals.

While the decriminalization of homosexuality was a significant step forward, challenges remain. LGBTQ+ individuals in India face societal prejudice, discrimination, and violence. They often encounter difficulties in accessing healthcare, education, employment, and other fundamental rights. Legal recognition of transgender rights and issues related to gender identity and expression also require further attention and progress. Nonetheless, there has been a growing LGBTQ+ rights movement in India, with numerous organizations, activists, and allies advocating for inclusivity, equal rights, and social acceptance. Pride parades, cultural events, and community-led initiatives have contributed to increasing visibility and fostering dialogue on LGBTQ+ rights in the country.

#### **AIMS AND OBJECTIVES:**

1. To understand the term gender equality.
2. To understand the concept and identity of LGBTQ +Community.
3. To study the issues faced by LGBTQ +Community.
4. To understand the rights of the LGBTQ +Community in India and the struggle for societal acceptance.
5. To study the initiatives taken by the government for transgender persons.

#### **STATEMENT OF PROBLEM:**

The problem addressed by this research is the existing gaps and challenges in achieving gender equality vis-à-vis LGBTQ+ rights in India, particularly in relation to intersectionality and social progress. While there have been advancements in both gender equality and LGBTQ+ rights individually, understanding their intersection and the unique challenges faced by individuals who belong to both marginalized communities are essential for comprehensive social change. To address these issues, organizations must take steps to create a more inclusive workplace culture that values diversity and promotes equality. The COVID-19 crisis has amplified the need for intersectionality as those experiencing intersectional discrimination face disproportionate impacts in terms of access to healthcare.

**RESEARCH QUESTION:**

What are the intersections of gender equality and LGBTQ+ rights in India, and how do they contribute to or hinder social progress and inclusivity for individuals belonging to marginalized gender and sexual orientation groups?

**RESEARCH METHODOLOGY:**

It is a mixed-methods research approach to comprehensively examine the intersections, challenges, and progress related to gender equality and LGBTQ+ rights in India. The methodology incorporates both quantitative and qualitative methods to gather and analyze data, allowing for a more holistic understanding of the research topic. By employing a mixed-methods research approach, the study aims to provide a comprehensive understanding of the intersections and social progress related to gender equality and LGBTQ+ rights in India. The integration of quantitative and qualitative data allows for a more nuanced analysis and a richer understanding of the research topic.

**GENDER EQUALITY AND LGBTQ+ RIGHTS IN INDIA:**

Gender inequality has been deeply ingrained in Indian society, with traditional norms and patriarchal values influencing social attitudes and practices. Women in India have faced various forms of discrimination, including limited access to education, restricted economic opportunities, and gender-based violence such as domestic abuse and sexual assault. To address these inequalities, India has implemented legislative and policy measures. The Constitution of India, adopted in 1950, provides a foundation for gender equality by guaranteeing fundamental rights and prohibiting discrimination based on gender. Additionally, specific laws have been enacted to promote gender equality, including the Equal Remuneration Act of 1976, which mandates equal pay for equal work, and the Protection of Women from Domestic Violence Act of 2005, which provides legal protection for victims of domestic abuse. Judicial developments have also played a crucial role in advancing gender equality in India. Landmark cases such as Vishaka v. State of Rajasthan (1997) recognized sexual harassment at the workplace as a violation of fundamental rights, leading to the formulation of guidelines to prevent and address workplace harassment. These guidelines, known as the Vishaka Guidelines, provided interim measures until the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013 was enacted.

**LEGAL FRAMEWORK: LAWS AND JUDICIAL DEVELOPMENTS**

The legal framework governing LGBTQ+ rights is a critical area of study for researchers examining the experiences and challenges faced by the LGBTQ+ community. Laws and judicial developments play a crucial role in shaping the rights, protections, and social recognition of individuals based on their sexual orientation and gender identity. This section provides a background on the legal framework pertaining to LGBTQ+ rights, focusing on laws and significant judicial developments.

India's legal landscape concerning LGBTQ+ rights has evolved over time. Historically, same-sex relationships were criminalized under Section 377 of the Indian Penal Code, a colonial-era law. Section 377 criminalized "unnatural offenses" and was often used to target and discriminate against LGBTQ+ individuals.

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In a landmark judgment, *Navtej Singh Johar v. Union of India (2018)*, the Supreme Court of India struck down Section 377, decriminalizing consensual same-sex relationships. The court held that sexual orientation is an essential attribute of privacy, dignity, and individual autonomy, affirming the rights of LGBTQ+ individuals.

Recognizing the unique challenges faced by transgender individuals, the legal framework has seen significant developments. The Transgender Persons (Protection of Rights) Act, 2019, provides legal recognition and protection to transgender individuals. It recognizes their right to self-perceived gender identity, prohibits discrimination, and mandates access to healthcare, education, employment, and welfare schemes.

Although there is no comprehensive anti-discrimination legislation specific to sexual orientation and gender identity in India, certain provisions offer some protection. The Constitution of India guarantees the right to equality (Article 14) and prohibits discrimination on grounds of sex (Article 15). Courts have interpreted these provisions to include protection against discrimination based on sexual orientation and gender identity.

Despite legal advancements, societal attitudes and prejudices continue to pose challenges for the LGBTQ+ community. Discrimination, stigmatization, and violence against LGBTQ+ individuals persist. Barriers in accessing healthcare, education, employment, and housing also persist, limiting their opportunities and overall well-being.

India is a signatory to various international human rights conventions that protect LGBTQ+ rights, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. These conventions provide a framework for understanding and advocating for LGBTQ+ rights in India.

## **POLICY INITIATIVES AND GOVERNMENT PROGRAMS**

Promoting gender equality and protecting LGBTQ+ rights require a comprehensive approach that involves policy initiatives and government programs. In India, various policy measures and programs have been implemented to address the challenges faced by marginalized groups, ensure inclusivity, and create an environment that upholds the principles of equality and non-discrimination. This section explores some of the key policy initiatives and government programs aimed at advancing gender equality and LGBTQ+ rights in India.

*National Policy for Women's Empowerment:* The Government of India formulated the National Policy for Empowerment of Women in 2001, which outlines a comprehensive framework to address gender disparities and promote women's rights. The policy focuses on areas such as education, health, economic empowerment, political participation, and legal rights. It aims to enhance gender equality through targeted interventions, affirmative action, and the promotion of women's leadership and decision-making roles.

*National Mission for Empowerment of Women:* The National Mission for Empowerment of Women (NMEW) was launched in 2010 with the objective of strengthening the overall status of women in India.

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The mission aims to address issues such as violence against women, economic empowerment, health and nutrition, education, and political participation. NMEW supports various initiatives and programs that empower women and promote their rights at the grassroots level.

*Beti Bachao, Beti Padhao (Save the Girl Child, Educate the Girl Child):* Launched in 2015, the Beti Bachao, Beti Padhao (BBBP) initiative focuses on improving the declining child sex ratio and promoting the education of girls. The program raises awareness about gender discrimination, advocates for equal opportunities for girls, and implements interventions to prevent female foeticide, child marriage, and other harmful practices. BBBP seeks to empower girls and ensure their participation in all spheres of life.

*National Legal Services Authority (NALSA) and Access to Justice:* NALSA, established under the Legal Services Authorities Act, 1987, aims to provide free legal services to marginalized sections of society, including women and the LGBTQ+ community. NALSA recognizes the importance of access to justice and has taken steps to address the legal needs of individuals facing discrimination based on gender or sexual orientation. It has played a pivotal role in transgender rights by issuing directives to ensure legal recognition, access to justice, and welfare measures for transgender individuals.

*Transgender Welfare Board and Schemes:* Several states in India have established Transgender Welfare Boards to address the specific needs and concerns of transgender individuals. These boards work towards providing education, healthcare, livelihood opportunities, and social welfare schemes to uplift the transgender community. Additionally, various state governments have launched specific schemes, such as scholarship programs and skill development initiatives, to empower transgender individuals and promote their inclusion in society.

*National Education Policy (NEP) 2020:* The NEP 2020 recognizes the importance of gender equality and inclusivity in education. It emphasizes the need for gender-responsive curriculum, safe and inclusive educational environments, and measures to address gender-based violence and discrimination in educational institutions. The policy promotes gender equality by encouraging girls' education, ensuring equal opportunities for all students, and challenging gender stereotypes in the education system.

*Sexual Harassment Prevention at the Workplace:* The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, mandates the prevention and redressal of sexual harassment in the workplace. It requires employers to establish Internal Complaints Committees and ensures a safe and harassment-free working environment for women. The Act provides a mechanism for victims to report incidents of sexual harassment and seek redressal.

## **SOCIAL ATTITUDES AND PUBLIC PERCEPTION**

Social attitudes and public perception play a crucial role in shaping the environment in which gender equality and LGBTQ+ rights are advocated and implemented. In India, a country with diverse cultural, religious, and social backgrounds, attitudes towards gender equality and LGBTQ+ rights vary widely. This section explores the social attitudes and public perception towards these issues, highlighting both the progress made and the challenges that persist.

*Traditional Gender Roles and Patriarchal Norms:* Indian society has traditionally been characterized by deeply ingrained gender roles and patriarchal norms. These norms often perpetuate stereotypes and

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inequalities, assigning specific roles and responsibilities to men and women. While there have been significant advancements in challenging traditional gender roles, certain segments of society continue to adhere to conservative attitudes that limit women's opportunities and reinforce gender-based discrimination.

*Intersectionality and Multiple Forms of Discrimination:* It is important to recognize the intersectionality of gender and other social identities, such as caste, class, religion, and ethnicity, which further influence social attitudes. Individuals facing multiple forms of discrimination may experience heightened barriers to equality and face complex challenges in gaining acceptance and support. Marginalized groups within the LGBTQ+ community, such as transgender individuals and those from lower socio-economic backgrounds, often face higher levels of discrimination and exclusion.

*Changing Perceptions and Increasing Awareness:* In recent years, there has been a noticeable shift in public perception towards gender equality and LGBTQ+ rights. Increased media visibility, educational initiatives, and advocacy efforts have contributed to raising awareness and challenging societal norms. The younger generation, in particular, exhibits more progressive attitudes towards gender equality and LGBTQ+ rights, demonstrating a growing acceptance and inclusivity.

*Role of Media and Entertainment:* The media and entertainment industry have played a significant role in shaping public perception. While some media platforms have actively promoted gender equality and LGBTQ+ representation, others continue to perpetuate stereotypes and biases. Positive portrayals and authentic representation of diverse gender identities and sexual orientations in media can help foster understanding and acceptance. *Resistance and Challenges:* Despite progress, there are segments of society that continue to resist and oppose gender equality and LGBTQ+ rights. Religious conservatism, cultural conservatism, and lack of understanding contribute to the resistance. Conservative groups often frame these issues as threats to traditional values and norms, leading to societal divisions and hindering progress.

*Grassroots Movements and Civil Society Activism:* Civil society organizations, LGBTQ+ advocacy groups, and grassroots movements have played a crucial role in driving social change and challenging discriminatory attitudes. Pride parades, awareness campaigns, and community-led initiatives have created platforms for dialogue, visibility, and education. These efforts have been instrumental in shifting public perception, fostering empathy, and promoting social acceptance.

*Legal Reforms and Judicial Pronouncements:* Legal reforms and landmark judicial pronouncements have played a significant role in shaping public perception. The decriminalization of consensual same-sex relationships and the recognition of transgender rights by the Indian Supreme Court have sent powerful messages of inclusivity and equality. These developments have helped challenge societal prejudices and contribute to changing attitudes towards the LGBTQ+ community.

## **CHALLENGES FACED BY THE LGBTQ+ COMMUNITY IN INDIA**

The LGBTQ+ (Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, and others) community in India faces a myriad of challenges in their pursuit of equal rights, social acceptance, and inclusion. Despite significant legal advancements in recent years, deeply ingrained societal attitudes, discriminatory



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practices, and lack of comprehensive protection continue to hinder the progress of LGBTQ+ rights. This section explores some of the key challenges faced by the LGBTQ+ community in India.

*Section 377 and Legal Ambiguity:* Until September 2018, Section 377 of the Indian Penal Code criminalized consensual same-sex relationships, contributing to the stigmatization and persecution of LGBTQ+ individuals. Although the Supreme Court of India decriminalized homosexuality and recognized the rights of LGBTQ+ individuals, legal ambiguity remains in areas such as marriage, adoption, and inheritance. The absence of comprehensive legislation protecting LGBTQ+ rights create uncertainties and challenges for individuals seeking legal recognition and protection. *Social Stigma and Discrimination:* The LGBTQ+ community in India faces pervasive social stigma and discrimination. Homophobia, transphobia, and prejudice based on gender identity and sexual orientation are prevalent in various spheres of life, including families, schools, workplaces, and public spaces. LGBTQ+ individuals often experience verbal abuse, physical violence, and exclusion from social and economic opportunities, leading to mental health issues and limited access to essential services.

*Lack of Inclusive Education and Awareness:* Education plays a crucial role in challenging stereotypes and fostering inclusivity. However, Indian schools and educational institutions often lack comprehensive sex education that includes information about diverse sexual orientations and gender identities. This results in a lack of understanding and acceptance among students and teachers, perpetuating discrimination and marginalization of LGBTQ+ students. The absence of inclusive policies and support systems further hampers their educational experiences.

*Healthcare Disparities and Access:* LGBTQ+ individuals face significant disparities in accessing healthcare services. Many healthcare providers lack proper training and awareness regarding the specific healthcare needs of the LGBTQ+ community. Discrimination, inadequate mental health support, and the lack of LGBTQ+ friendly services deter individuals from seeking essential healthcare, resulting in compromised well-being and higher vulnerability to health risks.

*Family Rejection and Homelessness:* Family rejection is a harsh reality for many LGBTQ+ individuals in India. The deeply rooted cultural and social norms, coupled with societal pressures, often lead to estrangement, disownment, and abandonment. As a result, many LGBTQ+ youth are forced into homelessness, exposing them to further risks, including poverty, exploitation, and vulnerability to violence. *Employment Discrimination:* LGBTQ+ individuals frequently face discrimination in the workplace. Prejudice, biases, and stereotypes result in unequal employment opportunities, lower wages, and limited career advancement prospects. Fear of discrimination and lack of legal safeguards often lead to the concealment of sexual orientation or gender identity, causing psychological stress and impacting professional growth and overall well-being. *Limited Legal Protection and Rights:* Although the decriminalization of homosexuality was a significant milestone, comprehensive legal protections for the LGBTQ+ community are still lacking in India. There is no specific anti-discrimination law that covers sexual orientation and gender identity. This absence leaves LGBTQ+ individuals vulnerable to discrimination in various aspects of life, including housing, healthcare, education, and public services. *Transgender Rights and Marginalization:* Transgender individuals face unique challenges and marginalization within the LGBTQ+ community. Limited access to healthcare, education, employment, and social welfare exacerbates their vulnerability. The legal recognition of transgender rights, such as the

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right to self-identify and access affirmative measures, is still evolving, and implementation remains a challenge.

### CONCLUSION AND SUGGESTIONS:

Gender equality and LGBTQ+ rights are fundamental principles of human rights and social justice. In India, a country with a rich cultural and social tapestry, progress has been made towards promoting gender equality and recognizing the rights of the LGBTQ+ community. However, significant challenges persist, necessitating continued efforts to achieve true equality, inclusivity, and social acceptance for all individuals, regardless of their gender or sexual orientation.

The intersections of gender equality and LGBTQ+ rights in India involve the recognition of diverse gender identities and sexual orientations, including women, transgender individuals, and gender non-conforming individuals. Intersectionality acknowledges that individuals experience multiple forms of discrimination and disadvantage based on their gender, sexuality, caste, class, religion, and other social identities. These intersections shape their experiences and access to rights, resources, and opportunities.

The legal framework for LGBTQ+ rights in India has witnessed significant developments, particularly with the decriminalization of same-sex relationships and the recognition of transgender rights. However, challenges such as discrimination, stigmatization, and limited access to services persist. Researchers studying LGBTQ+ rights in India need to examine the impact of these legal reforms, analyze the effectiveness of existing laws and policies, and identify areas where further legal advancements are required to ensure full equality and protection for the LGBTQ+ community.

The intersections of gender equality and LGBTQ+ rights in India are crucial for achieving social progress and inclusivity for individuals belonging to marginalized gender and sexual orientation groups. By recognizing and addressing these intersections, society can work towards dismantling discriminatory practices, promoting equal rights and opportunities, and fostering a more inclusive and equitable environment for all individuals, regardless of their gender or sexual orientation.

Social attitudes and public perception towards gender equality and LGBTQ+ rights in India are multifaceted, reflecting a combination of traditional norms, evolving perspectives, and resistance to change. While progress has been made, there are persistent challenges, including deeply ingrained patriarchal attitudes and societal divisions. Continued efforts are needed to challenge stereotypes, promote awareness and understanding, and foster inclusive environments that uphold the principles of equality and non-discrimination for all individuals, regardless of their gender or sexual orientation.

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## THE ROLE OF INDIAN JUDICIARY IN ENSURING GENDER EQUALITY

**J. R. Mulani**

Research Scholar,  
Dept. of Law, University of Mumbai

*“A woman cannot be herself in the society of the present day, which is an exclusively masculine society, with laws framed by men and with a judicial system that judges feminine conduct from a masculine point of view.” - Henrik Ibsen<sup>1</sup>*

### INTRODUCTION.

The Highest Court in India in case of *“Aparna Bhat and Others ..Vs.. State of Madhya Pradesh”*<sup>2</sup> has held that “Judges can play a significant role in ridding the justice system of harmful stereotypes. They have an important responsibility to base their decisions on law and facts in evidence, and not engage in gender stereotyping. This requires judges to identify gender stereotyping, and identify how the application, enforcement or perpetuation of these stereotypes discriminates against women or denies them equal access to justice.” Further, base of equality is also found to be established before more than thousand years in religious scriptures: -

“So, God created man in his own image, in the image of God created he him: male and female created he them.”<sup>3</sup>

As a result, God made no discrimination between male and female during creation process, and men and women both reflect the image of God equally. In our society, women are valued for their contributions to family happiness and to society's construction as architects. As a result, it is written in Sanskrit:

**“नारी अस्य समाजस्य कुशलवास्तुकारा अस्तस्त।”**

*Nārī Asya Samājasya Kuśalavāstukārā Asti. English Translation: Woman is the architect of this society.*<sup>5</sup>

As a result, there was no gender inequality in the beginning, and the role of the woman in raising her family and, as a consequence, society was valued. Unfortunately, this topic of gender justice is now a cause for concern in many countries. Part III of the Indian Constitution's essential rights are accessible to all Indian citizens, regardless of gender. The Indian Judiciary has played significant role in ensuring and establishing Gender Equality on the basis of such fundamental rights.

<sup>1</sup>Dhyani, S. (2022, March 4). नारी घर संस्कृत श्लोक | International Women's Day Quotes in Sanskrit. Sanskrit School; <https://www.facebook.com/sanskritschool.in/>. <https://www.sanskritschool.in/shlok/international-womens-day-quotes-in-sanskrit/>

## LANDMARK JUDGMENTS OF THE SUPREME COURT;

### 1. Transgender people have the right to be called "third gender."

On January 10, 2020, “Transgender Persons (Protection of Rights) Act 2019” brought into force to ensure the rights of transgender and wellbeing. But before such enactment, the Apex Court in the year 2014 in the significant case of “*National Legal Services Authority ..Vs.. Union of India*”<sup>5</sup> upheld the basic, essential rights of third gender-transgender persons, including the rights of self of gender, rights of education, rights of access to public areas, and rights to work opportunities. The court also declared Hijras as well as eunuchs "third gender" for the sake of protecting their rights under Part III of Constitution and Parliament and State Legislature statutes.

### 2. The Rule demanding formal authorization from the Government for marriage by female foreign service employees; -

Miss Muthamma, the petitioner in her case of “*C.B. Muthamma ..Vs.. Union of India*,”<sup>6</sup> claimed that she was refused promotion in the field of the Indian Foreign Service's Grade-I because she was a woman. Before marriage, a woman must obtain written permission from the Government, according to “Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961”. Married women were not permitted to be assigned to service as per the “Indian Foreign Service (Recruitment, Cadre, Seniority, and Promotion) Rules, 1961”. However, Justice V R Krishna Iyer declared that if a woman employee in foreign service must obtain Government approval before marrying, the Government runs the same risk if a male member marries, calling such a policy discriminatory and unconstitutional.

### 3. Absolute ownership of stridhan property even if spouse or family have possession;

*In case of “Pratibha Rani ..Vs.. Suraj Kumar,”*<sup>7</sup> Apex Court overruled the viewpoint of “*Punjab and Haryana High Court*” taken in case of “*Vinod Kumar Sethi v. State of Punjab [AIR 1982 P and H 372]*” and held that in case of property or material of stridhan, the husband or any close relative of his family who violates such absolute rights of wife will be punished for the crime of criminal breach of trust. The title always stays with the wife, even if custody of the property may sometimes be with them. Resultantly, the fact that the wife lives along with her life partner – husband and uses the dowry things jointly together does not impair her absolute ownership over them.

<sup>2</sup>2021 SCC OnLine SC 230

<sup>3</sup>*ibid.*

<sup>4</sup>Genesis Chap.1;27, The Holy Bible, King James Version, (2001) published bEverlasting Gospel Publishing Association, Seoul, Korea.

<sup>5</sup>2014 SCC OnLine SC 328

<sup>6</sup>(1979)4 SCC 260

<sup>7</sup>1985 SCC (Cri) 180

#### 4. During the father's lifetime, mother might be the Natural Guardian.

According to the legislation, the natural guardian of a minor is "the father, and after him, the mother" under "section 6 (a) of the Hindu Minority and Guardianship Act 1956". but in matter of "*Githa Hariharan ..Vs.. Reserve Bank of India*,"<sup>8</sup> Supreme Court construed said section of the said Act, to allow the mother to function as the minor's natural guardian if the father was not in care of the minor's affairs on the basis of gender equality.

#### 5. Safe workplaces free from sexual harassment are fundamental to a fulfilling career.

Gender equality involves protection from harassment as well as the right of work with honour and ignity and such civil right is recognised worldwide. In "*Vishaka ..Vs.. State of Rajasthan*,"<sup>9</sup> the Apex Court applied some clause of the "Convention on the Elimination of All Forms of Discrimination against Women" and found that workplace sexual harassment amounts to violation and infringement of Article 14, Articles 15 and 21 of the Indian Constitution's feminism and life and liberty rights.

The Vishaka Judgment was followed by "*Apparel Export Promotion Council ..Vs.. Chopra*,"<sup>10</sup> which declared that sexual harassment constitutes genderbased inequality and cited the ILO. In 2007, Parliament presented the Sexual Harassment at Workplace Bill, but it was not approved until 2013.

#### 6. Pregnant woman's consent is needed for pregnancy termination.

In case of *Suchita Srivastava ..Vs.. Chandigarh Admn*,<sup>11</sup> the Apex Court ruled that the victim's reproductive choice should be respected and that the pregnant woman's consent is necessary to terminate the pregnancy under "Section 3(4)(b) of the MTP Act, 1971". Except for when the pregnant woman is under 18 years old, "mentally ill," or immediately necessary to save her life.

#### 7. Equal rights for women in coparcenary property.

Since 9.9.2005, the daughter may seek division of coparcenary property under "sections 6(1) and 6(2) of the Hindu Succession Act,1956". Now, daughters have equal and same rights with brothers. In "*Vineeta Sharma ..Vs.. Rakesh Sharma*,"<sup>12</sup> the Supreme Court reversed the conflicting opinions held in "*Prakash v. Phulavati* (2016) 2

SCC 36 and *Mangammal v. T.B. Raju* (2018) 15 SCC 662". It is also ruled that the decision in "*Danamma v. Amar* (2018) 3 SCC 343" is partially overturned to the degree that it contradicts the decision and ordered to submit the cases before proper Bench for merits judgment and observed that substituted "section 6 of the Hindu Succession Act, 1956" grants daughters born either before or after the amendment's coparcener status with the same rights and duties as sons. Since coparcenary rights are inherited, father coparcener need not be alive on 9.9.2005. It is further held that different High Courts and lower courts are hearing suits/appeals due to legal impasse induced by opposing judgments, the pending proceedings should be resolved within six months.

<sup>8</sup>1999 SCC OnLine SC 179

<sup>9</sup>1997 SCC (Cri) 932

<sup>10</sup>1999 SCC OnLine SC 39

<sup>11</sup>2009 SCC OnLine SC 1562

<sup>12</sup>2020 SCC OnLine SC 641

## 8. Ipc Section 497 Is Invalid Since It Violates Articles 14, 15, And 21;

In “*Joseph Shine ..Vs.. Union of India*,”<sup>13</sup> a five-judges panel of the Apex Court with one accord repealed section 497 of the IPC, which criminalises adultery, as unconstitutional since it presumes that a woman is her husband's property. The Section discriminated against married women and encouraged gender stereotypes, violating their privacy and liberty.

## 9. Gender Inequality In The Army, Navy And Air Force;

*“Nature gave women too much power; the law gives them too little.”*

by “Will Henry, American political adviser and columnist”<sup>14</sup>.

Short Service Commissions (SSCs) have allowed women to serve into restricted sections of the Armed Forces. Their demand is for Permanent Commission (PC). These SSC officials have served for up to 14 years. Without PC, these officers lose pension, exserviceman status, medical benefits and more. In 2010 in matter of *Babita Puniya ..Vs.. Secretary*<sup>15</sup>, Delhi High Court, found gender discrimination in the refusal of military service. The court ordered that SSC women officers in Air Force, Army who elected for PC but given extension of SSCs are eligible for PC on the same terms and manner as male SSC officers resultant advantages. Only just the Air Force implemented the order of the Delhi High Court. The Indian Army appealed to the Supreme Court in “*Secretary, Ministry of Defense ..Vs.. Babita Puniya*,”<sup>16</sup> where the Supreme Court ruled that women officers who are SSC serving for more than 14 years but have not chosen or opt for PCs may continue to serve till 20 years of pensionable service. In *Union of India ..Vs.. Annie Nagaraja*<sup>17</sup>, Supreme Court in 2020 again ruled that all SSC women officers who were refused PCs and are not in service would be regarded, as a one-time measure, to have completed substantial pensionable service. The Supreme Court in 2022, in case of *Wg Cdr A.U. Tayyaba (Retd) ..Vs.. Union of India*<sup>18</sup> awarded benefits to the retired women Army officers and removed the pernicious effects of gender discrimination and directed that all the women SSCOs governed in that case shall be considered for the grant of onetime pensionary benefits.

## 10. Gender discrimination in getting income tax advantages eliminated.

The Supreme Court recently considered the law laid down in “section 10 (26AAA) of the Income Tax Act, 1961” in the case of “*Association of old settlers of Sikkim ..Vs.. Union of India (2023 SCC OnLine SC 38)*” which prohibited a Sikkimese woman from marrying a non-Sikkimese man after April 1, 2008 for receiving income tax benefits. The Court considered that such prohibition infringes articles 14 and 15 of the Constitution on the basis of gender, race, and gender-based discrimination and liable to be repealed and struck down since the Act does not exclude a Sikkimese man from claiming exemption after marrying a non-Sikkimese woman after April 1, 2008.

<sup>13</sup>2018 SCC OnLine SC 1676

<sup>14</sup>2010 SCC OnLine Del 1116

<sup>15</sup>*Supra*.

<sup>16</sup>2020 SCC OnLine SC 200

<sup>17</sup>2020 SCC OnLine SC 326

<sup>18</sup>2022 SCC OnLine SC 1783

### 11. Denying the daughter of a Tribal community's right to property;

In *Kamla Neti ..Vs.. Special Land Acquisition Officer*,<sup>19</sup> the Supreme Court rejected the appeal but found that where a non-tribal daughter is entitled to an equal part in her father's land, there is no basis for denying such right to a tribal daughter. Intestate succession equals male and female tribal. It is held that the Central Government should reform the Hindu Succession Act to the extend of Scheduled Tribes.

### **CONCLUSION**

Finally, it is important to note that gender equality is about mental conflicts. Women have been denied their legal rights and equitable treatment in family, community, and the job throughout history. As mentioned above, the Indian courts have and are playing a crucial role in breaking gender stereotypes and fostering gender equality by reading legislation in their true meaning. Long-term national growth requires gender equality. The Supreme Court ruled in *Aparna Bhat*,<sup>20</sup> case that Sexual offences and gender sensitization and awareness must be included in the All-India Bar Examination curriculum by the Bar Council of India (BCI).

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<sup>19</sup>2022 SCC OnLine SC 1694

<sup>20</sup>2021 SCC OnLine SC 230



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## A STUDY ON SEXUAL HARASSMENT AT THE WORKPLACE: IS A GENDER-NEUTRAL LAW NEEDED AT THIS TIME?

Adv. Rahul Dinesh Rai

Shree L.R. Tiwari College of Law (Visiting faculty)



**ABSTRACT:**

This research paper addresses sexual harassment in the workplace. Our nation's legislature passed a law called “Sexual Harassment of Women (Prevention, Prohibition, and Redressal) Act, 2013”, which addresses sexual harassment of women in the workplace. In contrast, the law is silent about sexual harassment of men, transgender people, and bisexual people. The main objective of the study was to find out if people are aware of the above-mentioned law on sexual harassment in the workplace and if the law should be changed over time to be gender neutral. The study was conducted among working class self-employed people working in major cities, particularly in the Mumbai

Metropolitan Area (MMRA) and other relevant cities. A convenient sampling technique was adopted for the study. Data was collected online using a structured questionnaire distributed to more than 251 participants. It was found that most of them were aware of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”; it deals with sexual harassment of women, the Committee on Prevention of Sexual Harassment (POSH) in the workplace, and whether they or anyone they know has ever been harassed, particularly in the workplace. It was noted that many of the participants, regardless of their gender, advocated that the said law should be a gender-neutral law over time and given the current scenario, and not focus on a single gender.

**KEYWORDS:** sexual harassment, workplace, POSH committee, gender neutral.

**1) INTRODUCTION –**

The beginning of the 21st century has enabled the equal participation of men and women in all areas of employment. Today, women have equal opportunities in all areas of working life, and they have excelled in taking advantage of the opportunities available to them. But to achieve this success, they have also had to cope with various difficulties. With the entry of women into various offices and fields of employment, harassment occurred in their workplaces, and for a long-time woman have faced this hostile situation.

The “Vishaka Guidelines” issued by the “Supreme Court of India” coupled with, the “Sexual Harassment at Workplace Act, 2013”, passed by the government have provided ammunition to counter situations like sexual harassment at workplaces. Moreover, various sections like 354, 354A, 354B, 354C, 354D and 509 of the “Indian Penal Code, 1860”, deal with sexual assault and use of criminal force against a woman with intent to outrage her shame, which has helped women seek justice for the wrongs done to them at the workplace. However, the same law is silent on the sexual harassment of men and LGBTQ persons in or out of the workplace.



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With the introduction of “Sexual Harassment at Workplace Act, 2013” and its guidelines, every employer with more than 10 employees is required to form a committee (POSH) to deal with this kind of sexual harassment at workplace and handle it as per the guidelines of “Sexual Harassment Prevention Committee” (POSH) and report the cases and actions taken against such incidents to the relevant government authorities accordingly. Now the question arises, "Can men be sexually harassed, and that too in their workplace?" Out of this curiosity, the researcher took up the topic of the study to find out how widespread and serious the problem of sexual harassment of men is in their workplace.

## 2) WHAT IS GENDER-NEUTRAL LAW?

In gender-neutral laws, all genders are equal before the law, either by explicitly naming each gender in the law or by making the language of the law gender-neutral.

For example, the 2012 “POCSO” law defines a “child” as "any person under the age of eighteen" without specifying a gender, and the use of the word 'any' implies equality for all genders.

The term "gender neutral" refers to the view that policy, language, and other social institutions should avoid distinguishing roles based on gender.

The 2012 “Verma Committee” emphasized that India must recognize different sexual orientations and recommended that transgender people be included along with other genders, i.e., men and women, when drafting gender-neutral laws.

## 3) RESEARCH PROBLEM-

Research formulation is to identify factors for which research is to be carried out. So, the research problem is: “**Should sexual harassment in the workplace be a gender-neutral law?**”, The “Sexual Harassment at Workplace Act 2013”<sup>1</sup> appears to be anachronistic. i.e., belonging to an earlier period or being old-fashioned, which needs to be looked at and changed and amended over time if required.

## 4) THE OBJECTIVE OF THE STUDY-

- To study, except for women who are mostly victims of sexual harassment in the workplace, whether men, transsexuals, bisexuals, etc., are sexually harassed especially at their workplace.
- Study whether the “Sexual Harassment Act, 2013”, should be amended as a gender-neutral law or some other laws be enacted to safeguard the rights of men, transsexuals, and bisexuals as enshrined in Articles 14, 15, and 16 of the “Indian Constitution”, which talk about the right to equality, no discrimination, and equal opportunity for all citizens.

## 5) RESEARCH METHODOLOGY:

The research methodology for the present study is the survey method. In this method, an attempt is made to collect data mostly from the working professionals in and around the Mumbai Metropolitan Region and other major cities like Pune and Bangalore, by describing the existing phenomenon and asking individuals about their opinions, attitudes, behaviors, or values. For the present study, this design is suitable because the researcher intended to collect data meant to ascertain facts about awareness of sexual harassment of men, transsexuals, bisexuals, etc., who are not included in the “Sexual Harassment

of Women at Workplace Act, 2013”. The researcher is of the view that the said act related to sexual harassment must be a gender-neutral law and not a gender-specific law.

## 6) SAMPLE DESIGN AND DATA COLLECTION PROCEDURE

The study is based on a sample of 251 people, mostly working professionals of all genders, in and around the Mumbai Metropolitan Region (MMRA) and other major cities. The self-administered questionnaires were sent to the participants via Google Form, and they were briefed about the purpose of the study, and the same questionnaire was filled out accordingly.

## 7) SAMPLING METHOD

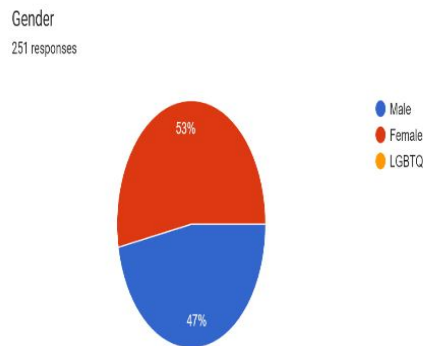
Non-probability sampling method: “Convenient Sampling”.

## 8) DATA ANALYSIS TECHNIQUE

The primary data was collected by questionnaire, and secondary data was collected from other resources like books, journals, and websites. The data was analyzed in percentage-wise calculation and the findings are as follows.

## 9) THE MAIN RESULTS OF THE STUDY:

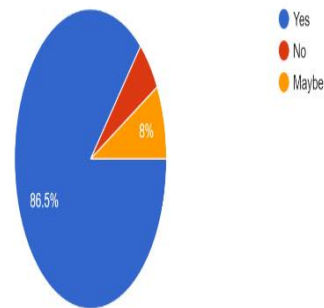
- In the aforementioned sample survey, the participation rate among women is 53%, while the participation rate among men is 47%.
- About 88.8% of all participants were aware of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013”, which protects against sexual harassment of women at the workplace. About 8% of the participants were not aware of this law against sexual harassment of women at workplace.
- About 78.9% of the participants were aware of the committee “POSH (Prevention of Sexual Harassment)”, set up in each workplace for grievance management related to sexual harassment in the workplace as per the Sexual Harassment of Women Act, 2013. The rest, 21.1% of the participants, were not aware of the committee POSH.
- About 76.1% of all participants have never faced harassment at their workplace, while 17.9% of all participants who gave their answers admitted that they have faced harassment at their respective workplaces. While 6% of the participants were not sure whether to admit or deny harassment at their workplace.
- Of the total number of respondents who admitted to harassment in their workplace, 53.7% of participants were subjected to psychological harassment, while 12% of participants were subjected to sexual harassment in their workplace, and 34.3% mentioned other harassment besides psychological and sexual harassment.



- Furthermore, 55% of all participants in this survey believed that in addition to women being more likely to be sexually harassed at work, other genders have been or may be sexually harassed at their workplace. About 4% of all participants disagreed with the statement that other genders have also been or can be harassed in their respective workplaces, and about 26.3% of participants believe that male workers can be harassed in their workplaces, while 13.9% stated that they cannot tell or are not sure whether or not male workers can be sexually harassed in their respective workplaces as well as their female counterparts. While 0.8% of participants had a different opinion.

- About 86.5% of all respondents to the survey think that laws such as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 should be gender neutral so that each gender, male, female or third gender, is protected from sexual harassment at work. Furthermore, 5.6% of all participants believe that the said law should not be gender neutral and should not remain a gender only law. 8% of the participants are not sure whether the law on sexual harassment in the workplace should be gender neutral.

Do you think that laws like Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 shall be gender neutral law, ...be protected from Sexual Harassment at Workplace?  
251 responses



## 10) CONCLUSION:

From the above findings, it can be concluded that the cases and incidents of sexual harassment of other genders, whether men or members of the LGBTQ community, are minimal and rarely reported. However, it cannot be denied that they do not face harassment in their workplaces, be it psychological, sexual, or other types of harassment. With the passage of time and the exigencies of the situation, the current Sexual Harassment of Women at Workplace Act, 2013 has become an archaic law, and now a gender-neutral law is required to address workplace harassment, whether the aggrieved person is a man, a woman, or a person from the LGBTQ community with a different or the same sexual orientation. The said law must be gender neutral so that it can complement the rights granted to individuals in Articles 14, 15 and 21 of our Constitution of India, which deal with the right to equality, prohibition of discrimination on the basis of sex and the right to life and liberty respectively.

## 12) PROPOSALS:

- That “The Sexual Harassment of Women at Workplace Act” should be amended and other genders must be brought within the ambit of the Act.
- A strict, uniform law against harassment in the workplace should be enacted, regardless of gender, as the said law should be gender neutral.
- Either amend the current law by adding more provisions on Male and LGBTQ “sexual harassment in the workplace”, or enact similar laws that address sexual harassment in the workplace and speak of gender neutrality.

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- When we speak of equality in our society, as enshrined in the Indian Constitution, it must be made practical for all existing genders; only then can gender equity in its true sense be achieved.
  - The Indian Parliament could replace the word "woman" in the law with the word "person." Also, the definition of "sexual harassment" could be expanded to include persons of all genders.
  - We should educate all employees about sexual harassment prevention, regardless of gender or sexual orientation, and we should enact the same law as POSH for male and other LGBTQ employees in the organization.
  - There must be a psychological assessment of the person facing “sexual harassment in the workplace”, regardless of their gender.
  - The concerned employers must conduct an awareness camp to discuss these types of issues related to sexual harassment in the workplace.
  - “Sexual harassment laws” in the workplace that are gender neutral must be enacted at the earliest possible time to protect the rights and integrity of every employee in their workplace, regardless of their gender.

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# ABORTION IN INDIA: AN ANALYSIS OF WOMEN'S RIGHTS AND ETHICAL CONSIDERATIONS

**Tiwari Komal Chetnarayan**

TYLLB Kishinchand Chellaram Law College

## ABSTRACT

The paper emphasises the need for further research and policy development to address the complex issues surrounding abortion in India. It calls for research to understand the social and cultural factors that influence women's access to safe and legal abortion and to develop interventions to address these factors. Additionally, the paper calls for policy development to expand access to safe and legal abortion and to address the stigma surrounding abortion. Overall, this research paper provides a comprehensive overview of the legal and ethical issues surrounding abortion in India. It highlights the progress that has been made in ensuring safe and legal abortions for women in India, as well as the challenges that remain. The paper emphasises the need for continued advocacy and policy development to ensure that women have access to safe and legal abortions, and that their reproductive rights are protected under international human rights law. It is crucial to recognise the complexity of the issue of abortion and to address it with a multifaceted approach that considers the social, cultural, legal, and ethical dimensions of the topic.

**Keywords:** abortion, India, reproductive rights, Medical Termination of Pregnancy Act,

## 1. INTRODUCTION

Abortion is the intentional termination of a pregnancy before the fetus can survive outside the mother's womb. The issue of abortion has been a subject of debate for many years, with conflicting opinions on whether it should be legalized or not. The debate revolves around the moral, ethical, and legal aspects of abortion. Some people argue that it is a woman's right to choose what happens to her body, while others believe that the fetus has the right to life. The ethics of abortion is a complex issue that has attracted significant attention from scholars, policymakers, and the general public. The paper aims to provide an overview of the ethical concerns surrounding abortion, the effects and side effects of abortion, both mentally and physically, and awareness regarding abortion pills. It also explores women's rights in India and globally, with case studies and Indian case laws to provide a perspective on the Indian legal system. The paper also addresses the current scenario and future impact of abortion, and directions for the future.

## 2. RESEARCH METHODOLOGY:

The present paper is mainly based on Secondary data, which has been taken from Statistical Abstract State-wise and, Newspapers data and interviews, International Journals, and the United Nations Data Report. For the current paper, the data has been analysed and explained with illustrations in a systematic approach. Both qualitative and quantitative methods have been applied for the data analysis.

### 3. HISTORY OF ABORTION

Abortion has a long and complex history both in India and globally. Here is an overview of some of the key historical developments

#### Global

- Throughout much of human history, induced abortion was common and often practiced without legal or social restrictions. Ancient texts from many cultures, including Greece, Rome, and China, contain descriptions of abortion methods and practices.
- In the 19th and early 20th centuries, many countries began to enact laws criminalizing abortion, often with the aim of protecting fetal life and promoting population growth. These laws varied widely in their strictness and enforcement.
- Beginning in the mid-20th century, there was a global movement towards liberalization of abortion laws. In many countries, including the United States, the United Kingdom, and much of Western Europe, abortion was legalized or decriminalized in the 1960s and 1970s.

Today, abortion laws and policies vary widely around the world, with some countries allowing abortion without restriction while others prohibit it entirely or allow it only in limited circumstances.

#### IN INDIA

- Abortion was legalized in India in 1971 with the passage of the Medical Termination of Pregnancy (MTP) Act, which allows for abortion up to 20 weeks of pregnancy under certain conditions.
- The MTP Act was revised in 2002 to expand access to abortion and improve the quality of abortion services. The revised law allows for abortion up to 12 weeks of pregnancy without any conditions, and up to 20 weeks in cases of rape, fetal anomalies, or threats to the woman's physical or mental health.
- Despite the legal framework, access to safe and legal abortion remains a challenge in many parts of India, particularly in rural and remote areas where health facilities may be limited and social stigma around abortion may be high.

It is important to note that the history of abortion is complex and multifaceted, with many different social, cultural, and political factors influencing attitudes towards and regulation of abortion in different times and places.

### 4. CURRENT LEGAL LANDSCAPE:

In India, abortion is legal up to 20 weeks of pregnancy under the Medical Termination of Pregnancy Act, 1971. However, a woman can only access abortion beyond 20 weeks of pregnancy if it is deemed necessary to save her life or to prevent severe physical or mental harm. The law also requires that the procedure be performed by a registered medical practitioner in a registered facility. The law has been amended several times to address issues related to gender-based sex selection and to expand access to abortion for women.

The Medical Termination of Pregnancy Act, 1971, governs abortion in India. Under this act, women can legally terminate their pregnancy up to 20 weeks of gestation, after which abortion is only permitted if

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the mother's life is in danger. However, there is a lack of clarity around the definition of "life-threatening," and women often face significant barriers when trying to access safe abortion services, particularly in rural areas.

However, access to safe and legal abortion remains a challenge in India due to a lack of awareness, stigmatization, and inadequate access to healthcare facilities. Women from marginalized communities are particularly vulnerable to unsafe abortions, which can lead to severe health complications and even death.

### **CASE STUDIES**

Case 1: A woman from Maharashtra, India, aged 37, sought the termination of her 26-week-old foetus in 2017, citing the diagnosis of Down syndrome. The Indian Supreme Court, however, denied her plea on the ground that she was too advanced in her pregnancy and there was no apparent threat to the life of the mother or the foetus. Typically, pregnancies with Down syndrome detected before 20 weeks of gestation are terminated. The Court, although expressing sympathy off the record for the woman's plight, instructed her to carry the pregnancy to term.

Case 2: In 2017, a 10-year-old girl from Chandigarh, India was found to be 32 weeks pregnant as a result of sexual assault by her maternal uncle. The girl was unaware of the cause of her abdominal pain until she was taken to a hospital at 30 weeks of pregnancy. Medical officials raised concerns that the pregnancy would pose risks to the girl and the foetus, given her underdeveloped pelvic bones. However, the Indian Supreme Court refused her request to abort the foetus due to the advanced stage of the pregnancy.

### **LANDMARK JUDGMENTS REGARDING ABORTION**

India has seen several landmark judgments regarding abortion over the years. Here are some of the most notable ones:

*Suchita Srivastava v. Chandigarh Administration*, 2009: In this case, the Supreme Court of India ruled that a woman has the right to terminate her pregnancy if continuing the pregnancy would pose a risk to her mental or physical health.

*Nikhil D. Datar v. Union of India*, 2016: In this case, the Bombay High Court allowed a woman to terminate her pregnancy beyond 20 weeks on the grounds that the foetus had a congenital heart defect that was likely to prove fatal after birth.

*Anushree Parekh v. Union of India*, 2017: In this case, the Delhi High Court allowed a woman to terminate her pregnancy beyond 20 weeks on the grounds that the foetus had anencephaly, a congenital defect that results in the absence of a major portion of the brain.

These judgments have been instrumental in protecting women's reproductive rights and expanding the scope of legal abortion in India.

## 5. ETHICS OF ABORTION

The ethics of abortion is a complex issue that involves conflicting values and moral principles. Proponents of abortion argue that it is a woman's right to choose what happens to her body. They believe that women should have the freedom to decide whether or not to continue with a pregnancy. On the other hand, opponents of abortion argue that the fetus has the right to life and that abortion is equivalent to murder. The ethical debate surrounding abortion is centered around the following questions: 1. When does life begin? What is the moral status of the fetus? Does the mother have a moral obligation to the fetus?

The question of when life begins is a complex and controversial topic, with different opinions among scientists, medical professionals, and ethicists. However, the scientific consensus is that human life begins at fertilization, when a sperm cell fuses with an egg cell to form a single cell called a zygote. According to leading embryology textbooks and scientific literature, fertilization marks the beginning of a new human life. For example, in their textbook "Human Embryology and Teratology," Keith L. Moore and T.V.N. Persaud write: "Human development begins at fertilization, the process during which a male gamete or sperm (spermatozoon development) unites with a female gamete or oocyte (ovum) to form a single cell called a zygote."<sup>1</sup> Similarly, in their paper "The human zygote: a biological definition," Maureen L. Condic and others write: "Fertilization is a critical landmark because, under ordinary circumstances, a new, genetically distinct human organism is formed when the chromosomes of the male and female pronuclei blend in the oocyte."<sup>2</sup>

## 6. RIGHTS OF THE FETUS VERSUS THE RIGHTS OF WOMEN

The issue of the rights of the fetus versus the rights of women in the context of abortion is a complex and controversial one that raises legal, ethical, and moral questions.

From a legal perspective, the Indian Constitution recognizes the right to life and personal liberty as a fundamental right, which includes the right to reproductive autonomy. However, the right to life of the fetus is also protected under the Constitution. Therefore, the legal framework for abortion in India seeks to balance the right to life of the fetus with the right to reproductive autonomy of the woman.

From an ethical perspective, the question of whether the fetus has rights or not is a matter of debate. Some argue that the fetus has a right to life from the moment of conception, while others argue that the fetus does not have rights until it is viable outside the womb. However, most ethical frameworks recognize the importance of the autonomy and well-being of the woman, and her right to make decisions about her body and health.

In summary, the issue of the rights of the fetus versus the rights of women in the context of abortion raises legal, ethical, and moral questions. The legal framework for abortion in India seeks to balance the right to life of the fetus with the right to reproductive autonomy of the woman. From an ethical

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<sup>1</sup> Moore, K. L., & Persaud, T. V. N. (2003). *The developing human: Clinically oriented embryology* (7th ed.). Saunders.

<sup>2</sup> Condic, M. L., et al. (2008). The human zygote: A biological definition. *Stem Cells and Development*, 17(2), 287-291. doi: 10.1089/scd.2008.0052

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perspective, most frameworks recognize the importance of the autonomy and well-being of the woman, and her right to make decisions about her body and health. Ultimately, the decision of whether or not to terminate a pregnancy should be left to the woman, in consultation with her healthcare provider.

## 7. DATA ON ABORTION

The incidence of abortion worldwide has declined significantly since 1990, with 36 abortions occurring annually per 1,000 women aged 15-44 in developing regions compared to 27 in developed regions<sup>3</sup>. However, unsafe abortion remains a significant cause of maternal mortality and morbidity, particularly in developing countries where access to safe abortion services is limited. Approximately 55% of all abortions are safe, while 31% are less safe and 14% are least safe.

### *CASE STUDIES*

In India, women face significant barriers when trying to access safe abortion services, particularly in rural areas. A study conducted in the state of Bihar found that 62% of women who sought abortion services did not receive them, with lack of availability and affordability cited as the main barriers<sup>4</sup>. In contrast, Nepal has made significant strides in expanding access to safe abortion services, with abortion now legal up to 28 weeks of gestation<sup>5</sup>. This has resulted in a significant reduction in maternal mortality and morbidity.

## 8. FUTURE DIRECTIONS FOR RESEARCH AND POLICY

There is a need for further research and policy development to address the complex issues surrounding abortion in India. Research is needed to understand the social and cultural factors that influence women's access to safe and legal abortion and to develop interventions to address these factors. There is also a need for policy development to expand access to safe and legal abortion and to address the stigma surrounding abortion.

## 9. CONCLUSION

The issue of abortion is complex and multifaceted, raising questions about women's rights, social justice, and ethical considerations. In India, access to safe and legal abortion remains a challenge, particularly for women from marginalized communities. The concept of reproductive justice emphasizes the intersection of race, class, gender, and sexuality in reproductive rights, and there is a need for further research and policy development to address the complex issues surrounding abortion in India. The right to access safe and legal abortion is recognized under international human rights law, and there is a need for continued advocacy to ensure that this right is protected globally.

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<sup>3</sup> Sedgh, G., Bearak, J., Singh, S., Bankole, A., Popinchalk, A., Ganatra, B., ... & Hussain, R. (2017). Abortion worldwide 2017: uneven progress and unequal access. New York: Guttmacher Institute.

<sup>4</sup> Ethical Issues concerning Legislation in Late-Term Abortions in India  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7747435/>

<sup>5</sup> Sedgh, G., Bearak, J., Singh, S., Bankole, A., Popinchalk, A., Ganatra, B., ... & Hussain, R. (2017). Abortion worldwide 2017: uneven progress and unequal access. New York: Guttmacher Institute.

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8. Anushree Parekh v. Union of India, W.P.(C) 8199/2017 (Delhi High Court, 2017).
9. Devika Biswas v. Union of India, W.P.A 1500 of 2019 (Calcutta High Court, 2019).

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## REDEFINING OF RIGHT TO EQUALITY: LGBTQ+ COMMUNITY

**Chandralata. M. Motwani**

2<sup>nd</sup> year LL.M (Student),  
Kishinchand Chellaram Law College, Mumbai

### ABSTRACT:

In response to a change in policy, society tends to move from opposition to ambivalence to support, the largest shift taking place from criminalization to de-criminalization of Section 377 of the Indian Penal Code, 1860. Recognizing and legalizing same sex marriage by enacting several laws to normalize the existence of LGBTQ+ Community has been accomplished by various countries. The acceptance of homosexuality and queer identities is on the rise among Indian youth, but LGBTQ+ Community still face challenges within the confines of their families, homes, and schools in expressing their gender choices openly and freely. In society, people tend to perceive LGBTQ+ Community people as strange and different because of their preconceptions and beliefs. It cannot be denied that the Community struggles for acceptance and equal rights. Finding acceptance is particularly challenging for transgender people. A lot of negative judgments are leveled against the Community. The prevalence of prejudice against the Community makes this a serious problem. Hence in this paper, an effort is made to discuss the issues relating to LGBTQ+ Community and also judgments, amendments, and enactment of laws concerning the rights of the community. This doctrinal research paper includes an introduction, reasons, issues, judgments, and effects, which brought the change in legislation by recognizing the right to equality for the LGBTQ+ Community.

### KEYWORDS:

Gender Equality, Right to Equality, Gender Equality Law, De-criminalization, Awareness, Judgments, Enactments, Challenges, LGBTQ+ Community Rights

*“If I let myself really understand another person, I might be changed by that understanding. And we all fear change. So as I say, it is not an easy thing to permit oneself to understand an individual”.*

*-Carl Rogers<sup>1</sup>*

### I. INTRODUCTION

The LGBTQ+<sup>2</sup> community has been fighting for their rights and recognition for decades. Despite significant progress made in some countries, including the legalization of same-sex marriage and anti-discrimination laws, the struggle for equality is far from over. In India, the LGBTQ+ community has faced significant legal and societal discrimination. This paper explores the concept of redefining the right

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<sup>1</sup> (1902-1987) was an American Humanistic Psychologist (Founder Of The Humanistic Approach To Psychology)

<sup>2</sup> A common abbreviation for the lesbian, gay, bisexual, transgender, queer or questioning community and more.

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to equality for the LGBTQ+ community in India. The paper will also discuss the challenges to redefining the right to equality and provide suggestions for policymakers and stakeholders.

## **A. BACKGROUND INFORMATION ON LGBTQ+ RIGHTS IN INDIA**

India has a complex history with regards to LGBTQ+ rights. While same-sex relationships were traditionally accepted in some parts of the country, the colonial-era law, Section 377<sup>3</sup>, criminalized homosexuality and led to discrimination against LGBTQ+ individuals. However, recent legal developments, such as the Navtej Singh Johar v. Union of India case, have led to significant progress in the struggle for LGBTQ+ rights in India.

## **B. IMPORTANCE OF REDEFINING RIGHT TO EQUALITY FOR THE LGBTQ+ COMMUNITY**

While legal progress has been made, the LGBTQ+ community in India continues to face significant challenges and discrimination. In order to achieve full equality and acceptance, it is important to redefine the right to equality in a way that includes and protects LGBTQ+ individuals.

## **C. PURPOSE OF THE PAPER**

This paper will explore the historical and legal context of LGBTQ+ rights in India, including the impact of Section 377 and the Navtej Singh Johar v. Union of India case<sup>4</sup>. It will also analyze the challenges that LGBTQ+ individuals continue to face in India, and discuss the importance of redefining the right to equality for the LGBTQ+ community. Finally, the paper will offer recommendations for policymakers and stakeholders to promote greater acceptance and inclusion of LGBTQ+ individuals in India.

Under the Indian Constitution, every individual is guaranteed the right to equality and the right to life. Article 14<sup>5</sup> of the Constitution provides for the right to equality, stating that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This means that every individual, regardless of their sexual orientation or gender identity, is entitled to the same rights and protections as others. Similarly, Article 21<sup>6</sup> of the Constitution provides for the right to life and personal liberty, stating that "No person shall be deprived of his life or personal liberty except according to procedure established by law."

## **II. REDEFINING THE RIGHT TO EQUALITY FOR THE LGBTQ+ COMMUNITY**

### **A. UNDERSTANDING THE CONCEPT OF EQUALITY**

The right to equality is a fundamental human right that is enshrined in the Indian

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<sup>3</sup> India penal Code, 1960.

<sup>4</sup> Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

<sup>5</sup> The Constitution of India, 1950, art.14.

<sup>6</sup> The Constitution of India, 1950, art.21.

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Constitution. However, the concept of equality needs to be redefined to include the LGBTQ+ community. Equality should not just mean the absence of discrimination but also the inclusion of all individuals, regardless of their sexual orientation and gender identity.

## B. INTERSECTIONALITY AND ITS IMPORTANCE IN REDEFINING EQUALITY

Intersectionality is the recognition of the multiple identities that individuals possess and the discrimination they face as a result of their intersecting identities. It is important to recognize the intersectionality of the LGBTQ+ community to understand the discrimination they face and to redefine the right to equality to include them.

## C. ROLE OF THE INDIAN JUDICIARY IN REDEFINING EQUALITY FOR THE LGBTQ+ COMMUNITY

The Indian judiciary has played a crucial role in the redefinition of equality for the

LGBTQ+ community in India. The landmark decision of the Delhi High Court in **Naz Foundation v. Govt. of NCT of Delhi** in 2009<sup>7</sup> was a significant step towards recognizing the rights of the LGBTQ+ community in India. The court declared that Section 377<sup>8</sup> of the Indian Penal Code, which criminalized homosexual acts, violated the fundamental rights of individuals, including the right to equality and privacy.

However, this decision was later overturned by the Supreme Court of India in **Suresh Kumar Koushal v. Naz Foundation** in 2013<sup>9</sup>, which led to a setback for the LGBTQ+ community. In 2018, the Supreme Court of India overturned its earlier decision and decriminalized homosexual acts in **Navtej Singh Johar v. Union of India**<sup>10</sup>. The court recognized the right to equality and the protection of sexual orientation as a part of the right to privacy.

The judiciary can play a crucial role in redefining the right to equality for the LGBTQ+ community in India by interpreting the Constitution in a manner that protects their rights.

## D. IMPORTANCE OF INCLUSIVITY IN REDEFINING THE RIGHT TO EQUALITY

Inclusivity is an essential component of redefining the right to equality for the LGBTQ+ community in India. It is important to ensure that the redefinition of the right to equality includes all members of the LGBTQ+ community, including those who are transgender, intersex, and non-binary. Inclusivity also involves creating safe spaces for LGBTQ+ individuals and providing them with access to resources and support.

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<sup>7</sup> Naz Foundation v. Govt. of NCT of Delhi, 160 Delhi Law Times 277.

<sup>8</sup> The Indian Penal Code, 1860, s.377

<sup>9</sup> APPEAL NO.10972 OF 2013 (Arising out of SLP (C) No.15436 of 2009) <sup>10</sup> Navtej

Singh Johar v. Union of India, AIR 2018 SC 4321 <sup>11</sup> Transgender Persons

(Protection of Rights) Act, 2019.

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## **E. TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019<sup>11</sup>**

In 2019, the Indian Parliament passed the Transgender Persons (Protection of Rights) Act, which recognizes the rights of transgender individuals and prohibits discrimination against them. However, the law has faced criticism from LGBTQ+ activists who argue that it falls short of providing adequate protection and recognition for transgender individuals.

## **F. CHALLENGES TO REDEFINING RIGHT TO EQUALITY**

There are several challenges to redefining the right to equality for the LGBTQ+ community in India. These include:

- Traditional and conservative societal attitudes that view homosexuality and transgender identities as immoral or unnatural.
- Political and legal resistance to change, particularly from conservative groups and religious organizations.
- Lack of awareness and understanding about LGBTQ+ issues, which can lead to discrimination and marginalization.

## **III. INTERNATIONAL PERSPECTIVE ON LGBTQ+ RIGHTS**

### **A. COMPARISON WITH OTHER COUNTRIES' LEGAL FRAMEWORK**

The legal framework surrounding LGBTQ+ rights varies widely across countries. While some countries have legalized same-sex marriage and provide legal protection against discrimination based on sexual orientation or gender identity, others criminalize same-sex relationships and deny basic human rights to LGBTQ+ individuals. India's recent legal developments, such as the Navtej Singh Johar v. Union of India<sup>10</sup> case, place it in a group of countries that have made significant progress in protecting LGBTQ+ rights.

### **B. INTERNATIONAL TREATIES AND CONVENTIONS ON LGBTQ+ RIGHTS**

Numerous international treaties and conventions recognize the rights of LGBTQ+ individuals. The Universal Declaration of Human Rights<sup>11</sup>, adopted by the United Nations General Assembly in 1948, affirms the right to equality and nondiscrimination, which has been interpreted to include protection for LGBTQ+ individuals. The International Covenant on Civil and Political Rights<sup>12</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women also recognize the rights of LGBTQ+ individuals.

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<sup>10</sup> Navtej Singh Johar v. Union of India, AIR 2018 SC 4321

<sup>11</sup> United Nations General Assembly. (1948). Universal Declaration of Human Rights.

<sup>12</sup> United Nations General Assembly. (1966). International Covenant on Civil and Political Rights



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## C. ROLE OF INTERNATIONAL ORGANIZATIONS IN ADVOCATING FOR LGBTQ+ RIGHTS

International organizations, such as the United Nations and Human Rights Watch, play a crucial role in advocating for LGBTQ+ rights around the world.

## IV. CONCLUSION

This paper has explored the historical and legal context of LGBTQ+ rights in India, compared India's legal framework with other countries, and examined the role of international organizations in advocating for LGBTQ+ rights. The paper has also discussed the importance of redefining the right to equality for the LGBTQ+ community in India and highlighted the challenges and suggestions for achieving this. Additionally, further research can explore the effectiveness of legal and policy changes in promoting greater inclusion and equality for the LGBTQ+ community in India. In this paper, we examined the historical and legal context of LGBTQ+ rights in India, compared India's legal framework with other countries, and explored the importance of redefining the right to equality for the LGBTQ+ community. We also discussed the challenges and suggestions for achieving this, as well as the international perspective on LGBTQ+ rights. Through this analysis, we found that while there have been significant advancements in protecting LGBTQ+ rights in India, there is still a long way to go in ensuring full equality and protection under the law.

## V. SUGGESTIONS FOR THE GOVERNMENT AND SOCIETY

The government and society can take steps to ensure that the LGBTQ+ community is treated equally and with dignity<sup>13</sup>. Suggestions include:

- A. Legal Reforms:** The government can implement legal reforms to ensure that the rights of the LGBTQ+ community are protected and upheld.
- B. Awareness and Sensitization:** The government can work towards creating awareness and sensitization among the general public, government officials, and law enforcement agencies to reduce stigma and discrimination<sup>14</sup> against the LGBTQ+ community.
- C. Advocacy and Support:** Civil society organizations can provide support and guidance to LGBTQ+ individuals facing discrimination and work towards creating safe spaces for them.
- D. Implementation and Enforcement:** The government should ensure that the legal reforms, awareness and sensitization programs, and advocacy and support initiatives are implemented effectively and efficiently.

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<sup>13</sup> The Constitution of India, 1950, art. 14, 15 and 21

<sup>14</sup> "India: LGBTQ People Face Discrimination, Abuse, and Violence," Amnesty International, accessed April 10, 2023, <https://www.amnesty.org/en/latest/news/2019/09/india-lgbtq-people-facediscrimination-abuse-and-violence/>.

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**E. Inclusive Policies and Practices:** The government should ensure that policies and practices are inclusive of the LGBTQ+ community.

**F. Data Collection:** The government should collect data on the experiences of the LGBTQ+ community, including discrimination and violence, to inform policies and programs that promote their rights and well-being.

The redefinition of the right to equality for the LGBTQ+ community in India is crucial for promoting their rights and well-being.

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# WOMEN TRAFFICKING AND THE VIOLATIONS OF BASIC HUMAN RIGHTS: A CRITICAL STUDY OF INDIA, BANGLADESH AND NEPAL IN THE LIGHT OF INTERNATIONAL PERSPECTIVES AND LEGISLATIVE APPROACHES

**Nuzhat Afroz Shaikh**

Government Law College, Mumbai

## ABSTRACT:

women exploitation is at the core in the modern human civilization. Organized crimes at local and international level plays a vital role in the crimes committed against women and children. The violations of human rights in particular the basic human rights violations are found to be increasing on large scale with the increase in the local and international interface and collaboration. This research paper mainly focuses on the women trafficking and all the related violations of basic human rights. The failure of the national protection machinery. The ever increase in the number of cases of women trafficking from India, Bangladesh and Nepal. The researcher focus on the ground realities and the result of basic human rights violations as the State as a mechanical and powerful institution has failed to curb the women trafficking and the need to have a separate and special legislation to deal and tackle the challenge posed by the rising women trafficking from Asian countries.

The efforts needed to be taken at national and local level from tracing the early cases of abduction and kidnapping with the intention of trafficking of women and girls. These three nations from Asian continent are at the most vulnerable and abused in terms of basic human rights violations. As a result of lack of education, and non-awareness about the general laws of protection and the institutions under duty of protection and providing safe guards. The reports of the United Nations on women trafficking in the south east Asian countries are alarming. This research focus on the loop holes and the grey areas in the present legislative approach and institutional practices. The international coordination amongst the developing countries like India, Bangladesh and Nepal. The modules executed by the international syndicates for the trafficking needs to be studied and traced. The institutional approach and coordination amongst the affected countries to be undertaken.

**Keywords:** women trafficking, human rights violations, international perspectives,

## 1. INTRODUCTION:

Women trafficking is the ever increasing challenge at national and international levels. In the context of the world parameters, south east Asia is the most affected countries as long as the women trafficking and related offences are concerned. The lack of special laws dealing with the offence of trafficking is one of the concerns as the law enforcement machinery working for the protection of women and children as a special unit have no existence in India Bangladesh and Nepal. In the bigger picture a concept called as

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Exploitative sham marriages found to be deliberate and coordinated crimes from the countries like Nepal Bangladesh and India.

Under the Palermo Protocol, “trafficking in persons” is defined as: “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>15</sup>

The Asian contributors so far whereas the “groom” participates in recruiting the potential victims.<sup>16</sup> It is seen and found that, it’s a multi-million dollar industry as enterprise in which human trafficking is seems to be one part of a larger operation and the involvement of other illegal activities. This also includes organ trafficking and migrant smuggling,<sup>i</sup>in this the Debt-based coercion could be seen as the characterized influencing a significant portion of Nepal’s trafficking internally. Where the workers are charged fraudulently by the traffickers. By way of inflated fees or higher interest rates and then forcing them to enlist their children or other members from the family. Creating new victims from new generation to work and pay of the parental debt.<sup>ii</sup>

The Nepal government does not able to fully meet the minimum standards regarding the trafficking elimination, but they are making significant efforts for the same. The efforts also included the identifying and removal of children, investigating the multiple government officials, including the trafficking victims and from the exploitative care shelters as homes. Funding the process repatriation for large Nepali trafficking victims abroad.<sup>17</sup>

## **2. WOMEN TRAFFICKING AND THE VIOLATIONS OF BASIC HUMAN RIGHTS: NEPAL**

Women trafficking and basic human rights violations- The issue of women trafficking and children trafficking are the core concerns with Basic human rights violations. Nepal as a State, investigate allegations in trafficking crimes and holding perpetrators criminally accountable. Hence, the human Trafficking and Transportation (control) Act, (HTTCA) amended for the purpose of criminalising all forms of labour is trafficking and sex trafficking. This was done in accordance with the 2000 United Nations TIP protocol.<sup>18</sup>

At the beginning of the new millennium, according to (Crawford & Kaufman,2010 citing the Labour Organisation report) the Nepalese girls and women that had been trafficked to the Indian brothels were estimated 5000 to 7000. After a decade time, The American Bar Association,2011 report of Human Trafficking Assessment tool reported approximately 5000 to 15,000 Nepalese women and girls were trafficked on annual basis to India for the commercial or sexual exploitation.<sup>iii</sup> As per the TIP report of

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<sup>15</sup>[www.2019-Trafficking-in-persons-Report.pdf,p-4.https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP\\_2022\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf)

<sup>16</sup> [www.2019-Trafficking-in-Persons-Report.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf)

<sup>17</sup> Ibid.

<sup>18</sup> Id at 364.

2010 (USDS 2010:246) that, Nepalese women are trafficked to the Middle East for commercial sex. Although in Nepal the Human Trafficking Control Act, 1986 prohibits slavery, forced prostitution and the selling of human beings.<sup>19</sup> Yet Nepal has to ratify the 2000 UN TIP protocol. As a result the United States, Department of State had listed Nepal as a country which failed to meet the minimum standards to combat all sorts of trafficking.<sup>20</sup>

### **3. WOMEN TRAFFICKING AND THE VIOLATIONS OF BASIC HUMAN RIGHTS: BANGLADESH**

Trafficking in Human requires fraud, force or use of coercion so as to get the victims for forced and bonded labour at times for organ trade and prostitution. Human trafficking is a crisis recognized globally with different forms. Women and children are the most vulnerable to it. As per the United Nations Convention against Transnational Organized Crime (UNTOC) Human trafficking constituents comprise of three parts. 1. The Act, 2 the means and 3 the purpose. Human trafficking the third largest illegal business generates 32 billion dollars annually.<sup>21</sup>

Prevention and Suppression of Human Trafficking Act 2012<sup>22</sup> is the national legislation in Bangladesh enacted to tackle and curb the menace of human trafficking in Bangladesh. With other scattered provisions dealing with the same issues under various legislations.

The Sea-route is another channel of human trafficking in Bangladesh recognized as a source and supplying the victims of human trafficking to Singapore, Malaysia and Middle East. This also includes the internal supply of trafficking victims to local prostitution for commercial sex. In Bangladesh it is a high profit business with low risk factor. A crime with all brutality affecting the right to life of the victims. A blatant violation of universal human rights. The anti-trafficking as a legal frame work of Bangladesh consists of its Constitution, various substantive and procedural enactments including the international instruments ratification from time to time.<sup>iv</sup>it alarming to find out that, number of trafficking and victims of migrant smuggling has recently increased. As per UNHCR periodic report, 25,000 Bangladeshis and Rohingyas had crossed the borders through smugglers' boats from the high sea

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<sup>19</sup> Mahat, Bhavana, "Trafficking of Women in Nepal: An Intersectional Analysis of Organizational Narratives" (2011). Theses and Dissertations. 138. <http://scholarworks.uark.edu/etd/138>.

<sup>20</sup> Rita Dhungel, *Unpacking Human Trafficking from Neoliberalism and Neoconservatism Paradigms in Nepal: A Critical Review*, Molung Educational Frontier, Volume 11, June 2021, p-188-211.

<sup>21</sup> Mohammad Moniruzzaman, Current Scenario of Women and Children Trafficking in Bangladesh: A Way Forward, ICONIC RESEARCH AND ENGINEERING JOURNALS, Nov 2021, Volume 5 Issue 5 | ISSN: 2456-8880.

<sup>22</sup> Bangladesh National Legislation to deal with the human trafficking in Bangladesh. <https://respect.international/wp-content/uploads/2022/11/First-National-Study-on-Trafficking-in-Persons-in-Bangladesh.pdf>

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of Bay of Bengal in the first quarter of 2015. It also point out that, the irregular Bangladeshi migrants generally move to south Asian countries like Malaysia and Maldives.<sup>23</sup>

#### 4. WOMEN TRAFFICKING AND THE VIOLATIONS OF BASIC HUMAN RIGHTS: INDIA

India is listed in the tier-2 list of countries along with Nepal. Bangladesh is listed in the watch list of tier-2 countries. Report of the ‘Trafficking in Persons Report- June-2019.’ It is abbreviated as TIP report. The concern over listed in this list is that, “In India, the government officially abolished bonded labo[u]r in 1976, but the system of forced labour still exists. For example, under one scheme prevalent in granite quarries in India, quarry owners offer wage advances or loans with exorbitant interest rates, trapping workers in debt bondage—in some cases for their entire lives.”<sup>v</sup> The changing trends to get access to the probable victims could be understood from the United States of America’s experience. “In the United States, traffickers prey upon children in the foster care system. Recent reports have consistently indicated that a large number of victims of child sex trafficking were at one time in the foster care system.”<sup>24</sup>

“During the reporting period, the National Crime and Records Bureau (NCRB) issued its 2017 and 2018 Crime in India Reports, which used a different methodology than previous years. In 2018, the government reported 1,830 trafficking cases under the IPC, a continued decrease from 2,854 cases trafficking cases reported in 2017 and 5,217 cases in 2016. It was unclear which sections of the IPC this data included. In 2018, the government completed prosecution in 545 trafficking cases, convicted 322 traffickers in 95 cases, and acquitted 1,124 suspects in 450 cases. The acquittal rate for trafficking cases increased to 83 percent in 2018. These statistics were compared to the government completing prosecution in 670 cases, convicting 249 traffickers in 165 cases, and acquitting 1,155 suspects in 505 cases in 2017, with 76 percent of cases resulting in acquittal. This marks a 29 percent increase in the number of individuals convicted, but a 42 percent decrease in the number of case convictions. Three of India’s 36 states and territories reported 43 percent of all trafficking cases, most likely due to more sophisticated reporting rather than larger trafficking problems.

In Uttar Pradesh and Gujarat states, some officials registered bonded labo[u]r cases as minimum wage violations and did not file FIRs for criminal investigation. Some district magistrates dissuaded bonded labor victims from pursuing cases against their traffickers and mediated cases in lieu of criminal prosecution. In Rajasthan state in 2019, authorities identified and released 77 child bonded laborers in 59 cases but only filed one FIR. While Telangana authorities identified more than 2,499 bonded lab[u]r victims through its annual child labor identification drive and levied fines against 431 offenders totalling 1.87 million Indian rupee (INR) (\$26,340)... .”<sup>25</sup>

The most important issues faced by the victims of trafficking are criminalization and detention. They are often tied to a concurrent failure of the State to afford the victims rights. Which they would have legally entitled under the national or international laws. As a practice in case of criminalization it generally

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<sup>23</sup> Arif Ahmed, Combating Sea-route Human Trafficking in Bangladesh: A Critical Analysis on Legal and Institutional Framework, Asian Journal of Research in Social Sciences and Humanities Vol. 6, No. 7, July 2016, pp. 969-987. <https://www.files.ethz.ch/isn/164375/Issue%209.pdf>

<sup>24</sup> 2019-Trafficking-in-Persons-Report.pdf,p-3.

<sup>25</sup> 2020-TIP-Report-Complete-062420-FINAL.pdf,pp-251-252.

results in the process of deportation of foreign victims, denying them the legal right to participate in the justice access system to impart effective remedy against the wrong doer.<sup>26</sup>

## 5. FINDINGS & CONCLUSION:

The situation of the victims of human trafficking particularly the women and girls seems to be very pathetic and inhuman in both reality and in fact. These three countries namely India, Nepal and Bangladesh are most affected nationally and internationally as the migrants figure reaching out is huge and monitoring is the herculean task for each of these governments on policies and in real execution. The demographic vulnerability and contribution of illiteracy, poverty and lack of job opportunities makes it possible for them to be the easy targets of the traffickers.

Firstly handling the issues of child labour and bonded labour is seems to be the first step towards uprooting the trafficking for forced and bonded labour internally. Lack of institutional support and effective legislations needs urgent address and solutions. International perspective of not having uniform monitoring and state to state coordination are real time issues as long as India is concern. The dearth of special legislation on Human trafficking is must for Indian government to address and eradicate Human trafficking. Substantive and laws has exhibited their short fall as the acquittal rates hit at 83% in cases of Trafficking. Nepal and Bangladesh had the national legislations enacted in 1986 and 2012 respectively, but the financial and political willingness is short of achieving the larger of goal. It seems rather impossible without the neighbour contribution and support at various levels.

Secondly, social awareness and community participation is the key of success. Inference drawn from the developed world tackling the issue of child involvement in drug trafficking and child abuse cases in United Kingdom and United States of America respectively. Community sensitization is very important in Indian context. Police modernization and judicial interventions are needed beyond the procedural protocol. Establishment of new institution of trauma care and psychological assistance will be needed for the victims in the process of rehabilitation and care. It is a mammoth task. Political will and peoples participation can bring the changes fighting against the might of the syndicates of trafficking nationally and internationally.

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<sup>26</sup> Human rights and Human Trafficking, fact sheet no36, United Nations New York and Geneva-2014., p-18.

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