
RIGHT TO EQUALITY AND WOMEN

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ABSTRACT

Women were treated unequally and discriminated on the basis of gender from long time due to the old patriarchal system. In this system women's status was lower than men. Men were the head of the society and women's rights and freedoms were restricted by men. In modern times, women's equality supported by Constitution and legislative acts, which provide prohibition of discrimination on gender basis and provide some rights and freedoms to equality. But there also arises a question is actually women equality exist.

1. Introduction

In India, the Constitution provides for gender equality to both men and women. It also provides freedoms and rights to women. Numerous acts are also enforced to protect their rights and prohibit gender discrimination to achieve true gender equality. But there are still gaps in equality between men and women. Women have been disadvantaged for long time because of the old patriarchal mindset and a lack of awareness. In this article, we will clearly discuss their challenges and solutions to achieve true equality for women in India. Equality is a key principle of a democratic society and serves as the basis for human rights. The right to equality guarantees that every person receives equal respect, dignity, and opportunities, regardless of their gender, caste, religion, race, or social status. In India, even with constitutional protections and progressive laws in place, women still face discrimination in many areas such as education, jobs, healthcare, political involvement, property rights, and access to justice. ¹These inequalities stem from long-standing patriarchal traditions, societal customs, and economic differences that have historically restricted women's chances to participate fully in public life.

The Constitution of India acknowledges gender equality as a core value and includes several

¹ Constitution of India, arts. 14, 15, 16, 21 and 39.

measures to combat discrimination against women. Articles 14, 15, and 16 ensure equality under the law, ban discrimination based on sex, and provide equal opportunities in public employment.² Additionally, Article 15(3) allows the government to create special provisions for women and children to promote real equality. The Directive Principles of State Policy and Fundamental Duties also advocate for gender justice and encourage women's equal involvement in all areas of society.

Over time, India's legislature and judiciary have significantly contributed to advancing women's rights through various laws and important court rulings. Laws addressing domestic violence, sexual harassment at work, maternity leave benefits, equal pay, and protection against gender-based violence have enhanced the legal framework for empowering women.³ Courts have also interpreted constitutional rules broadly to support women's dignity, freedom, and equality.

However, despite these legal protections in place, achieving true equality is still difficult. Women continue to face challenges like gender-based violence, unequal pay for work done, low representation in decision-making roles, discriminatory practices in society, and limited access to resources. The difference between legal rights on paper and their actual application shows the need for better enforcement mechanisms, increased public awareness about these issues, and a shift in social attitudes.

2. Right To Equality And Women Under Constitution of India⁴

Right to Equality given under articles 14-16,21,39,42,51A(e) of the Constitution of India. These articles not only grant the right to equality and freedom from discrimination but also direct the state to enact special laws for women to bridge the gap in gender inequality. These articles deal with the right to equality for women, which is as follows:

- Article 14: It ensures women are equal before the law and equal protection under the law.
- Article 15: It provides that no woman should be discriminated against based on gender.

² M. P. Jain, Indian Constitutional Law, Indian Constitutional Law 1325–1348 (LexisNexis, 9th ed., 2023).

³ The Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005 (India).

⁴ INDIA CONST. art. 14,15 ,15(3),16,39(a),(d),42,51(a)

- Article 15(3): It directs the state to make special laws related to women in the protection of their interests.
- Article 16: It provides equal opportunity in matters of public employment for women.
- Article 39(a) It directs the state to provide equally adequate means of livelihood to women.
- Article 39(d): This article directs the state to provide the same pay for the same work to women.
- Article 42: state mandates provisions for just and humane working conditions and provides maternity relief to women.
- Article 51A (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or section diversity., to renounced practices derogatory to the dignity of women.
- Article 243D & 243T: Women's seat reservations in panchayats and municipalities.

These articles are provided specifically for women and talk about rights to equality for both men and women.

2. There are various acts enforced to protect the rights of women which as follows:

2.1.1 Dowry Prohibition Act (1961) ⁵

The Act's primary objective is to end the dowry problem in India. The giving and receiving of dowries are strictly restricted. Additionally, it seeks to protect women who wish to marry but are prevented from doing so by petty dowry demands from the prospective groom. However, there are still many dowry-related cases, and enforcing this law has proven extremely challenging due to the nation's large population and the fear that prevents cases from being filed. This Act promotes gender equality.

⁵ The Dowry Prohibition Act, 1961 (Act No. 28 of 1961), §§ 2-4.

2.2 The Sexual Harassment of Women at Work (Prevention, Prohibition, and Redressal) Act (2013) ⁶

It addresses sexual harassment of women in the workplace. It offers a legal foundation that will help prevent such harassment and safeguard women, resulting in a safe and equitable workplace free from sexual harassment and abuse of women. The Act requires the creation of internal committees and the POSH Policy in order to handle complaints and quickly resolve cases.

2.3 The Medical Termination of Pregnancy Act (1971)

The Medical Termination of Pregnancy Act, 1971 (MTP Act) governs pregnancy termination in India. According to this law, a woman may terminate her pregnancy within 20 weeks if it is necessary to do so, if doing so would endanger her physical or mental health, or if the pregnancy was caused by rape.

2.4 The Maternity Benefit Act (1961)

Working mothers find it challenging to work both before and during childbirth. As a result, the Maternity Benefit Act of 1961 was enforced. The Act requires mothers to take at least 12 weeks of maternity leave. This time period was extended to a maximum of 26 weeks in the 2017 Amendment.

2.5 The Equal Remuneration Act (1976)

The Equal Remuneration Act, 1976 (ERA) is a gender-neutral and equality-based law that stipulates that men and women must receive equal compensation for the same or comparable work they perform, thereby granting them equal benefits and economic opportunities at work.

2.6 The Prohibition of Child Marriage Act (2006) ⁷

To protect children's rights, this act also aims to stop forced marriages. It seeks to ensure that girls are allowed to grow up, educate themselves, and make informed decisions about their

⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013, Gazette of India, Extraordinary, Part II, Sec. 1 (Apr. 23, 2013).

⁷ Ministry of Women and Child Development, Handbook on the Prohibition of Child Marriage Act, 2006 (Government of India).

lives and marriages, all of which protect their health and well-being. However, because of local customs and traditions, it has proven challenging to enforce this law in many areas of the nation.

2.7 The Hindu Succession Act (1956)

Daughters in joint families were given property rights by the Hindu Succession (Amendment) Act, 2005. This modification made sure that when it comes to inheriting property, both men and women are considered beneficiaries.

2.8 The Indecent Representation of Women (Prohibition) Act (1986) ⁸

According to the act, women cannot be depicted indecently in print, media, or advertisements.

It works to uphold women's decency and dignity and encourages respect for them.

2.9 The National Commission for Women Act (1990)

In 1990, the NCW Act was passed, creating the NCW. Its main goal is to protect and promote women's rights in India. The NCW actively addresses issues about violence against women, discrimination based on gender, and other violations of women's rights.

2.10 The Protection of Women Against Domestic Abuse Act (2005) ⁹

Even now, domestic violence still occurs frequently in many homes. The wife suffers from her husband's mistreatment, domestic abuse, and physical and psychological abuse at the hands of her in-laws. Because it is believed that these issues are family-related and should be settled within the family, these crimes go unpunished. This Act was introduced with the intention of educating people about the fact that domestic violence is illegal and subject to legal penalties.

2.11. The Commission of Sati (Prevention) Act (1987) ¹⁰

Sati was regarded as a custom in which, as part of a social rite, the wife is burned alongside

⁸ The Indecent Representation of Women (Prohibition) Act, 1986, No. 60 of 1986, §§ 3–4 (India).

⁹ The Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, India.

¹⁰ The Commission of Sati (Prevention) Act, 1987, No. 3 of 1988, Acts of Parliament, 1987 (India).

her husband when he passes away. Young girls were forced to marry middle-aged or older men in the past. It was fairly obvious that those men would pass away early, and when he did, the women were made to perform sati, which resulted in a terrible and agonizing demise. This Act was passed to put an end to this practice and make it illegal to force someone to commit sati or to try to do so voluntarily. It carries a fine and a life sentence.

3. Judicial Response towards Equality For Women's In India

• Vishaka and Ors. vs. State of Rajasthan and Ors. (1997) ¹¹

The fundamental rights of working women, including the right to life and the right to work with dignity under Articles 14, 15, 19(1)(g), and 21, were filed in accordance with Article 32. After a social worker in Rajasthan was brutally raped by a gang, social activists and non-governmental organizations filed the complaint. The incident brought attention to women's vulnerability in the workplace and the insufficiency of legal safeguards against sexual harassment.

• Shayra Bano vs UOI (2017)

The triple talaq concept is discussed in this case, in which his husband divorced Shayara Bano in 2016 after 15 years of marriage. The Supreme Court declared triple talaq to be unconstitutional after ruling in favor of Shayara Bano. Article 14 is violated by triple talaq because the husband can end the marriage immediately without taking into account his wife or making an attempt to keep the union intact.

• Ahmad Khan vs Shah Bano begum and Ors. ¹²

In This Case held Muslim women's rights to maintenance under secular law after the iddat period (CrPC). The case sparked a national discussion about the conflict between constitutional rights and personal laws, as well as the Uniform Civil Code (UCC). In the end, it resulted in the Muslim Women (Protection of Rights on Divorce) Act, 1986, which overturned Shah Bano's impact by requiring Muslim men to give their wives fair and reasonable maintenance "within the Iddat period.

¹¹ Vishaka & Ors. V. State of Rajasthan & Ors., (1997) 6 SCC 241.

¹² Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.

•Indian Young Lawyers Association & Others. V. The State of Kerala & Others (“Sabarimala case”)¹³

Women were restricted in enter of Sabarimala temple in their menstrual years or between the ages of 10 and 50, was challenged by the petitioners in this public interest lawsuit. Supreme Court held that any exclusionary religious practice which infringed upon women’s constitutional guarantees was unconstitutional, the status of this judgment is tenuous with over fifty review petitions filed in challenge. The petitions are pending before a 9-judge constitutional bench of the Supreme Court, which is also tasked with looking at “overarching issues” pertaining to women’s access to public religious institutions including women’s access to mosques and Parsi women’s access to fire temples.

• Mackinnon Mackenzie & Co. Ltd. v. Audrey D’Costa and Others¹⁴

The Supreme Court ruled that disparate treatment of male and female stenographers by the company was found to have engaged in discriminatory practices, and the management was held accountable for compensation for all stenographers, regardless of gender.

• Mackinnon Mackenzie and Co. Ltd. vs. Audrey D’Costa and Another (1987) 2 SCC 469

The Equal Compensation Act and Article 39(d) of the Indian Constitution, which stipulates that the State shall specifically focus its policy on ensuring that men and women receive equal compensation for equal work.¹⁵

Here, the women were carrying out the same or comparable tasks to those performed by male stenographers. Consequently, the Court affirmed the ruling of the High Court and reaffirmed that ERA applies to all businesses.

4. Challenges

1. There are many challenges faced by women which primarily challenge is education. In rural areas, women are still restricted for getting an education. Due to lack of education and awareness, women are unaware of their rights that’s why men easily discriminated and exploit

¹³ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.

¹⁴ Mackinnon Mackenzie & Co. Ltd. V. Audrey D’Costa, (1987) 2 SCC 469

¹⁵ Equal Remuneration Act, No. 25 of 1976, § 4 (India).

women. It is the main challenge in achieving equality for women.

2. Secondly, Employment is also challenges face by women. Still, in rural areas, many people with an old patriarchal mindset thinks women have to do household chores and take care of the family and serve them and men have to do work outside and earn money, they think why women need employment when his husband earn. They think it's a very bad impression in society about their family if their daughter in law doing job outside, so it is also one of the major challenges in achieving gender equality.

3. The Lack of women's participation in politics is also challenge to achieving gender equality. The women's reservation seat is still pending. The women must have to give minimum 33% seat in the Lok Sabha and state legislature.

4. There are other challenges like socio cultural barrier which women are still harmed by the old patriarchal system and customs like the dowry system, child marriage, and discrimination between men and women.

5. In achieving gender equality there are gaps in the implementation of laws related to the rights of women. These laws are poorly implemented because of societal pressure, corruption and ignorance by the government.

6. Safety and health of women are still challenges to achieving gender equality; malnutrition, foeticide, and limited access to healthcare still have an impact on the health of women. Safety like violence against women, domestic violence, dowry death, sexual harassment, rape, murder, human trafficking etc.

5. Conclusion

In India, women's equality is grant under the Constitution, but there are many challenges face by women. Even though India's legal system effectively creates legal parity and protective laws, there is still a significant disconnect between fundamental rights and everyday life due to ingrained patriarchal customs, a lack of knowledge about legal rights, and lax enforcement.in India, real gender equality requires more than just progressive legislation. The two biggest challenges are closing the enforcement gap and changing cultural attitudes. It demands a cooperative strategy that actively promotes economic independences, actively eradicates systemic prejudice and aggressively raises legal consciousness. For the country's democratic

and socioeconomic development and the transition from formal legal equality to real equality is still a crucial process.

6. Recommendations

1. Effectiveness of the Law

Implementing current laws effectively is essential. This calls for training law enforcement personnel, raising women's awareness of their rights, and guaranteeing prompt and equitable legal proceedings. However, the implementing of laws is not alone enough to remove gender inequality but it is also way to resolve the gender inequality effectively in whole.

2. Education Reforms:

Girls must have better access to high-quality education. This covers higher education as well as vocational training in addition to elementary and secondary education. By education reform we can aware people about gender equality.

3. Empowerment of the economy:

Reducing economic dependence can be achieved by increasing women's employment opportunities and guaranteeing equal compensation for equal work. Microfinance and support for female entrepreneurs are examples of initiatives that can have a big impact.

4. Shifting Mentality:

A cultural change is necessary to address ingrained patriarchal beliefs. Positive role models, education, and awareness campaigns can all help achieve this. Even though women's rights have advanced significantly in India, there is still much work to be done. A multifaceted strategy involving legislative, educational, economic, and cultural reforms is needed to ensure gender equality. India can create a more just and equitable society where women can reach their full potential by tackling these issues.

5. Connectivity and Technology

Women's access to information, education, jobs, and one another will continue to change as a result of the digital revolution. With the help of technology, women who live in remote places

can connect, learn, and make money. Digital platforms can help with activism and organizing. Women's economic participation can be increased through financial technology. However, technology also makes it possible for new kinds of violence, control, and surveillance. Poor and rural women are denied opportunities due to the digital divide. Women's voices are silenced by online harassment. Resolving access issues and safety concerns will determine how technology affects women's rights in the future.

6. Change in the Economy

Women will be significantly impacted by India's economic trajectory, whether it is inclusive growth that lowers poverty or growth that increases inequality. Women can negotiate better terms within families and society by taking advantage of economic opportunities through employment, entrepreneurship, and asset ownership. Women are not empowered by economic growth that ignores them or only generates exploitative jobs.

7. Access to Justice and Legal Reform

Legal frameworks would be strengthened by comprehensive legal reforms that address the remaining discriminatory provisions, such as the marital rape exemption, unequal personal laws, and insufficient anti-discrimination protections. However, without implementation, legal change is insufficient on its own.

8. Changes in Generations

Compared to older generations, young people especially educated, urban youth show more progressive gender equality. They oppose dowries, question arranged marriage, encourage women to enter the workforce, and support shared household duties. As younger generations mature into positions of decision-making, this generational shift driven by education and exposure to a variety of viewpoint may hasten social change.