

# GENDER EQUALITY – THE CORNERSTONE OF SUSTAINABLE DEVELOPMENT IN INDIA

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## **Abstract**

*Women have for centuries been subjugated and treated as second class citizens all over the world. It is an irony that they constitute nearly half the global population and yet are deprived of equality of status. The recognition for the dire need of empowerment of women coupled with the realisation that the empowerment of women would lead to development of the respective nations has driven the global community to take steps to improve the status of women. The Agenda for sustainable development goals 2030 has also included gender equality as one of its goals. This inclusion is the acknowledgement of the need to focus on providing an enabling environment to facilitate the realisation of the womens' rights and freedoms. And it imposes an obligation on all the signatories to the agenda to provide for such conducive environment in their respective countries for the empowerment of women. This article looks at the status of women in India and also studies the legal framework, the executive machinery and the judicial activism in the sphere of gender equality.*

*Key words- Gender equality, laws, judiciary, executive schemes*

## **Introduction**

Women constitute roughly half of the total population of our country<sup>i</sup> and it is imperative that they are accorded equal status along with men. The global recognition of this fundamental right of equality of women and the recognition of wide spread gender based violence as a public law issue <sup>ii</sup> has led to the UN including it in the Sustainable Agenda 2030. It is an inconvenient truth that women face discrimination and are accorded secondary status in almost all the countries including India. Gender equality would empower women to live independent lives with economic, social and political freedom. It is evidenced by the access to health care, education, jobs, inheritance, right to own property and political participation.

## **Research Objective**

This article aims to determine the status of women in India through the information garnered from the Census 2011 and the National Family Health survey and study the legal protection accorded to women in India and also to study if the laws have been amended or enacted to suit the changing needs of the time. It also endeavours to study the response of the executive machinery through the schemes launched by the government in furthering the cause of women. Judiciary is an important wing of the Government as it interprets the laws enacted and upholds the rule of law, this study seeks to assess the role of judiciary in the empowerment of women in India.

### Status of Women in the Past vis-à-vis the Present<sup>iii</sup>

Women in India in the early vedic times were truly empowered as they enjoyed equal status with men, had access to education, had right to own property and were truly honoured. But with the passage of time their position deteriorated even though their right to stridhana was still upheld. But with the invasion of foreigners and consequent foreign dominance in India the position of women worsened further and they have been relegated to an inferior position in the society. With the advent of 19<sup>th</sup> century a great deal of reformist movements took place to ameliorate the status of women. Subsequently with India gaining Independence the architects of modern India through the Constitution made clear of their intention of according equal status to women in India.

Indian society is characteristically a patriarchal society where male supremacy and dominance is a social norm. Gender equality is a burning issue and discrimination on the basis of gender is prevalent in India. Discrimination starts from the time of birth of a girl child as is evident from the high incidence of female infanticide and sex selective abortions which is reflected in the skewed sex ratio (914 females for 1000 males)<sup>iv</sup> and is carried on to the preference of sons to daughters in the family and consequent preferential treatment of boys affecting the access to food and sanitation of the girl child. The freedom of a girl is curtailed and they are made dependent on their male counterparts at every stage of their lives. The government survey-the National Family Health Survey-NFHS-4, reported less than two-thirds (63%) of married women participate in making decisions about their own health care, major household purchases, and visit their own family or relatives alone or jointly with their husband, while 16 % do not participate in any of the three.<sup>v</sup> Regarding access to health care 67% of women reported having problem in obtaining medical care. Access to money is another problem cited by 1/4<sup>th</sup> of women. 30% of women cited distance to a health facility and 27% cited commutation as a problem. 37% have cited the absence of a female service provider as a problem. 45% of women have reported no service provider was available at the health facilities and 45% reported that no medicines were available.<sup>vi</sup> With regard to education, it is documented by the survey that 69% of girls compared to 85% of boys aged six and over have attended school. The gender parity index is 0.9 in higher education in India.<sup>vii</sup> Government's Economic Survey 2018 reveals a gender gap in labour force participation rate is more than 50 percent and women constitute a very high proportion among the low skilled informal worker category and are engaged in low-productivity and low paying work and therefore earn low wages.<sup>viii</sup> According to the NFHS-4, employment among currently married women age 15-49 declined from 43% in NFHS-3 (2005-06) to 31% in 2015-16<sup>ix</sup>. The crimes against women is on the increase as the official data reveals the total crimes committed against women as reported in 2015 was 329,243 and in 2016 was 338,924. The cases under crimes against women were reported under 'Cruelty by Husband or His Relatives' (32.6%) followed by 'Assault on Women with Intent to Outrage her Modesty' (25.0%), 'Kidnapping & Abduction of Women' (19.0%) and 'Rape' (11.5%).<sup>x</sup> The NFHS-4 found that 29% of married women (compared to 37%

in the NFHS-3 2005-06) had experienced spousal violence at some point in their married lives.<sup>xi</sup> According to a UNICEF data 27% of girls are married before the age of 18<sup>xii</sup>. The maternal mortality rates is at 130 per 100,000 live births.<sup>xiii</sup> Against this backdrop of disconcerting data it would be worthwhile to review the laws in India and the government response to the situation of women.

### **Legal Frame Work in India and Women Empowerment**

The Constitution of India which is the supreme law of the land not only guarantees equality to women but also empowers the State to undertake proactive measures like positive discrimination in favour of women. The principle of gender equality is advocated in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Article 14 of the Constitution of India assures equality before law. Article 15 prohibits discrimination on the grounds of sex. Article 16 declares equality of opportunity for all citizens in matters relating to employment. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex, etc., Article 15(c) of the Indian Constitution allows the State to adopt special provision for women and children. Article 39 (a) directs the state to steer its policies towards securing all citizens, men and women, the right to means of livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 directs the State to ensure just and human working conditions. The Constitution also through its provisions of fundamental duty provide a safe guard to the women <sup>xiv</sup> by insisting on the renunciation of derogatory practices which affect the dignity of women. Even political participation is mandated by the Constitution and the 73rd and 74th Amendments of the Constitution provide for reservations of 33% seats to women in elections in the Panchayats and Municipalities. However the Women Reservation Bill for guaranteeing 33% of seats in Lok Sabha to women is yet to be passed. The representation of women in the parliament is only 12%<sup>xv</sup>. Article 23 provides against exploitation of women through the provision on prohibition of trafficking in Human beings and Forced labour.

Apart from these women centric provisions of the Constitution there are a plethora of laws that aim to protect the interest of women in India. The Hindu Adoption and Maintenance Act, 1956 obligates the husband to maintain his wife<sup>xvi</sup> and provides for maintenance of a widow by her father-in-law<sup>xvii</sup>. In the Hindu Succession Act, 1956 property of a female Hindu is deemed to be her absolute property<sup>xviii</sup> and also the amendments to the Hindu Succession Act in 2005, have facilitated daughters to have the same rights as sons with regard to inheritance and succession. However Muslim women who are governed by the Shariat law are discriminated against and get lower shares when it comes to land inheritance.<sup>xix</sup> There is great divergence when it comes to inheritance among the different personal laws and a gender equal and Uniform Civil code would be a welcome measure.

To improve the labour participation of women , Equal Remunerations Act, 1976 paves the way for non-discrimination of women at the time of appointment and The Maternity Benefit (Amendment) Act, 2017

has increased the paid maternity leave from 12 weeks to 26 weeks<sup>xx</sup> and 'work from home' options for new mothers<sup>xxi</sup>.

To deal with the perpetuation of violence against women various laws have been enacted. These include, the Immoral Traffic (Prevention) Act, 1956, the Dowry Prohibition Act, 1961, the Commission of Sati (Prevention) Act, 1961, the Bonded Labour System (Prohibition) Act, 1976, the Indecent Representation of Women (Prohibition) Act, 1986, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, The Pre- Conception & Pre-Natal Diagnostic Techniques Act 1994, the Protection of Women from Domestic Violence Act, 2005, , the Criminal Law (Amendment) Act 2013 and the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013.

The Maintenance and Welfare of Parents and Senior Citizens Act 2007 is a novel social security legislation which mandates protection of elderly parents and senior citizens.

### **Executive Programmes<sup>xxii</sup>**

As the Government of India is a signatory to the CEDAW and the Agenda of the Sustainable Development Goals 2030 it has launched a slew of programmes and schemes aiming to further the cause of gender parity in India. These include the National Perspective Plan, 1988, National Commission for Women, 1992, National Plan of Action for Girl Child, 1991-2000, National Policy for Empowerment of Women, 2001. In addition, various schemes have also been introduced such as the Beti Padhao, Beti Bachao Scheme with a primary aim of educating the girl child and ensuring her protection. One Stop Centre Scheme funded through Nirbhaya fund aim at providing support and assistance to women affected by violence. Women helpline scheme is a toll free service available 24 hours which seeks to provide support and assistance to women affected by violence. Working Women's Hostel is meant to provide safe accommodation to working women both urban and rural with day care facilities for the children. It is endeavored to set up such facilities at all places where there are opportunities for women to work. Support to Training and Employment Programme (STEP) for Women is another ambitious programme to provide skill training to rural and urban poor women to enable them to be able to generate income. Swadhar Greh Scheme and Short Stay Home (SSH) are meant to provide accommodation and aid rehabilitation of women and girls who are rendered homeless due to various reasons. Pradhan Mantri Matru Vandana Yojana is meant to provide cash incentives for improved health and nutrition of pregnant and lactating mothers. Mahila e-Haat is an initiative for meeting needs of women entrepreneurs and acts as a web based marketing platform for them. Mahila police volunteers to not only to fight crime against women but also report of such incidences. Rashtriya Mahila Kosh is a National Credit fund for women to provide lower income group women with access to loans to begin small businesses. National Mission for Empowerment of Women (NMEW) envisages holistic development of women and to create and implement women- centric programmes. Ujjawala is envisaged as a Scheme for Prevention of

trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation.

### Judiciary's Proactive Approach

Judicial activism has come to the rescue of women in India in upholding their rights and freedom. Judgments of the courts display great sensitivity and acumen and have even been instrumental in various laws being enacted to suit the changing need of the times, the Sexual Harassment Act of 2013, the expansion of the ambit of Article 21 of the Constitution and the various amendments brought about in the family laws and criminal laws stand testimony to this fact.

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>xxiii</sup>, the Supreme Court extended the benefits of the Maternity Benefit Act 1961 to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation. In this case, the court directly incorporated the provisions of Article 11 of the CEDAW 1979 into the Indian Law. In *Chairman, Railway Board v. Chandrima Das*<sup>xxiv</sup> the Supreme Court awarded compensation of 10 lakhs to an alien women under Article 21 of constitution who has been a victim rape. In *Githa Hariharan v. Reserve Bank of India*<sup>xxv</sup> the Supreme Court interpreted Section 6(a) of Hindu Minority and Guardianship Act, 1956 to include mother also as a guardian. In *Mohd Ahmed Khan v. Shah Bano*<sup>xxvi</sup>, the Supreme Court granted equal right of maintenance under section 125 of Cr. P.C. 1973 to a divorced married woman notwithstanding the personal law. In *Charansingh v. Union of India*<sup>xxvii</sup>, the Delhi High Court expressed that women are a backward class as compared to men. In *Government of Andhra Pradesh v. P.B. Vijay Kumar*<sup>xxviii</sup>, the Supreme Court has held that the issue of reservation for women in state services was upheld under Article 15(3) of the Indian Constitution. In *Municipal Corporation of Delhi v. Female Workers*<sup>xxix</sup>, The Supreme Court held that a just social order could be achieved only when inequalities against women are obliterated, and women are honoured and treated with dignity. In *Air India v Nargesh Mirza*<sup>xxx</sup>, the Supreme Court struck down the discriminatory Rules of Indian Airlines. In *Bodhisattwa v. Ms. Subhra Chakraborty*<sup>xxxi</sup> the Supreme Court held that rape is a crime against basic human rights. In *Vishakha v. State of Rajasthan*<sup>xxxii</sup>, the Supreme Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. In *Apparel Export Promotion Council v. A.K. Chopra*<sup>xxxiii</sup> the Supreme Court found all facets of gender equality including prevention of sexual harassment in the fundamental rights granted by the Constitution. In *C.B. Muthamma v. Union of India*<sup>xxxiv</sup> a service rule whereby marriage was a disability for appointment to foreign service was declared unconstitutional by the Supreme Court. In *Shobha Rani v. Madhukar Reddi*<sup>xxxv</sup> the Supreme Court held that dowry demand was held enough to amount to cruelty. In *Prathibha Rani v. Suraj Kumar*<sup>xxxvi</sup>, the Supreme Court upheld women's right to the Stridhana. In *State of Punjab v. Gurmit Singh*<sup>xxxvii</sup> the Supreme Court held that rape was violative of the right of privacy.

## Research Findings

1. With regard to status of women - in the sphere of education considerable success has been achieved. Political participation is low as there is lack of education and awareness. There is a gap even in the access to sanitation and health care. The labour participation is low and the nature of work women do is characteristically low skilled work. Discriminatory practices against women are still practised as is evident from the skewed sex ratio and a high Maternal Mortality Rate. Gender based violence is on the rise.
2. The Constitution has a lot of women centric provisions which uphold the ideal of gender equality. But the Uniform Civil Code envisioned in the Constitution is still an elusive dream.
3. Various laws have been amended and a host of laws have been enacted to suit the changing demands of time. The criminal laws have not been successful in deterring the occurrence of crime against women. Loopholes in the law and the lacuna in the proper implementation of the laws exist. For instance, Child marriages still being prevalent inspite of the Act of 2006 prohibiting is because they are voidable and not void.<sup>xxxviii</sup> Criminal laws have not curtailed the incidence of crimes against women.
4. The Government has announced various welfare schemes but the situation of women has a lot to be improved implying the implementation of the schemes have to be stepped up and awareness about the schemes have also to be achieved.
5. The judiciary has adopted a proactive approach and its activism has expanded the ambit of Article 21 to uphold the dignity of women by including the basic necessities of food and shelter as a fundamental right as also privacy. It has also led to right to education to be included in the fundamental rights. This move has also resulted in higher enrolment in primary education.

## Conclusion

It is abundantly clear that all the three wings of the government in India, the legislature, the executive and the judiciary advocate gender equality. We have made strides towards equality in family laws but a Uniform Civil Code which would remove the anomalies in matters of inheritance and property ownership of women of different religions still remains an elusive dream. The other area of concern is the proper implementation of the laws and the various schemes launched to serve the interests of women. That despite the presence of the Pre- Conceptual & Pre-Natal Diagnostic Techniques Act 1994 and various health programmes like Janani SurakshaYojana and National Rural Health Mission (NHRM), our country has a skewed sex ratio and a high Maternal Mortality Rate is witness to this distressing fact. The underlying impediment for gender equality in India is the entrenched patriarchal mind set. The incidence of honour

killing and khap panchayats is a reminder of this. Though we have laws to deal with violence against women both in the family and in the society incidence of crime against women is increasing proving that laws have to be made more stringent and the implementation of the laws have to be improved. Also there exists a lack of awareness of the rights and entitlements of women among both women and men in the society. Economic independence is an integral part of the exercise of rights of women and it will greatly serve the country's economic development also. The issue of low women Labour participation is a matter of concern and concerted efforts have to be taken to resolve this problem. The access to health care, nutrition and sanitation will also be addressed with economic independence of women. Education and economic independence along with political participation will go a long way in helping women overcome the barriers in realising their freedoms. For this dream to come true it is not enough that the Government takes steps but we as citizens collectively have a huge responsibility in changing the social norms of the society which hinder the actualisation of the goal of gender equality in India.

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