

# LEGAL PROVISIONS ON GENDER EQUALITY: AN ANALYSIS

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## ABSTRACT

Gender equality is the belief that men and women should be treated and perceived as equals in society, including all areas such as education, employment, and in decision-making positions. It is a fundamental human right and a necessary foundation for a peaceful, prosperous, and sustainable world. If there arises gender inequality then that disparity may create gender discrimination then one group face the problem of discrimination and that discrimination arises so many problems. So, to remove all the problems there must be some legal and constitutional provisions. Then only both men and women should be treated equally and get equal opportunities to develop.

**KEY WORDS: Gender equality, legal provision, discrimination, constitutional provisions**

## INTRODUCTION:

Inequality and discrimination lie in the mindset the people hold and the way they approach it. Gender inequality affects everyone, be it children, women, transgenders or even men. Gender equality is a human right but there seems to be a certain gap in access to various opportunities as well as the decision-making power for women and men. Women's empowerment is an important aspect of bringing gender equality. Giving equal opportunities to women and guaranteeing them their equal share of rights, helps in not only achieving gender equality but also in a wide range of development goals. Article 15 mandates the State to not segregate towards any person on the sole basis of sex, ethnicity, race, nationality, caste, or any of them. Article 39(a) – It mandates the State to aim its approach against equally reserving the right to a decent medium of living for men and women. Equality Act provisions which came into force on 1 October 2010 the basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions, work, education, associations and transport. So, to overcome from this problem there we need some legislative and constitutional provisions and government creates some special initiatives.

Muhammad Ali Jinnah once said "There are two powers in the world, one is the sword and other is the pen. There is a great competition between the two. There is a third power stronger than both that of women" How true lines are these, Women are really very strong and they are showing their capabilities in each sector of life but still a safe atmosphere is needed for them in many places so that they can shine ever. Safeguards in Public toilets, safeguards in local trains, safeguards in streets, safeguards at night is still required. Some statutory acts are required to save women at public places so that they should feel safe at night and at midnight also. There should not be any gender gap in any job or in any sector. A concept of gender equality will be proved when gender globe will be balanced with equal number of men and women. Government action with public support is required to fulfill this dream.

- **OBJECTIVES:**

1. To find out the causes of the gender inequality.
2. To study the legal and constitutional provisions against the gender discrimination.
3. To study various government policies and programmes.

- **METHODOLOGY**

For analysis this study is based on mainly secondary sources and information and issues are collected from different books, journals and internet etc.

- **CAUSES OF GENDER INEQUALITY**

Gender equality between women and men refers to the equal rights, responsibilities and opportunities for 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 equity that provides a level playing field for men & women so that they have a fair chance to realize equal outcomes are a precondition for ensuring gender equality and human rights. The ultimate goal in gender equality is to ensure that women and men have equitable access to, and benefit from society's resources, opportunities and rewards. And, as part of this, women need to have equal participation in defining what is valued and how this can be achieved. Equity is a means. Equality is the result. Gender equity denotes an element of interpretation of social justice, usually based on tradition, custom, religion or culture, which is most often to the detriment to women. The Convention on the Elimination of All Forms of Discrimination against Women, also known as the Women's Bill of Rights, declares that countries should:

- Act to eliminate violations of women's rights, whether by private persons, groups or organizations,
- Endeavour to modify social and cultural patterns of conduct that stereotype either gender or put women in an inferior position,
- Ensure that women have equal rights in education and equal access to information,
- Eliminate discrimination against women in their access to health care,
- End discrimination against women in all matters relating to marriage and family relations.

There are various reasons prevailed for the gender inequality

**Illiteracy:** Illiteracy is one of the factors responsible for gender inequality. According to 2011 census of India., the literacy level in India is 74.04% in which the male literacy level is 82.14% and female literacy level is only 65.46%.

**Child Marriage: Children** specially the girls are married at a very young age. This proves fatal for their overall development and have a negative impact on their health, too. Social evils social evils like dowry system, sati system, are also responsible for the low status of women.

**Discrimination:** This is against the girl child The girl child is not treated properly in the family. People still prefer the birth of a boy rather than a girl. The girl child is basically trained for household work only. Even today, female infanticide is a common social evil.

**Lack of employment equality:** The current global labor force participation rate for women is close to 49%. For men, it's 75%. That's a difference of 26 percentage points, with some regions facing a gap of more than 50 percentage points.

**Job segregation:** One of the causes for gender inequality within employment is the division of jobs. In most societies, there's an inherent belief that men are simply better equipped to handle certain jobs. Most of the time, those are the jobs that pay the best. This discrimination results in lower income for women.

**Lack of legal protections:** In many countries, there's also a lack of legal protections against harassment in the workplace, at school, and in public. These places become unsafe and without protection, women frequently have to make decisions that compromise and limit their goals.

- **LEGAL AND CONSTITUTIONAL PROVISIONS ON GENDER EQUALITY**

The Constitution of India made things a little easier for women in terms of gender equality. The term gender equality in the Constitution is mentioned in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy. The Constitution not only guarantees women's empowerment but also encourages the State to adopt various measures of equality and empowerment in favour of women.

- **CONSTITUTIONAL PROVISIONS**

Article 14, Article 15, Article 15(3), Article 16, Article 39(a), Article 39(b), Article 39(c) and Article 42 of the Constitution are of specific importance in terms of gender equality and equality in the general sense. Mentioned below are some of the articles:-

#### Article 14

Article 14 of the Indian Constitution talks about equal status or equality before the law. Every person has equal status before the law and the State cannot deny it.

#### **Article 15**

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex and place of birth. This Article cannot prevent the State from making any special provisions for women and children.

#### **Article 16**

Article 16 states that there shall be equal opportunity for all citizens of India in matters of employment or appointment to any office.

#### **Article 39**

According to Article 39 of the Constitution, the State shall make sure that men and women have an equal right to an adequate livelihood, there is equal pay for men and women, the economic system does not result in the concentration of wealth and the material resources are distributed to serve a common purpose.

#### **Article 42**

The State shall secure humane conditions for work and for maternity relief according to Article 42 of the Constitution.

Hence, the Constitution of India makes gender equality a human right. Apart from these constitutional provisions, certain Acts have emerged more or less from these constitutional provisions, which are the legal provisions classified into two categories which are:

#### **1. Crimes identified under Special Laws**

##### **The Equal Remuneration Act, 1976**

Under this Act, the employer must give equal pay or remuneration to men and women for the same work. No employer can, while recruiting, training or transfer, for the same work, or for the work done can discriminate between men and women.

##### **The Criminal Law Amendment Act, 2013**

The Criminal Law Amendment Act, 2013 came into force on February 3, 2013 on the recommendation of the Verma Committee Report. This Act added some new offences such as acid attack, sexual harassment, voyeurism, stalking all of which have been incorporated in the Indian Penal Code.

##### **Sexual Harassment of Women at Workplace Act, 2013**

The issue was first brought to light in the Vishaka case in 1992, where sexual harassment of women at their place of work was talked about and legislation for the same was passed. Harassing 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 Women's Reservation Bill**

The Women's Reservation Bill or the Constitution's 108th Amendment Bill is a pending Bill in which India plans to reserve 33 percent of all seats in the Lower house of Parliament of India, the Lok Sabha, and in all state legislative assemblies for women. The Rajya Sabha or the Upper House of Parliament has not yet voted on this Bill.

### **The Hindu Succession Act, 1956**

Under the Hindu Succession Act, 1956, a certain amendment was made in 2005 leading to the removal of discriminatory provisions. Under the Act, females are granted ownership of all property acquired either before or after the signing of the Act, abolishing their "limited owner" status.

### **The Maternity Benefit Act, 1961**

An amendment was made in 2017 to the Maternity Benefit Act, 1961. Under the Act, paid maternity leave for women employees with less than two surviving children, from the original twelve (12) weeks to twenty-six (26) weeks was extended. The amendment further provided working mothers who have adopted a child below the age of three months, to take 12 weeks of maternity leave from the date of receiving the child and also allowed mothers to work from home after completing 26 weeks subject to their mode of work and employer's consent.

### **The Special Marriage Act, 1954**

The Special Marriage Act, 1954 provides for a special form of marriage irrespective of religion, or faith that the other party believes in. This Act replaced the Old Act of 1872.

### **The Dowry Prohibition Act, 1961**

This Act prohibits the payment or acceptance of dowry as a consideration for marriage. Asking for or giving of dowry can be punished by imprisonment of up to six months, a fine of up to Rs. 15000 or the amount of dowry, or imprisonment up to 5 years.

## **2. Crimes Identified under the Indian Penal Code**

- Rape (Section 375);
- Kidnapping and abduction (Section 363-373);
- Molestation (Section 354);
- Sexual Harassment (Section 509);
- Importation of a girl (up to 21 years of age);
- Torture (Section 498A);
- Dowry Deaths (Section 304B).

### **SPECIAL INITIATIVES FOR WOMEN :**

- **National Commission for Women :**

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

- **Reservation for Women in Local Self -Government :**

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

The principle of gender equality is enshrined in its Preamble, Fundamental Rights, Fundamental Obligations and Directive Principles of the Indian Constitution. Not only does the Constitution guarantee women equal rights, but it also empowers the State to take constructive discrimination action in favour of women.

Our legislation, development policies, strategies and initiatives have been aimed at advancing women in various fields within the context of a democratic polity. India has also ratified numerous international treaties and agreements on human rights, dedicated to ensuring equal protection for women. Ratification of the Convention on the Elimination of All Forms of Discrimination against Women is necessary. Successful legislation on gender equality is critical in ensuring equal rights and opportunities for women and men in all fields of life, and in combating systematic discrimination against women. This section provides a range of international and regional treaties, non-treaty agreements, international jurisprudence, OSCE resolutions and other legal principles relevant to gender equality and discrimination prohibition.

### Government Schemes/ Programmes

The Government of India is implementing various schemes /programmes to overcome gender disparity and provide equal status to the women in the country. The Schemes/Programmes being implemented are as under:

- **Beti Bachao Beti Padhao Scheme:** The Census (2011) data showed a significant declining trend in the Child Sex Ratio (CSR) between 0-6 years with an all time low of 918. The issue of decline in the CSR is a major indicator of women disempowerment as it reflects both, pre-birth discrimination manifested through gender biased sex selection, and post birth discrimination against girls. Coordinated and convergent efforts are needed to ensure survival, protection and education of the girl child. In this background, Beti Bachao Beti Padhao (BBBP) Scheme was launched by the Government of India on 22nd January, 2015 to address the issue of decline in CSR and related issues of empowerment of girls and women over a life cycle continuum. The Overall Goal of the Beti Bachao Beti Padhao (BBBP) Scheme is to celebrate the girl child and enable her education. The objectives of the Scheme are as under: i. To prevent gender biased sex selective elimination ii. To ensure survival and protection of the girl child iii. To ensure education and participation of the girl child The Scheme has been implemented in 161 districts till date.

- **Nirbhaya Fund Scheme:** Violence and abuse against women and girls is frequent on streets, in public transportation and in other public places. Such occurrences restrict women's right to mobility, discouraging their freedom to walk freely and move in public spaces of their choice. Such violence also limits their access to essential services and adversely impact their health and well being. In this context, and following the tragedy of December 2012, the Government has set up a dedicated fund – Nirbhaya Fund – which can be utilized for projects specifically designed to improve the safety and security of women. It is a non-lapsable corpus fund, being administered by Department of Economic Affairs, Ministry of Finance.

- **Mahila Shakti Kendra Scheme:** The budget speech (2017-19) of the Finance Minister announced setting up of "Mahila Shakti Kendra" at village level in 14 lakh ICDS Anganwadi Centres with an allocation of Rs 500 crore. This is meant to provide "one stop convergent support services for empowering rural women with opportunities for skill development, employment, digital literacy, health and nutrition". Accordingly, the Ministry of Women and Child Development has proposed a new sub-scheme namely Mahila Shakti Kendra (MSK) under the Umbrella Scheme of Mission for Protection and Empowerment for Women.

- **Adolescent Girls Scheme:** For the first time in India, a special intervention was devised for adolescent girls using the Integrated Child Development Scheme (ICDS) infrastructure. ICDS with its opportunity for childhood development, seeks to reduce both socio-economic and gender inequities. The Adolescent Girls (AG) Scheme under ICDS primarily is aimed at breaking the inter-generational life-cycle of nutritional and gender disadvantage and providing a supportive environment for self-development.

- **SwadharGreh Scheme:** This is the scheme of the Central Government and is designed to provide relief and rehabilitation to destitute women and women in distress.

- **Ujjawala Scheme:** The scheme is designed for prevention of trafficking and rescue, rehabilitation and re-integration of victims of trafficking and commercial sexual exploitation
- **Rashtriya Mahila Kosh (RMK):** The scheme has been started by the Government of India to provide loan to poor women through Intermediary Microfinancing Organisations (IMOs), NonGovernmental Organisations (NGOs) to promote their socio-economic development
- **Working Women Hostels (WWH):** This scheme is meant for ensuring safe accommodation for women working away from their place of residence.
- **One Stop Centre:** The Ministry of Women and Child Development is also implementing Scheme of 'One Stop Centre' to provide integrated support and assistance to women affected by violence • **Universalisation of Women Helpline:** The scheme is intended to provide 24 hours immediate and emergency response to women affected by violence and
- **Mahila Police Volunteers:** The scheme has been started by the Government of India and it acts as a link between police and community and help the women in distress
- **Existing loopholes and possible solutions**

India's low rank at the 'WEF's Global Gender Gap Index report' shows that there is a need for work to be done at the grass-root level. Culture and traditions play an important role in igniting gender inequality. A cultural parental preference for a son automatically leads to poor consequences for daughters. In many parts of the country today, customs like sati, child marriage still exist and no one is even aware of all this. To achieve gender equality, solutions should be implemented targeting gender-based violence and discrimination; also creating awareness especially in the rural areas and remote villages is a must. Women have time and again proved that they are equal to men in every field. So what can be done to strengthen gender equality?

1. Implementing measures to strengthen women's economic independence through improving financial and employment services.
2. Improving gender violence prevention systems and stringent penalties to those who cause gender-based violence.
3. Creating awareness among vulnerable sections of society about sexual rights and sex education.
4. Help improve life and development skills of low-income women for a better understanding of how to manage lives.

All these measures sound ambitious and stable; however, the main crux of improving gender-based equality lies in changing the mindset and the thinking of the people.

## CONCLUSION

The Indian Constitution has made equality a basic right of all the citizens of this country. Ever since the enactment of the Constitution, society and values have evolved, but there are still some flaws. Some people still consider having a girl child as a burden to the family. The Government, the Supreme Court, and other authorities have time and again implemented various measures to prevent discrimination but, this still does not change the shallow thinking of the people who even consider practising female foeticide. Due to all this, achieving absolute gender equality in a country like India continues to be a huge challenge.

This article has extensively discussed the various policy measures, schemes and other initiatives undertaken by the Government of India to achieve gender equality in India. These schemes and measures seek to uplift, protect and empower women and persons of the transgender community to enable them to enjoy an equal status in personal and public life and to eliminate all forms of discrimination, prejudice and unfair treatment meted out to them. While there are a plethora of schemes and laws that have been formulated and are being formulated to address the gender inequalities in India, what is required is the continuous monitoring and tracking of the implementation of these measures. In addition to that, the timely

revival and updation of these policies to make them more inclusive and responsive to the urgent needs of a particular situation or crisis will go a long way in accelerating the achievement of the goal of gender equality in India.

## References

- [https://www.worldwidejournals.com/paripex/recent\\_issues\\_pdf/2015/September/September\\_2015\\_1492176817\\_\\_30.pdf](https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/September/September_2015_1492176817__30.pdf)
- <https://unu.edu/publications/articles/achieving-gender-equality-in-india-what-works-and-what-doesnt.html>
- <http://oscw.nic.in/sites/default/files/Legal%20Provision%20for%20Women%20Empowerment.pdf>
- <https://www.pewresearch.org/global/2020/04/30/worldwide-optimism-about-future-of-gender-equality-even-as-many-see-advantages-for-men/>
- <https://www.livemint.com/news/india/india-slips-four-ranks-on-world-economic-forum-s-global-gender-gap-index-2020-115tml>
- <https://indianexpress.com/article/cities/mumbai/gender-inequality-can-be-reduced-by-giving-equal-opportunities/>
- <https://data.em2030.org/countries/india/>
- <https://www.gvi.co.uk/blog/what-is-the-state-of-gender-equality-in-india-and-how-can-you-help/>
- <https://theprint.in/india/india-struggles-to-meet-gender-equality-goal-second-year-in-a-row-special-attention-needed/675504/>
- Lok Sabha Unstarred Q.No. 201 dated 18.11.2019 URL: <http://164.100.24.220/loksabhaquestions/annex/172/AU201.pdf>
- Gender Budgeting Handbook, pg. 1-2 URL: <https://wcd.nic.in/sites/default/files/GB%20-%20Handbook%20October%202015.pdf>
- Beti Bachao Beti Padhao Scheme, May 2019, Ministry of Women and Child Development, pg.6-7 URL: [https://wcd.nic.in/sites/default/files/Guideline\\_5.pdf](https://wcd.nic.in/sites/default/files/Guideline_5.pdf)
- Lok Sabha Unstarred Q.No. 394 dated 19.07.2019 URL: <http://164.100.24.220/loksabhaquestions/annex/171/AS394.pdf>
- [http://www.unesco.org/culture/pdf/gender/Gender\\_Thematic\\_Study\\_5-pager\\_Final\\_Link.pdf](http://www.unesco.org/culture/pdf/gender/Gender_Thematic_Study_5-pager_Final_Link.pdf)