

India and Its Approach for Ensuring Gender Equality

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Abstract: *The notion of gender equality has been long evolved from the essential human rights and it seeks to contribute in delivering of justice to society regardless of their gender. By achieving a gender justice, the state can ensure a dignified life to its citizens. In India, to achieve a goal of gender justice our constitution makers had included number of constitutional measures in our constitution. These measures are implemented by our legislatures into our society through various guidelines and schemes. Besides legislature, our Judiciary has also shown a dynamic approach towards ensuring gender equality in India. A recent example of this can be seen in the decision of Supreme court in which they have given equality to LGBTQ community by decriminalizing the section 377 of Indian Penal Code, 1860. It can be said that the parameters to achieve gender equality are also changing with the passage of time and in recent many different issues stood up in front of our society which are concentrated more on the upliftment of economic rights of a woman, equal representations of women in politics, etc. In this paper we will analyze the various policies made by Indian legislature to implement all the constitutional safeguards for gender equality. Also, we will be analyzing the role of Indian Judiciary in achieving the gender equality. In this paper, we will also be discussing some of the remedial measures by which we can secure the gender equality in our society.*

Keywords: Gender Equality, LGBTQ community, Indian Judiciary, Constitutional safeguards

1. Introduction

Once, Swami Vivekanand while talking about social engineering had aptly stated that: “Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.” Gender inequality is one of the most prevalent form of inequalities that can be seen throughout the world. This is majorly because of the old customs, the traces of which are still visible in our patriarchal societies. “The Article 1 of the United Nations charter focuses on achieving international co-operation in promoting and encouraging respect for human rights and for fundamental freedom for all without any distinction as to race, sex, language and religion.” The issue of gender equality and empowerment of girls is so prominent in the world that it has been selected as the fifth major goal amongst the United Nations sustainable development goals.

This patriarchal nature can also be seen in the Indian society. Although our constitution makers had included numerous constitutional safeguards to prevent this in our society but still, we are lagging in some or the other way in achieving our goal to gender equality. As per the reports of World Economic Forum, it is seen that even after taking a lot of schemes to achieve gender parity among the Indian society, we still ranked 112th position out of 153 nations. Justice K. Ramaswamy has also stated that: “Indian women have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, inequalities and discrimination.”[1]

It is seen that from time to time the judiciary in India has played a proactive role in upholding the constitutional provisions for safeguarding the gender equality among the society. They laid down many exhaustive guidelines to establish the notion of gender justice and gender equality in

our society. The supreme court of our country has observed that the democracy, development and respect for human rights and fundamental rights are interdependent to each other. [2]

2. Research Methodology

The descriptive and analytical methodologies are used in the course of the research. This is a qualitative research in nature. The facts are analysed and investigated from the primary sources like books, court judgments, secondary sources and research articles.

3. Research Objectives

The main objectives of this research paper are to examine and analyze:

- 1) The constitutional safeguards, legislative acts, and various other schemes of union and state government in order to achieve a target of gender equality in India.
- 2) The role of Indian Judiciary and the liberal interpretations given by them in different judgments in delivering the objective of provisions given in constitution of India towards gender equality.

4. Constitutional safeguards for equality

Our Constitution is the foundational head of all the laws of our country. It provides us with numerous legislations to provide the stable gender equity among the nation. There are number of fundamental rights enshrined in our constitution for gender justice in the society. [3] While explaining the importance of equality for a nation the Justice P.N. Bhagwati said that “These fundamental rights represents the basic value cherished by the people of this country since Vedic times and they are calculated to protect the dignity of

the individual and create conditions in which every human being can develop his personality to the fullest extent.”[4]

The Article 14 of Constitution of India, 1950 talks about the equality of laws and equal protection of laws. It directs the states to formulate laws with positive discrimination in order to bring all its citizen to a same equal footing in society.[5] The Apex court in the case of AIR India vs Nergesh Meerza has said that the fixation of different ages for males and females for retirement is unconstitutional. [6]

The Article 15(1) of the Constitution prohibits the state to discriminate on grounds of religion, race, caste, sex place of birth or any of them. However in Article 15(3), the state is given explicit power to make special provisions for the welfare of the women and children.[5] The Bombay high court in the case of Datatraya vs State of Bombay had held that the state can established the educational institutional specifically for women.[7]

The Article 16 of Indian Constitution provides for equality of opportunity in matters of public employment and appointment in any offices. The principle of equal pay for equal work are also covered in article 16[8] The same is written under Article 39 of Directive principles of State Policies in Part IV of constitution.[5]

The Article 21 is also helping us in gender equality. It should be read in consonance of the Universal declaration of Human rights, 1948. In the case of State of Maharastra vs Madhukaer Narayan Mandikar, the apex court had held that even a women of easy approach is entitles to privacy and no one had any right to invade her privacy without her likes.[9] Also to prevent sexual harassment in work place, the supreme court of our country in the case of vishaka vs State of Rajasthan the court has given detailed directions and guidelines which must be strictly followed by the company and its employees during public or private gathering.[10]

Article 42 talks about securing humane conditions of work and for maternity relief. It is proved to be a very a very important provision for the welfare of women in society. The Supreme court in the case of Municipal Corporation of Delhi vs Female workers has said that “Since Article 42 specifically speaks of just and humane conditions of work, and maternity relief, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of..”[11]

The Article 51(A) (e) of Constitution imparts duty on every citizen to renounce all the practices which are derogatory to the dignity of women.[5]

Article 243D and 243T of Constitution talks about 33% reservation of seats for the women candidates to hold office in the panchayat and at the municipal level.[12]

5. Legislative acts and policies

There are many acts made by our legislature to implement the above provisions of constitution at the grassroots level.

For ensuring economic justice to women some provisions mentioned below are formulated:[13]

- Workmen Compensation Act, 1923,
- The Employees State Insurance Act, 1948,
- The Minimum Wages Act, 1948,
- The Payment of Bonus Act, 1965.

For ensuring health of a women the provisions added are:

- The Maternity Benefit Act 1961,
- The Surrogacy (Regulation) Act, 2019.

6. Schemes of government at centre and state for ensuring gender equality

The government has introduced numerous schemes to achieve a gender equality at the grass root level. Some schemes are specifically for a particular state while others are for benefit for all the countries. All these schemes are majorly focused on developing the socio-economic conditions of a women in or society. Out of which few of the schemes which are showing great results are:

- **Beti Bachao Beti Padhao:** This scheme was made to address the declining Child sex ratio in our country and other related issues of girl education.
- **Pradhan Mantri Matru Vandana Yojana (erstwhile Maternity Benefit program):** This scheme is made for enabling a better environment by providing the cash incentives for the health and nutrition to the pregnant and nursing mothers.
- **Ujjawala:** It is scheme to prevent trafficking of women and children for commercial sexual exploitation, and to put them in safe custody.
- **National Nutrition Mission:** The aim of this scheme is to attain “Suposhit Bharat” by improving their nutritional status and reducing anaemia among children.

At grass root level government has established any Mahila Shakti Kendra which are helping women to improve their level of participation in the rural community level. Recently the government has launched Rastriya Mahila Kosh which will provide easy finance to women.[13]

7. Recentpro-active steps of Indian Judiciary for ensuring gender equality

The Supreme Court in the case of Danamma vs Amar Singh, held that the right of a daughter is same as the right of the son in the ancestral property. This even applies to the females born before the Hindu Succession Act, 1956 came into force. [14]

Again in 2018, the 5 Judge bench of Apex court struck down he Section 497 (Adultery) of Indian Penal Code and while striking the section the court said that, “the section is violation of right to privacy and liberty of a women and also it discriminates married women and boost the gender stereotypes of society”[15]

Also, the court break the gender stereotypes by allowing the women entry to the Sabarimala temple in Kerala, India. The Chief Justice Deepak Misra said that, “The irony is nurtured by the society is to impose a rule, however unjustified, and proffer explanation or justification to substantiate the substratum of the said rule. Mankind, since time

immemorial, has been searching for explanation or justification to substantiate a point of view that hurts humanity. This landmark judgment helps in implementation of the fundamental right to worship. [16]

Recently in the case of the secretary, Ministry of Defence vs Babita Puniya and ors, the Supreme court of India upheld the Delhi High court order on the permanent commission to women in the Indian Army. They also said that it is irrational to bar women from granting the command post because of their physiology features and is complete violation of Article 14 of the Indian constitution. [17]

8. Scope of Further Research

From the above data and observations made it has been observed that both state and judiciary in India are working really hard to remove the gender injustice into our society, but still apart from implementing various schemes at the grass root level, few issues are still left that need immediate attention. These are:

- 1) The Supreme court gave directions to all the states to regulate the sale of acids into their territorial area but still the states are not able to implement such directions nor did they made any law on this issue.
- 2) The case of recent Muzaffarpur shelter house case that occurred in Bihar, India shows that the state is unable to implement the Protection of Children from Sexual Offences (amendment) act, 2019.
- 3) The reservation of transgender sex in educational institutes, government jobs, and many other sectors for their upliftment in the society.

9. Conclusion

From the above discussion it distinctly clear that there are already numerous laws at grass root level to tackle the problem of gender inequality and gender injustice, but still, we are lacking behind when it comes to reality. This is only because of the traditional old views of gender injustice which is still imbibed in our day to day lives. Such things is not only common in India but are also present in the other corners of the world. We need to change our thinking and have to move on leaving all those bad traditional believes.

Next it is observed that despite our constitutional safeguards and judicial activism towards a gender equality, the changes and implications cannot be implemented to the lowest level of society and we need to change our social attitude towards gender, these laws should be implemented at the lowest level and a check should be maintained by government. Here, we also need to see that the role of the courts and the judges are of great importance and it is always expected from them to deal such cases in more realistic and sensitive manner. It is their duty to not only pen down the actions but also bring them to action for upbringings a concept of ideal gender equality.

Awakening of the social consciousness of the society is the hour of the day. This responsibility to achieve gender equality should be together shared among state, legislature, judiciary and the citizens, if each one of them will perform their role with honesty, then we can do a legal reform in the

field of gender equality and can bring new dawn of freedom, dignity and opportunity for all the three genders of the society.

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