



# Legal Issues Pertaining Gender Discrimination

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## Abstract

Human beings are God's most beautiful creations; they are born male or female, but in every community, men and women are assigned different roles, which influence the nature and power they have in their everyday lives. Gender sensitive study examines both men and women's lives holistically, asking how technology, intervention, and behaviour integrate into women's and men's lives. Gender equality is a cornerstone of human rights and a necessary component of a just, safe, and democratic society. In this century, when the globe is awakening to the cry of educated feminism, women are still seen as a cumbersome appendage in many regions of the country.

Because she destroys her family with marriage and dowry fees, she must be exploited or discarded as a non-person. Discrimination begins at birth, if not earlier, and continues until she dies. Since India's independence, planners and policymakers have paid close attention to the development of women, who account for half of the population. This study examines the whole scope of the troubles that women face as a result of gender inequality, as well as the legal issues that arise as a result of it. Gender inequality continues to be a fundamental impediment to human progress. Women have made significant progress for a long time, but they have yet to achieve gender equality. Gender inequality is associated with a more unequal distribution of human development in countries with significant gender inequality.

This study also considers the law passed by parliament to address gender-related concerns, as well as how the law is being implemented. Aside from that, gender equality is inscribed in the Indian constitution in the form of fundamental rights, fundamental obligations, and directive principles. The constitution not only guarantees women's equality, but also authorises the state to take positive discrimination measures in their favour. The Indian Supreme Court has also taken a constructive stance on issues of gender equity. It has made a determined effort to alleviate women's discrimination complaints by respecting their constitutional and legal rights. Gender equality is a multi-faceted notion that entails equal opportunity in political, legal, economic and social terms.

Gender sensitivity is a mentality that can develop as a result of family and other associations, educational institutions, and other factors. Alternatively, it could be the product of a later-developed intellectual conviction based on the acquisition of specific forms of information and the subsequent extension of one's other societal values. The law in the country is already mainly functional and uniform for human beings, but now it is up to us to put it into practise. Instead of our ethical assistance, the approach could not be fulfilled from a legal standpoint. A woman is a human being who is not wiser, stronger, more intelligent, more creative, or more responsible than a man, but she is never less capable of performing than a man.

**Keywords:** - Gender Discrimination, Gender sensitivity, Gender equality.

## Introduction

Discriminatory attitudes toward men and women have existed in Indian society for decades, affecting the lives of both genders. Despite the fact that India's constitution guarantees equal rights to men and women, gender disparity persists. Gender discrimination is a thorn in the side of human rights. This is most commonly seen in family land sharing between sisters and brothers.

Sex discrimination, also known as gender discrimination, occurs when people are treated differently in the workplace or elsewhere just because they are a woman or a man. This is a case of sex or gender discrimination if someone has been rejected for a job, dismissed, or otherwise hurt in their job because of their sex or gender.

Women have been discriminated against in the country from ancient times. They have been treated in a really unjust way. It's particularly unfortunate because there are so many deities adored in our country. Since its independence, the country has been driven to safeguard women from prejudice. Discrimination is defined by the Marriam Webster dictionary as the practise of treating a person or group of people unfairly in comparison to other people or groups of people. Discrimination cuts to the core of what it is to be human. It's when someone is treated differently just because of who they are or what they believe.

Regardless of our race, ethnicity, nationality, class caste, religion, belief, sex, language, sexual orientation, gender identity, age, health, or other status, we all have the right to be treated equally. Despite this, we frequently hear heartbreaking accounts of people who have been treated cruelly simply because they belong to a different group than those in authority.

There has been much research on gender discrimination, with the majority of findings favouring men over women. At work, women are thought to be at a disadvantage. Women's protection is prioritised in Indian legislation on rape, dowry, and adultery, although these highly discriminatory practises continue to be prevalent.

Despite this, millions of women around the world face discrimination:

Women are denied equal access to land, property, and housing due to laws and practises.

Women face fewer and inferior life choices as a result of economic and social discrimination, making them vulnerable to human trafficking.

Gender-based violence affects at least 30% of women worldwide.

Women's sexual and reproductive health rights are violated.

Women who advocate human rights are shunned by their communities, who perceive them as a danger to religion, honour, or culture.

Women's vital role in peace and security, as well as the unique dangers they face in crisis situations, are sometimes underestimated.

## Legal perspective in India

Human rights activists, feminists, NGOs, and government backing have all contributed to the fight for equal rights, freedom, and justice. Despite the fact that significant progress has been made in this area, women continue to lag behind. There are a slew of other challenges that women are dealing with modern days as a result of globalisation. Aside from these, there are still numerous societies in the globe where women's conditions are horrible, and they have no control over their bodies or their own bodies. Gender justice refers to the incorporation of women's rights and needs into mainstream society.

## Constitution of India

The Indian constitution is the first and foremost safeguard against all forms of discrimination. It might be claimed that the constitution, as the supreme law of the land, discusses and answers to issues concerning women. The entire legal system must be constructed in accordance with the provisions of India's constitution.

However, while the law will not be able to change society overnight, it will undoubtedly bring positive improvements and ensure that discrimination is not tolerated in any way.

Article 14 of the Constitution states that "the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India," and that "discrimination on the basis of religion, race, caste, sex, or place of birth is prohibited."

Article 15 states that discrimination on the basis of religion, race, caste, sex, or place of birth is prohibited.

The state shall not discriminate against any citizen solely on the basis of religion, race, caste, sex, birthplace, or any combination of these factors.

No citizen shall be subjected to any disability, liability, limitation, or condition with regard to access to shops, public restaurants, hotels, or places of public amusement based solely on religion, race, caste, sex, or place of birth, or any combination of these factors.

This article has no bearing on the state's ability to provide particular provisions for women and children.

Nothing in this article or clause 2 of article 29 prevents the state from establishing specific provisions for the advancement of socially and educationally disadvantaged persons, as well as the scheduled castes and tribes.

Article 15(1) prohibits discrimination against women on the basis of sex, caste, or other factors, and Women-favouring legislation are specifically mentioned in Article 15 subclass 3 in order to safeguard and promote women from discrimination.

In matters relating to employment or appointment to any office under the state, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state, according to Article 16.

No citizen shall be ineligible for, or discriminated against in respect of, any employment or office under the state based solely on religion, race, caste, sex, decent, place of birth, residence, or any combination of these factors.

Nothing in this article prevents parliament from passing a law requiring residents of a state or union territory to reside within that state or union territory for a period of time in order to look for work or be appointed to a position under the government of, or any local or other authority within that state or union territory.

Nothing in this article precludes the state from creating provisions for the reserve of appointments or positions in favour of any backward class of persons who, in the state's judgement, deserve it.

Not only does the state have a responsibility to protect women from discrimination, but it is also everyone's responsibility to ensure that women's dignity is respected.

It must be the duty of every citizen of India to promote concord and the spirit of common brotherhood among all the people of India, transcending religious, linguistic, regional or sectional diversities, and to abandon practises insulting to the dignity of women, according to Article 51 A.

### **Ban on prenatal diagnostic testing**

The Preconception and Prenatal Diagnostic Techniques (PCPNDT) Act, 1994 was passed by India's parliament to prevent female foeticides and reverse the country's decreasing sex ratio. The act outlawed the practise of determining a child's gender before birth. This procedure began in India in the early 1990s, when ultrasound methods became widely used. Families had a tendency to keep having children until a male child was born. Medical experts are increasingly using foetal sex determination and sex selective abortion to determine the gender of the foetus. Discrimination against women has increased, as has a preference for sons. Families are not afraid to say, "We simply need a boy."

The act's principal goal is to prohibit the use of sex selection techniques before or after conception, as well as the misapplication of prenatal diagnostic techniques for sex selective abortion.

Conducting or assisting in the conduct of prenatal diagnostic techniques in unregistered units, sex selection on a man or woman, conducting PND tests for any purpose other than those specified in the act, and the sale, distribution, supply, or rental of any ultrasound machine or other equipment capable of detecting the sex of the foetus are all prohibited under this act.

The act makes it illegal to choose a partner's sex before or after conception.

It limits the use of prenatal diagnostic procedures such as ultrasound and amniocentesis to detecting genetic abnormalities, metabolic problems, chromosomal abnormalities, certain congenital malformations, and hemoglobinopathies.

Sexually transmitted diseases,

No laboratory, centre, or clinic will do any test, including ultrasonography, to determine the fetus's gender.

No one, including the person performing the surgery in accordance with the legislation, will reveal the sex of the unborn to the pregnant woman or her relatives through words, signs, or any other means.

Anyone who places an advertisement for prenatal and preconception sex determination facilities in the form of a notice, circular, label, wrapper, or any other document, or advertises through interior or other media in electronic or print form, or engages in any visible representation made by means of hoardings, walls, paintings, signal light, sounds, smoke, or gas, can be imprisoned for up to three years and fined Rs 10,000.

All diagnostic laboratories, all genetic counselling centres, genetic laboratories, genetic clinics, and ultrasonography clinics are required to register under the legislation.

**Preconceptions sex selection:** Newly discovered procedures for determining sex at the time of conception, such as the Ericsson method (X and y chromosomal separation) and pre-implementation genetic diagnostics (PGD), are also covered by the Ambit of law.

Keeping track of the records All genetic counselling centres, genetic laboratories, genetic clinics, and ultrasound clinics, regardless of what they are involved in as far as diagnosis for gynaecological or other purposes, must keep records of all the tests they perform.

Implications of the 2003 amendment, the statute was amended primarily to bring preconception sex selection techniques within the scope of the act.

Including ultrasonography in its scope.

Constitution of a state-level supervisory board, as well as the empowerment of the central supervisory board.

There are provisions for harsher punishment.

Providing relevant authorities with the power of a civil court to search, seize, and seal the violators' machinery and equipment. Limiting the selling of ultrasound machines to licenced organisations.

### **The sexual harassment of women at workplace(Prevention ,Prohibition and Redressal) Act 2013**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 is an Indian law that makes rules to protect women against sexual harassment at work. The Supreme Court of India's Vishakha guideline for the prevention of sexual harassment was superseded by Status. According to the International Labor Organization, just a few Indian companies are in compliance with this regulation. Despite the fact that any firm with more than 10 employees is required to apply the law, the majority of Indian employers have not done so. Employers who do not comply with the regulation will face stiff penalties, according to the government.

The primary goal of the act is to protect women at work from sexual harassment, as well as to prevent and resolve sexual harassment complaints and to deal with concerns related to or incidental to them.

Sexual harassment violates a woman's fundamental rights to equality under Articles 14 and 15 of the Indian constitution, as well as her right to life and dignity under Article 21 of the constitution, as well as her right to practise any profession, trade, or business, which includes a right to a safe environment free of sexual harassment.

The right to work with dignity and protection against sexual harassment are universally recognised human rights by international conventions and instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, which was ratified by the Indian government on June 25, 1993.

To provide for the implementation of the aforementioned convention for the protection of women from sexual harassment.

The statute ensures that women are safeguarded from sexual harassment at work, whether in the public or private sector.

This will help them realise their rights to gender equality, life and liberty, and fair pay in all workplaces around the world. Women's engagement in work will improve as a result of their sense of security at work, leading in economic empowerment and inclusive growth.

The act uses the Supreme Court of India's definition of sexual harassment, which was established in *Visakha vs. State of Rajasthan* in 1997.

Article 19(1)(G) of the Indian constitution says that all people have the right to work in any profession of their choice or to engage in commerce or business in that profession.

The case showed that actions that violate a victim's fundamental right to gender equality, life, and liberty are in fact violations of the victim's fundamental right under Article 19(1)(G). The case finding indicates that sexual harassment in the workplace violates a woman's rights and is not just an issue of personal hurt.

Students in schools and colleges, as well as patients in hospitals, would be covered by the act. Employers and local governments will be required to set up grievance committees to review any complaints. Employers who fail to comply will be fined up to 50000 rupees.

Create a framework for redressing complaints of sexual harassment in the workplace.

It also protects against false or malicious accusations.

The definition of an aggrieved woman who will be protected by the act is exceptionally broad, covering all women regardless of their age or employment situation, whether in the public or private sectors, as well as clients, consumers, and domestic workers.

The legislation goes on to define the workplace in more detail, including organisations, departments, offices, branches, units, and so on. Organized and unorganised hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complexes, and any other location visited by the employee during the course of employment, including transportation. Even non-traditional employment environments are covered by the law.

## **Hindu succession Act, 1956**

The Hindu Succession Act of 1956 was adopted by India's parliament to alter and codify the legislation governing intestate or unwilled succession among Hindus, Buddhists, Jain's, and Sikhs. The Hindu succession (reform) Act 2005 made a substantial amendment linked to the abolition of prejudice in the year 2005. Females are allowed ownership of all property purchased before or after the passage of the Hindu Succession Act in 1956, removing their "limited owner" status. Daughters, on the other hand, were not given equal rights to the property until the 2005 Amendment. This is a feminist tirade on women's property rights.

The property of a Hindu female who dies intestate, or without a will, is divided as follows:

1. On the husband and his sons and daughters (including the children of any predeceased son or daughter).  
 2. Upon the husband's heirs.

3. Affecting the father and mother

4. against the father's heirs, and

5. Upon the mother's heirs.

### **Criminal Law (Amendment) Act ,2013**

On February 1, 2013, the Cabinet Ministers approved the enactment of an ordinance to give effect to the legal amendments recommended by the Verma committee report. The ordinance was later superseded with a law that made various amendments and was enacted by the Lok Sabha on March 19, 2013.

Certain acts were expressly recognised as offences under this new Act, which were dealt with under the new revised Act. The Indian penal code has been amended to include new offences such as acid attack, sexual harassment, voyeurism, and stalking. Under the Act, the definition of rape is further broadened.

**Section 326A- Acid Attack:** Imprisonment for not less than ten years, but not more than life, and a fine that is just and reasonable to cover the victim's medical expenditures and is given to the victim.

**Section 326 B: Attempt to Acid Attack:** five years in jail, with the possibility of a seven-year sentence, with the possibility of a fine.

**Sexual Harassment (Section 354A):** It solely protects women by imposing a harsh sentence of up to 5 years in jail, or a fine, or both in the case of the offences listed in clauses 1 and 2. In other circumstances, it imposes a sentence of up to 1 year in prison, or a fine, or both. Physical contact and advances involving unsolicited and explicit sexual overtures; or demand or request for sexual favours; or making sexually coloured remarks; or forcibly showing pornography; or any other unwelcome physical, verbal, or nonverbal sexual activity are all prohibited.

With the intent to disrobe a woman, Section 354 B of the Act imposes a sentence of imprisonment of not less than three years but not more than seven years, as well as a fine. Only protects women against anyone who assaults or uses unlawful force against a woman with the goal of disrobing her or forcing her to be naked.

**Section 354 C - voyeurism;** It provides that a first conviction will result in imprisonment for not less than one year but not more than three years, as well as a fine, and that a second or subsequent conviction will result in imprisonment of either description for not less than three years but not more than seven years, as well as a fine. It only serves to safeguard women. As a result, women may prey voyeuristically on men without repercussions. "Viewing or capturing a woman in the private act" is defined as "observing or catching a woman in the private act," which includes an act of watching carried out in a place that would reasonably be anticipated to guarantee privacy under the circumstances.

**Section 354 D Stalking;** It provides for a sentence of imprisonment of not less than one year but not more than three years, as well as a fine. It only protects women from stalking. As a result, women may stalk guys without repercussions. Following women and contacting or attempting to contact them to develop personal interaction repeatedly despite evident indications of disinterest, or monitoring a woman's usage of the internet, email, or any other kind of electronic communication is illegal.

In the recent case of Santosh Kumar Upadhyay vs. State of Uttar Pradesh, the learned standing council acknowledged the circumstance that there is a judgement in the field of gender discrimination and that the state government has already taken remedial measures by amending the legislation. In fact, discrimination against a daughter is clearly discriminatory on the basis of gender. The promise in article 15 of the constitution is wide enough to include gender discrimination, and any discrimination based on gender fundamentally disregards the constitution's guarantee of equality.

In another case of Annie Nagaraja & others versus union of India

According to the Navy Act of 1957, no woman shall be eligible for appointment unless the government, in its policy decision, notifies the department or branch, including the conditions of service in which they may be recruited, and the Government of India decided to lift the bar on appointment in the Navy in 1991. Counsel also claimed that the Government of India identified departments and branches where women as SSC officers could be appointed on an experimental basis alongside male officers to see if women were suitable and complete with men, and that these select branches, as approved by the cabinet, included education, logistics, and law.

### **International scenario on the discrimination**

Almost every human rights treaty prohibits discrimination based on gender, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both of which provide for the right of equality between men and women in the enjoyment of all rights under their common Article 3.

There are also treaties and expert groups dedicated specifically to the realisation of women's human rights.

### **The Convention on the elimination of the discrimination against women (CEDAW)**

The treaty, which is regarded as the worldwide bill of rights for women, specifies what constitutes discrimination against women and establishes a national action plan to end such discrimination. The United Nations enacted it in 1979, and it went into effect on September 3, 1981.

The committee on the eradication of discrimination against women, made up of 23 independent experts on women's rights from the many states that have ratified the convention, is in charge of overseeing the convention.

Every four years, countries that are party to the convention must submit reports outlining their compliance with the pact's terms.

The committee examines those reports and may also hear claims of violations and investigate cases involving serious or systematic violations of the law.

### **Special rapporteur on violence against women**

In 1994, the United Nations decided to establish an impartial special rapporteur on the causes and consequences of violence against women. The special rapporteur studies and monitors violence against women, as well as proposes and advocates alternatives for its abolition.

## Conclusion

Gender issues are in desperate need of ethical growth in today's culture. I can split the women on the basis of discrimination with the use of the paper. Women are classified as Hindu women, Muslim women, vulnerable women, Dalit women, economically disadvantaged women, and illiterate women as a result of prejudice. The harsh reality is that women are split into several categories solely due to gender prejudice. Only because of their gender can we consider women to be a vulnerable group in society; otherwise, she is far more capable than a man.

It should also be emphasised that when a crime is performed against a woman, the perpetrator may overlook gender discrimination, such as when a rape is perpetrated against a woman, the criminal may not notice if the woman is a dalit, Hindu, or Muslim. In a nutshell, prejudice is defined by numerous authors in their own ways, but each and every member of the community provides his or her own definition through which he or she might approach. Despite the fact that we have a list of rules to halt gender discrimination from a worldwide perspective, we are still grappling with the question of how to get out of it all.

True, the parliament has passed all of the laws, but they still need to be implemented. Finding flaws in the legislation enacted for our benefit by the highest authority is simple, but putting it into practise in an ethical or moral manner is the responsibility of the common people. Parliament passes laws, but we can give them ethical requirements by using or applying them to our own families.

If a mother instils ethical ideals in her children and the youngsters follow her orders to the letter, he might easily opt for parliamentary orders as well. Stopping crime or reducing discrimination against women is not only the responsibility of the legislature or advocates; it is also the responsibility of each and every citizen of the country to instil motherly values in the form of ethics and to follow the laws as the country's second mother, which is essential for a crime-free society.

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