

“Role Of Legislature and Judiciary in Securing Gender Justice”



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GENDER EQUALITY IN LAW

CONSTITUTIONAL PROVISIONS

- Art. 14 :- Right to Equality.
- Art 15(1) :- Prohibition of Discrimination on the ground of Sex.
- Art 15(3) :- Permits State to positively discriminate in favour of women.
- Art 23 :- Prohibits traffic in human beings.
- Art 39(a) :- Equal right to men & women to adequate means of livelihood.
- Art 39(d) :- To secure equal pay for equal work.
- Art 39(e) :- Not to abuse the health & strength of workers, men & women.
- Art 42 :- To secure just & human conditions of work & maternity benefits.
- Art 51A(e) :- To renounce the practices derogatory to women.

Seven Faces of “Gender Inequality”

Inequality in Mortality

Inequality in Natality

Inequality in Basic Facility

Inequality in Special Opportunity

Inequality in Choice of Profession

Inequality in Ownership of Properties

Inequality in Household Responsibilities

Right to be Born.

Preference for Male Child
And
Advancement in Technology

Pre-conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 Amended in 2003

To stop Sex Selection and Sex Determination and arrest the declining sex ratio in India.



How Courts have upheld Rights of Women

**In cases of Gender Biased Sex Selection
And
PCPNDT Act**

CEHAT Vs Union of India (2001)5 SCC 577

- In this P.I.L. the Supreme Court has passed several orders & directions from time to time for proper and effective implementation of the Act, with all vigor and zeal it deserves, including directions for-
 - appointment of Appropriate Authorities,
 - amendment of the Act in view of emerging technology.
 - to review and monitor the implementation of the Act.
 - for creating public awareness against the practice of sex-determination and sex-selection.

CEHAT Vs Union of India (2003) 8 SCC 398

- S.C. has expressed grave concern about discrimination against girl-child prevailing in India.
- Opined - The reason for the same - no change in the mind set which still favors a male child against a female.
- The misuse of modern science & technology, preventing the birth of Girl Child, by sex determination.
- Resulting into greater decline in sex-ratio in the 0-6 age group in States like Haryana, Punjab, Maharashtra & Gujarat which are economically better off .
- The law which aims at preventing such practice is not implemented by the government. Hence, S.C. again gave further directions for implementation of the Act.

Voluntary Health Association of Punjab Vs. Union of India AIR 2013 SC 1571

- Various directions issued in this PIL to Central and State Supervisory Boards and Advisory Committees viz. to maintain all the records and forms in accordance with Rule 9.
- Mapping of registered and unregistered clinics within three months.
- Special Cell to monitor progress of various cases pending in the Court and to take steps for their early disposal.

Voluntary Health Association of Punjab Vs. Union of India (2016) 10 SCC 265

- Various directions issued in this PIL to Central and State Supervisory Boards and Advisory Committees viz. to maintain all the records and forms in accordance with Rule 9.
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Reproductive Rights of Women.

Medical Termination of Pregnancy Act 1971- Her consent for termination -must

Suchitra Srivastav v/s Chandigarh Administration **AIR 2010 SC 235-**

- ❖ A woman's right to make reproductive choices is - a dimension of 'personal liberty' under Article 21.
- ❖ Reproductive choices can be exercised to procreate as well as to abstain from procreating

Suchitra Srivastav v/s Chandigarh Administration
AIR 2010 SC 235-

:

- ❖ A woman's right to privacy, dignity and bodily integrity should be respected.
- ❖ There should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods.
- ❖ Women are also free to choose birth-control methods such as undergoing sterilisation procedures.
- ❖ Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.

Shayara Bano v. Union of India & Ors. (2017)9 SCC 1.

Triple Talaq--Talaq-e- bidat - a practice which gives a man the right to divorce his wife by uttering 'talaq' three times in one sitting without his wife's consent.

Its stature is that of 'personal law', and on that account, the practice of 'talaq-e-biddat' has a constitutional protection.

Held- besides being arbitrary, the practice of 'talaq-e-biddat' is gender discriminatory.

Held to be illegal and unconstitutional by a 3:2 majority.

Under Article 142 of the Constitution, directed the Union of India to consider passing appropriate legislation, Till passing of such legislation Muslim husbands injuncted from pronouncing 'talaq-e-biddat'.

THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE)ACT, 2019

S.3- Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

S.4- Any Muslim husband who pronounces talaq - shall be punished with imprisonment for a term which may extend to three years & fine.

S.5- Woman-entitled to amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.

S.6- entitled to custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by the Magistrate.



How Courts have upheld Rights of Women

**In cases of Sexual Harassment
at Workplace**

**Prevention of Sexual Harassment at Work
Place Act 2013**

Vishaka and Ors Vs. State of Rajasthan and Ors AIR 1997, 6 SCC 241

Sexual Harassment at work place amounts to discrimination against women.

Gender equality includes protection from harassment and right to work with dignity which is a universally recognised human right....

In the absence of domestic law- relied upon CEDAW.

Held-guarantee of gender equality, right to work with human dignity implicit in Articles 14, 15 19(1)(g) and 21 of the Constitution

Defined sexual harassment and issued guidelines to prevent sexual harassment at workplace.

How Courts have upheld Rights of Women

In cases of Sexual Assault / Rape

State of Punjab v. Gurmit Singh(1996) 2 SCC 384

Her Sole testimony sufficient.

Insisting on corroboration is-adding insult to her injury.

Judicial Officer has to be sensitive in appreciation of her evidence.

Must take active part in recording of her evidence.

Trial must be in camera. Her identity not to be disclosed.

Women J.O.; Compensation;

State of Punjab v. Gurmit Singh (1996) 2 SCC 384

- Even in cases, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl, of “loose moral character” is permissible to be drawn from that circumstance alone.

How Courts have upheld Rights of Children

In cases of Sexual Assault / Rape

Sakshi v. Union of India (2004) 5 SCC 546

Held- Definition of Rape- narrow.

Directions-Accused not to be seen by child. Screen or one way mirror or video-conferencing.

Questions to be asked by Judge.

Frequent breaks; Not to be called repeatedly; Presence of support person, legal assistance, compensation.

The Protection of Children from Sexual Offences Act 2012

Lillu @ Rajesh and Anr vs. State of Haryana MANU/SC/0369/2013

- Held- Even if the victim had lost her virginity earlier, it can certainly not give a license to any other person to rape her.
- “Undoubtedly the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity.” Medical procedures should not be carried out in a manner that constitute cruel, inhuman or degrading treatment.....”

Independent Thought VS. Union of India (2017) 10 SCC 800

- “Constitutionally a female has equal right as a male and no statute should be interpreted or understood to derogate from this position.
- If there is some theory that propounds such an unconstitutional myth, then that theory deserves to be completely demolished.”

Independent Thought VS. Union of India (2017) 10 SCC 800

- Declared Exception 2 to Section 375 IPC which gives immunity to husbands from prosecution, as unconstitutional, holding that,
- Marriage is not a license to forcibly rape the wife. A husband does not own his wife's body by reason of marriage. By marrying she does not divest herself of the human right to an exclusive autonomy over her body and thus she can lawfully opt to give or withhold her consent to marital coitus.

Joseph Shine vs Union Of India

2018 SCC OnLine SC 1676

Any system treating a woman with indignity, inequity and inequality or discrimination invites the wrath of the Constitution.

Any provision that might have, few decades back, got the stamp of serene approval may have to meet its epitaph with the efflux of time and growing constitutional precepts and progressive perception.

A woman cannot be asked to think as a man or as how the society desires. Such a thought is abominable, for it slaughters her core identity. And, it is time to say that a husband is not the master.

Joseph Shine vs Union Of India

2018 SCC OnLine SC 1676

Held- Section 497 IPC is unconstitutional and adultery should not be treated as an offence.

Section 198 CrPC which deals with the procedure for filing a complaint in relation to the offence of adultery as unconstitutional.

Overruled -earlier the decisions in Sowmithri Vishnu v/s Union of India ((1985) Supp SCC 137) and V. Revathi v/s Union of India ((1988) 2 SCC 72)

The right to sexual autonomy and privacy has been granted the stature of a Constitutional right.

Joseph Shine vs Union Of India

2018 SCC OnLine SC 1676

Held- Section 497 denudes the woman of the ability to make these fundamental choices, in postulating that it is only the man in a marital relationship who can consent to his spouse having sexual intercourse with another. Section 497 disregards the sexual autonomy which every woman possesses as a necessary condition of her existence.

The ability to make choices within marriage and on every aspect concerning it is a facet of human liberty and dignity which the Constitution protects. In depriving the woman of that ability and recognising it in the man alone, Section 497 fails to meet the essence of substantive equality in its application to marriage.

Young Lawyers Association V/s. Union of India 2018 SCC Online 1690 (Sabrimala Temple Entry case)

- Held-“To suggest that women cannot keep the Vratam is to stigmatize them and stereotype them as being weak and lesser human beings. A Constitutional Court, such as this one , must refuse to recognize such claims.”
- In a 4:1 majority ruled that Sabarimala's exclusion of women violated the fundamental rights of women between the ages of 10-50 years and Rule 3(b) of the Public Worship Rules was unconstitutional.

Laxmi vs Union Of India

(2014) 4 SCC 427

In the face of rising cases of acid attacks Directions issued-
For amendment in the IPC and for formation of Injury
Compensation Fund.

The crucial step from this case is the amendment in the laws
for acid attack offence in the Penal code by insertion section
326A and 326B relating to the laws and punishment of
throwing acid offence and

in Crpc section 357A and 357C was inserted which provides
compensation to the acid attack survivors of Rs. 3 lakhs and
treatment of acid attack victims to be free of cost in both
public and private sector of hospitals.

Banning sale of Acid.

Patan Jamal Vali vs The State Of Andhra Pradesh
2021 SCC OnLine SC 343

Recognised - Different Hues of Identity.

Held- experience of rape induces trauma and horror for any woman regardless of her social position in the society.

But the experiences of assault are different in the case of a woman who belongs to a Scheduled Caste community and has a disability because the assault is a result of the interlocking of different relationships of power at play.

When the identity of a woman intersects with, inter alia, her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds.

Patan Jamal Vali vs The State Of Andhra Pradesh on 2021 SCC OnLine SC 343,

Victim was visually disabled and belonging to Scheduled caste.

Held- When the identity of a woman intersects with her caste, class, religion, disability and sexual orientation, she may face violence and discrimination due to two or more grounds. Transwomen may face violence on account of their heterodox gender identity. In such a situation, it becomes imperative to use an intersectional lens to evaluate how multiple sources of oppression operate cumulatively to produce a specific experience of subordination for a blind Scheduled Caste woman.”

Gender oppression is oppressive in the same way for all women, only more so for women suffering marginalization on other grounds.

Direction- Judicial Academies- to hold sensitization training for Judicial officers, Police officers, Public Prosecutors

NALSA v/s Union of India
(2014) 5 SCC 438]

Upheld- rights of Trans genders.

Held- Trans genders fall within the purview of the Indian Constitution and therefore should enjoy all the rights of the Constitution. These rights include Article 14 which guarantees the right to equality.; Art 15, and 21.

Declared - Centre and State governments must grant recognition of gender identity as male, female or third gender in the eyes of the law.

It was observed that transgenders require full recognition in the eyes of the law. They should get to enjoy health care, education, etc.

NALSA v/s Union of India

(2014) 5 SCC 438]

Directed- all government documents such as ration card, passports, etc. would recognize third gender.

Declared- Trans genders are citizens of India and are fully entitled to get the benefit of all schemes and programs launched by the Government irrespective of their population.

The Transgender persons Protection of Rights Act 2019- passed in 2020- making any discrimination against transgender a punishable offence.

Navtej Singh Johar v. Union of India AIR 2018 SC 4321

Held- Section 377 IPC unconstitutional. Recognized consensual sex between same sex. Held-sexual orientation was natural, innate and immutable.

APARNA BHAT & ORS.V/S STATE OF M.P.

CRIMINAL APPEAL NO. 329 OF 2021 dated 18th March 2021

Given this state of affairs, the traditional view of the legal system as neutral, objective and gender blind is not defensible. Since the system is ineffective in protecting the rights of women and children, it is necessary to re-examine the existing doctrines which reflect the social limitations that have preserved dominant male interests at the expense of women and children.

APARNA BHAT & ORS.V/S STATE OF M.P.

2021 SCC OnLine SC 230

Judges can play a significant role in ridding the justice system of harmful stereotypes.

They have an important responsibility to base their decisions on law and facts in evidence, and not engage in gender stereotyping.

This requires judges to identify gender stereotyping, and identify how the application, enforcement or perpetuation of these stereotypes discriminates against women or denies them equal access to justice.

Stereotyping might compromise the impartiality of a judge's decision and affect his or her views about witness credibility or the culpability of the accused person.

APARNA BHAT & ORS.V/S STATE OF M.P.

2021 SCC OnLine SC 230

- (e) Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said, during the arguments, and

- (g) Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

APARNA BHAT & ORS.V/S STATE OF M.P.

2021 SCC OnLine SC 230

Training of all Judicial officers on Gender Sensitization.

The module should also emphasize the prominent role that judges are expected to play in society, as role models and thought leaders, in promoting equality and ensuring fairness, safety and security to all women who allege the perpetration of sexual offences against them. Equally, the use of language and appropriate words and phrases should be emphasized as part of this training.

Gender & Law

Gender & Law

Krishan Lal V. State of Haryana

AIR 1980 S.C. 1252.

**“One socially sensitized Judge is a better
Statutory Armour against
Gender-outrage than long
Clauses of a complex section, with all
Protections
Writ into it”**

C.Ravichandran Iyer V. A. M. Bhattacharjee

1995 SCC(5)457.

“Role of Judge is not merely to interpret the law but also to lay new norms and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. The society demands active judicial roles.”

Shayara Bano v. Union of India & Ors.

(2017) 9 SCC 1.

“The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause of justice to the derelicts.”

“Gender equality is more than a goal in itself. It is really a pre-condition for meeting the challenges of reducing poverty, promoting sustainable development and building good governance.”

---Kofi Annan, Former UN general Secretary

