

## GENDER JUSTICE OR EQUALITY: LAW RELATED TO WOMEN IN MODERN ERA

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**Abstract:** “This humanity is male and man defines woman not in herself, but as relative to him; she is not regarded as an autonomous being .....She is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential. He is the subject, He is the Absolute-she is the other”. Simon de Beauvoir [1] For the last two centuries, gender has shaped both the legal and cultural landscapes of all countries. Although numerically equal in population, women are a minority group in terms of their and influence. According to Confucius, the subordination of woman to man was one of the supreme principles of govt. Aristotle too deemed the dominion of male over female. The Hindu sage, Manu, condemned woman to eternal bondage. But as people evolved and their mindsets were changed therefore, on an international scale certain declarations, conventions, conferences were held from time-to-time. Universal Declaration of Human Rights(UDHR), Declaration On The Elimination Of Discrimination Against Women,1967 (DEDAW) and Convention On The Elimination Of All Forms Discrimination Against Women,1979 (CEDAW) and also the 4 World Conferences, were landmark occurrence and paved a path for enlightenment of women all around the globe. In India too, The Constitution provides a no. of provisions for gender equality as in Fundamental Rights(FRs), Fundamental Duties(FD) and Directive Principles of State Policy (DPSP).

**Keywords:** Convention, Discrimination, DPSP, Human Rights, Minority, FRs, FD.

**Introduction:** “All history attests that man has subjugated woman to his will, used her as a means to promote his self-gratification, to minister to his sensual pleasures, to be instrumental in promoting his comfort; but never has he desired to elevate her to that rank she was created to fill. He has done all he could to debase and enslave her mind; and now he looks triumphantly on the ruin he has wrought, and says, the being he has thus deeply injured is his inferior.... But I ask no favor for my sex.... All I ask of our brethren is, that they will take their feet off from our necks and permit us to stand upright on that ground which God designed for us to occupy”. Sarah Grimke [2] In the primitive societies women have been considered men’s inferiors physically and intellectually. Most of the ancient Greece and Rome, women enjoyed very few rights. Marriages were arranged, women had no property rights and were not entitled to education. In China too, Yang(male) always dominated the Yin(female). According to Hindu law of Manu as put forth in the Manusmriti, women were subservient to male relatives, widow remarriage was not allowed and the law sanctioned the practice of Sati, which was totally an evil and atrocious practice. Wearing bangles is also understood to be a form of fetters/shackles. Under the England’s common law, fundamental rights were hardly given to any married women; and she also had no rights over the property after marriage. In the early history of the United States, women and children were dealt under the men’s dominion. Due to globalization, the perspective against women were changed and a broader look was adopted for their

individual development. UN Charter of 1945 played a vital role for empowering women. The Preamble of the UN (1945) begins by reaffirming a “faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of nations large and small.” To achieve its goal to provide equal status to women and their development; the social, political, economic and cultural rights of women were considered in the form of certain conventions, declarations, commissions and conferences, which are discussed as under.

**Universal Declaration of Human Rights, 1948:** As per the UNDHR, women along with men are entitled to all rights and terms “no one” and “everyone” include both men and women. The declaration has 30 articles. Articles 2-21 have been referred to as civil and political rights, and articles 22-27 deal with different social and economic rights. The International Covenant on civil and political rights, 1966 (ICCPR) in Article 3 declares: “The State parties to the present covenant undertake to ensure the equal right of all civil and political rights set forth in the present covenant.” The International Covenant on Economic, Social and Cultural Rights, 1966 declares the same thing in Article 3.

**Convention On The Political Rights of Women, 1953:** The Convention was adopted by the General Assembly on 20<sup>th</sup> Dec 1952[3] and came into force on 7<sup>th</sup> July, 1954. According to Article 1 of the Convention, women shall be entitled to vote in all elections on equal terms with men, without any discrimination. Women will also be eligible for election to all publically elected bodies, established

by national law, on equal terms with men, without any discrimination (Article 2). They will also be entitled to hold public office and exercise all public functions established by national law on equal terms with men without discrimination (Article 3).

**Convention On The Nationality of Married Women, 1957:** In 1949, the Commission on the Status of Women expressed the view that a convention on the nationality of married women should be prepared and concluded, as soon as possible, for it would assure women of equality with men, especially with respect to the right to a nationality, and prevent them from becoming stateless upon marriage or at its dissolution. Subsequently, the draft of the Convention was prepared by the Commission and in 1957, the General Assembly adopted the Convention on the Nationality of Married Women.

**Declaration On The Elimination Of Discrimination Against Women, 1967:** The UN General Assembly adopted the Declaration on the Elimination of Discrimination Against Women on 7<sup>th</sup> Nov 1967. Some of the important articles are related to equal remuneration, equal rights in the fields of economic and social life. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective work, measures shall be taken to 1.) prevent their dismissal in the event of marriage or maternity; 2.) provide paid maternity leave with guarantee of returning to former employment, and 3.) make available the necessary social service including child care facilities.

**Convention On The Elimination Of All Forms Of Discrimination Against Women, 1979:** Article 1 of the Convention, the term “discrimination against women” means any distinction, exclusion or restriction made on the basis of sex which have the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, of human rights and fundamental freedoms in the political, social, cultural, civil or any other field.

**Declaration on the Elimination of Violence Against Women, 1993:** Article 1 of the Declaration on the Elimination of violence Against Women and the Platform for Action from the Fourth World Conference on women, both, define violence as: Any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Thus, the declaration gives a broad definition to the world “violence” and includes psychological harm inflicted on women. **Indian Scenario:** The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy (DPSP). The

Constitution not only grants equality to woman, but also empowers the state to adopt measures of positive discrimination in favor of women. Preamble of the Constitution lays down certain basic principles. These principles have been elaborated in detail in Part III and IV of Constitution. Part III of The Constitution deals with Fundamental Rights and make a number of provisions for protection and promotion of persons and citizens which include both male and female citizens. Part IV of the Constitution deals with DPSP and Article 38 provides social, economic and political justice to women. PART IV A of the Constitution deals with Fundamental Duties. The National Commission for Women was setup by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. This commission also proposed some bills, amendments and acts which are as follows:

**Prohibition of Sexual Harassment of Women at Workplace Bill, 2010:** Sexual Harassment infringes the fundamental rights of a women to gender equality under Articles 14 and 15 of the constitution of India and her right to life and live with dignity under Article 21 of the constitution which includes a right to a safe environment free from sexual harassment. The Supreme Court in *Vishaka v. State of Rajasthan* [4], held that right to life meaningful and dignified life. It was held that sexual harassment of working woman amounts to violation of human rights of gender equality and right to life and personal liberty under Articles 14, 19 and 21 of the Constitution.

**Penal Code, 1860:** The Commission has recommended 1) to strengthen the IPC to curb the incidence of sale of minor girls, and 2) to transfer the substantive provision of the Commission of Sati (Prevention) Act, 1987 under the IPC and name the offence as sati murder.

**Immoral Traffic (Prevention) Act, 1956:** Amendment of the Immoral traffic (Prevention) Act, 1956 for elimination of child prostitution, devising a comprehensive for rehabilitation of women id children in prostitution, and taking up correctional measures was recommended.

**Medical Termination of Pregnancy Act, 1971:** The Commission recommended amendment of the Medical Termination of Pregnancy Act, 1971, so that the women’s consent must be obtained in every case of termination of pregnancy and to provide stringent punishment to the violators.

**The Protection of Women from Domestic Violence Act, 2005:** The objective of the Act is to provide for more effective protection of the rights of women, guaranteed under the Constitution, who are victims of violence of any kind occurring within the family for incidental matters. Domestic violence manifests as verbal, physical or psychological abuse, often in forms that are more subtle than the violence

elsewhere in society. A survey conducted by the US based International Centre for Research on Women(ICRW), spanning across seven Indian cities [5] covering both rural and urban populations, revealed that 45% of the women surveyed had been subjected to at least one incident of physical or psychological violence in their lifetime; 26% women said that they experienced moderate to severe forms of physical violence[6]; 43.5% of women experiencing at least one incident of psychologically violent behaviors like insult, threat, inducement of fear or abandonment. According to the said survey only 23% of those living in joint families became victims of violence- joint families act as a deterrent. The findings shatter another myth that working women are less prone to such violent acts. On the contrary the study shows that more working women are beaten up at home by their unemployed husbands. [7]. Since then many national and international conferences has been held, Declaration, Commission on women had been made, laws has been formed in order to protect the rights of the women but still their identity in the present era is in threaten. The incidents like Nirbhaya case that took place in Delhi in 2012, was one of the example of the ineffective governance of the Delhi state and the carelessness attitude of the Delhi police regarding the women security. Most recent incident that took place in Bengaluru also shows the poor implementation of law and order in the country that gives the men, more of a fearless opportunity of doing violence against women. The restriction are imposed in the guise of

precaution that is intended to the safety of women folk in families. It is sad that despite legislating several punitive laws to safeguard the rights and political dignity of woman, right from conception till her old age seems to be not enough to curb the menace of rise in crimes against women. This shows that they are inadequate, or have not being properly implemented in opposing all forms of gender based discrimination and violence against women. The thing that is lacking in the present generation is the mindset of man of seeing woman as a consumable for one's physical pleasure, be it either for lure or for satisfaction of lust. Thus, it is the only woman who can decide their conduct or behavior whether in public or private as they may choose, and no person has any right to invade into their personal or private domain for whatsoever reason it might be. And thus to protect the violence against woman, our country has to come up with some more advanced and strict rule against the violence of woman just as other western countries are having.

**Conclusion:** To conclude, the success of programs, policies and laws for gender equality and empowerment of women involves commitment on part of actors at all levels, from the leaders, bureaucrats, communities, families, to the individuals concerned. Promoting gender equality and empowerment of women needs to be incorporated as one of the important agenda in political dialogue and policy discussion and the effectiveness of programs is also dependent upon the process of implementation which involves accountability and monitoring as well.

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10. This figure would go up if slapping was also included in the study. "Physical Abuse of Indian Women in Home is Rampant:Survey", Times Of India 25-02- 2000

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