

**LAW AND GENDER BIAS IN INDIA**

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**Abstract**

In this Article analyse the concept of Law and Gender Bias, it is also analyse the terms and definitions which are used for the Gender in all around the world as well as in India and further that the Indian Constitution guaranteed the various fundamental rights for the all the genders who are lives in India and legal provision relating genders. Every human being has their unique identity so the discrimination only because of their gender identity violates their fundamental rights which is guaranteed under the constitution of India. This article also analyse special laws in India.

“See no gender, hear no gender, speak no gender see only human, hear only human, and speak only human.”

**Abhijit Naskar,**

**Introduction:-**

The word Gender is different than sex. Although genetic factors typically define a person's sex, gender refers to how they identify on the inside of every individual. Only the person themselves can determine what their gender identity they have. A person's gender identity is not restricted to being either a man or a woman or any other gender and some people do not identify with any gender identity, while others identify with multiple genders. Here is some type of gender which is identifying medically. Following are the some gender identities and their definitions.

- I. Agender :** A person who is 'agender' does not identify with any particular gender, or they may have no gender at all. Other terms for this may include following types of genders.
  - a) Neutral gender
  - b) Null-gender
  - c) Genderless
  - d) Neutrois
- II. Androgyne:** A person who identifies as 'androgyne' has a gender that is either both masculine and feminine or between masculine and feminine. In Western cultures, people associate femininity with women and masculinity with men but this social construction varies across cultures.
- III. Bi-gender:** A person who identifies as 'bi-gender' has two genders. People who are bi-gender often display cultural masculine and feminine roles.
- IV. Butch:** Women, especially lesbians tend to use this term to describe the way they express masculinity, or what society defines as masculinity. However, the LGBT Resource Center states that butch can also be a gender identity in itself.
- V. Cis-gender:** A 'cisgender' person identifies with the sex that they were assigned at birth. For example, a 'cisgender' woman is someone who still identifies with the sex female; in this case a doctor assigned them at birth.
- VI. Gender expansive:** The LGBT Resource Center define 'gender expansive' it is an umbrella term used for individuals who broaden their own culture's commonly held definitions of gender, including expectations for its expression, identities, roles, and other perceived gender norms. Those who are gender expansive include people who are transgender.
- VII. Gender-fluid:** A person who identifies as 'gender-fluid' has a gender identity and presentation that shifts between or shifts outside of society expectations of gender.
- VIII. Gender outlaw:** A person who identifies as a 'gender outlaw' refuses to allow society definition of male or female to define them.
- IX. Gender-queer:** A person who identifies as 'gender-queer' has a gender identity or expression that is not the same as society's expectations for their assigned sex or assumed gender. It can

also refer to a person who identifies outside of how society defines gender or someone who identifies with a combination of genders.

- X. Masculine of centre:** A person who uses this term is usually a lesbian or a trans person who leans more toward masculine performances and experiences of gender.
- XI. Non-binary:** A person who identifies as 'non-binary' does not experience gender within the gender binary but People who are non-binary may also experience overlap with different gender expressions, such as being gender non-conforming.
- XII. Omni-gender:** A person who identifies as Omni-gender experiences and possesses all genders.
- XIII. Poly-gender and pan-gender:** People who identify as 'poly-gender and pan-gender' experience and display parts of multiple genders.
- XIV. Transgender:** Transgender is an umbrella term that encompasses all people who experience and identify with a different gender than that which their assigned sex at birth would suggest. In spite of that most people think of trans men and trans women when hearing the word transgender this term also encompasses people who identify as a gender other than man or woman it also including non-binary and gender-fluid.
- XV. Trans:** Trans is a more inclusive term that covers those who identify as non-binary and those who are genderless, according to the LGBT Resource Center.
- XVI. Two Spirit:** 'Two Spirit' is an umbrella term that encompasses different sexualities and genders in Indigenous Native American communities. There are many different definitions of Two Spirit, and Indigenous Native American people may or may not use this term to describe their experiences and feelings of masculinity and femininity.

In further after that analysing above all definition of different types of genders in all over the world. Now we are talking about EQUALITY. The word has literally flooded the entire print and electronic media. Everybody seems to be talking about equality how it is essential for a healthy society and the various means and methods to achieve for the equality.

We envision a kind of society where equality will be established in its true sense, and established not at the cost of any gender! Equality and justice consists not in being neutral between right and wrong but it is in finding out the right and upholding it, wherever found, against the wrong and One day our descendants will think it incredible that we paid so much attention to things like the amount of melanin in our skin or the shape of our eyes or our gender instead of the unique identities of each of us as complex human beings.

When we are talking about equality and justice of all genders in India, when it comes to the Indian constitution sadly it is far from realism. Inequality and discrimination lay in the mind-set the people hold and the way they approach it.

Gender bias affects everyone, be it children, women, LGBT 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, man and LGBT persons. 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. The existing legal provisions on gender equality in India

The Constitution of India made things a little easier for women in terms of gender equality but not for the LGBT people. 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 but LGBTQA people still face inequality.

Constitutional Provisions which are talking about the equal fundamental rights are of specific importance in terms of gender equality and equality in the general sense. Below are some of the articles which are guaranteed the fundamental rights of all the persons who are living under the territory of India.

- **Article 14:** Under Article 14 the Indian Constitution guaranteed about equal status or equality before the law. Every person has equal status before the law and the State cannot deny it.
- **Article 15:** Under 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:** Under 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:** Under 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:** Under Article 42 the State shall secure humane conditions for work and for maternity relief.

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 as Legal Provisions. The legal provisions are broadly classified into two categories which are as follow

1. **Crimes identified under Special Laws in India**
2. **Crimes Identified under the Indian Penal Code**

**1. Crimes identified under the Special Laws in India:-**

Now researcher first analyse the Crimes identified under Special law

➤ **The Equal Remuneration Act, 1976:**

Under the equal remuneration 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 3<sup>rd</sup> February 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 108<sup>th</sup> Amendment Bill is a pending Bill in which India plans to reserve 33% 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, it is 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:**

This 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 weeks to twenty-six weeks was extended. The amendment further provided working mothers who

have adopted a child below the age of three months, to take twelve weeks of maternity leave from the date of receiving the child and also allowed mothers to work from home after completing twenty-six 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 and fine of up to Rupees 15000/- or the amount of dowry or imprisonment up to 5 years.

**2. Crimes Identified under the Indian Penal Code:-**

- Rape Under Section 375 of Indian Penal Code
- Kidnapping and abduction under Section 363- 373 of Indian Penal Code
- Molestation Under Section 354 of Indian Penal Code
- Unnatural offence under Section 377 of Indian Penal Code
- Sexual Harassment under Section 509 of Indian Penal Code
- Importation of a girl up to 21 years of age
- Torture under Section 498A of Indian Penal Code
- Dowry Deaths Under Section 304B of Indian Penal Code

India has always been a gender sensitive society and this has been a matter of concern. The current social structure in India states that women are still considered inferior to men and still LGBT community have face problems still they have not equal rights. India's rank in the World Economic Forum's Global Gender Gap Index 2020 is 112<sup>th</sup> out of the 153 total countries covered. According to the report, India has slipped by 3% in offering equality of opportunity to men and women and other genders.

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of genders for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights among others ensure equality before the law and equal protection of law prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth and guarantee equality of opportunity to all citizens.

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity our laws development policies Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of gender. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against genders (CEDAW) in 1993.

Gender biased laws aim at upliftment of the gender. But this does not mean that it curbs the prospects of the opposite sex. The objective of such laws is to secure all gender from any inhuman treatment, cruelty or injustice which they are often subject to and to punish the wrongdoer. The efforts to do so are not novice in nature; instead owe their gestation to the brains of the Constitution drafters.

**Conclusion:**

The Indian Constitution has made equality is a basic right of all the citizens of this country because LGBT community still face difficulty only because of their different gender identity. Ever since the enactment of the Constitution society and values have evolved but there are still some flaws. The Government and the Supreme Court of India and other authorities have time and again implemented various measures and Acts to prevent discrimination of genders but this still does not

change. Due to all this achieving absolute gender equality in a country like India continues to be a huge challenge.

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