

## Right to Equality and Gender Justice

**Shyamali Kumar**

TRIP Fellow and Academic Tutor, JGLS,  
O.P. Jindal Global University

**Prachi Tyagi**

TRIP Fellow and Academic Tutor, JGLS,  
O.P. Jindal Global University

**Sanyukta Saxena**

TRIP Fellow and Academic Tutor, JGLS,  
O.P. Jindal Global University

**Srutee Badu**

TRIP Fellow and Academic Tutor, JGLS,  
O.P. Jindal Global University

### **INTRODUCTION**

#### **THE HISTORY OF GENDER EQUALITY:**

The history of gender equality do not run way back as it was until the end of 19<sup>th</sup> century that women around the world started using this word. It was started with the feminist movements of voting rights and inclusion in politics, equal education etc. Resistance to the idea of gender equality drew its strength from Stoic and Platonic misogyny, which was reinforced and justified under different intellectual movements, from early Christianity through to the Enlightenment.

When it comes to women, they have been categorized as inferior especially when it came to new age invention methods. They were often associated with traditions and the keeper of the same. The hierarchical dichotomy of body versus soul/intellect was seen to parallel the division of the sexes, with women, due to their childbearing functions and menarche, pejoratively associated with corporeality. The perfect example would be the story of Eve who was blamed to corrupt Adams and who condemned the whole humanity. Even in medical treatises of the first five centuries AD, women's inferiority to men was justified by their physiological weaknesses. In Aristotelian physiological tradition, which influenced medieval, early modern and even modern notions of sex and gender, Woman is the

imperfect version of Man: she is matter whereas he is form.

#### **LATE 90's AND EARLY 20's:**

In 1941, the British author Virginia Woolf highlighted the absence of female authors in a bookshelf which was only filled by men. By the turn of the twentieth century, however, Woolf's contemporaries in Britain and in the USA, New Zealand and Australiawere actively pushing for greater equality, establishing new traditions and feminist mothers to inspire later generations. Elizabeth Cady Stanton and Susan B. Anthony in the US and the Suffragettes led by the Pankhurst in England were the key pioneers of 'first-wave feminism', a period in which women organized themselves into public and high-profile advocacy groups, campaigning for equality in property, economic and voting rights. By 1898, women across the globe started getting the right to vote.

The second wave of feminism was however focused on other horizons like discrimination and salaried in employment offices, education, reproductive rights and women's role in family. The slogan and battle-cry of the second wave was coined by Carol Hanisch: "The Personal is Political". Key feminists of this period include Germaine Greer and Betty Friedan. Their works explored the origins and contours of women's inequality, breaking the silence over the false myth of the domestic and docile 'bliss'

of housewives and breaking taboos over female sexuality. There were several achievements regarding this around the world like in USA the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Title IX and the Women's Educational Equity Act (1972 and 1975), Title X (1970, health and family planning), the Equal Credit Opportunity Act (1974), the Pregnancy Discrimination Act of 1978, and landmark Supreme Court cases<sup>1</sup> overturning anti-abortion legislation.

Then came the third wave of feminism around 1980s where the issues of the marginalised women were highlighted by specific groups. Women from black and minority backgrounds, bisexual, lesbian and transgender women, the 'postcolonial' voice and lower social classes raised their concerns because the discrimination faced by these communities were different than white and middle class women.

*"For many of us it seems that to be a feminist in the way that we have seen or understood feminism is to conform to an identity and way of living that doesn't allow for individuality, complexity, or less than perfect personal histories. We fear that the identity will dictate and regulate our lives, instantaneously pitting us against someone, forcing us to choose inflexible and unchanging sides, female against male, black against white, oppressed against oppressor, good against bad."*<sup>2</sup>

#### GENDER INEQUALITY AROUND THE WORLD:

When someone talks about gender inequality, it is pertinent to find examples from the current world situation. One of the very prominent example is professional obstacles. According to the most recent statistics from the U.S. Census, women earn just 77 percent of what men earn for the same amount of work.<sup>3</sup> Women are often discriminated in their workspaces in terms of earnings, promotions and especially if they are pregnant. It is often seen that women usually face termination or penalized if they become pregnant. Also, jobs which are known as being traditional women's job like nursing and

teaching are often some of the lowest paying fields. Not just professional obstacles, women around the world face hurdles like in many Saudi Arabia countries, women are not allowed to drive or leave home without their husband's permission. Another very prominent example is feticide which is mostly common in countries like China, India etc. It is usually seen that parents tend to go for abortion if there is a female child in picture. Not just this, there are also cases reported where the female girl child is abandoned or killed just after the birth. Another very pertinent issues is often deemed as the 'feminization of poverty'. More than 1.5 billion people in the world live on less than one dollar a day, and the majority of those people are women.<sup>4</sup> One of the main reasons is women in many countries do not have the right to hold properties. Not just the right to hold properties in her name but also the freedom to marry and divorce is not widely accepted at many places. According to a report of UNICEF, more than 1/3<sup>rd</sup> of the women around the world are married even before they turn 18. Also, early marriage risks early childbirth which then lead to birth complications and death. In many middle east countries women do not have the liberty to ask for divorce or initiate the proceedings. Because of this, many women are trapped in abusive marriages. One of the major concerns that have been raised by many international organizations is the lack of education or access to education for women. It is often seen that girls drop out of school to help with household chores or take care of their siblings. If the parents can afford to send one child to school, they will prefer sending a boy as he can earn for the family and will not be married off like a girl. It is also the case that women around the world lack access to health care services. Basic necessities like sanitary napkins do not reach the underprivileged women. Also, according to WHO, one woman dies in childbirth every minute and every day. The major reason being lack of adequate nutrients. It is usually seen that women fall trapped to violence in every form. Violence against women in the form of rape,

<sup>1</sup>Roe v. Wade, 410 U.S. 113 (1973)

<sup>2</sup>To be Real: Telling the Truth and Changing the Face of Feminism, Walker Rebecca, Anchor Books, 1995

<sup>3</sup>The Pay Equity for All Act, (H.R.6030)

<sup>4</sup>Global Gender GapReport 2020, World Economic Forum

sexual abuse, torture, child abuse is very high as compared to men's violence.

The harsh reality is that women have been ill-treated in every society for ages and India is no exception. The irony lies in fact that in our country where women are worshipped as shakti, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not robbed of her dignity and pride outside her house, but she also faces ill-treatment and other atrocities within the four walls of her house. They are discriminated at two levels, firstly they suffer because of their gender and secondly due to grinding poverty. Highlighting the causes of women's suffering was the key concern in this chapter.

### **JUDICIAL RESPONSE RELATING TO GENDER JUSTICE IN INDIA**

The practice to follow one's own personal laws based on their religions is permissible in India alone. Hence, different personal laws are followed, based on the religion of the person for personal matters like marriage, divorce, succession, adoption and maintenance,

### **INTERNATIONAL LAW**

Various International Legal Instruments that safeguard and guarantee protection to women can be understood as follows:

- Universal Declaration of Human Rights, 1948;
- Convention on the Political Rights of Women, 1953;
- Convention of the Elimination on of All Forms of Discrimination against Women (CEDAW), 1979;
- Optional Protocol to the CEDAW, 1999.

### **Universal Declaration of Human Rights, 1948**

The Universal Declaration of Human Rights, 1948 undoubtedly can be regarded as the utmost momentous feats of United Nations. UDHR ensures promotion and protection of Human Rights on the international front. "All human beings are born free and equal in dignity and rights."<sup>5</sup> The international document firmly advocates the notion of equality. Everyone shall respect and maintain the dignity of all without discrimination.

<sup>5</sup>Universal Declaration of Human Right 1948, Article 1

### **Convention on the Political Rights of Women, 1952:**

The significance of this can be traced from the fact that it talks about universal attainment of equal rights between Men and Women. "Women shall be entitled to vote in all elections on equal terms with men, without any discrimination."<sup>6</sup> The convention dealt with political rights of the women by establishing electoral rights and securing participation of women in functionaries of Government.

### **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),1979**

The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979 by the UN General Assembly. It is often understood as international bill of rights for women which consists of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

### **Madhu Kishwar v. State<sup>7</sup>**

The Hon'ble Supreme Court of India measured the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 and held that they are a mirror image of Part III and Part IV of the Constitution of India.

### **Optional Protocol to the CEDAW, 1999.**

The reason why any case is brought under the instruments of the OP-CEDAW is to gain the recommendations of CEDAW Committee's on what remedies ought to be made available to the victim(s) at the national level. Moreover, the purposes of the OP-CEDAW is to ensure substantive rights of the CEDAW Convention are available to women in practice, the remedies envisaged by a particular communication or inquiry should be considered at the outset.

### **CRIMINAL LAW**

The Indian Courts have principally adopted a formalistic approach to equality and a protectionist approach to gender difference.

<sup>6</sup>Convention on the Political Rights of Women, 1952, Article 1.

<sup>7</sup>AIR (1996) 5 SCC 125.

### **Adultery**

The Supreme Court considered challenges to section 497 of the Indian Penal Code, which makes adultery committed by a man only to be an offence, and section 198(2) of the Code of Criminal Procedure, which permits only the husband of the "adulteress" to prosecute the man with whom she committed adultery, but does not allow the wife of that man to prosecute him.

#### **Abdul Aziz v. Bombay<sup>8</sup>**

The accused having charged with the offence of committing adultery under s. 497 was challenged on the grounds that the section is discriminating on the basis of sex, and in violation of Articles 14 and 15. The High Court observed that the difference of treatment was not based on sex but rather, on the social position of women in India. When the matter went in appeal, the Supreme Court held that any challenge under 15(1) was met by 15(3). The Court rejected the argument that 15(3) "should be confined to provisions which are beneficial to women and cannot be used to give them a license to commit and abet crimes".

The Court held: Article 14 is general and must be read with the other provision which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The Court thus upheld the adultery provisions as beneficial to women.

### **Maintenance**

Several challenges have been made to S. 125 of the Code of Criminal Procedure which requires men to pay maintenance in favour of their wives, but imposes no such corresponding duty on women to maintain their husbands.

#### **Gupteshwar Pandey vs. Smt. Ram Pearl Devi<sup>9</sup>**

In this case the Court held that S. 125 was a special provision designed for the benefit or protection of women or children whose husbands or fathers failed to maintain them in spite of sufficient means, and thus within the scope of Article 15(3). The Court again adopts a formal approach to equality, within which

Article 15(3) is understood as an exception to equality, and a protectionist approach to gender difference, according to which s. 125 is justified on the basis that women are the weaker sex, and in need of special protection.

### **OTHER WOMEN WELFARE LAWS**

The provisions in the constitution form the bedrock of equality amongst the citizens. Nonetheless, the legislature has passed other laws pertaining to specific issues, following the clear mandate of the government's approach to safeguard women's rights. Of course, many such laws were enacted in the earlier decades as part of the Government's efforts at social reform or labour welfare. But the government rose to the occasion in the post-Independence era and we saw several of these laws being amended in response to the egalitarian urges of the new Constitution.

#### **The Child Marriage Restraint Act, 1929**

The Act has been duly amended in 1938, 1951, 1968 and 1978. It is applicable on all persons in India irrespective of their caste, community and religion. The marriageable age decided upon for the groom is 21 years and for the bride is 18 years. The Act provides for punishments for an adult male contracting a child marriage, anyone who performs, conducts or directs the child marriage and a male parent/guardian who promotes, permits or solemnizes a child marriage. There is a presumption that when a minor contracts a child marriage, the parent/guardian/person having charge of such minor has negligently failed to prevent the marriage from being solemnized. Offences under the Act are cognizable for certain purposes. Even though the Act prohibits and prescribes punishment for child marriage, it does not in any way affect the validity of such a marriage.

#### **The Special Marriage Act, 1954**

This Act replaced the Special Marriage Act, 1872 which caters to a special civil forum of marriage which can be availed by any citizen of India and by all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess. The parties can solemnize their marriage by observing any ceremony provided certain formalities are complied with under this Act before the marriage can be registered by the Marriage

<sup>8</sup> AIR (1954) S.C. 321.

<sup>9</sup> AIR (1971) Pat. 181

Officer. The Act further permits persons who are already married under others forms of marriage to register their marriage under this Act and thereby avail themselves of its provisions.

#### **The Hindu Succession Act, 1956**

The Acts seeks to amend and codify the law relating to intestate succession for Hindus. It simplifies the law by abolishing the different systems prevailing under the Mitakshara and Dayabhaga schools. The act has applicability to persons in South India who were governed by the Marumakkattyan law. The Act has introduced some radical and fundamental changes, the most significant being that it grants equal rights of succession to male and female heirs in the same category, e.g. brother and sister, son and daughter. It recognizes the much-needed right of a woman to inherit equally with men. It also abolishes the right to life or limited estate of female heirs with the result that the Class I heirs of a man succeed to the estate of the deceased “simultaneously”, taking the property in equal shares and as ‘absolute’ owners.

#### **The Immoral Traffic (Prevention) Act, 1956**

This legislation makes the act of keeping a brothel, living on the earnings of a prostitute, trafficking women for prostitution, etc punishable offence. It also aims at prohibiting prostitution in public places with a view to safeguarding public morals and society. It prescribes stringent action against commission of offences against a child or a minor. Every offence punishable under the Act is cognizable and the Special Police Officer is empowered to arrest the offender without warrant. The powers of a Special Police Officer includes the power to enter premises and to search the premises and to rescue persons from such premises under the directions of court. Such rescued persons are to be taken in custody and medically examined.

#### **The Hindu Adoption and Maintenance Act, 1956**

The conditions requisite for a valid adoption and eligibility criteria for persons who wish to adopt or give into adoption and who can be adopted has been laid out in the act. The law clarifies the effects of adoption on the status of the persons involved and the right of the adoptive parents to dispose of their properties. The right of maintenance of a Hindu wife has been made out.

The Act specifies the special circumstances under which a Hindu wife can claim maintenance. All these factors are essentially measures of social justice designed to prevent destitution in society. Similarly, the Act also deals with the circumstances under which a widowed daughter-in-law, children, aged parents and dependants are entitled to maintenance.

#### **The Maternity Benefit Act, 1961**

The Act aims to safeguard social justice to all women workers. It protects the dignity of motherhood by ensuring full and healthy maintenance of the woman worker and her child during the period of her confinement. The Act further provides for payment of maternity benefits in cash for a certain period before and after confinement. Grant of leave and other medical facilities are covered. Act entitles the woman workers right to nursing breaks until her child attains the age of 15 months. It prescribes the period during which the employer is prohibited from giving to a pregnant woman employee any arduous work, or work which involves long hours of standing, or work which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause miscarriage, or otherwise adversely affect her health.

#### **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

This is a breakthrough legislation which provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

The Act incorporates definition of sexual harassment which was laid down by the [Supreme Court of India](#) in Vishaka’s Case<sup>10</sup>. Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business.

In Vishaka’s case<sup>11</sup> the court ruled that actions that result in violation of one’s rights to ‘Gender Equality’ and ‘Life and Liberty’ are in fact, violation of the victim’s fundamental right under

<sup>10</sup>(1997) 6 SCC 241

<sup>11</sup> Ibid.

Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

The violence against women is increasing by the day. The need of the hour is to change the mentality of people, which certainly is not going to be a cakewalk, but we can come together to put efforts in improving the quality of education imparted to our children at an early stage to further the goals of eradicating gender and to bridge the gaps and remove stereotypes about women. The international and national framework to protect rights of women has not attained satisfactory results. Finally, collaboration between all classes of society may be suggested and Governmental, Non-Governmental instruments, an effective and efficient Judiciary and conscious Media is the need of the hour.

#### **INHERITANCE LAW AND WOMEN IN INDIA**

Law has a potential to change the existing notions about different types of gender as it plays an important role in defining the relations between them. Laws and the grant of legal rights may not by themselves change the social system but in situations they can help to transform the economic and the social position.

If a childless widow dies intestate, everything that belongs to her goes to her in-laws, and that includes all the wealth she acquired in her lifetime through her own efforts. However, if a widower dies in a similar fashion, his property will go only to his parents and family; but, most definitely, not to his wife's parents. This is just one of the many in-built illogical biases in property laws in India and many other countries. The World Bank too calls investing in women "smart economics" because research shows economic growth for women has a valuable multiplier effect. Women are more likely to share their economic gains with their families and communities at large.

Moreover, women's equal rights to land, housing and property are also human rights, recognized in various international human rights instruments. Yet, laws and social customs, and most crucially practices, continue to be skewed against women getting their fair share of wealth.

#### **HINDU LAW**

In India, during the debate on the Hindu Code Bill in Parliament, a majority of the legislators, all men, took a stand against daughters inheriting property from their natal families. Thus, the Hindu Succession Act (HSA) of 1956 did not allow women the right to ancestral property. It was amended as late as 2005 to give daughters equal rights. Under the Indian Constitution, the preamble and various articles do lay stress upon the principle of gender equality. In spite of these statutory measures being in place, gender disparity has been very deep-rooted and has manifested itself in various forms and it is also reflected in the laws that govern any inheritance and succession of property belonging to the Hindu joint families.<sup>12</sup> The Hindu Succession (Amendment) Bill, 2005 covered only ancestral property and self-acquired properties were left out. This is not justified because ancestral properties are fast dwindling today as nuclear families are becoming more and more the order of the day.<sup>13</sup> Therefore, by not giving access to self-acquired property, the gender equality remains a concept and does not become a reality.<sup>14</sup>

Several landmark judgments are being passed by the Indian judiciary which has provided rights of succession to women and depicts progression in the Indian society. On September 9, 2005, the Hindu Succession Act 1956 was amended to allow a daughter equal share in her father's ancestral property. In August 2020, another landmark judgment was passed where the Supreme Court ruled that a woman was entitled to equal rights in her father's property even if he had passed away before 2005 when the Hindu Succession Act 1956 was amended.<sup>15</sup> The three-judge panel headed by Justice Arun Mishra ruled that a daughter's inheritance rights are absolute and would hold even if the coparcener was not alive. It went a step ahead and ruled that the children of the daughter could also demand a share in that inheritance if she has passed away before 2005.<sup>16</sup> The only condition was that the

<sup>12</sup> Motion for consideration of the Hindu Succession (Amendment) Bill, 2005

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> (2020) 9 SCC 1

<sup>16</sup> *ibid.*

property should not have been partitioned before December 20, 2004, the date on which the Bill was introduced. This judgment set aside a series of earlier judgments that had ruled that the new norms would be applicable only if the father and daughter had been alive in 2005.

While applauding the Indian Supreme Court's progressive decision, Amnesty International tweeted that: "We welcome the decision of the Supreme Court that upholds a daughter's right to inherit parental property, as absolute. This is a step towards promoting equality for women. Property rights are fundamental to women's social, economic & legal security."

In its latest and laudable judgment, the Supreme Court has observed that a daughter is capable of inheriting the self-acquired property or share received in the partition of a coparcenary property of her Hindu father dying intestate.<sup>17</sup> Indubitably, what differentiates this extremely commendable judgment from the ones delivered earlier is that the Apex Court had in August 2020 ruled that daughters will have inheritance rights equal to those sons in the properties of their father, grandfather and great grandfather right from the codification of the Hindu laws in 1956. On the contrary, this learned judgment took the daughters rights to the pre-1956 period, when male primacy were in vogue pertaining to inheritance of properties. While referring to the ancient texts and Smritis, Justice Krishna Murari said that: 'It is clear that ancient text as also the Smritis, the commentaries written by various renowned learned persons and even judicial pronouncements have recognized the rights of several female heirs, wives and daughters being foremost of them.'<sup>18</sup>

Thus, if a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband. In case, a female Hindu dies leaving behind her husband or any issue, then Section 15(1)(a) comes into operation and the properties left behind including the properties which she inherited from her parents

would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act. The basic aim of the legislature in enacting Section 15(2) is to ensure that inherited property of a female Hindu dying issueless and intestate, goes back to the source.<sup>19</sup> Section 15(1)(d) provides that failing all heirs of the female specified in Entries (a)-(c), but not until then, all her property howsoever acquired will devolve upon the heirs of the father. The devolution upon the heirs of the father shall be in the same order and according to the same rules as would have applied if the property had belonged to the father and he had died intestate in respect thereof immediately after her death.

#### MUSLIM LAW

The law governing Muslims and Muslim women in India is under 'The Muslim Personal Law (Shariat) Application Act, 1937'. The Shariat is regarded as the Custom or Usage for the purposes of division of all properties, irrespective of being movable or immovable and agricultural land. In the earlier times Muslims were governed by the local customs, laws and practices where they were domiciled which ran contrary to the Shariat in following the local customs and laws. The customary laws were highly discriminatory and it excluded daughters and others like widow were in the bottom line in the succession order, this practice runs contrary to the Shariat where a daughter and widow cannot be excluded by any other heir and also have the protection from the testamentary restrictions. The shares of the daughters and widows are lower than a male. In light of Quran, the Muslim women has full right to inheritance. The Quran emphasizes on four core values i.e.

- Insaaf (justice),
- Ehsaan (favor),
- Rehem (compassion) and
- Ilma (wisdom).

If we follow all these core values then the women will get their rights automatically and there would be no chaos. It is a fact that Quran has provided independence and right to women in all aspects. It clearly talks of daughter's right to 1/3rd property irrespective of being movable or immovable and agricultural land is not an exception. A Muslim woman governed by the

<sup>17</sup> Arunachala Gounder (dead) v Ponnuswamy, CA No. 6659/2011

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

Muslim Personal Law, is entitled to get 1/8th share of her husband's property if the couple had children, else she gets 1/4th share. When the parents of a Muslim woman die, even daughters become the rightful legal heirs of their estate. However, the quantum of the share of a female heir is half of that of the male heirs.

#### CHRISTIAN AND PARSILAW

In case of Christians and Parsis, the Indian Succession Act, 1925 is applicable. A Christian woman is entitled to a pre-determined share. The amount of that share depends on the identity of the other relatives of the deceased. If deceased has left children, his widow receives one-third of his estate, with the remaining going to the children. And if the heirs are relatives other than the children, she receives a half of the estate, and the remainder goes to the other relatives of the deceased. If there are neither children nor other relatives, she receives the entire property.

A Parsi widow is entitled to get an equal share as her children besides the deceased's parents who get half of the child's share, in her husband's estate. And in the absence of the parents, the property is distributed between the Parsi woman and her children, so that the widow and each child receive equal shares in the estate of the deceased. Hence, prima facie the property rights of the Parsis are quite gender just.

The rights of women to succeed to any property vary from one religion to another depending on personal laws followed by them. The position of Hindu women in relation to property and succession was not satisfactory and uniform. In India, women are often not allowed to work after marriage. When they do work, they usually earn less than men, and therefore become the logical choice for the stay-at-home parent and then they even don't get equal share in property. So directly or indirectly they become totally dependent on male members. However, the position is changing slowly and gradually. The Indian judiciary has tried to protect the interests of the woman and whether a wife, mother or a daughter, hence, the property rights of Indian women have grown better with advance of time. Though legislature and judiciary have made it possible for the women to claim their inheritance rights without putting the limitations of marriage and religion, it is on the women, to be aware and proactive in exercising their rights and

demanding what legally belongs to them. Awareness of rights and the courage to claim them are the only weapons that can help the women in resisting any injustice that is meted out to her at home, at work, or in society at large.

#### CONCLUSION

Women are deprived of economic resources and are dependent on men for their living. A large population of the women in our country are often confined to domestic space with little contribution in the public sphere, she is expected to play the role of a nurturer in the house, do all household works, which are often not recognised and hence largely remain unpaid. In modern times, we see a shift especially within the urban population where many women are coming out to work but this leads to them having to shoulder the double responsibility; one she has to work where she is employed and secondly she also has to do all the household works. Moreover, she is overlooked at the workplace. Gender pay gap, sexual harassment at workplace are some of the most commonly seen problems that working women face. Women also face discrimination in hiring as employers feel that women are more likely to take leave or go on sabbaticals due to motherhood or pregnancy and hence they are also the first to be fired as they are considered to be weaker than their counterpart. The general status of women in the family and in the society is not at par with that of the men even in the present times.

From the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the workplaces and in the society.

There are a plethora of laws in India that ensure that women are given equal rights, opportunities and status in the society, but the problem lies in the implementation. Sometimes even when there is proper implementation, then there is lack of awareness. After going through the provisions of constitution and different laws it will not be correct to say that there are not many laws to treat women equal to men and to help toward achieving gender justice.

Well, then the question that arises is where does the actual problem lie?

The answer to that question lies in the mindset of our male dominated society. Patriarchal



customs and practices have a large role to play behind the condition of women in the society. Although there is an availability of a plethora of rights, programs, schemes for the welfare of women and girls to attain gender equality in a different section of the society, a need is required to look into the gaps that need to be addressed.<sup>20</sup> The biggest problem in achieving equality and gender justice is the mindset of our society and for this to change, it is not enough to simply make laws. It is well said that the law without the public opinion is nothing but a bundle of papers. There are government schemes and programs to allow educating girls for higher literacy and enrolment rate of women in education, but still, gender inequality is evident.<sup>21</sup> The gap between the men and women cannot be bridged by just enacting laws without any public support and opinion as social engineering laws are different from penal laws which are just related to injuries and punishment and are deterrent in nature, but social engineering laws enacted to uplift the norms of the society and are progressive in nature and therefore it should be backed by the will of the people for whom it is enacted. And when laws are enacted to bring radical change in society and are not backed by the will of the people then it has to face great resistance and opposition from the narrow and conservative thinking of the society, and they are become dead law.

In India most of the laws were not effective as they were ahead of public opinion and willingness of the people to change the society and give the women the status of equality in society too lacked, so in order to give women their respective position in the society strong public opinion should be created through education, seminars and by taking the help of various other instruments of the society such as media etc, so that the people of the society should get educated about and willingly implement the laws enacted for giving equal status to women. It must be asserted that social

reforms is in social thinking, behaviour and law would be effective only if they are backed by major section of the society.

As it rightly said, by Wendell Phillips: *Law is nothing unless close behind it stands a warm living public opinion.*

Even in the legal sector, the discrimination is clearly visible. Till the date we have only 5 female judges in Supreme Court. The representation is highly skewed as compared to the female population and we have yet to witness a female CJI at the bar. No doubt there are changes but the change has not been accompanied by a basic change in approach to women's issue, which is still limited and biased, as it does not consider the systemic and deep-rooted existence of inequality among men and women. The attitude toward development and legal reform has remained sufficiently uncritical, when the entire process especially the assumption underlying development and laws need to be questioned, if women issues are to be effectively tackled.

Women's responsibility for family welfare therefore carried little prospect for changing women's position in society and economy. And this discrimination was more acceptable to both male dominated implementing agencies as well as to entrenched patriarchal interest. Thus, today our country needs gender legislation of women laying down her rights irrespective of religion and region. The legislative measures are in favour of women, but their success depends on effective implementation. The lack of implementation due to absence of commitment to the policy of the constitution has led to either non-implementation or to watering down by the judiciary and the executive of the beneficial effects.

From the above view one question which is confronting the authors is whether social change and gender justice can be brought about merely by passing stricter laws and implementing them?<sup>22</sup> On the contrary the existing laws, the amendments and the new laws add to the confusion. Thus, until there is empowerment of women, dissemination of legal awareness

<sup>20</sup> Ackerly, Brooke A. "Feminist Theory, Global Gender Justice, and the Evaluation of Grant Making." *Philosophical Topics* 37, no. 2 (2009): 179–98.

<sup>21</sup> Okin, Susan Moller. "Justice and Gender." *Philosophy & Public Affairs*, vol. 16, no. 1, 1987, pp. 42–72.

<sup>22</sup> Parashar, Archana. "Gender Inequality and Religious Personal Laws in India." *The Brown Journal of World Affairs* 14, no. 2 (2008): 103–12.

amongst them, economic status raised with the family and in the society, law will remain in effect on paper only.

It is pertinent to note that denial of equality to women and the exclusion of women from the benefits of development are not problems for women alone. They also affect the fabric of society and influence the direction of its change<sup>23</sup> and hence it requires immediate action.

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<sup>23</sup> Okin, Susan Moller. "Justice and Gender." *Philosophy & Public Affairs*, vol. 16, no. 1, 1987, pp. 42–72,