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A JURISPRUDENTIAL STUDY ON THE ROLE OF GENDER EQUALITY AND ITS SPECIAL REFERENCE WITH THE CONSTITUTION OF INDIA

ABSTRACT

Gender inequality and disparities have been prevalent in nearly all societies throughout history, hence the current state of affairs in India is not novel. The perpetuation of stereotypical views and notions regarding women is a result of intergenerational transmission, wherein cultural traditions remain largely unchallenged. Gender inequality in India originated during the later Vedic period and remains a topic of ongoing scholarly discourse, since women encounter a multitude of problems over their lifespans. Gender equality encompasses the equitable distribution of representation, authority, social standing, and societal roles amongst individuals of different genders, with a particular focus on ensuring parity for women. This study analyses the position of women in India by utilising the Indian Constitution as a framework, recognising its potential significance in the pursuit of gender equality. The subject matter is not only centred on feminist jurisprudence. After doing a thorough examination of the Constitution, it becomes evident that women possess equal rights in comparison to their male counterparts. Furthermore, women may derive advantages from distinct provisions. The topic of gender neutrality is explored in the present essay. My attention was directed towards the many components of the Constitution, namely the Preamble, Fundamental Rights, Directive Principles, Fundamental Duties, and judicial pronouncements.

The present study undertakes an analysis of the efficacy of the Indian Constitution in attaining de jure equality with respect to de facto equality, employing a doctrinal methodology.

KEY WORDS: *Gender inequality, gender equality, de jure equality, de facto equal*

1-INTODUCTION-:

Socioculturally, gender refers to the traits and conduct that are traditionally associated with males and females. Women have been subjected to oppression and discrimination by Indian society over time. Even prior to birth, female feticide, selective abortion, pregnancy abuse, and coerced pregnancy are prevalent in India. Prejudice and abuse continue to plague women throughout their careers, including the period following childbirth. In addition to dowry-related violence, she is subjected to genital mutilation, sexual abuse, workplace discrimination, human trafficking, and forced prostitution, among other forms of abuse (emotional and physical). The notion that women ought to be enslaved for life is the Hindu philosopher Manu's foundation for gender inequality. A woman must be under the guardianship of her father during her youth, followed by her spouse and ultimately her son when she is an old widow. Gender inequality arises when intricate representations and notions of a minority group are transmitted via rituals and customs. Over time, the status of women in India has undergone a transformation. Equal responsibilities, standing, and significance are all components of gender equality in a society, alongside equivalent numbers and relative authority. In Indian society, women possess a dual nature.¹

As per religious texts and societal norms, women are anticipated to be subservient to men and devoid of personal agency. Their existence ought to be entirely for their benefit. Consequently, women ought to be productive, patient, and kind. Consider the progression of the social standing of women throughout history: Vedic Period: Women occupied a position of social dominance during the Vedic period. Women were enrolled in gurukuls and engaged in formal education. As stated in the Rig Veda, the home is composed of the bulk of women. ApalaAtreyi (daughter of Atri Rishi in the Rig Veda), ViswavaraAtreyi (composer of the Rig Veda), Gargi (the first female philosopher in ancient India), and Maitreye (an educated woman) were among the 47

¹ Linda Heaphy, Life in India: The Practice of Sati or Widow Burning (1st Sept, 12:11 p.m.),

women. According to Manusmriti, women hold significance in locations where gods wander. As per the Upanishad, spouses were regarded as their husbands' genuine companions.²

A thread ceremony (upanayana) was permissible for forty-eight females during the Vedic period; the pardah system did not exist; life companions could be selected; and widows were permitted to remarry. Females belonging to the Kshatriya caste were educated in weaponry and martial arts.³

2- FRAMERS OF THE CONSTITUTION AND THEIR NOTION TOWARDS GENDER JUSTICE:-

The Constitution's Preamble states that everyone deserves equal rights and opportunity. Until all community members have equal rights, guaranteeing rights is pointless. The Preamble shows that the Constitution's authors intended positional and opportunity-based equality. The Indian Constitution is based on equality. The Constitution's Preamble emphasises social, political, and economic equality for everyone.⁴ The Preamble defines social justice as the elimination of income, social status, social class, caste, gender, race, and honorary inequities. Economic justice guarantees fair wages regardless of caste, creed, gender, or vocation. Political justice prevents needless gender differences. The phrase means unlimited adult suffrage.

To promote and protect human dignity, the Preamble states that all people must have equal fundamental rights. Dignified lifestyles include equality and freedom. The Constitution's third provision guarantees fundamental rights to all Indians, regardless of gender. The state cannot refuse anybody equal protection under the law under Article 14 of the Indian Constitution. The article discusses religion, race, caste, sex, and birthplace.

Gender discrimination is illegal under Article 15(1). Certain fundamental rights protect women. Equality means treating everyone equally under similar circumstances, not applying the same laws to everyone. Article 15(3) of the law favours women and authorises state action to help them. They wanted to empower and unite women. Therefore, Article 15(3) supports affirmative action and

² id

³ AparnaBasu, (1st Nov, 2022,2:40 p.m.),

<http://gpsctaiyari.com/Books/aoxbulikuobapli4nnwcx20Indian%20Women%E2%80%99s%20Movement.pdf>

⁴ id

does not violate Article 15(1). Article 16 includes public employment equality. Equal employment opportunity includes fair hiring and working conditions.⁵

It also includes fair performance evaluation. Article 16 covers state-governed employment and appointments. Pre- and post-employment difficulties are job considerations. The number is 66. Human trafficking is prohibited under Article 23. According to the article, the legislature passed the Suppression of Immoral Traffic Act, 1956 (now the Immoral Traffic Prevention Act, 1956) to end prostitution and other types of trafficking. The Andhra Pradesh legislature banned devoting women to deities and temples with the Devdasis (Prohibition of Dedication) Act, 1988.

The Directive Principles of State Policy in Part IV of the Constitution empower and protect women. User input is 67. Art-39(a) requires the state to provide equal food possibilities for men and women. The number is 68. Article 39(d) requires the state to pay equivalent workers of both genders equally. The state passed the Equal Remuneration Act in 1976. Article 39(e) prohibits the state from mistreating workers' health and capacities. The state must provide fair working conditions and maternity leave under Article 42. The Maternity Benefit Act was passed for these reasons. Article 44 requires the state to provide a complete civil code for all Indians. Dr. Ambedkar supported personal law reform and a unified civil code.⁶

Leila Seth, the first female chief judge, believes a uniform civil code will end cultural practises that degrade women. Implementing a uniform civil code might violate religious liberty, sparking debate. Justice Leila Seth correctly said that a universal civil law would not violate religious liberty. The proposed legislation grants women equal property rights, the right to adopt, protection against arbitrary divorce, inheritance, and protection against their spouse's polygamy, even if their father or husband converts to a religion.

The 73rd and 74th Indian Constitutional amendments gave women Panchayat and municipal seat reservations. Article 243D of the Constitution requires one-third of panchayat seats to be reserved for women in direct elections. Article 243T(3) guarantees women's participation in municipal direct elections. Article 51A(e) requires all Indians to stop degrading women.⁷

⁵ First Day in the Constituent Assembly, Indian Parliament, (<http://parliamentofindia.nic.in/lsls/debates/facts.htm>)

⁶ Part-IV, The Constitution of India, 1950

⁷ The Constitutional Amendment

3-INDIAN CONSTITUTION AND GENDER JUSTICE-:

The Preamble of the Constitution establishes the principle that all individuals should be granted equal status and opportunities. The act of ensuring rights becomes futile until such time as all people in a community possess equal rights. The framers of the Constitution expressed a desire for the establishment of both positional and opportunity-based equality in the Preamble. The Indian Constitution is founded on the principle of equality. The Preamble of the Constitution explicitly references the principles of social, political, and economic equity for all individuals. The concept of social justice, as articulated in the Preamble, encompasses the eradication of many manifestations of inequality, including economic disparities, social status⁸ differentials, class divisions, caste hierarchies, gender disparities, racial distinctions, and titles, among others. Economic justice ensures equitable remuneration for labour, irrespective of factors such as caste, creed, gender, and social status. The principle of political fairness entails the prohibition of inconsequential gender disparities within the realm of politics. The aforementioned phrase encompasses the principle of granting voting rights to all adult individuals without discrimination. The Preamble asserts the necessity of ensuring equal fundamental rights for all individuals in order to protect the inherent worth and value of human beings. Dignified lives encompass principles of equality and freedom. The third section of the Constitution ensures that all individuals in India, irrespective of their gender, are granted fundamental rights. According to Article 14 of the Indian Constitution, the state is prohibited from denying any individual equal protection under the law. The article discusses the various factors that might influence an individual's identity, such as religion, race, caste, sex, and birthplace. The legislation further stipulates that public spaces must be made accessible to those with impairments, liabilities, limitations, or circumstances.⁹

⁸Dr B.R. Ambedkar, Dr. BR Ambedkar Castes in India Their Mechanism, Genesis,SCRIBD, (2nd Nov,2023, 5:45 a.m), <https://www.scribd.com/doc/209776841/Dr-B-R-Ambedkar-Castes-in-India-Their-Mechanism-Genesis-and-Development-1916> RatneshKatulkar, Dr Ambedkar on woman liberation, (2nd sept,2015, 5:50 a.m.), <http://www.countercurrents.org/katulkar310808.htm>.

⁹ The Constitution of India,1950

According to Article 15(1), the act of gender discrimination is prohibited. Certain fundamental rights safeguard the rights of women. The concept of equality does not include the implementation of identical legislation for all individuals but rather the provision of equitable treatment under comparable circumstances. Article 15(3) of the legislation demonstrates a preference for women and grants the state the authority to implement specific measures to their benefit. In accordance with Article 15(3) of the Indian Constitution, women in historical Indian society were found to possess a comparatively inferior position in terms of political, economic, and social status as compared to their male counterparts.

Their objective was to empower and foster solidarity among women. Therefore, Article 15(3) upholds the principle of affirmative action and does not contravene Article 15(1). Article 16 encompasses the provision of equal opportunities in public employment. The concept of equal employment opportunity encompasses the provision of equitable circumstances for both hiring and working.

Furthermore, it encompasses an equitable evaluation of performance. Article 16 specifically pertains to employment or appointment under state law. Job matters encompass any issues or concerns that pertain to work, whether they arise before or after the commencement of a job. The act of human trafficking is expressly forbidden, according to Article 23. According to the article, the legislative body enacted the Suppression of Immoral Traffic Act, 1956 (now known as the Immoral Traffic Prevention Act, 1956) with the aim of eradicating prostitution and other forms of trafficking.

The Devdasis (Prohibition of Dedication) Act, 1988, enacted by the legislature of Andhra Pradesh, prohibits the practice of dedicating women to deities and temples. The Directive Principles of State Policy, as outlined in Part IV of the Constitution, include a range of rules pertaining to the empowerment and protection of women.¹⁰

Art. 39(a), it is incumbent upon the state to guarantee equitable opportunities for both men and women to have adequate means of sustenance. The numerical value provided is 68. According to Article 39(d), it is imperative for the state to guarantee equitable remuneration for comparable

¹⁰ Id

work performed by both genders. In 1976, the state enacted the Equal Remuneration Act. According to Article 39(e), the state is forbidden from engaging in the mistreatment or exploitation of workers' physical well-being and stamina.

According to Article 42, it is incumbent upon the state to provide equitable working conditions and provide maternity leave. The Maternity Benefit Act was enacted for the following reasons: According to Article 44, it is mandated that the state ensure the provision of a comprehensive civil code that is applicable to all citizens of India. Dr. Ambedkar advocated for the reform of personal laws and the implementation of a single civil code.¹¹

According to Leila Seth¹², the inaugural female chief justice, the implementation of a comprehensive civil code will effectively eradicate detrimental customary practices that undermine the dignity of women. A contentious issue arose over the potential infringement on religious freedoms that may result from the implementation of a unified civil code. Justice Leila Seth aptly asserted that the implementation of a universal civil law would not infringe upon religious freedoms. This legislation would solely provide the equitable protection of a woman's entitlements pertaining to property, adoption, divorce, inheritance, and safeguard against her spouse's practice of polygamy, even in the event of her father or husband undergoing a religious conversion. The 73rd and 74th amendments of the Indian Constitution granted women the provision of reservations for seats in panchayats and municipal bodies. According to Article 243D of the Constitution, it is mandated that a minimum of one-third of panchayat seats must be reserved for women in direct elections. According to Article 243T(3), there is a provision that ensures the inclusion of women in municipal direct elections. According to Article 51A(e), it is imperative for every individual in India to renounce practices that contribute to the degradation of women.

4.JUDICIAL TRENDS AND PRACTICAL REALITY:-

Fundamental Rights and Women As was said before, the Constitution of India stipulates that females are entitled to the same rights as males. One of these rights is the ability to vote. As a result, in addition to the rights outlined above, women also have the right to be free, to be shielded

¹¹ P.M. BAKSHI, THE CONSTITUTION OF INDIA, Pg-31, (Universal Law Publication, New Delhi, India, 11th Edition, 2011).

¹² Id

from being exploited, to practice their faith freely, to have access to cultural and educational opportunities, and to constitutional remedies. In the following discussion, we are going to shed light on the posture that the judicial system takes towards women and evaluate how effective it is in turning de jure equality into de facto equality.¹³

It was rightly decided in the landmark case of *Nargesh Meerza vs Air India*¹⁴ which states that discrimination against a woman in the workplace should not be based solely on her gender. An infraction of a constitutional provision called Article 14 is the result of this. The subject under consideration pertains to a dispute between an Air India air stewardess and the organisation's service regulations. Those regulations prohibited air hostesses from entering into matrimony within four years of their commencement of employment with the company. Furthermore, the regulation mandated that air hostesses who became pregnant would be terminated from their positions and would be obligated to retire at the age of 35 (with the sole exception being a 10-year extension granted at the discretion of the managing director). Despite the first clause's acceptability, the Supreme Court has ruled that the second and third clauses are harsh, arbitrary, and unconstitutional.

In the case of C.B Muthamma vs Union of India,¹⁵

A writ petition was filed challenging Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961. The Supreme Court heard the petition. This regulation stipulated that an unmarried woman member must obtain government sanction prior to matrimony, and that she may be requested to resign from her position at any time, even after marriage, if it is determined that her family life is impeding her work performance. The regulations pertaining to seniority and promotion within the Indian Foreign Service were deemed to be in contravention of Article-15 of the Indian Constitution by the Supreme Court in this particular instance. Furthermore, the court determined that the guidelines exhibited a masculine undertone, which implies an attempt to exert authority over the submissive gender.

¹³ 71RamachandraGuha, Towards A Gender Sensitive Civil Code-Hindustan Times(3RD Nov,2021, 1:45 p.m.), <http://ramachandraguha.in/archives/towards-a-gender-sensitive-civil-code-2.html>.

¹⁴ 1982 SCR (1) 438

¹⁵ 1979 AIR 1868,

In the case of C.Rajakumari vs Commisioner-¹⁶

The Hyderabad Police Department has petitioned the Andhra Pradesh High Court to rule on whether or not beauty pageants are in breach of Article 15 of the Indian Constitution. The court ruled that a beauty pageant that displays immoral and harmful to public morals depictions of the human body is unlawful since it goes against Articles 14, 21, and 51A of the Constitution.

In the case of P.B. Vijaykumar and another vs Govt of Andhra Pradesh-¹⁷

A challenge has been lodged against Section 497 of the Indian Penal Code on the grounds that it violates Articles 14 and 15(1) of the Indian Constitution. The 1860 Penal Code of India stipulates that punishment is meted out solely to the male perpetrator of adultery, while the female is exempt from such consequences.

The petitioner asserts that this provision violates the principle of equal protection under the law. Society absolves women of any legal repercussions for their conduct; this is in contrast to the principle that holds both sexes equally accountable for adultery. The intent of Section 497 of the Indian Penal Code is to penalise the offence of engaging in extramarital affairs with a married woman without the consent of her spouse, as becomes apparent upon closer inspection. Consequently, it would not be unlawful for a married man to engage in sexual activity with an unmarried woman, a widow, or a married woman who gave his consent. The petitioner contended that this legal provision classifies individuals artificially based on their gender.

The Supreme Court, however, rejected the argument, noting that it is commonly believed that males initiate seductive meetings more frequently than women. While not all of the criteria employed in the classification were associated with the gender of the individual, Extramarital relationships between two individuals who have given informed consent are inherently consensual, rendering the court's position untenable. Furthermore, it is explicitly stated

¹⁶ 1998 (1) ALT 329

¹⁷ 1995 AIR 1648, 1995 SCC (4) 520

in this chapter that the amendments to Section 497 of the Indian Penal Code were not approved by the Commission for Women. They reached this conclusion on the grounds that penalising women would not contribute to the strengthening of marriages.

Furthermore, a considerable proportion of married women continue to face a dearth of authority in contemporary society. Presumably, the repercussions of a woman's incarceration on her family and acquaintances will be more severe. It is abundantly clear from this line that the legislature intends to preserve marriage as a social institution. In the event that both men and women were equally culpable for adultery, women would endure societal disgrace and domestic turmoil and ultimately contribute to the disintegration of the institution of marriage, considering their indispensable function in its preservation. The accompanying discourse illuminates traditional gender roles, societal norms, and the general perception of women in comparison to men. She is not considered a rational, volitional individual capable of consenting to infidelity and understanding its consequences.

In the case of Abdul Aziz vs State Of Bombay⁻¹⁸

Articles 14 and 15(1) of the Indian Constitution have been used as grounds for challenging the constitutionality of Section 497 of the Indian Penal Code. In cases of adultery, only the male perpetrator is punished under India's 1860 Penal Code, while the female is exempt. The petitioner argued that this provision violates the principle of equal protection under the law. Because even though both sexes share equal responsibility for adultery, society absolves women of any legal repercussions for their actions. Upon closer inspection, it is clear that Section 497 of the Indian Penal Code is intended to punish the crime of adultery with a married woman without the consent of the woman's husband. Therefore, in the case of sexual contact occurring between a married man and an unmarried woman, a widow, or a married lady with the agreement of her husband, the conduct would not be regarded as unlawful. The petitioner claimed that this provision of the law creates an artificial classification of people based on their gender. Nonetheless, the Supreme Court rejected the argument, pointing out that it is often held that males, not women, are more likely to make the first move in a seductive encounter.

¹⁸ 1954 AIR 321, 1954 SCR 930

The gender of the individual was not the only factor used in the classification. Extramarital relationships between two adults who have both given their informed consent are intrinsically voluntary, rendering the court's stance unworkable. Furthermore, it is obvious within this chapter that the Commission for Women denied the proposals aimed at altering Part 497 of the Indian Penal Code. They reasoned that punishing women would have no positive effect on marriage stability, so they made this choice. Furthermore, a large percentage of married women in today's culture continue to feel powerless. The repercussions of a woman's incarceration on her family and friends are likely to be amplified. Therefore, it is clear from this sentence that the legislature intends to defend marriage as a social institution. If both men and women are equally culpable for participating in adultery, women would experience social shame, disturbance in their family life, and eventually contribute to the degradation of the institution of marriage, given their vital role in its preservation. The accompanying discussion illuminates the common understanding of women in relation to men, traditional gender roles, and social norms. She is not seen as a person with agency or reason who can provide assent on topics of adultery and understand the consequences of doing so.

In the light of this discussion, Leela vs State of Kerala-¹⁹

Demand an elevated level of concentration. The constitutionality of Section 66(1)(b) of the Factories Act was challenged on the basis of Articles 14, 15, and 16 of the Indian Constitution, and this challenge was upheld. Nevertheless, the petition was declined based on the rationale that Section 66(1)(b) already has a provision that exhibits a prejudice in favour of women. This was the explanation provided for the rejection. As to a ruling rendered by the High Court of Kerala, the Factories Act is classified as a kind of legislation aimed at promoting social welfare.

The principal objective of Section 66(1)(b) is to establish regulations pertaining to the duration of employees' work hours. The division bears the obligation of ensuring that women are not subjected to familial separation or compelled to engage in hazardous nocturnal employment within industries. The court further determined that women possess an inherent inclination towards

¹⁹ Leela vs State Of Kerala, 2004 (102) FLR 207, 2004 (2) KLT 220, (2004) IIILLJ 106 Ker

familial dedication, therefore exempting female police officers and hotel waiters from mandatory nocturnal duties.

5-WHETHER THAT CREATE AND RIGHTS ARE DEVOTING IN THE WRONG DIRECTION:-

In India, women are protected by the law more than men due to their physical traits, duties, status, and present condition of circumstances. Traditional Indian society views women as uneducated, illogical, and unaware of their legal rights. Our patriarchal society stifles her. With little political power and financial dependence, she needs others. Indian men and women face distinct difficulties daily. The state can treat people differently if their circumstances are unjust. Aristotle advocated accepting differences and similarities. A woman and a guy are different. Her socioeconomic position differs greatly from that of men. Women differ from men in many ways. Therefore, they need particular care. They need particular attention. Since developing an equitable society is the goal, Article 15(3) allows women preferential treatment. The provision in Article 15(3) is sometimes called "protected discrimination". Women from lower financial levels or less influential groups should expect communal protection. Her dignity must be protected by the government.²⁰

In *Dattatreya Motiram vs. State of Bombay*,²¹ women were given preference over males, but this was not verified. Men are born with an edge. In Balan Nair, Bhavani Amma 93, the Kerala High Court ruled that Articles 15(3) and 39 aid destitute women and children. The state can adopt legislation to protect women's dignity, freedom, and equality. The judge's rulings show that the court sought to respect women. It has treated women equally in some cases. In the 1994 Abdul Aziz case, the Supreme Court considered women in the context of their families, duties, and society. Marriage preservation was the court's main objective. The court weighed this while

²⁰ 92AIR 1953 Bom 311

²¹ AIR 1987 Ker 11

proceeding. After a day in factories, the Kerala High Court decided women should spend nights with their families.

Her life should be dedicated to serving society, the family, and men, not herself. Society, specifically, may grant women rights to protect their femininity, dignity, and modesty. This is an honour, and the court cares for her health as well as that of the public. The right to equality seeks equal economic, political, and social rights for women and men. Women's emancipation and equality should reform society so women may choose their roles, even traditional ones. For equality to thrive, society must adjust its attitude towards women. The goal of change should be to enhance women's standing in society. It also has worth. The legal system granted women temporary protections based on long-standing social norms regarding men's and women's roles. The legal system should aim for social equality in the broadest sense possible rather than make exceptions for women given their obstacles. It should aim to change society and erase women's disadvantages. However, Dalit, tribal, religious, and talented women may receive certain perks.

6-CONCLUSION:-

It is evident from the preceding discussion that the Indian Constitution contains a number of gender equality provisions, which at times grant women preferential treatment. The Indian Constitution specifically mentions the topic in question, which lends credence to the aforementioned assertion. Furthermore, specific legal measures have been enacted in order to afford protections for women.

Numerous pieces of legislation were passed during this period, including but not limited to the Child Marriage Restraint Act, the National Commission for Women Act, the Protection of Women from Domestic Violence Act, and the Protection of Women against Sexual Harassment at Work Act. Additionally, the Factories Act and the Maternity Benefit Act were enacted, as were the Dowry Prohibition Act and the Equal Remuneration Act. Nevertheless, it is worth mentioning that intermittent occurrences of transgressions have transpired thus far. We regret to inform you that the prevalence of sexual assaults and other forms of gender-based violence has been on the rise. The Verma Committee Report, which was released on January 23, 2013, furnished an exhaustive synopsis of offences committed against women, along with suggestions for modifications to legislation. From my standpoint, there seems to be a correlation between the increasing frequency of violent incidents that specifically target women, the increased attention paid to gender

inequalities, and the temporary benefits granted to women in recent years. Men must be actively involved in initiatives to attain gender equality, as it is critical to restore a state of balance that is satisfactory to both sexes. It is crucial to restore a state of balance in which individuals of all genders can readily accept and recognise it. When analysing the media's depiction of violence against women, it is vital to consider the issue of violence against men. In accordance with conventional gender norms, men are generally designated as the primary earners for their families, whereas women are frequently anticipated to perform domestic duties, including providing care for the family and acting as nurturing mothers. It is imperative to consider this veracity. The societal ideal of success can be perceived as oppressive for both genders, similar to the societal expectations placed on physical appearance for women. From my standpoint, the notion of equality necessitates a reclamation procedure that incorporates a wider range of relatable individuals, including males, to augment its effectiveness, given that the current approach is static. The only plausible consequence that could ensue after such an occurrence would be the achievement of equality in its most essential form.