Research Paper Law

LAWS PROTECTING WOMEN FROM GENDER DISCRIMINATION IN INDIA - A CRITICAL ANALYSIS

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ABSTRACT

The Constitution of India not only removes inequalities but also provides special status to women and also provides various empowering provisions to bring up the dominated women in the society through various opportunities. Also there are many legislations in India which aim at not only removing the inequalities but also punish the offenders of discrimination under various instances. This paper analyses the laws relating to gender justice in India.

KEYWORDS

INTRODUCTION

The women have been discriminated in the country from time unknown. They have been treated in a very unfair manner. It is sad especially since there are innumerous many goddesses worshipped in this country. The country has been striving ever since the independence to protect the women from discrimination. The Marriam- Webster Dictionary defined discrimination as "the practice of unfairly treating a person or group of people differently from other people or groups of people."

Discrimination strikes at the very heart of being human. It is treating someone differently simply because of who they are or what they believe. We all have the right to be treated equally, regardless of our race, ethnicity, nationality, class, caste, religion, belief, sex, language, sexual orientation, gender identity, age,health or other status. Yet all too often we hear heart-breaking stories of people who suffer cruelty simply for belonging to a "different" group from those in power. [1]

CONSTITUTIONAL PROVISIONS

The Constitution of India plays a pioneer role in protecting the women from discrimination and ensuring gender justice in the present times. It can be said that the Constitution being supreme law of the land significantly addresses the questions related to woman and also responds to the challenges. The whole legal system is to be framed according to the provisions of the Constitution of India. But law alone cannot change the society in a night, but it will certainly bring positive changes and also ensure that the discriminated cannot be dealt in any manner whatsoever.

Article 14 of the Act reads as follows:
Equality before law-
The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 14, therefore, not only provides the British concept of equality before law but also gives equal protection of law which is an American concept. The provisions have wide connotations and very protect the women form discrimination from their counterparts.

Article 15 reads as follows:
Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth-

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
   -access to shops, public restaurants, hotels and palaces of public entertainment; or
   - the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
3. Nothing in this article shall prevent the State from making any special provision for women and children
4. Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

Thus Article 15(1) specifically prohibits any kind of discrimination against women on the basis of sex, caste etc. and article 15(3) makes special provision for the women favouring laws in order to protect the women and uplift them from such discrimination.

Article 16 reads as under:
Equality of opportunity in matters of public employment-
1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

Article 16 of the Constitution provides for equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically forbids discrimination inter-alia on the ground of sex. These articles are all justiciable and form the basis of our legal-constitutional edifice.[2]

Not only the State is required to protect the women from discrimination but it is the fundamental duty of every individual to ensure that the dignity of women is protected. Article 51 A reads as follows:

It shall be the duty of every citizen of India-

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

Thus it forms part of our personal obligation to protect the dignity of women and not to resort to any activities which are derogatory to the women.

The Equal Remuneration Act, 1976, the Maternity Benefit Act, 1961, the NREGA,2005, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Dowry Prohibition Act, 1961 and the Immoral Traffic (Prevention) Act, 1956 are some of the laws related to women empowerment in India.

Although these principles are strictly not justiciable, the Supreme Court of India, through its judicial activism, has infused dynamism into these non-justiciable provisions and issued directions to the state to implement them. The 73rd and 74th Amendments (1993) to the Indian Constitution have served as a major breakthrough towards enhancing the women's participation in democratic process.

The Supreme Court in Muthamma v. Union of India[3] and Air India v Nargesh Mirza[4] struck down discriminatory service conditions requiring female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed. In Vishaka v. State of Rajasthan[5], the Supreme Court observed that Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. And therefore issued guidelines to ensure women have equal working conditions and are protected from sexual harassment.[6]

In Mackinnon Mackenzie & Co. Ltd v. Audrey D'Costa[7] the Court observed that there was discrimination in payment of wages to lady stenographers and such discrimination was being perpetuated under the garb of a settlement between the employees and the employer. The Court finally not only made it mandatory to pay equal remuneration to lady stenographers as their male counterparts but also observed that the ground of financial incapability of the management cannot be a ground to seek exemption from the Equal Remuneration Act, 1976. Hindu Succession Amendment Act 2005 is a piece of central legislation that was brought into force in all our states. The Act confers equal rights of inheritance to Hindu women along with men, thus achieving the constitutional mandate of equality. Interpretation of the Guardianship law in the light of Article 15 by the Supreme Court in GithalHariharan v. Reserev Bank of India[8] could equate the position of mother to that of father in the matter of guardianship.[9]

BAN ON PRENATAL DIAGNOSTIC TESTING

Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 is an Act of the Parliament of India enacted to stop female foeticides and arrest the declining sex ratio in India. The act banned prenatal sex determination.

This process began in the early 1990s when ultrasound techniques gained widespread use in India. There was a tendency for families to continuously produce children until a male child was born. Foetal sex determination and sex selective abortion by medical professionals has today grown into a Rs. 1,000 crore industry (US$ 244 million). Social discrimination against women and a preference for sons have promoted. According to the decennial Indian census, the sex ratio in the 0-6 age group in India went from 104.0 males per 100 females in 1981, to 105.8 in 1991, to 107.8 in 2001, to 109.4 in 2011. The ratio is significantly higher in certain states such as Punjab and Haryana (126.1 and 122.0, as of 2001).[10]

Objectives

The main purpose of enacting the act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion.

Salient features

Offences under this act include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection on a man or woman, conducting PND test for any purpose other than the one mentioned in the act, sale, distribution, supply, renting etc. of any ultra sound machine or any other equipment capable of detecting sex of the foetus.

Main provisions in the act are:

The Act provides for the prohibition of sex selection, before or after conception.It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect:

1. genetic abnormalities
2. metabolic disorders
3. chromosomal abnormalities
4. certain congenital malformations
5. haemoglobinopathies
6. sex linked disorders.

No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.

No person, including the one who is conducting the procedure as per the law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.

Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000.[11]

Compulsory Registration: The Act mandates compulsory registration of all diagnostic laboratories, all genetic counselling centres, genetic laboratories, genetic clinics and ultrasound clinics.

Pre-conception sex selection: Recently developed techniques of sex at the time of conception like Ericsson method (X and Y chromosome separation) and pre-implementational genetic diagnosis (PGD) are also brought under the ambit of the law.

Maintenance of Records: All Genetic Counseling Centers, Genetic Laboratories, Genetic Clinics and Ultrasound clinics, irrespective of whatever they are involved as regards diagnosis for gynecological or other purposes, would now have to maintain records of all the tests conducted by them.[12]

Implications of the amendment of 2003 are:

1. Amendment of the act mainly covered bringing the technique of pre conception sex selection within the ambit of

the act
2. Bringing ultrasound within its ambit
3. Empowering the central supervisory board, constitution of state level supervisory board
4. Provision for more stringent punishments
5. Empowering appropriate authorities with the power of civil court for search, seizure and sealing the machines and equipments of the violators
6. Regulating the sale of the ultrasound machines only to registered bodies[13]

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. Most Indian employer's have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. The government has threatened to take stern action against employers who fail to comply with this law.[14]

Objectives of the Act:

To 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.

It addresses:

1. Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;
2. The protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;
3. To make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Background and provisions:

According to the Press Information Bureau of the Government of India:

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.[15]

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in Vishaka v. State of Rajasthan (1997). 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. Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under 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.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

The legislative progress of the Act has been a lengthy one. The Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011. In May 2012, the Union Cabinet approved an amendment to include domestic workers. The amended Bill was finally passed by the Lok Sabha on 3 September 2012. The Bill was passed by the RajyaSabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated the 23rd April 2013 as Act No. 14 of 2013.[16]

Major Features:

The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.

The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.

The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.[17]

Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.The Complaints Committees have the powers of civil courts for gathering evidence.The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to INR 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.[18]

HINDU SUCCESSION ACT, 1956 :

The Hindu Succession Act, 1956 is an Act of the Parliament of India enacted to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The significant amendment related to removal of discrimination was made in the year 2005 by the Hindu Succession (Amendment) Act, 2005.

Under the Hindu Succession Act, 1956, females are granted ownership of all property acquired either before or after the

signing of the Act, abolishing their "limited owner" status. However, it was not until the 2005 Amendment that daughters were allowed equal receipt of property as with sons. This invariably grants females property rights.[19]

The property of a Hindu female dying intestate, or without a will, shall devolve in the following order[20]:

1. upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband,
2. upon the heirs of the husband.
3. upon the father and mother
4. upon the heirs of the father, and
5. upon the heirs of the mother.

MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT OF 1937

The inheritance rights are governed by Sharia and the share of females are less than males as mandated by Quran.

EQUAL REMUNERATION ACT, 1976

It is the duty of employer under the Act to pay equal remuneration to men and women workers for same work or work of a similar nature. No employer can, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

CRIMINAL LAW (AMENDMENT) ACT, 2013

The Cabinet Ministers on 1 February 2013 approved for bringing an ordinance, for giving effect to the changes in law as suggested by the Verma Committee Report. According to former Minister of Law and Justice, Ashwani Kumar, 90 percent of the suggestions given by the Verma Committee Report have been incorporated into the Ordinance. The ordinance was subsequently replaced by a Bill with numerous changes, which was passed by theLok Sabha on 19 March 2013.[21]

New offences:

This new Act has expressly recognised certain acts as offences which were dealt under related laws. These new offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code:

1. Section 326A- Acid attack- Imprisonment not less than ten years but which may extend to imprisonment for life and with fine which shall be just and reasonable to meet the medical expenses and it shall be paid to the victim.
2. Section 326B-Attempt to Acid attack- Imprisonment not less than five years but which may extend to seven years, and shall also be liable to fine.
3. Section 354A - Sexual harassment- Rigorous imprisonment up to five years, or with fine, or with both in case of offence described in clauses (i) & (ii)Imprisonment up to one year, or with fine, or with both in other cases
   - It only protects women. Provisions are:
   - physical contact and advances involving unwelcome and explicit sexual overtures; or
4. a demand or request for sexual favours; or
5. making sexually coloured remarks; or
6. forcibly showing pornography; or
7. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Section 354B - Act with intent to disrobe a woman- Imprisonment not less than three years but which may extend to seven years and with fine. Only protects women against anyone who "Assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked.

Section 354C- Voyeurism- In case of first conviction, imprisonment not less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine. Only protects women. By implication, women may prey voyeuristically upon men with impunity. The prohibited action is defines thus: "Watching or capturing a woman in "private act", which includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public."

Section 354D- Stalking- Imprisonment not less than one year but which may extend to three years, and shall also be liable to fine Only protects women from being stalked by men. By implication, women may stalk men with impunity. The prohibited action is defined thus: "To follow a woman and contact, or attempt to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitor the use by a woman of the internet, email or any other form of electronic communication. There are exceptions to this section which include such act being in course of preventing or detecting a crime authorised by State or in compliance of certain law or was reasonable and justified."[22]

WOMEN'S RESERVATION BILL

Women's Reservation Bill or the Constitution (108th Amendment) Bill, is a pending bill in India which proposes to amend the Constitution of India to reserve 33 per cent of all seats in the Lower house of Parliament of India, the Lok Sabha, and in all state legislative assemblies for women. The seats to be reserved in rotation will be determined by draw of lots in such a way that a seat shall be reserved only once in three consecutive general elections.

The Upper House Rajya Sabha passed the bill on 9 Mar 2010. As of February 2014, the Lower House Lok Sabha has not yet voted on the bill. If the Lok Sabha were to approve the bill, it would then have to be passed by half of India's state legislatures and signed by the President.[23]

CONCLUSION

There are adequate legislations in India which not only removes the discrimination against women but also empowers the women. The Constitution itself makes room for the discriminatory laws in favour of the women who are considered the weaker sex, disadvantaged and discriminated in the male dominated society. The action wise plan of the Government in preventing the discrimination has proved the legislations as a failure. The existence of these laws only in the books is the major problem in India. The Supreme Court, however, has taken initiatives too and in some cases issued directions to the Government as well. But the implementation of these legislations in actual sense is very much necessary to remove the discrimination in the society.

REFERENCES

1. Discrimination, available at: https://www.amnesty.org/en/what-we-do/discrimination/ (last visited on: august 17, 2015) | 2. Dr.Rajendrakumarhittanagi, The Role Of Education Sector In Removing Gender Inequality, Available At: Http://Www.Legalservicesindia.Com/Article/Print.Php?Art_Id=1448 (Last Visited On: January 31, 2015) | 3. Sonali Khatri, Understanding Jurisprudence Of Judicial Legislation On Sexual Harassment Of Women At Workplace In India, Available At: Http://Www.Legalservicesindia.Com/Article/Article/Understanding-Jurisprudence-Of-Judicial-Legislation-On-Sexual-Harassment-Of-Women-At-Workplace-In-India-1660-1.Html (Last Visited On: August 17, 2015) | 4. Tcl, Female Foeticide, Available At: Http://Tclinfotech.Com/Womens/5.Htm (Last Visited On: January 30, 2015) | 5. Pinky, Pre-Natal Diagnostic Techniques(Prohibition Of Sex Selection) Act 1994, Available At: Http://Www.Ambitionias.Com/Pre-Natal-Diagnostic-Techniquesprohibition-Of-Sex-Selection-Act-1994.Html#Sthash.3y1yf30l.Dpuf, (Last Visited On: January 30, 2015) | 6. Drsahanwaz, Right To Be Born And Indian Legislative And Judicial Framework, Available At: Http://Www.Legalservicesindia.Com/Article/Article/Right-To-Be-Born-And-Indian-Legislative-And-Judicial-Framework-1833-1.Html(Last Visited On: August 17, 2015) | 7. Amritadasgupta, Workplace Harassment! Know The Laws!, Available At: Http://Www.Respectwomen.Co.In/Workplace-Harassment-Know-The-Laws/ (Last Visited On: January 30, 2015) | 8. Ibn, Bill To Make Workplace Safer For Indian Women, Available At: Http://Www.Ibnlive.Com/News/India/Bill-To-Make-Workplace-Safer-For-Indian-Women-504736.Html | 9. Uas, Sexual Harassment Of Women At Working Place, Available At: Https://Sites.Google.Com/A/Uasd.In/Women-Harassment1/Introduction (Last Visited On: January 30, 2015) | 10. The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013, Available At: Http://Togethervcan.In/?Article=The-Sexual-Harassment-Of-Women-At-Workplace-Prevention-Prohibition-And-Redressal-Act-2013 (Last Visited On: August 17, 2015) | 11. Various Provisions Of Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 | 12. Siddharth Sharma, A Critical Analysis Of The 174th Report Of The Law Commission Of India, Available At: Http://Www.Academia.Edu/7575974/A_Critical_Analysis_Of_The_174th_Report_Of_The_Law_Commission_Of_India_Subject_Family_Law (Last Visited On: August 17, 3015) | 13. Taxguru, Criminal Law (Amendment) Bill 2013 Related To Crime Against Women Available At: Http://Taxguru.In/Corporate-Law/Download-Criminal-Law-Amendment-Bill-2013-Related-Crime-Women.Html#Sthash.Icuankj1.Dpuf (Last Visited On January 30, 2015) | 14. Manangupta, Women's Reservation Bill, Available At: Http://Www.Quora.Com/Why-Are-There-Only-33-Of-All-Seats-Reserved-For-Women-In-Parliament-And-Not-50-According-To-The-Indian-Constitution (Last Visited On: January 30, 2015) |