



Research Paper

Towards a Gender Critical Rule of Law: A Survey of Women's Rights in India from a Legal Perspective

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Abstract: Women have always been overlooked and excluded; from their perceived role in society to them realizing their human rights. Women accessing legal services to avail their rights is, unfortunately, not an easy task. All around the world, access to healthcare is hindered, workplace harassment is rampant, and yet, women find legal aid to be inaccessible when they need it. The lack of knowledge about women's rights leads to their inability to ask for help, rendering it hard for them to make an educated decision about their human rights. As the United Nations said, women's rights are human rights. Why then, do so many women find it hard to locate and avail legal services to resolve their issues? This paper attempts to unravel the answer to that question by looking at the history of women's rights and movements, shifting from a global view and zooming in on India specifically, and elucidating recent bills and laws designed to help women attain what they rightfully deserve.

Keywords: women's rights, legal aid, human rights, laws, equality

Received 05 Oct., 2023; Revised 16 Oct., 2023; Accepted 18 Oct., 2023 © The author(s) 2023.

Published with open access at www.questjournals.org

I. Introduction

Mary Wollstonecraft, in her book "A Vindication of the Rights of Woman", said "All the sacred rights of humanity are violated by insisting on blind obedience." (1792) Written in the 18th century, Wollstonecraft set the standard for women speaking up for their rights and status of equality in society.

Gender is a social identity given to people based on certain attributes, majorly biological and societal. Following social constructs to create distinctive roles for men and women results in social and cultural meanings that in turn create hierarchical differences. The rights are usually in favor of men and are of a disadvantage to women. Some of the factors that affect the favoring of men are political, economic, cultural, social, religious, ideological, and environmental, and can be changed by culture, society, and community.

Stereotypes and discriminatory behavior are formed similarly around the world owing to the ideology that women are traditionally meant to "take care of the household" (*Women's Rights Are Human Rights*, 2014) and perform daily chores whereas men are supposed to "provide for the family by working outside the home". (2014) This systemic discrimination deprives women of balanced and improved socio-economic conditions. (*Gender & Women's Rights*) However, these orthodox perceptions have changed over the decades, and are evolving, which gives us a precedent for further substantial change.

Terms like 'gender mainstreaming', 'gender critical', and 'gender affirmative laws' have been gaining more attention lately. Gender mainstreaming, specific to women's rights in India, helps assess the impact of laws, policies, and programs on groups of men and women. (*Women's Rights Are Human Rights*, 2014) In democratic India, speaking legally, everyone who is affected by a decision should have an equal right to participate in the decision-making process behind it. (Saikia & Baruah, 2012) There are certain limitations that Indian women face on account of India's cultural and familial background, leading to the oppression of their voices. Women are primarily restricted to the domestic sphere of life and are often forced back into those traditional roles following situations that demand their participation, even after they become the de facto heads of households in such circumstances. (Kothari, 2003)

The term 'gender critical' can be contentious and may be used with different connotations. It could be used to convey the more commonly known societal differences between men and women, or it could be used to describe those who oppose the idea of gender identity and firmly believe that the sex assigned to one at birth is the immutable determinant of gender. This belief may lead them to oppose policies or perspectives that recognize distinct gender identities.

Gender affirmative laws set the foundation for a huge debate in India as the idea of veering away from the norm is morally opposed and unsupported by many. These laws are designed to protect rights and identities, particularly those of transgenders and gender non-conforming individuals. The intention to reduce discrimination based on gender identity through these laws should impact everyone involved in positive ways without creating more distinctive boundaries. The aim is to create a more equitable environment.

In the Indian Constitution, there are several gender affirmative laws. Right to Equality (Article 14), Prohibition of Discrimination (Article 15), Equality of Opportunity in Matters of Public Employment (Article 16), and more such articles positively affect women, ensuring their fundamental rights. However, as these articles exist and create room for change, there also exists an unwarranted divide between men's rights and women's rights. It is worth recognizing that gender rights are human rights and any division can hinder progress towards equality. Unfortunately, there is still a long way to go to achieve full equality of rights and opportunities between men and women as believed by the United Nations.

II. Background

United Nations observed that women are the world's largest 'excluded' category. History plays a significant role in gauging the extent of women's rights today. Human rights have always been male-dominated with limited scope for women. There are several examples of men who had contradictory opinions on women's rights. Plato was the first philosopher to advocate for women's rights, attempting to emancipate women from household duties to contribute to state affairs. Jean Jacques Rousseau belittled his contemporaries who advocated for women's rights. Mary Wollstonecraft is credited with the idea and the first expression of women's human rights. (Kaur, 2009)

In the USA and Europe, women played an insignificant role in decision-making in political, legal, and institutional structures. (Burrows, 1986) In India, there is a common misconception about women's status in ancient society—that they deserve no rights. The Rigveda, however, saw women as equals to men, where women enjoyed full rights and had access to the highest knowledge. They were also given the highest social status at home, as well as in the public sphere. (Kaur, 2009)

In a democratic country like India, a true democratic spirit can be ensured only by women attaining better political participation. (Saikia & Baruah, 2012) The history of women's rights and systemic gender discrimination in India can aid our understanding of the mental frameworks of this cause and the progress this discrimination, marked by complex dynamics, has made to this day. Women have always faced unequal treatment in areas such as education, property rights, and social roles. Gender disparities in India persisted despite the colonial era introducing legal reforms, the main reason being a lack of legal uniformity. (Sreenivas, 2004) Colonial law developed distinct codes for Hindu, Muslim, and other communities. (Cohn, 1997)

Post-independence, the progressive legislation sought to address issues like equal voting rights and seats for women in local governance. Women constitute half of the world's population and hence, half of its potential. (*Gender Equality | United Nations*) Technically, they have a right to vote or play a role in decision-making as much as any man. Yet, challenges remain. Gender-based violence, limited political representation, and unequal pay are just some of the many issues that persist. India has made strides in women's empowerment, however, historical disparities and deeply ingrained norms underscore the ongoing struggle. Stereotypes and cultural etiquette that are male-centric harm women's ability to enjoy their human rights. (*Women's Rights Are Human Rights*, 2014)

Women's rights are generally concentrated around the domestic and public spheres. Domestic sphere inequality encompasses restricted access to education and property and forced conformity to traditional gender roles. Legal reforms such as the Protection of Women from Domestic Violence Act, which came into practice in 2005, have been introduced. In the public sphere, women have gained greater visibility and representation in politics with reservations of seats in local governments. Anti-discrimination laws have also promoted equality in the workplace. Yet, obstacles like underrepresentation in leadership and the pay gap linger. Despite the advancements, the question remains: are men and women viewed and treated as equals? The answer for that remains a firm 'no', unfortunately, in India and the rest of the world.

Indian culture is closely intertwined with gender roles. Even with headways made in areas of education and employment, traditional cultural norms in India have often reinforced patriarchal structures and gender-specific roles onto women. (Saikia & Baruah, 2012) Cultural expectations from Indian women weigh down their sense of freedom and rights. Tradition is overwhelmingly used against women to keep them at a lower rung on the metaphorical ladder by denying them their rights. (AICTE, 2006) Today, as cultural transformations are ongoing, the connection between culture and women's rights is dynamic.

Practices like dowry, female infanticide, and child marriage perpetuate gender-based discrimination and are common in many parts of India to this day. Women have little to no decision-making power in Indian families but cultural shifts are also evident—celebrations like International Women's Day, which began as a conference in 1908 (Kaur, 2009) promote equality and the role of women in society. Films have also been tackling issues

such as gender violence and women empowerment, impacting popular culture and mindsets across India. Every coin has two sides, and so does culture, both challenging and reinforcing gender roles and women's rights in India.

III. Discussion

Women's rights to equality can only be realized if women are encouraged to assert their rights in court. (AICTE, 2006) For this to happen, every woman needs easy access to legal services. According to the Constitution, as elucidated in Article 39A, free legal aid should be provided to any citizen without discrimination based on economic or any other disability. Although several Acts have been passed in favor of women's rights, they are not easily obtainable. Factors like the quality of legal aid, the attitudes of the people responsible, and the long process of availing the required assistance can all hinder women from going ahead with asking for legal aid.

Women's ability or inability to access legal services in India varies significantly as a result of socio-economic status and geographic location. Rural women may lack awareness of various rules, laws, or regulations. Women from marginalized backgrounds often find it hard to access legal services which in turn hinders their ability to seek justice. As Mary Wollstonecraft said, "It is justice, not charity, that is wanting in the world!"

Women face problems trying to access legal help, especially in cases of violence. Proof of this dire situation was amplified through the 2012 Delhi Gang Rape Case. Access to medical resources for women in rural areas is hindered owing to a dearth of transportation and infrastructure. Indian cultural norms may also deter women from seeking reproductive health services like family planning or antenatal care. For instance, the fear of ostracism or being judged may inhibit unmarried women from using contraceptives. Maternal mortality rates also remain high in certain parts of India due to inadequate access to skilled healthcare. (AICTE, 2006)

Women's access to legal rights in India not only impacts their education but also their work opportunities and pay scale. There are legal provisions for promoting equality, but only to an extent. For example, the Right to Education Act provides access to education for girls, which increases initial enrollment, but factors like taboos surrounding women's health and economic background limit their continued participation. (*Women's Rights Are Human Rights*, 2014)

When it comes to women's health in India, gender-based discrimination has a highly negative impact. According to a joint study conducted by AIIMS, the Indian Statistical Institute, Prime Minister's Economic Advisory Council, and Harvard University in 2019, it was found that only 37% of women had access to healthcare, as opposed to 67% of men. (Kalra, 2019) Age was a big factor in determining whether a woman could access healthcare and gender bias was rampant in rural areas. Having to spend large amounts on travel to reach the healthcare facilities was hampering women from getting the help they needed. Shamika Ravi, one of the co-authors, called this situation "gross neglect of women's health across India."

Women's legal rights affect educational and occupational fronts, as well as earnings. Just education, however, is not enough; there needs to be quality education that promotes learning and development. Schools today are seen as places to challenge the patriarchy, but in rural areas, it is a place where it is reinforced, opposing the point of empowering women. (AICTE, 2006) The content of the education becomes critical in giving girls the confidence they need, and the knowledge of their rights and how to avail of them.

The percentage of working women has improved considerably over the decades, creating a pressing need for appropriate and adequate rights for women in the workplace. Sexual harassment is the main issue to be tackled, ensuring women's safety, and leading to increased productivity and development. (AICTE, 2006) One of the United Nations' Sustainable Development Goals (SDGs) is to "achieve gender equality and empower all women and girls". Gender disparity remains a global concern, with women earning on average 20 percent less than men in the labor market. Legal changes are necessary to ensure women's rights.

Recently passed laws and bills include the Bill on Prohibition of Child Marriage (Amendment) Act, 2021, and The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013. These have had a profound impact on women's ability to access and avail of legal rights. The Bill on Prohibition of Child Marriage (Amendment) of 2021 raised the legal age of marriage from 18 to 21 and aims to prevent forced early marriages, allowing girls to complete their education and pursue their career aspirations. The Sexual Harassment of Women at Workplace Act has helped create safer work environments, encouraging women to report workplace harassment. This is a step forward in promoting gender equality in the workplace, ensuring that women can work discrimination-free.

IV. Conclusion

Gender affirmative laws are deemed a necessity by some, and less than desirable by others. The UN Secretary-General António Guterres was under the impression that the longstanding fight for gender equality by women is "the unfinished business of our time," in a speech given in 2018. The United Nations devised countless

initiatives to promote equal employment opportunities and reduce the underrepresentation of women in politics and leadership positions. (Furtado et al., 2021)

There is ample potential for the Indian government to include more areas of women's rights until all of them are covered. The Indian government has made some progress, but it has a long way to go, and several areas to address. Legal amenities only manage to contribute to a small percentage of access to women's rights. Women feel unsafe while walking on the streets and even in their own homes, knowing that it is highly unlikely that they will be believed if something untoward were to happen. A study by the University of Washington, conducted in 2021, found that.

“Women who are young, “conventionally attractive” and appear and act feminine are more likely to be believed when making accusations of sexual harassment.” (Eckart, 2021)

Women's rights and human rights are interlinked and indivisible. Acknowledging this will help foster a peaceful, happy, and equal society. Gender-affirmative laws can help achieve this, also enabling women to have legal, medical, and employment-related rights. Addressing these issues legally and expanding such legislation can empower women and help bridge existing gender gaps.

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