

The level of Gender Neutrality in Indian Constitution

Ajitesh Kunder

Amity Law School, Amity University, Noida, Uttar Pradesh

Best Citation - Ajitesh Kunder, The level of Gender Neutrality in Indian Constitution, 3 IJLR 103, 2022

Abstract

We have talked about gender difference for eras. If we say equality, it means that both men and women should be equal, but if we talk about the Indian Constitution, it is far from reality. It is true that women in India face lot of discrimination in various fields due to which special provisions have been made in the Indian Constitution, but unfortunately, many such provisions are highly biased towards the people of other gender identities apart from women of the country⁴⁴⁴. Especially, men seem to be victims of the so-called women empowerment legislations.

Section 377 has been scraped by the Hon'ble Supreme Court but still it is extremely painful to even think that the LGBTQ+ community are not being accepted in our society and even the Constitution of India is biased towards them in many aspects. All the above issues go against the goals of the Preamble and violates the basic Fundamental Rights of the citizens especially males and the third gender.

Key Words: *Biased, LGBTQ+ Community, Women, Men, Reservation, Discrimination, Fundamental Rights, Constitution, Gender Neutrality.*

I. Introduction

“To be born a man in India is a crime, and this is because of anti-men laws in the name of laws to protect women blanket our country”. Our country always thinks about how a man treated women but never talks about a how a woman treats men. In earlier times, the term “Sexual Harassment” was popularized by women, and from then on, women are only being seen as the victims of such practices and since long, no one even wondered that even men can be the

sufferers. The major victory of the men activists was when the Supreme Court of India recognised that even men can be the victims of domestic violence in our country.

Most of the women use the rights given to them to threaten others and to make the victim sound as if he has only done something wrong. Now in this modern world, it is really time to make some amends in this area and making our constitution less “gender bias”.

Many people believe, today, that the concept of sexual harassment or rape is limited to females only and males are the ultimate culprits. It is very important to make clear that such type of heinous crimes can be committed against any person, whether a male or a female or a person belonging to the LGBTQ+ community.

Sexual offences affects a person's physical and psychological well-being irrespective of their gender, caste, sex, place of birth, religion, etc. Gender-neutral laws are the laws which are interpreted in a way to include all the sections of a society, male-female, upper caste or lower caste. The problems of male victims are barely reported and goes unrecognized in our country.

In modern times, not only our country but the whole world is suffering from rise in crime rates which make each and every one equally vulnerable. So, it is very much reasonable to have a constitution without imposing the concept of gender in it.

The cases which shows men as the victim are barely reported in India because of the sociological taboo that “Men are stronger than Women” and if a man is a victim, he is no longer a man. The reasons given above are the main cause as to why legislative bodies at times lack gender neutrality in making certain laws in our country. They think that harassment against men and injustice, which can be in any form, against men is highly uncommon.

II. Biased Legal Provisions in India

The basic morals and prevailing issues that have been recognised in recent years are gender equality and women

⁴⁴⁴ Mr. Harsh Kumar, Gender Biased Laws in India, Legal Service India blog (July 23, 2021, 9:30 AM)

empowerment. There is no doubt in this that sexual abuse in any form or in any kind needs to be very strictly denounced. If we tolerate such things and refrain from giving justice to the victims and harsh punishments to the criminal, it will simply mean that we are disrespecting the freedom and dignity of every individual. The basic human rights of equality, choice of work or live with dignity and incorporated protection from any form of assault, be it rape, sexual assault, cruelty, etc.⁴⁴⁵. The Indian Constitution guarantees fundamental freedoms to each and every citizen regardless of their gender and there is no doubt in that but there are some laws in our country that needs improvement or change to make it neutral for every gender.

A. Sexual Harassment Laws

There is a belief in our society that when anyone hears the word rape, people always think a man forcing a woman but the World Health Organisation has recently estimated that the percentage of men have a sexual abuse history in the world is 12-16% during childhood and most of the victims, according to the reports, are from developed countries. It has been analysed that a man or a boy may suffer sexual abuse in three forms⁴⁴⁶:

- Prison rape
- Sexual assault during any conflict
- Sexual assault of juvenile males during childhood

In our country, there is no official data present for the first two forms. This lack of data tell us that there has been very less initiative taken by the government to protect men from rapes and also the society has also been ignorant about it since decades.

Section 375 of IPC has categorised rape as done by a man on a woman. It says that a man can be the only possible criminal⁴⁴⁷. This discrimination clearly constitutionally

invalid. The section ignores the following situations of harassment:

- Man, sexually assaulted by man
- Man, sexually assaulted by woman

B. The Protection of Women from Domestic Violence Act, 2005

Much more pain and damage is caused to the victims of domestic violence than we think of because of acts of harassment within a marriage or any other relationships. It identifies only and only women as the victims of this evil. Hence from this we can conclude that there are two major problems in this legislation:

- The law only favour and protects the rights of women citizens
- The chances of misuse of power using is flaw is very high

C. Section 304 B (Dowry Death) And Section 498 A (Cruelty Against Women)

The above mentioned two offences are heinous crimes and are non bailable. The purpose of these laws is to bring charges against the husband and the in-laws. In such of cases, even if the allegations are wrong, trial will be held and the husband will be guilty until proven innocent. The burden of proof lies in the hands of the husband. It has been studies that in 44% cases, the prosecution is completely wrong. There are a lot of consequences to this, like social and economic, because the accused and the family remain in the custody until proven innocent.

D. Section 354 (Modesty of a Women)

The section under the Indian Penal Code deals with the modesty of a women. Criminal charges will be levied against anyone who offend a dignity of a women. There is no such law in India in favour of men. There have been cases where a woman abuses a man and get away without any trial. This provision is highly discriminatory towards men.

⁴⁴⁵ Madhavi Sunder, 'Piercing the Veil' [2003] 112 YALE L.J. 1399.

⁴⁴⁶ Will S., 'Rape of men: Darkest Secrets of War' The Guardian Article, <https://www.theguardian.com/society/2011/jul/17/the-rape-of-men>.

⁴⁴⁷ Menon, P. (2013). 'Lacking support, male rape victims stay silent' The Times of India, <https://timesofindia.indiatimes.com/city/chennai/lacking-support-male-rape-victims-stay-silent/articleshow/18524668.cms>.

III. Biased Provisions about Reservation in our Constitution (108th Constitutional Amendment)

The 108th amendment of our Constitution granted reservation of one-third seats to women in the Lok Sabha and the State Legislative Assemblies. Further, the bill also says that one-third of the total number of seats reserved for Schedule Castes and Schedule Tribes shall be reserved for the women of that particular category.

Now from these provisions in the constitution, we can understand that the main objective was that women should also have a voice in the decisions and governing of our country. Including women's reservation in Lok Sabha and the State Legislative Assemblies, they also have seats reserved in the Village Panchayat as well, taking their influence on the grass-root levels as well.

It is true that to bring stability and empower women, we need to take certain steps which can be biased towards males so that equal representation can be achieved. There are a group of people who need these kinds of policies in favor of them more than women in society. These are the LGBTQ+ community. We want women empowerment but in the same way we need to empower the queers as well. It is them who need reservation in all the government jobs and it is them whose problems need to be urgently heard, even if it means to drop reservations in favour of women. Women face a lot of problems in our country and so do LGBTQ+ community. They even face more problems than women which are of heinous nature, hence, their representation is necessary in the decision making process. Article 15 of our constitution provides for the reservation to women but there is no law which provides for the reservation to the gays, lesbians or the transgenders. This provision is really biased towards the community and has deprives them of their basic fundamental rights.

IV. Violation of Fundamental Rights of Males and LGBTQ+ Community

A. Article 14 of Indian Constitution

Harassment and injustice against towards men and LGBTQ+ are very much against the principle of "Equality of Status and Opportunity" and the goal of Social Justice which has been enshrined in the Preamble of our Constitution. Article 14 of our constitution provides equality before law and equal protection of laws within the territory of India. This is one of the most important fundamental rights which is to be given to each and every citizen in any democracy. By favouring women through various laws, clearly this particular part of our constitution is being violated.

B. Article 15 of Indian Constitution

Another important fundamental right which are citizen have is that they cannot be discriminated against each other on the bases of religion, race, caste, sex and place of birth and it is the responsibility of the state of ensure this and provide justice. But, in reality, this is not the case. Because of the biased nature of various laws and the lack of gender neutrality in our constitution, the situation in our country is contrary to this fundamental right.

C. Article 21 of Indian Constitution

Article 21 of the constitution of India gives all the citizens right to a dignified life. It also protects the personal liberty of an individual. When anyone is abused, it affects the person mentally as well as physically, regardless of the gender identity of the person. It deprives the person, the enjoyment of his life.

V. Use of 'He' or 'Her' in Indian Constitution

After reading a lot of legislations, we must have notices that the Constitution of India uses the term 'he', wherever the law is specifying an individual. After questioning this, the argument arises that the word 'he' includes all the gender identities. It is true that this debate will always remain that whether we should include 'he' or 'she' in the constitution. If we will include 'she' instead of 'he', then people will

argue that why only she is being used everywhere. Though the word 'he' includes everyone, but still, this make our constitution gender specific, and not gender neutral. Hence, instead of using words like 'he' or 'her', we can use words like 'the person', 'persons', 'people', 'an individual', which are more gender neutral words.

VI. Conclusion

Hence, it is very necessary to make laws which are gender neutral in nature. The laws has to be changed with the changing times as the society is becoming modern and advanced, so everyone are equally prone to offences. The misuse of the women centric criminal laws has to be stopped and the special provisions also should be made in the Constitution of India to protect the interests of not only females, but the LGBTQ+ community as well. The concept of gender-neutrality should properly come into picture in all spheres of life. The Local, regional and national media has a key role to play in this regard, so as to achieve the idea or essence of gender-neutrality which has been enshrined in the Preamble and Articles 14, 15 and 21 of the Indian Constitution.

References

- The Wilson Center, 'Opening Statement by Additional Solicitor General Indira Jaising to the Verma Committee' The Wilson Center (15 October 2013)
- Madhavi Sunder, 'Piercing the Veil' [2003] 112 YALE L.J. 1399, 1466.
- Aditya Paul SOLJ, AU, 'Violation Of Fundamental Rights Of Males As Victims Of Sexual Harassment: An Analysis With Reference To India'.
- Gupta, T. S., 'Child Abuse', <http://www.sos-sexisme.org/english/IndiaChildAbuse.htm>
- Universal Lexis Nexis, The Constitution of India, Bare Act (Edition 2022).