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ROLE OF INDIAN LEGAL SYSTEM IN PROTECTING GENDER EQUALITY IN INDIA

Kinkini Chaudhuri¹

The state shall not discriminate against any person on the basis only of religion, caste, sex, place of birth, or any combination thereof," states Article 15 of the Indian Constitution. But why does society create gender inequity by dictating to people and passing judgement on them? These people are later labelled as "others" because of the difficulties they encounter owing to their personalities and sexual orientations. They are essentially left alone by their families, mocked by others, and left with no choice but to beg or perform at weddings. Despite the fact that the third gender has been granted a number of rights, these rights are not very active in society due to gender inequity and human nature. LGBTQ people do not currently hold the same standing as those of other genders.

INTRODUCTION

In order to uphold gender equality in society, law must take into account how differences in men's and women's social, economic, and legal capabilities affect how they perceive justice and the rule of law in their daily lives, as well as how these patterns are significantly influenced by their way of life.

A person benefits from the law when it grants them the freedom to live their lives as independent, free, and autonomous members of society. Over the years, the Supreme Court of India has developed its gender jurisprudence and shown a positive, forward-thinking, and activist attitude toward gender-specific issues, making a bold step toward attaining gender justice.

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LGBTQ people and third-gender people are both seen as belonging to the same category, and as a result, society discriminates against them. In fact, however, LGBTQ is a concept in which a person is classified as such by either themselves or by a member of the community. LGBTQ people and people who identify as a third gender are occasionally categorized as transgender. The general public does not fully understand this concept.

LEGALITY OF MARRIAGE

The first case to address marriage with sex transformation was *Corbett v. Corbett*². In this instance, the court decided that even though the respondent had changed his gender, he was still a man and thus any marriage between men was null and void. Furthermore, the *R v. Tan*³ judgement found that a male remains a man by law after undergoing a sex change procedure, applying the principle employed in the prior case.

After further observation, it is found that neither the Hindu Marriage Act nor the Special Marriage Act in India covers transgender individuals. Since eunuchs are not a part of the fairer sex, they are not protected by the National Commission for Women. Transgender people are not covered under Section 2(c) of the National Commission for Minorities, which defines minority populations as Muslims, Christians, Sikhs, and Buddhists. It's interesting to note that several legal texts in the international system remain silent about transgender people's status.

Marriage between two hijras is voidable, meaning it can be legitimate depending on the parties, according to the Hindu Marriage Act.

CONSTITUTIONAL PROVISIONS

² 2 All E.R. 33.

³ [2020] QCA 64.

Following are the Constitutional provisions:

- **Article 14:** The State must guarantee everyone's equality before the law and impartial protection of Indian law, according to this requirement. The "*equality before the law*" approach identifies a clause in all written documents that guarantee that everyone has the same rights under the law, regardless of their place of birth, ethnicity, gender, or race. Equal protection of the law refers to the unbiased defence of the law for each and every person living in India.
- **Article 15(1):** It requires the State to refrain from discriminating against anyone on the basis of their sex, ethnicity, race, nationality, caste, or any combination of these.
- **Article 15(3):** It requires the State to provide some unique arrangements for the benefit of women and children. Accordingly, it states that even while the state won't separate anyone, they can nonetheless implement special laws just for kids and women to protect their interests. The Children's Sexual Harassment Act, the Domestic Violence Act, the Workplace Harassment Law, the Sexual Abuse Legislation (Nirbhaya Act), the Amendment to the Hindu Succession Act, and other laws are examples of those that support discussions aimed at promoting women and children. On the other hand, Article 15(3) supports discussions. This addresses issues such as limitations on a wife's allowance, marital rape, limitations on the Food Protection Bill, etc.
- **Article 16:** It requires equal chance for everyone in matters involving education or distribution of any post within the State. Guidelines on equal chances for public sector jobs are outlined in Articles 16(1) and (2). However, it is stated in Article 16, Clause 3, that this clause shall not in any way prevent Parliament from

passing legislation establishing a requirement that people appointed to any office within that State reside within that State or a territory of the Union prior to recruitment or allotment to any office within that State. According to Article 16(4) of the Indian Constitution, state-owned facilities must be set aside for the benefit of the underprivileged.

- **Article 39(a):** It requires the State to direct its efforts toward reserving the right to a good standard of living for both men and women on an equal footing.
- **Article 39(d):** It requires the State to guarantee equal pay for equally hard labour for men and women. Although the "*fair compensation for fair work*" notion is not explicitly recognized as a civil right in our Constitution, it is unquestionably a constitutional objective. According to it, the Directive's clause states that "*fair compensation for equal effort*" implies equal pay for equal work performed by both sexes.
- **Article 39A:** It promotes justice, on an equal footing, and providing free legal aid by effective legislation, programmes, or other means to ensure that no one is denied favorable conditions for accessing justice because of their financial situation or other constraints.
- **Article 42:** It requires the State to organize for the provision of maternity aid and fair and reasonable working conditions.
- **Article 46:** It requires the State to make the scholastic and financial woes of the Scheduled Castes, Scheduled Tribes, and other underprivileged sections public. It also directs the State to make a considerable effort to raise awareness of the financial and academic issues of the underprivileged sections of society,

particularly the Scheduled Tribes and Scheduled Castes, and to protect them from all forms of persecution.

- **Article 47:** The level of the population's living and nutritional conditions will be improved by the State. The most essential part for the aim of social change is how it identifies the government's main duties. It pertains to health care, the elderly, raising job standards, protecting justice, and increasing the responsibilities of the government.
- **Article 51(A)(e):** Fostering a culture of friendship and cooperation among all citizens of the nation, and rejecting behaviour that is demeaning to women's dignity.
- **Article 243D(3):** The maximum number of seats that can be held by open voting in each Panchayat must be reserved for women, with more than or equal to one-third of those seats (*including the number of seats reserved for women who belong to the Scheduled Tribes and Scheduled Castes*) being distributed by succession to different constituencies within a Panchayat.
- **Article 243D(4):** For Administrators at each tier of the Panchayats, more than or equal to one-third of all positions must be reserved for women.
- **Article 243T(3):** The maximum number of seats that can be held by open voting in each municipality must be reserved for women and distributed successively to separate constituencies within a municipality for these seats. This number must be greater than or equal to one-third (inclusive of the proportion of seats reserved for women who belong to the Scheduled Tribes and Scheduled Castes).

- **Article 243T(4):** The distribution of administrative positions in municipalities to members of Scheduled Tribes, Women, and Scheduled Castes in a manner permitted by statute by the State House.

CONCLUSION

Gender-based discrimination is a social ill that ought to be eradicated at all costs. A nation's judiciary must take the initiative and interpret the laws to uphold the equality principle. In order to improve the status of women in our society and alter all the laws that prevent them from making decisions and taking advantage of all the opportunities that life has to offer, constitutional measures must be made.