



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN



WHITE BLACK
LEGAL.

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GENDER EQUALITY¹

AUTHORED BY - AAKANKSHA CHAUHAN

ABSTRACT

Gender equality impacts every member of the community as a whole and forms the basic cornerstone of a fair society; thus, the issue of social inequality is of utmost importance and has colossal implications across a vast and limitless canvas. In India, there are health, employment, social, and political inequalities between males and females due to gender inequality. Multiple worldwide indices of inequality rank India differently on each of these characteristics, as well as on a weighted scale, and these measurements are polarising. Gender gaps and its societal foundations have an impact on India's sex ratio, women's health throughout the course of their lifetime, educational performance, and economic environment. In India, discrimination on the basis of gender is a significant issue that affects both men and women.

Multiple facets of women's life have been impacted by gender inequity, including career progression and the escalation of mental health issues. Despite the fact that India's laws on rape, dowry, and adultery have prioritised the protection of women, massive prejudice seems to be upsetting and negatively impacting men's lives today. Each Indian citizen has also been given specific rights to safeguard their interest in the community against any assault, which are enforced by the court in regard to certain limits.

INTRODUCTION

The rape of Unnao demonstrates that the Indian constitution's guarantee of women's equal rights is a reality. On her way to testify against the accused, a fire was started, causing the lady to suffer serious burns that ultimately proved fatal. Since the Nirbhaya case, incidences of alleged rape and sexual assault have been in the spotlight. Nirbhaya was brutally raped and murdered by six men in New Delhi, which triggered a nationwide outcry and the formation of the J.S. Verma Committee to provide recommendations about rape legislation. The Nirbhaya Fund was established by the federal government to cover costs

¹ Aakanksha Chauhan, LLM, IILM University, Greater Noida, Uttar Pradesh

associated with enhancing women's safety. In contrast, the heinous gang rape and murder of a female veterinarian in Telangana, as well as comparable events in Bihar, Rajasthan, and Karnataka, reveal that women are just as vulnerable and fearful as they were before the "Nirbhaya Gang Rape" case. Seven years later, following the execution of the four convicted individuals, Nirbhaya was finally awarded justice. Now, India has enacted stringent regulations, such as the 2012 POSCO Act modification that allows the death sentence for convicted rapists of minors or children under 12 years old. Even the federal government intends to establish expedited courts to resolve similar matters within six months.

In India, a similar "Men's Rights Movement" has arisen to defend men against unjustified harassment and mental torment. They are seeking gender-neutral legislation since the majority of Indian laws favour women. The parents of a man who committed suicide in New Delhi in 2016 said that he did so as a result of unwarranted mental suffering and harassment by his spouse. The case was finally recorded under Sections 302 and 34. The anti-dowry statute, Section 498-A, must be amended, since the majority of laws cause men and in-laws to experience humiliation.

LGBTQ (lesbian, gay, bisexual, transgender, and queer) individuals in India confront legal and societal obstacles that non-persons do not. Other substantive measures, like as non-discrimination or same-sex marriage, have not been made, despite the abolition of colonial-era laws that explicitly prohibited gay intercourse and sexual identities. Since 2014, in the renowned NALSA case, the Supreme Court has permitted them to register as the country's third gender. Similarly, the Navtej Singh Johar case deemed unlawful the colonial-era Section 377 IPC. But presently, the Bharatiya Nyaya Sanhita, 2023 deleted the provision relating to unnatural offence

MEN'S RIGHT IN INDIA

India is a common-law country with diverse cultures, several religious sects, and centuries of history. In accordance with the democratic concept of equality, the constitution of India has been seen as a key ingredient for social development. India's persistent political liberties are uncommon among emerging nations; but, given socioeconomic advancements, the area continues to be plagued by unparalleled poverty, religious and

social class-related cruelty, separatism, and other societal biases.

Women's rights in India are protected by many legislation, and they may submit complaints against anybody who violates their rights. Despite the fact that men and women have the same basic rights, men's rights are not as clearly stated as women's. In section 3 of the Indian Constitution, men have access to their basic rights regardless of religion, ethnicity, gender, or place of birth. The majority of these rights ensure men's freedoms, allowing them to live free from pressure and harassment.

As a result of the widespread patriarchy in Indian culture, there is a pressing need for gender neutrality in rape law. Until now, only women have been deemed victims of rape. The notion of gender neutrality legislation was hampered despite the increase of women's empowerment and feminism. The majority of IPC laws pertaining to crimes against women solely refer to males as criminals. From the Tukaram case to the Nirbhaya case, males were the only perpetrators. However, the Central Government could have accepted the JS Verma committee's recommendation to make several legislation gender-neutral, which was also rejected.

Numerous PILs have been filed in different High Courts and the Supreme Court in an effort to make rape legislation gender-neutral. In 2017, Sanjiv Kumar questioned in the Delhi High Court the legitimacy of current rape statutes that solely treat males as perpetrators. It was said that the situation has changed and that society must now go "beyond the male-on-female paradigm." In its plea, Centre said that the rules pertaining to rape should not be changed, as certain provisions are required to combat the escalating crime against women. Similarly, the Supreme Court rejected Rishi Malhotra's PIL, which called for gender-neutral rape legislation since there are no laws protecting men from sexual harassment. It was *Rishi Malhotra vs the Union of India*.

The Law Commission proposed that the term "rape" be replaced with "sexual assault" to make legislation gender-neutral. After the Nirbhaya event, the government of the Union resolved to gender-neutralize its laws. In his findings, Justice Verma recommended using "person" instead of "woman" to include all types of sexual abuse. However, the Criminal Law (Amendment) Act of 2013 reinstated the gender-specific term in response to complaints from feminist organisations over the entrenched sexism in society.

WOMEN'S RIGHT IN INDIA

In democratic nations like the United States and the United Kingdom, which were created long before India's independence from the British, women were not permitted to vote in elections for a long period. They lacked the authority and right to vote in elections. Women of the United Kingdom gained the right to vote in 1918 and women of the United States of America gained the right to vote in 1920. The battle wasn't easy for women of the United Kingdom because they fought for it more than two centuries after the first elections took place and more than a century after the right to vote was granted to women of the United States of America. This provides a general sense of how long it takes to implement Judiciary and laws to ensure gender justice in India. In the realm of gender, we still have a long way to go before achieving so-called "equality."

PROVISIONS IN THE CONSTITUTION FOR WOMEN

The Constitution of India focuses not only on granting women equal rights, but also on how to strengthen them in society so that they do not experience discrimination and segregation financially, socially, and politically. Even though some constitutional provisions, such as Articles 14, 15, 16, 39, and 42 of the Indian Constitution, provide the concept of gender justice, such as equality before the law or equal protection of the law; no discrimination on the basis of sex, race, religion, caste, residential area, or place of birth; and equal opportunity to every citizen of India in matters pertaining to the employment sector, the concept of gender justice has not been fully implemented. There are other articles that specifically advocate for the empowerment of women in society.

These are described below:

- **ARTICLE 51 (A)(e):** There must be a spirit of fraternity among Indian people, and there must be no practices that offend the feelings of women.
- **ARTICLE 243 (D)(3):** One-third of the total number of seats in Panchayats must be reserved for women (including women from disadvantaged groups such as SC/ST) and filled by direct election.
- **ARTICLE 243 (D)(4):** One-third of the total number of Panchayat chairperson positions shall be allocated for women.

- ARTICLE 243 (T)(3): One-third of the total number of seats in Municipality should be reserved for women (including women from disadvantaged sections such as SC/ST) and filled by direct election.
- ARTICLE 243 (T)(4): As mandated by the state legislature, one-third of the total number of seats shall be reserved for women (including women from disadvantaged sections such as SC/ST) in Municipality as Chairperson.

LEGAL PROVISIONS FOR WOMEN

To ensure that there is law and order in the community and that everyone abides by it, so that there are no disturbances and everything works smoothly, the Centre and State legislatures have enacted particular laws and measures to protect the dignity of women. These rules and procedures are enacted so that people are not subjected to verbal or physical discrimination and abuse. These laws and regulations are intended to assist and support both working and non-working women in society. The immoral and ill-intentioned acts that cause grievous harm or damage to another person are referred to as crimes. Illegal acts such as murder (Section 300 of the Indian Penal Code), cheating (Section 415 of the Indian Penal Code), robbery (Section 390 of the Indian Penal Code), etc., are categorised as crimes, and crimes committed primarily against women are referred to as "crimes against women." These may be roughly divided into two classes:

In accordance with the Indian Penal Code of 1860, the following conduct constitutes a crime against women:

- Abduction and Kidnapping (Sec. 363-373)
- Abuse (Sec. 376)
- Molestation (Sec. 354)
- Torture Physical and Mental (Sec. 498-A)
- Sexual Harassment (Sec. 509)
- Attempts and Deaths involving Dowry (Sections 302/304-B)

Some Statutes and Statutory Provisions that Protect a Woman's Interests:

- The Maternity Benefit Act of 1961;
- The Women's Reservation Bill of 2008;
- The Employees State Insurance Act of 1948;

- The Sexual Harassment of Women in the Workplace Act of 2013;
- The Criminal Law Amendment Ordinance of 2018;

Several Significant Initiatives for Women by the Indian Government

- **NATIONAL POLICY FOR EMPOWERMENT OF WOMEN, 2001:** This strategy was formulated in 2001 by the Department of Women and Child Development under the Ministry of Human Resource Development, with the intention of empowering women.
- **NATIONAL COMMISSION FOR WOMEN:** In 1992, the Centre established a commission tasked with monitoring all issues pertaining to women's rights and proposing amendments to new legislation as required.
- **RESERVATION FOR WOMEN IN LOCAL SELF-GOVERNMENT:** The Parliament enacted the 73rd Constitutional Amendment in 1992, guaranteeing women one-third of the total number of seats in local offices, regardless of whether they are in a metropolis or a hamlet."

In addition to government measures, the Indian Judiciary has actively participated in matters concerning women. These landmark disputes altered women's future course of action. In *C.B. Muthamma v. Union of India*, for instance, the legitimacy of the "Indian Foreign Service Rules of 1961" was challenged. The primary question in this case was whether or not a woman employee must get formal authorization from the government before to her marriage and whether or not she may resign from her employment after her marriage. This statute was knocked down by the Supreme Court on the grounds that it is unconstitutional and discriminatory towards women.

In another historic decision, *Air India v. Nargesh Mirza*, the Supreme Court ruled that it is illegal and arbitrary to fire an air hostess solely on her first pregnancy. In *Pratibha Ranu v. Suraj Kumar*, the central question was who is entitled to the Stridhan property upon marriage. In this instance, the Supreme Court rendered a stunning ruling indicating that a married woman had entire ownership and authority over the Stridhan property.

The central issue in *Vishaka and Others v. State of Rajasthan* was the sexual harassment of women in the workplace. In this case, the Supreme Court of India ruled that any action

that is immoral and degrades the dignity of women on the job violates Articles 14, 15, and 21 of the Indian Constitution. The Supreme Court issued the Vishaka Guidelines in order to prohibit sexual harassment of women in the workplace.

TRANSGENDER'S RIGHTS IN INDIA

The Fundamental Rights given to men and women of the society are also available to the third gender as well. They have the same Fundamental Rights as to ours and them equally the beauty of our constitution like Articles 14, 15 and 23 etc. The Court has legally recognized the third gender as Transgender in both civil as well in criminal status. Now, they have the same fundamental rights and constitutional provisions as men and women of the society and now they can enjoy these in the same manner. After the decriminalization of sec. 377 of IPC in the landmark judgement given by the Top Court in 2018 in the case of *Navtej Singh Johar v. Union of India* now they can consensual sex including homosexual sex. Certain bills that gave rights to Transgender persons are detailed as follows:

- **THE RIGHTS OF TRANSGENDER PERSON'S BILL, 2014:** The third gender was legally recognized by the government on the order of the Supreme Court and asked them to reserve their seats for education and employment.
- **THE RIGHTS OF TRANSGENDER PERSON'S BILL, 2015:** A Private member's bill was passed by Upper House regarding the right of a transgender person which defines transgender as a psychosomatic individual and stating about reservations.
- **THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016:** The government opposed Rajya Sabha's bill and introduced new Transgender Person's Bill (Protection of Rights) which defined transgender as Biotic Appearance and stating no reservations for them. The main crux of this bill was drawn from the landmark judgement given by the Top Court in the case of National Legal Services Authority (NALSA) v. Union of India. Their legal identity was given to them in this case.
- **TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2017:** The bill was introduced to tackle social issues faced by the transgender and how to empower them in society.

It is indicated through the essay that, despite the fact that the Indian constitution grants

equal rights to all people, this is not the case in practise. Due to the existence of patriarchy in society, however, there are some laws, such as rape laws, that provide women with more protection. Now, however, the time has changed, and politicians are required to modify these laws to make them gender-neutral.

CONCLUSION

The majority of Indian laws are genuinely intended for both men and women, and it is now time for legislators to include transgender people in these laws. Surprisingly, though, the rape laws favour women. No longer can it be argued that gender-specific laws against sexual harassment serve any purpose. Outside of the established framework, there is little reason to suspect the prevalence of sexual assault. Only the formulation and execution of gender-neutral laws would be effective in expanding the scope of coverage for these offences. The legal definition of rape must be re-evaluated, sexual assault must be classified in accordance with the varied degrees of damage each causes, and each must always be stated in detail.

