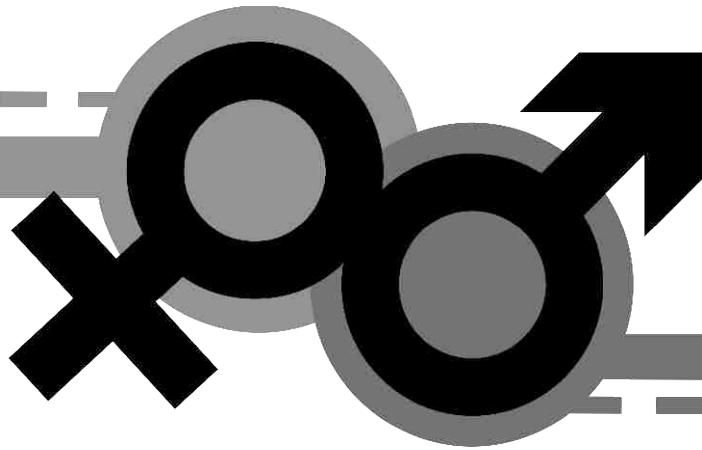




**SVKM'S  
PRAVIN GANDHI COLLEGE OF LAW  
MUMBAI**



# **Conference Proceedings Gender Justice Law and Society**



**Editors:**

**Ms. Apurva Thakur**

**Dr. Kavita Rai**

**Ms. Rachi Singh**

# **Conference Proceedings: Gender Justice Law and Society**

**ISBN : 978-93-91044-27-5**

Price ₹600.00

US\$ 49.00

First Edition: 2023

## **Publisher By:**

### **Imperial Publications**

304 De Elmas Sonawala Cross Road 2,  
Goregaon E, Mumbai- 400063  
Maharashtra, India

## **Mail Your Order**

**IMPERIAL PUBLICATIONS PVT. LTD.**

**© Imperial Publications, Mumbai - India 2023**

All Rights Reserved. No part of this publication can reproduced in any form or by any means (electronical, mechanical, photocopying, recording or otherwise) without the written permission of publisher. Any person does any authorized act in relation to the publication may be liable to criminal prosecution and civil claims for damages in the jurisdiction of Courts in Mumbai.

### **Disclaimer**

The Opinions expressed in this publication are those of authors. They do not purport to reflect the opinions or views of the Imperial Publications or its members. The designation employed in this publications and presentation of material therein do not imply the expression of any opinion whatsoever on the part of the Imperial Publications concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

Designed, Layout, Typset Printed By: IMPERIAL PUBLICATIONS  
304 De Elmas Sonawala Cross Road 2, Goregaon E, Mumbai- 400063 Maharashtra, India  
Cover Page Designed By: Ashnav Sinha (Fifth year B.L.S. LL.B, SVKM's PGCL,  
Mumbai)

**CHAIRPERSON**

**Dr. Navashikha Duara**

B.A.; M.A.; Ph.D.; Diploma in Russian Language  
I/C Principal  
SVKM's Pravin Gandhi College of Law

**ADVISORY BOARD**

**Ms. Anju Singh**

B.SC; LLB; LLM  
Assistant Professor  
SVKM's Pravin Gandhi College of Law

**EDITORS**

**Ms. Apurva Thakur**

B.L.S/L.L.B.; LLM  
Assistant Professor  
SVKM's Pravin Gandhi  
College of Law

**Dr. Kavita Rai**

L.L.B.; L.L.M; Ph.D.  
Assistant Professor  
SVKM's Pravin Gandhi  
College of Law

**Ms. Rachi Singh**

LL.M. (NLIU-Bhopal)  
B.A. LL.B. (Hons).  
SVKM's Pravin Gandhi  
College of Law

**STUDENT VOLUNTEERS**

**STUDENT EDITORS**

Deepanjali Mishra  
Niyomi Jariwala

**ORGANIZING TEAM**

Anoushka Desai

Ayushi Chopra

Devanshi Rathod

Jeet Somaiya

Kanak Bharadwaj

Kartik Hede

Khushi Goradia

Khushi Wazalwar

Kiran Yadav

Nishta Rathod

Punit Vyas

Rajlaxmi Pawar

Ruhika Sawant

Sakina Dorajiwala

Siddhi Deshmukh

Srushti Dotiya

Stuti Menon

Suryansh Vaishnav

Tanmay Patil

Yoksha Mehta

## *Preface*

*“A gender-equal society would be one where the word 'gender' does not exist: where everyone can be themselves.”*

- Gloria Steinem, American Feminist Journalist & Social Political Activist

The Cambridge Dictionary defines the word gender as “a group of people in a society who share particular qualities or ways of behaving which that society associates with being male, female, or another identity.” Today, the term gender does not only connote male and female genders, but it also extends to imply transgender, gender neutral, non-binary, genderqueer, and many others.

A democratic society promises justice for all, and self-expression is one of the most essential features of the fundamental rights guaranteed to individuals under the Constitution. Upholding the right to self-expression, not discriminating anyone based on their gender, class, caste or creed, and treating everyone with human dignity as equals in the eyes of the law are at the very heart of a progressive and democratic society. True gender justice is achieved when all genders are given access to equal social, economic, political, and other opportunities.

The notion of gender justice is not confined to the idea of fighting the forces of patriarchy or to assert the rights of transgender persons. In addition, emerging discussions on other genders also hold importance in the current social and legal domains. Gender justice means equal and equitable justice for all genders.

The questions that Book explores are: Do the laws reflect the emerging social realities? Do we really appreciate the differences between genders and value their individuality? Is gender justice an inclusive phenomenon? Is society ready for LGBTQ+ rights? Do we anticipate a gender inclusive society? What are the traditional and modern perspectives on gender justice? A just, fair, and an evolved society needs to offer a safe environment for people of all genders so that people can thrive, without being threatened socially or legally because of their gender, gender expression or sexual orientation. Within such a framework of reflections, the book covers a vast and vivid canvas of ideas and ideologies.



## *Foreword*

The discussion around gender continues to be relevant through time. The twin tenets of justice: equality and equity rest on the gender inclusion.

Even today, the world is plagued by gender discrimination, as evidenced by the existing wage gap, violence against those who don't confine to the narrow definitions of gender.

The Conference has brought forth a discussion around various aspects of gender, and has thrown up relevant and interesting questions.

We invite the readers to be a part of the larger gender debate.

**Dr. Navasikha Duara**

I/c Principal

SVKM's Pravin Gandhi College of Law,

Mumbai



***Disclaimer:***

The views or opinions or suggestions expressed or published in the Book are the personal point of view of the Author(s). SVKM's Pravin Gandhi College of Law and the editors are not liable for the same.

While every effort has been made to avoid any mistake or omission, this publication is published on the condition and understanding that SVKM's Pravin Gandhi College of Law and the editors shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work. bear no responsibility for any legal claims for the same.



**-: Table of Contents :-**

<b>Title/ Author(s)</b>	<b>Page No.</b>
Cruelty Against The Husbands In India - <b><i>Lokesh Chauhan</i></b>	1-22
A Conflict of Comprehensive Legal Framework For Transgender Persons- A Jurisprudential Perspective - <b><i>Parveen Islam</i></b>	23-36
Glass Ceiling Magnitude on Indian Working Women in Context to Corporate Laws - <b><i>Reshma Yadav</i></b>	37-42
Questioning Trans-inclusivity: A Study Of Queer Depiction in Indian Cinema - <b><i>Sarvesh Sitaram Gosavi</i></b>	43-48
Theory of Modern Feminism - <b><i>Somya Bajaj</i></b>	49-56
Abortion Laws and its Constitutional Validity in India - <b><i>Dr. Swapnil Choudhary</i></b>	57-64
LGBTG Facet of Human Rights, But Cast A Dark Cloud of Desolation on their Diurnal Subsists - <b><i>Dr. Tejaswini Malegaonkar</i></b>	65-72
Comparitive Analysis of Surrogacy Laws in India and the Third World Countries - <b><i>Viral Dave</i></b>	73-86
Depiction of Gender Roles in Indian Prime-time Television Shows in the Context of Judith Butler's Theory of Gender Performativity - <b><i>Zainab Reza Razvi</i></b>	87-96





---

# CRUELTY AGAINST THE HUSBANDS IN INDIA

**Lokesh Chauhan**

Research Scholar  
G.D. Goenka University, Sohna

---

## ABSTRACT

Cruelty against husbands is now an emerging problem in India. Cruelty is not only faced by women but also men. Men face violence like cruelty, domestic abuse, sexual abuse, verbal abuse etc., in their marital relationships. Husbands don't report incidents of cruelty because of fear and societal pressure. The legislature made laws to protect wives from abuse, but they are misusing the provisions by filing false complaints against husbands and their relatives. However, we don't have gender-neutral laws and safeguards against the cruelty caused by wives against their husbands. So men(victims) don't get justice quickly, which affects their human rights.

In *Sushil Kumar Sharma versus Union of India*, the honourable Supreme Court observed that 498-A of IPC is misused by wives and ordered to stop "legal Terrorism". Mostly husbands are facing economic abuse or harm from their wives. Many courts, including the Supreme Court of India, have opined that the Protection of Women against Domestic Violence Act, 2005 is a poorly drafted law. It is an anti-male, anti-social and anti-national Act.

In a recent case, Delhi High Court ordered to dissolve a marriage between a Hindu couple because the wife had filed a false criminal complaint against her husband, which caused him mental cruelty. Punjab and Haryana High Court held that if the wife is harming the career and reputation of her husband by making complaints against him to his seniors, then it will be mental cruelty.

This research is based on the concept of various aspects of cruelty and relief available to the husband given by the legislature. The researcher examines the judiciary's role in protecting the husbands from cruelty and gives some suggestions and remedial measures. The researcher also does a pilot study in Delhi and NCR. Indian courts should prevent the misuse of legal provisions by wives against their husbands, and the legislature should make gender-neutral laws.

*Keywords: Cruelty, Misuse, Gender-Neutral law*

## **INTRODUCTION**

According to Indian society, marriage is a social institution and union in which husband and wife live together and enjoy social status. But cruelty against the husband is now an emerging problem in marriage that affects the victim's life, including physical, emotional and mental health. Societies are not recognizing that the husband can also face violence from the wife and her family members. The legislature introduced the definition of cruelty and treated it as a severe offence in the Indian Penal Code, 1960 (I.P.C) and the Protection of Women from Domestic Violence (P.W.D.V.) Act, 2005. But it is a gender-biased definition, which only protects the rights of the wife and not the husband. Even the legislature considered only women as victims and men as perpetrators; that is why the Legislature is not taking steps to amend gender-biased laws.

Unfortunately, women are misusing laws against their husbands. According to the crime report in India 2020, 1,11,549 cases were registered under Section 498A, 5,520 cases were closed by police because of false, and overall, 16,151 cases were closed by police because the cases were false or there was a mistake of fact or law or civil dispute etc. Approximately 14% of cases were closed by police for not finding merit in the case. The court tried over 18,967 cases, 14,340 led to an acquittal, and 3,425 led to the conviction. The acquittal percentage (approx. 75%) is higher than the conviction percentage (approx. 18%). Courts see that wives are filing false cases under I.P.C. and Domestic Violence Act, 2005 for taking revenge and monetary benefit from husbands. They are dragging all family members of the husband into Court without any reason. The report of N.C.R.B. 2020 shows that husbands face cruelty from their wives.

## **MEANING OF “CRUELTY”**

Many courts commented that there is no straight jacket formula to define cruelty. Cruelty means the violent behaviour of one spouse against another spouse. It can be done physically (when there is a danger to life, health and property) or mentally (when it causes mental pain or depression or pressure or agony). Cruelty includes the wife humiliating her husband in front of his family members and friends, taunting her husband, denying to do sexual intercourse without any reason, dragging the husband into court in false cases, the extramarital affair of wife, not cooking food on time, not doing household work, complaining the behaviour of husband to his colleagues, etc. In *Manoj Madhukarrao Pate v. Sou. Vijaya Manoj Pate*, the wife filed a false complaint against her husband and his family members under section 498-A, I.P.C., and the Court acquitted all the respondents. The Court held that the husband was entitled to seek divorce on the grounds of cruelty in the Hindu Marriage Act, 1955 against the wife.

## **DIFFERENT ASPECTS OF CRUELTY AGAINST HUSBAND**

In India, the court recognizes various forms of cruelty done by wives to their husbands and classifies them accordingly:

- **Physical cruelty:** In this present time, wives are using physical power against their husbands. There are many cases where male partners produced evidence of being scratched, bit, punched, attacked with deadly instruments, and anything thrown at them by their violent wives. We don't have any proper legal system to protect husbands from their wives, so they don't get justice easily.

- Emotional cruelty: It includes “demand of separation of husband from his parents, separate residence, the threat of false complaint, threat to take the children from husband, non-cooperation of the wife, etc.” If the husband does not fulfil these demands of the wife, then he will face a false case of cruelty, dowry, domestic violence etc.
- Sexual cruelty: Husbands face sexual cruelty like the threat of false rape and molestation case even after consensual sexual intercourse; the wife forces the husband to do sexual intercourse to conceive a child, denying to make a physical relation in marital relation, etc.
- Verbal Cruelty: It includes calling the husband with abusive words and names (impotent, eunuch) with the intention to hurt them, taunting about their physical appearance in front of friends, insulting in public, etc.
- Economic cruelty: It includes the demands of money for purchasing jewellery, property, automobiles, restaurants, hospitality, feminine beauty products, expensive clothing, high maintenance in divorce cases, education of the wife’s family etc. When the husband or his family does not fulfil these demands of female partners, then they are subjected to further emotional and physical abuse.
- Legal cruelty: Most husbands face legal cruelty. Legal cruelty means the wife takes the help of state machinery and forces the husband to fulfil their demands. Legal cruelty includes the misuse of section 498-A of the Indian Penal Code, Domestic Violence Act 2005, denying child custody in divorce and judicial separation cases, demanding massive maintenance in divorce cases, etc.

### **RELIEF AVAILABLE TO THE HUSBANDS**

Whenever a husband faces cruelty from his wife, he will file a case for divorce in court. The burden of proof lies on the husband, who alleged that he faced cruelty from his wife. The legislature of India made cruelty a ground for divorce.

- There are many acts in which cruelty is a ground for divorce like:
- Section 13, Hindu Marriage Act, 1955
- Section 10, Indian Divorce Act, 1869
- Section 27, Special Marriage Act, 1954
- Section 32, Parsi Marriage and Divorce Act, 1936
- The husband may take expenses for litigation (section 24) and maintenance (section 25) from the wife under Hindu Marriage Act, 1955
- Husband takes a decree of restitution conjugal rights (section 9) and judicial separation (Section 10) from the court under the Hindu marriage act, 1955

The husband can file counter-cases against his wife.

- The husband can also file a case against his wife on the ground of conspiracy (under section 120B I.P.C., 1860) which is committed against him and his family members.
  - If the wife gives false evidence against her husband, he files a case under section 191 of I.P.C., 1860, on the grounds of providing false evidence.
-

- If the wife harms the reputation of the husband and his family members by dragging them to court in a false case, then the husband can file the case of defamation under section 500 I.P.C., 1860.
- A husband can also file a case under section 464 of the Indian Penal Code if he finds that his wife is making a false document and producing before the court.
- If the husband finds that the complaint filed by his wife is false and bogus, he can also file a complaint under section 227 of Cr.P.C. and state that the complaint under section 498A is bogus.
- If the wife makes a scene, breaks the objects in the matrimonial home, and falsely claims that the husband tortured her emotionally, physically and mentally. He can file a suit of recovery of damages under section 9 of C.P.C., 1908, against his wife.

### **JUDICIAL APPROACH**

Various courts are protecting the rights of husbands from the cruelty done by their wives. Apex Court condemns misuse of the laws given by the legislature.

In the landmark case of *Sushil Kumar vs Union of India*, the Hon'ble Supreme Court ordered to stop "legal terrorism". It noted that "*the provision is intended to be used as a shield, not assassin*" weapon. If the cry of a wolf is made to open as a prank, assistance and protection may not be available when an actual wolf appears. In *Sejalben Tejasbhai Chovatiya vs the State of Gujarat*, "the Court held that there are many laws which are in favour of the distressed wife, but they are misusing by stating incorrect facts in their petition, this act of wife impacts on the administration of justice would make it expedient for it to direct the prosecution." In the case of *Rajesh Sharma vs State of UP*, Supreme Court had issued directions for the making of the 'Family Welfare Committee' and to prevent misuse of provisions of cruelty. In *Samar Ghosh vs Jaya Ghosh*, the Court held that we could not set any uniform criteria to establish a case of mental cruelty, and each case must be decided on its own facts. In *K. Srinivas vs K. Sunita*, the wife filed a complaint against her husband and her husband's relatives under 498A of the Indian Penal Code, 1860, and all respondents were acquitted. This complaint made by the wife was false and malafide. Court held that if any spouse filed a false complaint against the other spouse and their family members, this would lead to cruelty. In *Anil Bharadwaj vs Nimlesh Bharadwaj*, the Court held that if a wife refuses to have sexual intercourse, without any reason, with her husband, it leads to cruelty against the husband. In *Narendra vs K. Meena*, in this case, the Supreme Court held that if a wife uses force or coercion upon her husband to leave his parents, who are dependent on her husband, then it amounts to cruelty by the wife against her husband. Therefore, this will be the decisive ground for divorce. In *Surinder Kaur vs Gurdeep Singh*, the wife accepts the job in a different place from the matrimonial house without the consent of the husband. Due to the job, the wife is unable to perform her marital duties, which are imposed by marriage. The court held that the wife had withdrawn the marital duties without reasonable excuse, which amounted to cruelty against the husband. In *Imlesh vs Amit*, the wife made indecent allegations against her father-in-law and dragged the husband and his family members into a false case. The wife was misusing section 498-A and filed a suit against them. Court held that the act of the wife caused mental cruelty to the husband and his family members, and he is entitled to get a divorce. In *Smt. Sangeeta Shukla vs Ganesh Shukla*, the Court held that if the wife does not do any domestic work, does not care about the husband, abuses her in-laws and her husband and fights regularly, it amounts to cruelty against the husband and his family members, and the husband is entitled

to get a divorce. In *Joydeep Majumdar vs Bharti Jaiswal Majumdar*, where the wife made defamatory complaints to the husband's superior officers and the complaint affected the husband's career, and the Hon'ble Apex Court ruled that it amounted to 'mental cruelty' because due to such allegations, the husband had faced the consequences in his life and career. The husband was granted divorce by the Family Court on the grounds of cruelty. In *Raj Talreja vs Kavita Talreja*, the wife made a false complaint against the husband after inflicting injuries on her own body. In this case, the husband was acquitted, and criminal proceedings against the wife were initiated. On the basis of cruelty done by the wife, the husband was entitled to a divorce decree. In *Saritha vs R. Ramachandra*, Court held that educated women are filing a case of the 498A against their husbands and family members. This section has protected the women from their cruel husbands, but now they are misusing it against their husbands. It is up to the Law Commission and Parliament to either keep that provision (Section 498-A IPC) in its current form or to make the offence non-cognizable and bailable so that women and their parents do not abuse the provision to harass innocent husbands and their families. In *Mrs Deepalakshmi Saehia Zingade vs Sachi Ramesh Rao Zingade*, in this case, the wife filed a lawsuit against her husband and stated that her husband has a girlfriend. This contention of the wife is proved to be false. The Court held that the false case instituted by the wife could be ground for cruelty against the husband.

In the *Arnesh Kumar case*, Hon'ble Supreme Court issued directions to prevent unnecessary arrest by the police officers:

1. "All the State Governments to instruct their police officers not to automatically arrest when a case under Section 498-A of the I.P.C. is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr. P.C.;
  2. All police officers be provided with a checklist containing specified sub-clauses under Section 41(1)(b)(ii);
  3. The police officer shall forward the checklist duly filed and furnish the reasons and materials which necessitated the arrest while forwarding/producing the accused before the Magistrate for further detention;
  4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid, and only after recording its satisfaction, the Magistrate will authorise detention;
  5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
  6. Notice of appearance in terms of Section 41A of CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
  7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action; they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
-

8. Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.
9. Directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, but also such cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

### **OBJECTIVES OF THE STUDY**

- To identify whether husbands are facing cruelty from wives or not.
- To identify the causes and effects of cruelty against husbands.
- To identify the cases of cruelty against husbands in Delhi and N.C.R.

### **METHODOLOGY**

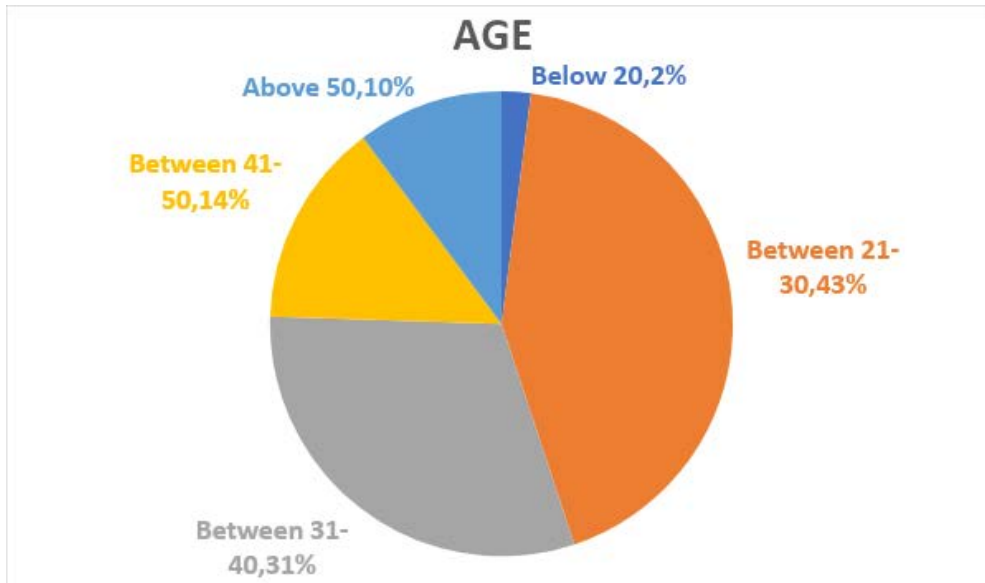
- *Descriptive Methodology:* This research approach is called the foundation of research. This approach is more focused on the “what” of the research subject than the “why” of the research subject. The researcher of this study uses more descriptive information about cruelty against husbands from books, journals, articles and documentaries.
- *Analytical Methodology:* This research approach is for solving the research problems. It uses by the researcher to make the final result. The researcher analyses various issues, laws, effects and data on cruelty against husbands.
- *Sources of Study:*
  - The researcher gets primary sources by circulating a Google questionnaire form (Cruelty against Husbands in Delhi and N.C.R) in the region of Delhi and N.C.R.
  - The researcher gets secondary sources from articles, journals, books and videos.

### **1. SURVEY FOR CRUELTY AGAINST HUSBANDS IN DELHI AND NCR**

#### ***I. Age***

CATEGORIES	RESPONDENTS
Below 20	01
Between 21-30	21
Between 31-40	15
Between 41-50	07
Above 50	05

---

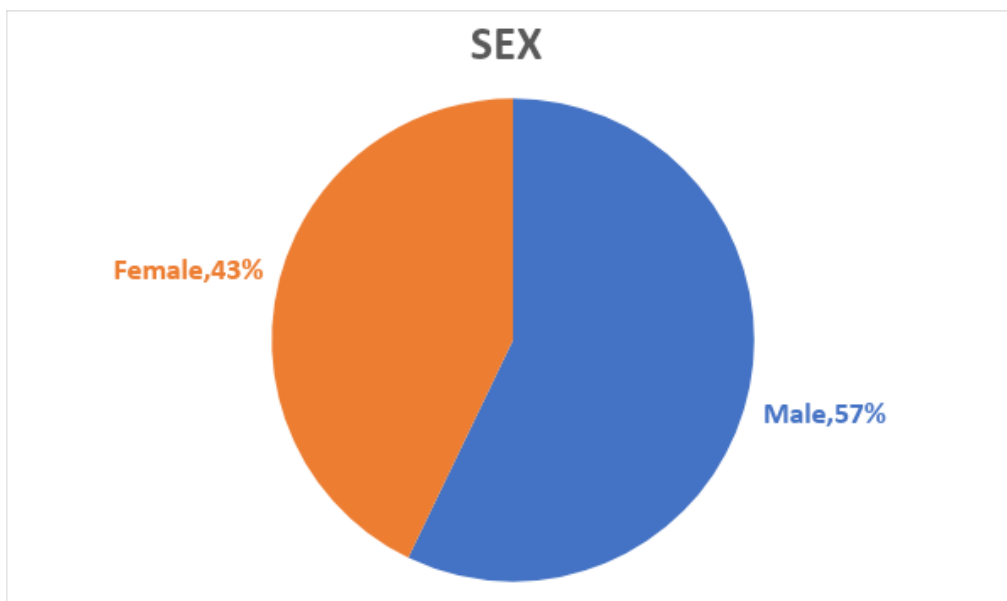


**Diagram 1**

The above diagram shows that 2% of respondents are below 20 years, 43% of respondents are between 21-30 years, 31% of respondents are between 31-40, 14% of respondents are between 41-5- and 10% of respondents are above 50 years.

**II. Sex**

CATEGORIES	RESPONDENTS
Male	28
Female	21
Transgender	00



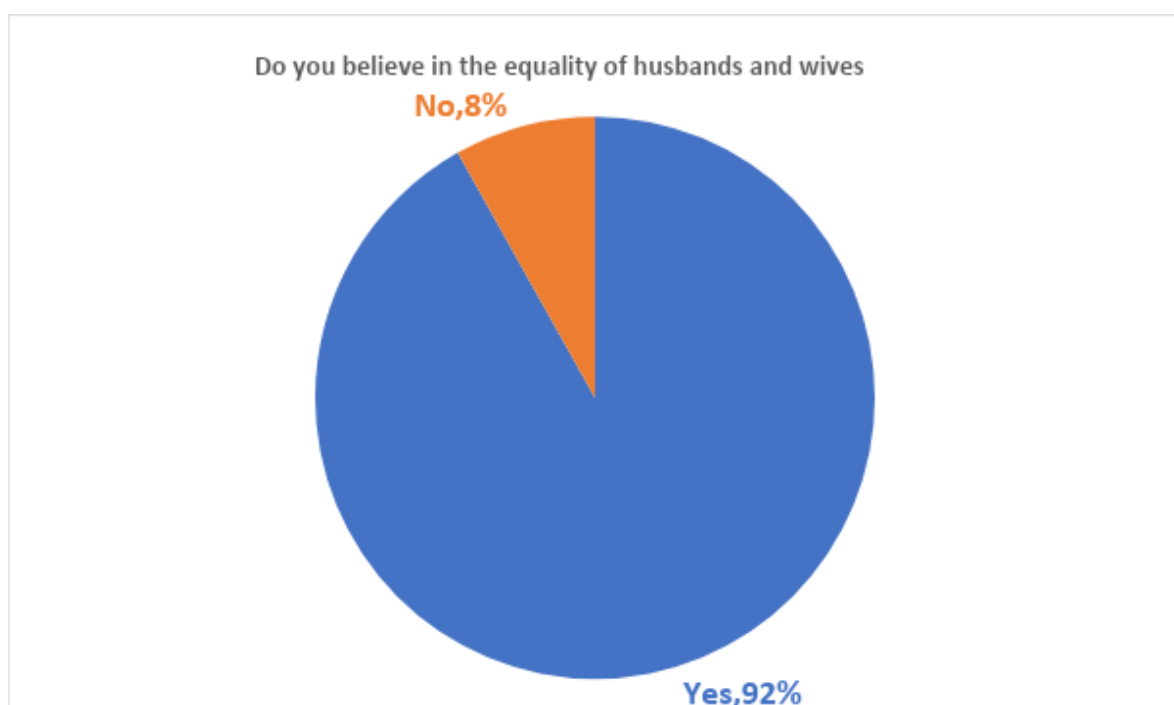


**Diagram 2**

The above diagram shows that 43% of respondents are female and 57% of respondents are male.

**III. Do you believe in the equality of husbands and wives?**

CATEGORIES	RESPONDENTS
Yes	45
No	04
Maybe	00



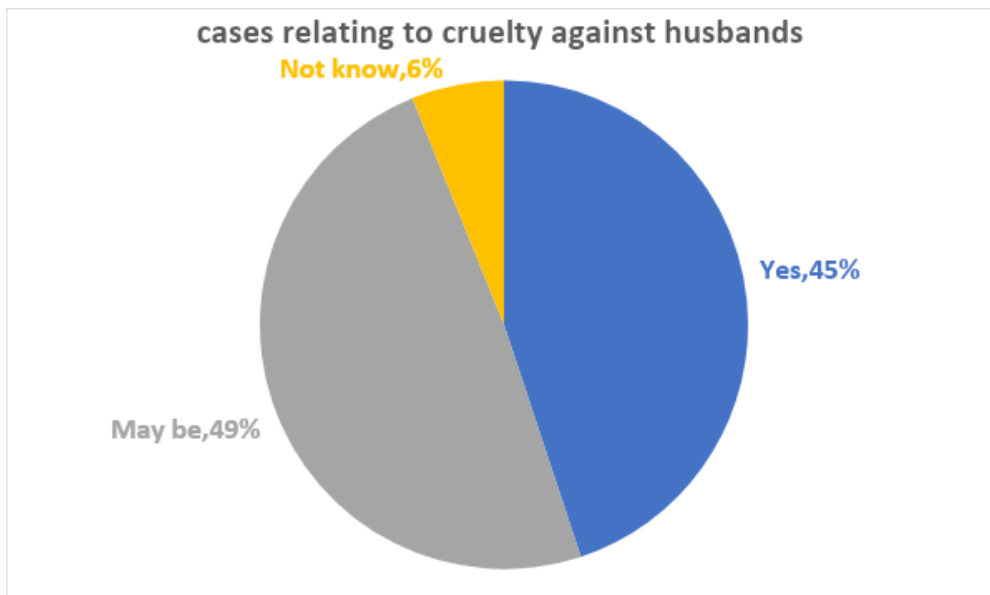
**Diagram 3**

The above diagram shows that 92% of respondents believe in the equality of husbands and wives, and 8% of respondents are not believed in the equality of husbands and wives.

**IV. Have the number of cases relating to cruelty against husbands during the period of lockdown increased in the region of Delhi and N.C.R.?**

CATEGORIES	RESPONDENTS
Yes	22
No	00
May be	24
Not know	03



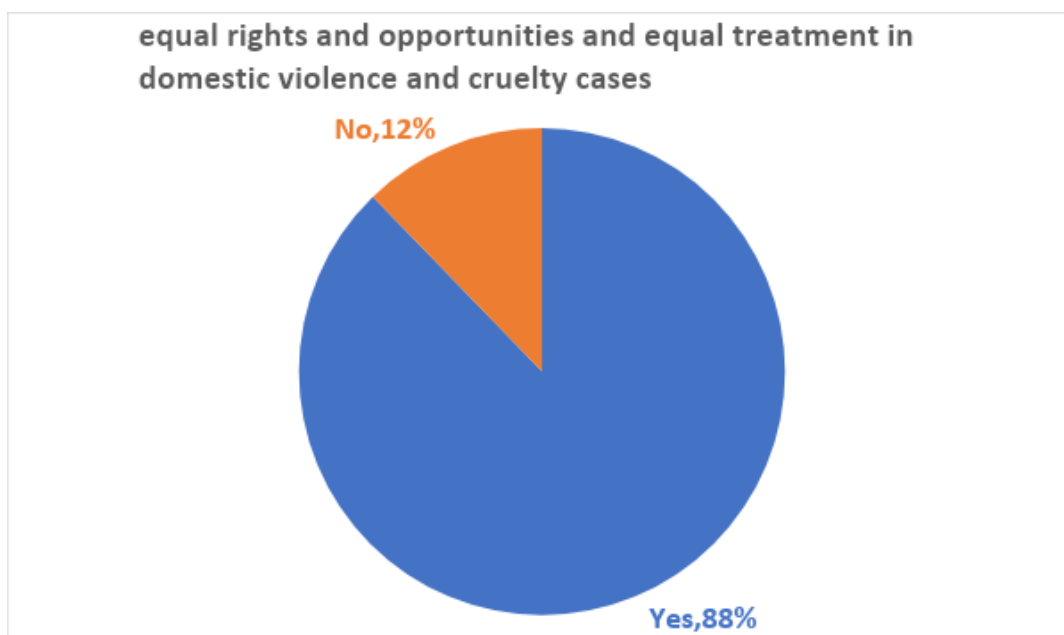


**Diagram 4**

The above diagram shows that 45% of respondents said that the number of cases relating to cruelty against husbands during the lockdown period had been increased in Delhi and N.C.R., 49% of respondents said the number of cases relating to cruelty against husbands during the lockdown period might be increased in Delhi and N.C.R., and 6% of respondents don't know about this issue.

**V. Do you think that husband and wife be given equal rights and opportunities and equal treatment in domestic violence and cruelty cases?**

CATEGORIES	RESPONDENTS
Yes	43
No	06
Maybe	00

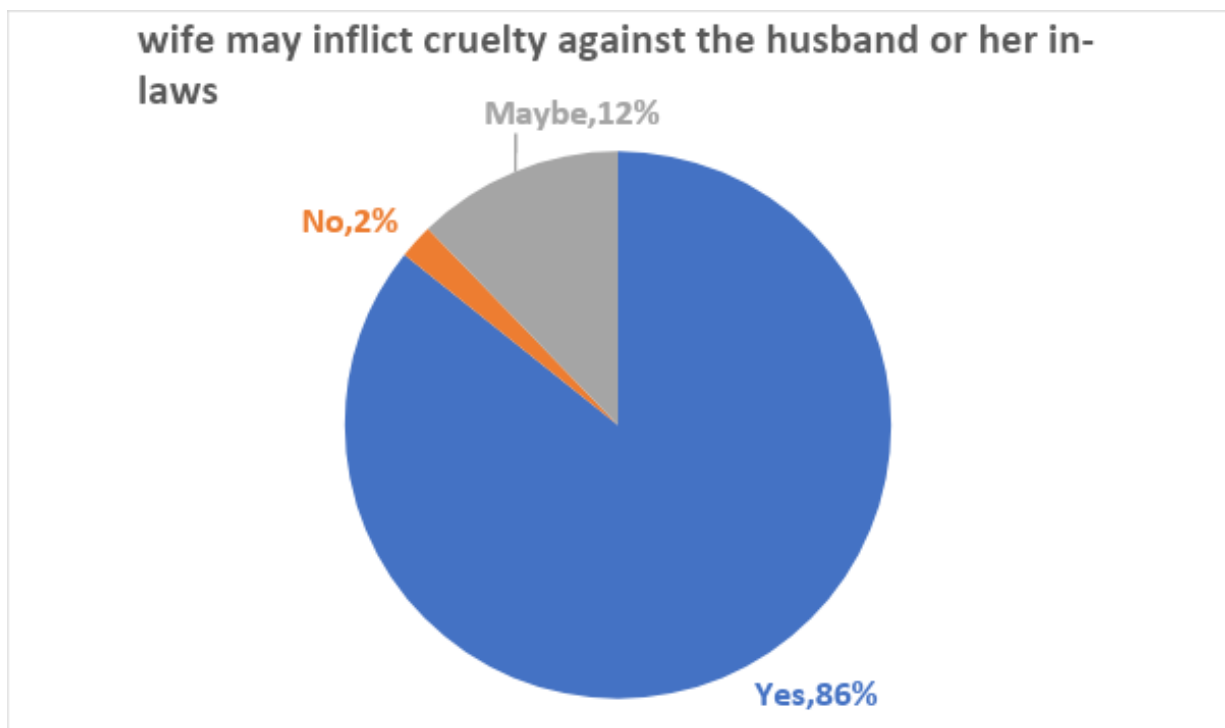


**Diagram 5**

The above diagram shows that 88% of respondents said that the husband and wife be given equal rights, and opportunities and equal treatment in domestic violence and cruelty cases, and 12% of respondents said that the husband and wife are not given equal rights and opportunities and equal treatment in domestic violence and cruelty cases

**VI. Do you think that wife may inflict cruelty against the husband or her in-laws?**

CATEGORIES	RESPONDENTS
Yes	42
No	01
Maybe	06

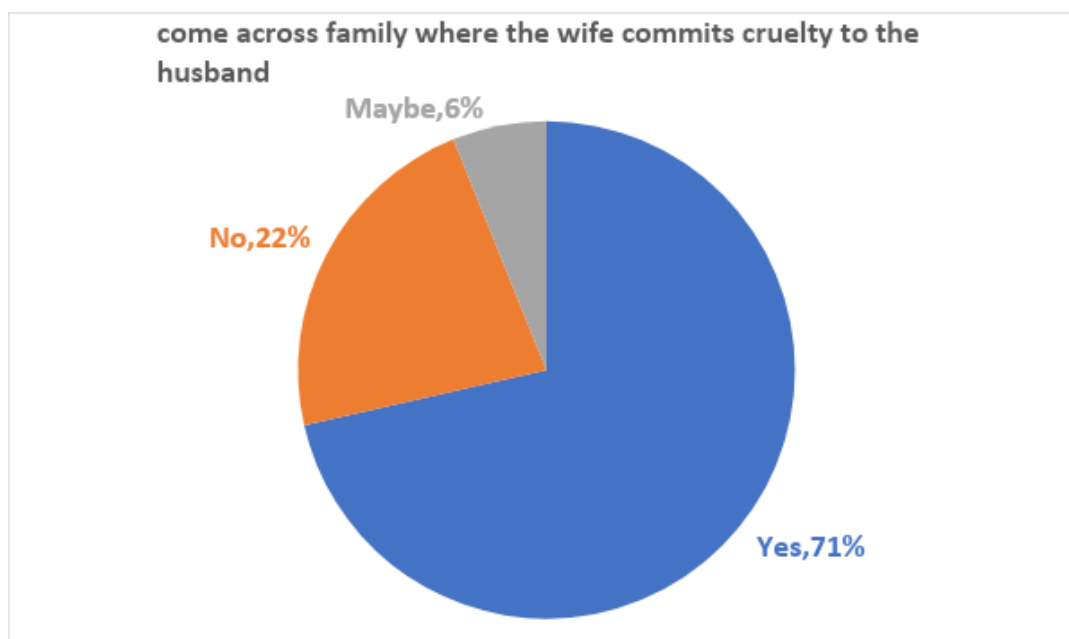


**Diagram 6**

The above diagram shows that 86% of respondents said the wife inflicts cruelty against the husband or her in-laws, 12% of respondents said the wife maybe inflict cruelty against the husband or her in-laws, and 2% of respondents said no.

**VII. Have you come across any family where the wife commits cruelty to the husband?**

CATEGORIES	RESPONDENTS
Yes	35
No	11
Maybe	03

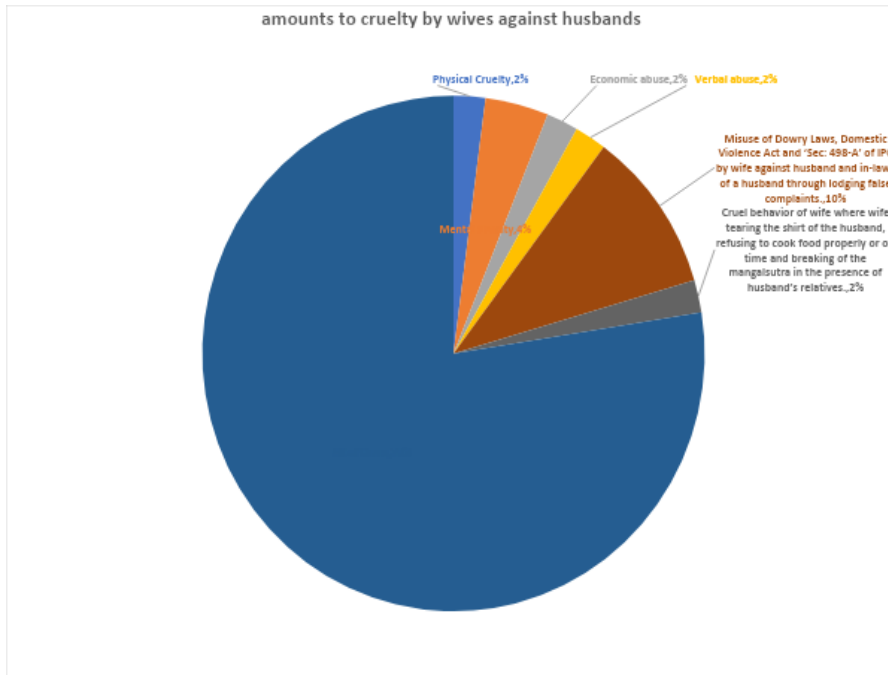


**Diagram 7**

The above diagram shows that 71% of respondents said that they come across a family where the wife commits cruelty to the husband, 23% of respondents said they didn't come across a family where the wife commits cruelty to the husband, and 6% of respondent said they maybe come across the families where the wife commits cruelty to the husband.

**VIII. What according to you amounts to cruelty by wives against husbands?**

CATEGORIES	RESPONDENTS
Physical Cruelty	01
Mental Cruelty	02
Economic abuse	01
Verbal abuse	01
Domestic violence	00
Sexual abuse	00
Making of false allegations against the husband	00
Misuse of Dowry Laws, Domestic Violence Act and 'Sec: 498-A' of I.P.C. by wife against husband and in-laws of a husband through lodging false complaints.	05
Cruel behavior of wife where wife tearing the shirt of the husband, refusing to cook food properly or on time and breaking of the mangalsutra in the presence of husband's relatives.	01
Extra-marital affairs of wife	00
All of them	38

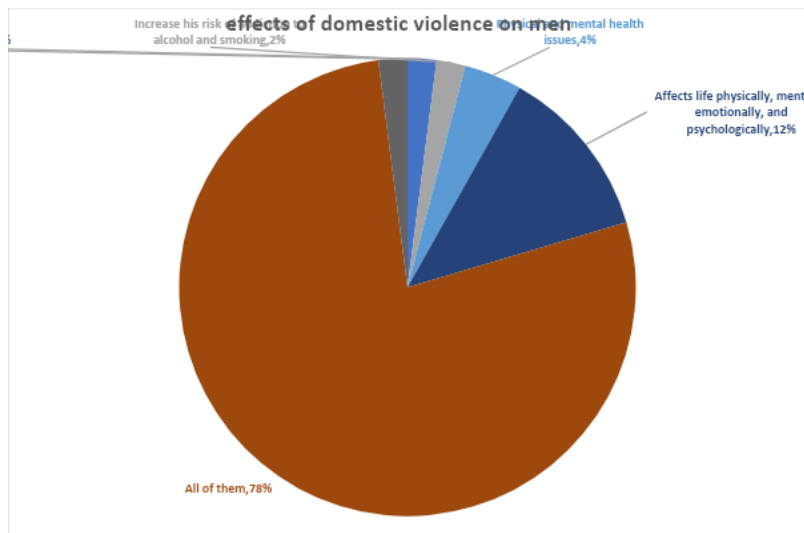


**Diagram 8**

The above diagram shows that 2% of respondents said physical cruelty amounts to cruelty by wives against the husband, 4% of respondents said mental cruelty amounts to cruelty by wives against the husband, 2% of respondents said that economic abuse amounts to cruelty by wives against the husband, 2% of respondents said that verbal abuse is amounting to cruelty by wives against the husband, 10% of respondents said that misuse of dowry laws, domestic violence act and section 498-A of I.P.C. by wife against husband and in-laws of a husband through lodging false complaints are amounting to cruelty by wives against the husband, 2% of respondents said that cruel behaviour of wife where wife hearing the shirt of the husband, refusing to cook food properly or on time and breaking of the mangalsutra in the presence of husbands relatives are amounting to cruelty by wives against the husband, 78% of respondents said that all above categories are amounting to cruelty by wives against husbands.

**IX. What are the effects of domestic violence on men?**

CATEGORIES	RESPONDENTS
Helplessness	01
Experiencing health issues	00
Increase his risk of addiction to alcohol and smoking	01
Lead to anger issues, depression, Suicide	00
Physical and mental health issues	02
Chronic diseases such as heart disease, diabetes, and cancer;	00
Affects life physically, mentally, emotionally, and psychologically	06
All of them	38
Not known	01

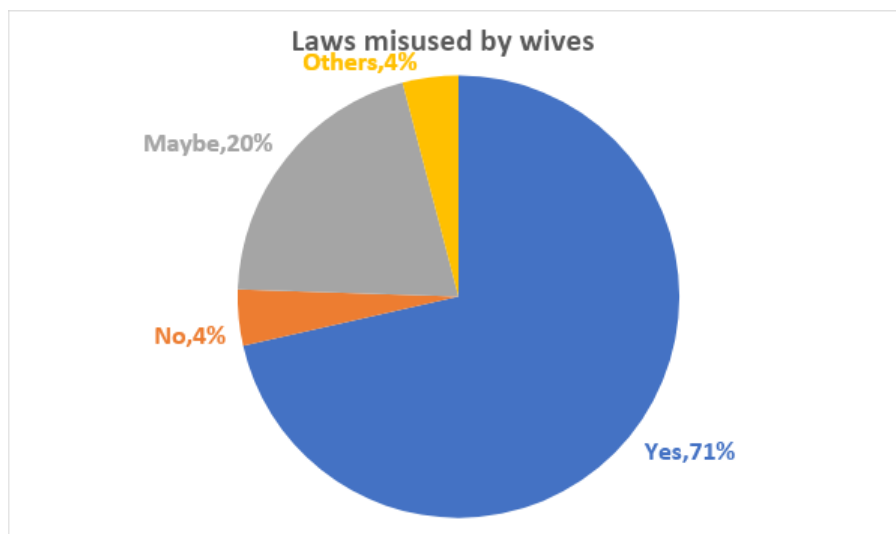


**Diagram 9**

The above diagram shows that 2% of respondents said helplessness is the effect of domestic violence against men, 2% of respondents said an increase in his risk of addiction to alcohol and smoking are the effects of domestic violence against men, 4% of respondents said physical and mental health issues are the effects of domestic violence against men, 12% of respondents said domestic violence against men affects life physically, mentally, emotionally, and psychologically and 78% of respondents said all in categories are effects of domestic violence against men.

**X. Do you think the legislative provisions which have been legislated for the protection of wives are being misused by wives for causing cruelty against husbands?**

CATEGORIES	RESPONDENTS
Yes	35
No	02
Maybe	10
Others	02

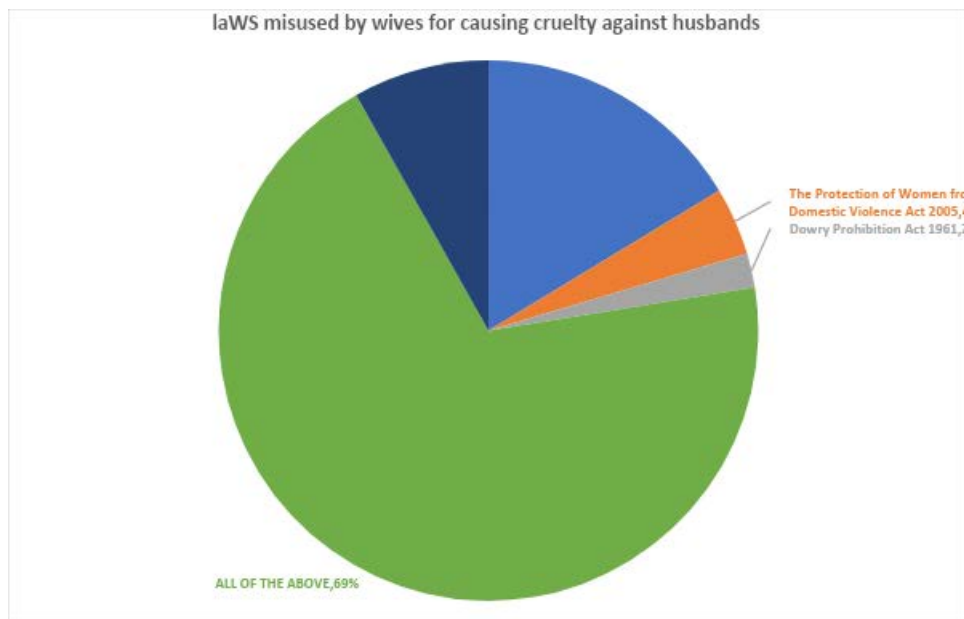


**Diagram 10**

The above diagram shows that 72% of respondents said the legislative provisions which have been legislated for the protection of wives are being misused by wives for causing cruelty against the husband, 4% of respondents said the legislative provisions which have been legislated for the protection of wives are not being misused by wives for causing cruelty against the husband, 20% of respondents said the legislative provisions which have been legislated for the protection of wives maybe misuse by wives for causing cruelty against husband and 4% of respondent stated other reasons.

**XI. Which law according to you is often misused by wives for causing cruelty against husbands?**

CATEGORIES	RESPONDENTS
498A, I.P.C., 1860	08
The Protection of Women from Domestic Violence Act 2005	02
Dowry Prohibition Act 1961	01
Section 13(Divorce), Hindu marriage act, 1956	00
Maintenance provisions	00
ALL OF THE ABOVE	34
Others	04

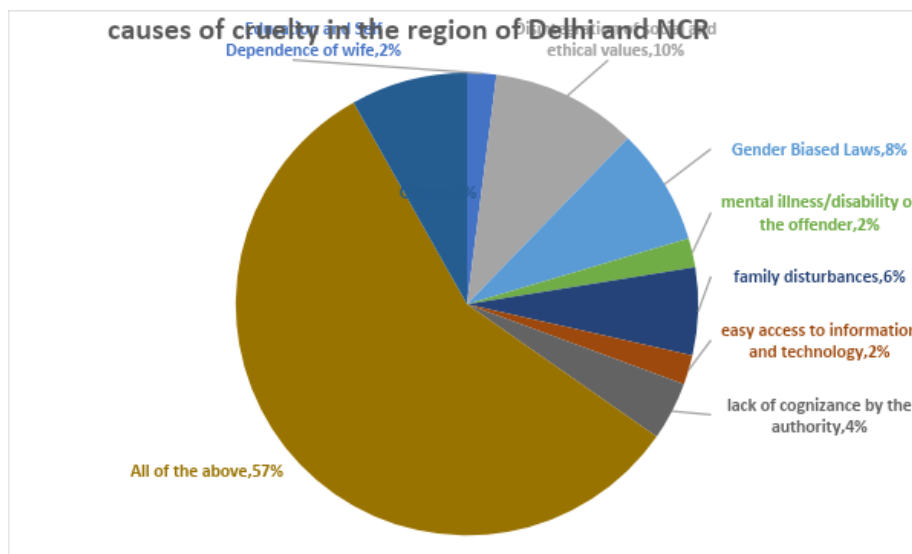


**Diagram 11**

The above diagram shows that 16% of respondents said 498A, I.P.C., 1860 is misused by wives for causing cruelty against husbands, 4% of respondents said that wives misuse the protection of women from domestic violence act 2005 for causing cruelty against husbands, 2% of respondents said Dowry Prohibition Act 1961 is misused by wives for causing cruelty against husbands, 8% of respondents said wives misuse other laws for causing cruelty against husbands, and 70% of respondents said wives misuse all laws in categories for causing cruelty against husbands.

**XII. What are the main causes of cruelty by wives against husbands in the region of Delhi and N.C.R.?**

CATEGORIES	RESPONDENTS
Education and Self Dependence of wife	01
Liberalization	00
Disintegration of social and ethical values	05
Concept of single child	00
Gender Biased Laws	04
mental illness/disability of the offender	01
family disturbances	03
easy access to information and technology	01
lack of cognizance by the authority	02
All of the above	28
Others	04



**Diagram 12**

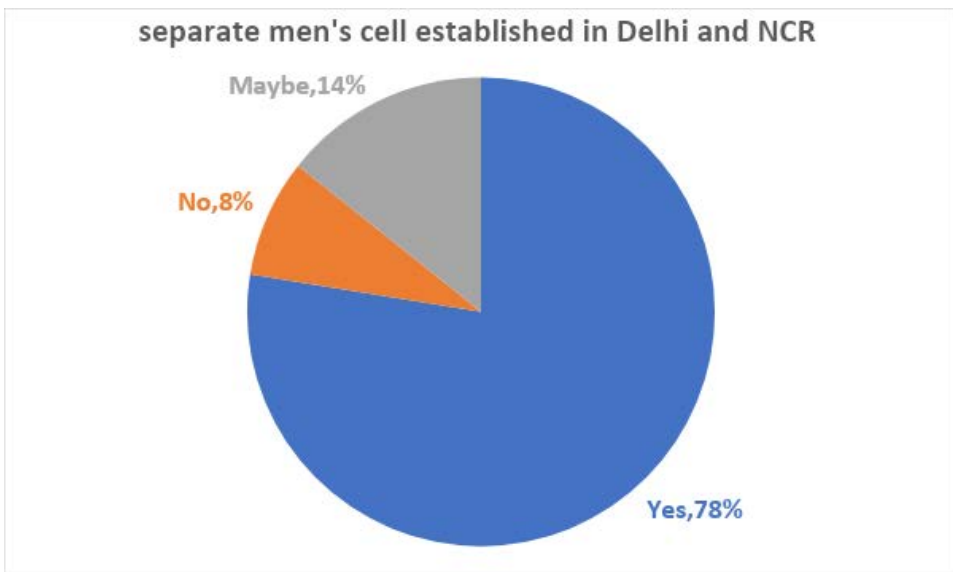
The above diagram shows that 2% of respondents said education And self-dependence of wife is the main cause of cruelty by wives against husbands in the region of Delhi and N.C.R., 11% of respondents said the disintegration of social and ethical values are the main cause of cruelty by wives against husbands in the region of Delhi and N.C.R., 8% of respondents said the gender biased laws are the main cause of cruelty by wives against husbands in the region of Delhi and N.C.R., 2% of respondents said mental illness/disability of offender is the main cause of cruelty by wives against husbands in the region of Delhi and N.C.R., 6% of respondents said family disturbances are the main causes of cruelty by wives against husbands in the region of Delhi and N.C.R., 2% of respondents said the easy access to the information and technology is the main cause of cruelty by wives against husbands in the region of Delhi and N.C.R., 4% of respondents said the lack of cognizance by authority is the main cause of cruelty by wives against

***Cruelty Against the Husbands in India***

husbands in the region of Delhi and N.C.R., 8% of respondents said other causes and 57% of respondents said all in the categories are the main causes of cruelty by wives against husbands in the region of Delhi and N.C.R.

***XIII. Do you think that there should be a separate men's cell established on the pattern of women's cells in every region of Delhi and N.C.R.?***

CATEGORIES	RESPONDENTS
Yes	38
No	04
Maybe	07



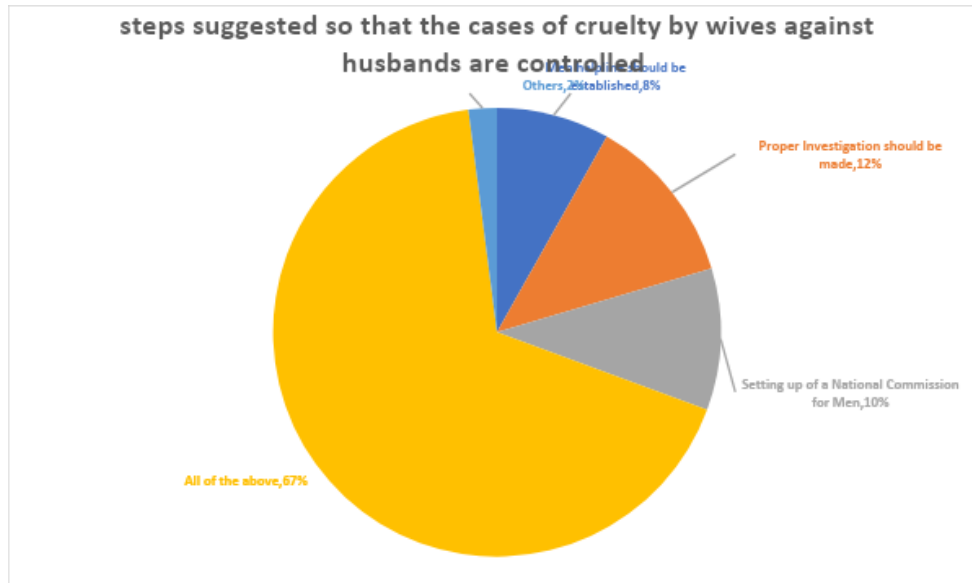
***Diagram 13***

The above diagram shows that 78% of respondents said that there should be a separate men's cell established on the pattern of women's cells in every region of Delhi and N.C.R., 8% of respondents said that there should not be a separate men's cell established on the pattern of women's cells in every region of Delhi and N.C.R., and 14% of respondents said that there might be a separate men's cell established on the pattern of women's cells in every region of Delhi and N.C.R.

***XIV. What steps you would be suggested so that the cases of cruelty by wives against husbands are controlled?***

CATEGORIES	RESPONDENTS
Men helpline should be established	04
Proper Investigation should be made	06
Setting up of a National Commission for Men	05
All of the above	33
Others	01



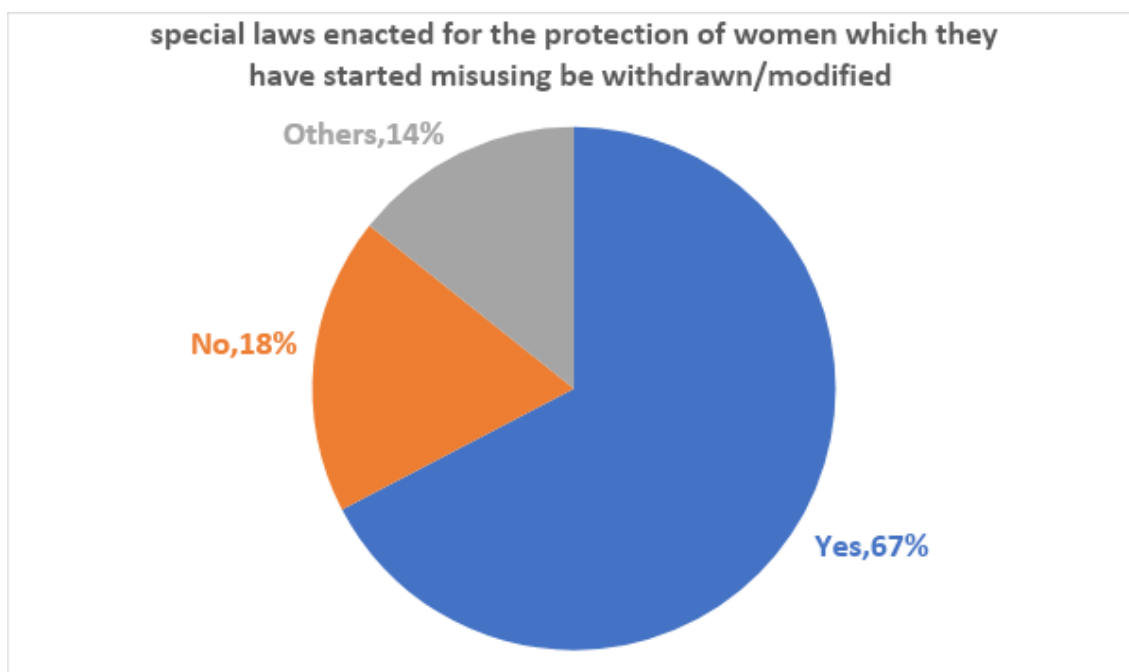


**Diagram 14**

The above diagram shows that 8% of respondents suggested a men's helpline should be established, 12% of respondents suggested proper investigation should be made, 10% of the respondents suggested setting up of a national commission for men, 2% of respondents suggested other steps and 68% of respondents suggested all steps in the categories that the cases of cruelty by wives against husbands are controlled.

**XV. Do you think that the special laws enacted for the protection of women which they have started misusing be withdrawn/modified?**

CATEGORIES	RESPONDENTS
Yes	33
No	09
Others	07

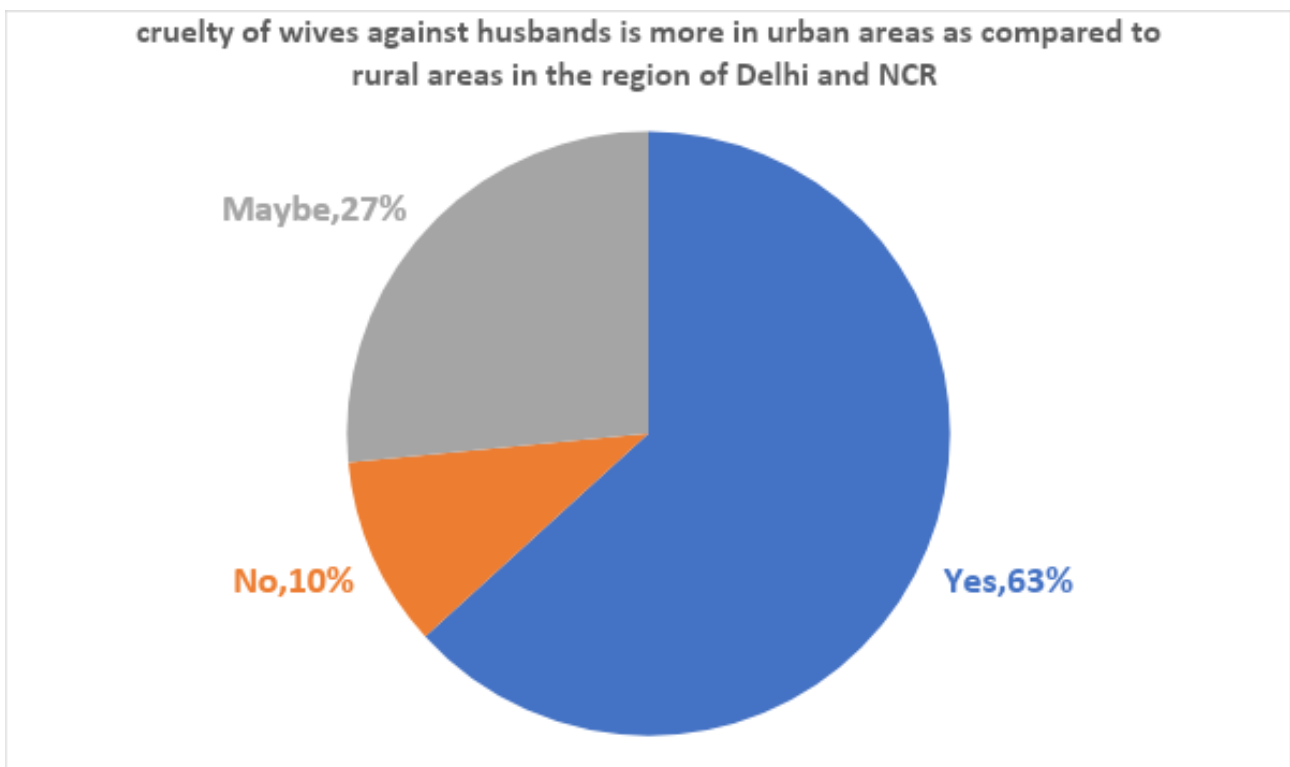


**Diagram 15**

The above diagram shows that 67% of respondents said the special laws enacted for the protection of women which they have started misusing be withdrawn/modified, 19% of respondents said that the special laws enacted for the protection of women which they have started misusing not to be withdrawn/modified and 14% of respondent said the other reasons.

**XVI. Do you think that the cruelty of wives against husbands is more in urban areas as compared to rural areas in the region of Delhi and N.C.R.?**

CATEGORIES	RESPONDENTS
Yes	31
No	05
Maybe	13

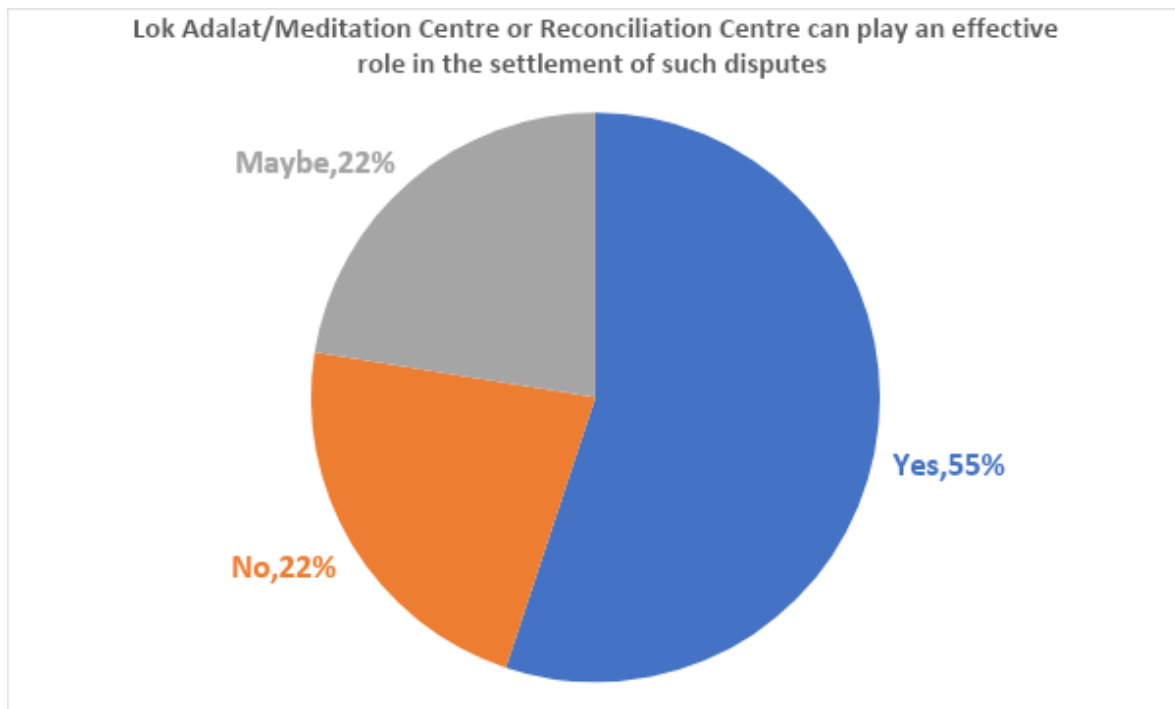


**Diagram 16**

The above diagram shows that 63% of respondents said that the cruelty of wives against husbands is more in urban areas as compared to rural areas in the region of Delhi and N.C.R., 10% of respondents said that cruelty of wives against husbands is not more in urban areas as compared to rural areas in the region of Delhi and N.C.R. and 27% cruelty of wives against husbands may be more in urban areas as compared to rural areas in the region of Delhi and N.C.R.

**XVII. Do you think that Lok Adalat/Meditation Centre or Reconciliation Centre can play an effective role in the settlement of such disputes?**

CATEGORIES	RESPONDENTS
Yes	27
No	11
Maybe	11

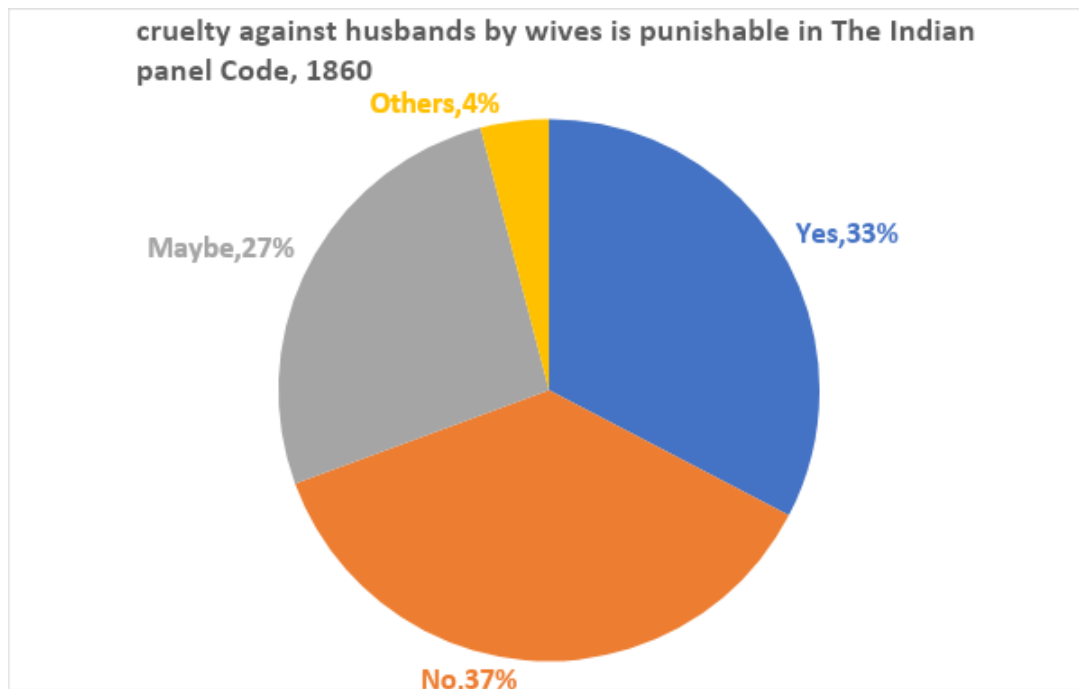


**Diagram 17**

The above diagram shows that 55% of respondents said that the Lok Adalat/Meditation Centre or Reconciliation Centre could play an effective role in the settlement of such disputes, 23% of respondents said that Lok Adalat/Meditation Centre or Reconciliation Centre could not play an effective role in the settlement of such disputes and 22% of respondents said that Lok Adalat/Meditation Centre or Reconciliation Centre maybe play an effective role in the settlement of such disputes

**XVIII. Do you think cruelty against husbands by wives is punishable in The Indian panel Code, 1860?**

CATEGORIES	RESPONDENTS
Yes	16
No	18
Maybe	13
Others	02



**Diagram 18**

The above diagram shows that 33% of respondents said cruelty against husbands by wives is punishable in The Indian panel Code, 1860, 37% of respondents said cruelty against husbands by wives is not punishable in The Indian panel Code, 1860, 26% of respondents said cruelty against husbands by wives might be punishable in The Indian panel Code, 1860 and 4% of respondents said the other reasons.

**Findings:**

This study reveals that husbands are the victims of cruelty done by their wives. Wives are misusing laws and exploiting their husbands financially, emotionally and physically for fulfilling their demands.

1. It shows that 92% of respondents believe in the equality of husbands and wives.
2. It shows that 45% of respondents responded that the number of cases relating to cruelty against husbands during the lockdown period had increased in Delhi and N.C.R.
3. It shows that 88% of respondents said that the husband and wife be given equal rights and opportunities and equal treatment in domestic violence and cruelty cases.
4. It shows that 86% of respondents said the wife inflicts cruelty against the husband or her in-laws.
5. It shows that 78% of respondents said physical cruelty, mental cruelty, economic abuse, verbal abuse, domestic violence, sexual abuse, making of false allegations against the husband, misuse of dowry laws, domestic violence act and section 498-A of I.P.C. by wife against husband and in-laws of a husband through lodging false complaints, cruel behaviour of wife where wife hearing the shirt of the husband, refusing to cook food properly or on time and breaking of the mangalsutra in the presence of husbands relatives, and extra-marital affairs of the wife are amounting to cruelty by wives against husbands.

6. It shows that 78% of respondents responded helplessness, increased his risk of addiction to alcohol and smoking, and physical and mental health issues affecting life physically, mentally, emotionally, and psychologically are effects of domestic violence against men.
7. It shows that 70% of respondents responded that 498A I.P.C., 1860, P.W.D.V. Act 2005, and Dowry Prohibition Act 1961 are misused by wives for causing cruelty against husbands.
8. It shows that 57% of respondents responded that education and self-dependence on wife, Liberalization, the disintegration of social and ethical values, the concept of single child Gender Biased Laws, mental illness/disability of the offender, family disturbances, easy access to information and technology and lack of cognizance by the authority are the main causes of cruelty by wives against husbands in the region of Delhi and N.C.R.
9. It shows that 68% of respondents suggested men's helpline should be established, a proper investigation should be made and setting up of a national commission for men so that the cases of cruelty by wives against husbands are controlled.
10. It shows that 67% of respondents said the special laws enacted for the protection of women, which they have started misusing be withdrawn/modified.
11. It shows that 63% of respondents said that the cruelty of wives against husbands is more in urban areas as compared to rural areas of Delhi and N.C.R.
12. It shows that 55% of respondents said that the Lok Adalat/Meditation Centre or Reconciliation Centre could play an effective role in the settlement of such disputes.
13. It shows that 33% of respondents said cruelty against husbands by wives is punishable in The Indian panel Code, 1860, and 37% of respondents said cruelty against husbands by wives is not punishable in The Indian panel Code, 1860.

## **CONCLUSION**

This study concludes that husbands are also victims of cruelty in their marital relationships. Society only thinks about men as a perpetrator, not as a victim, but we have to change our mindset and raise awareness about the mental, emotional and physiological trauma which men face in their marital relationships. Article 14 of the Indian Constitution, 1950 talks about equality, but if we speak about cruelty against men, there are no laws to protect men from violence or cruelty. Men should raise their voice and report incidents of brutality. N.G.O.s and women's commissions should focus on preventing the misuse of legal provisions by women. Indian legislature and judiciary should follow the recommendations of the Malimath Committee Report of 2003 (Reforms in the criminal justice system) and the 111<sup>th</sup> report of the Parliamentary standing committee on Home Affairs.

## **Suggestions**

There are four recommendations based on literature review, pilot study of the researcher and judgments of various courts:-

- We need to set up emergency services for abused men like men's helpline numbers, a national commission for men, police services, victim services, counselling services, and community and social service offices. So we can solve the issues related to husbands.
- The government should amend gender-biased laws and the investigation procedure. So that women will not misuse the laws against their husbands.
- Government should make 498-A I.P.C. as a bailable and compoundable offence.
- Courts should take serious action against wives who are filing false complaints against their husbands and their family members.

# A CONFLICT OF COMPREHENSIVE LEGAL FRAMEWORK FOR TRANSGENDER PERSONS- A JURISPREDUENTIAL PERSPECTIVE

**Parveen Islam**

Assistant Professor

NEF Law College, Email: parveenislam17@gmail.com

---

## **ABSTRACT**

The historical existence of homosexual subjectivities and their fight for legal gender recognition has posed a challenge to the stereotypical notion on sex, sexuality and gender identity. This lead to various statutory laws and judicial pronouncements across the world some liberating their rights whereas others criminalizing them. The existing social dichotomy of gender in terms of access to basic human rights underwent sea changes with the rise of feminist jurisprudence. The growing visibility of concerns pertaining to health, prostitution, marriage, adoption, identification, discrimination amongst the transgender persons globally made a forced shift to reimagining gender at national and international level. This in turn led to mapping a framework for protection, welfare and assimilation of the transgender persons. This paper aims to provide a comprehensive overview of the various legal developments relating to transgender persons.

**Key words:** *Transgender, Feminism, Rights, Law, Jurisprudence.*

## **1. INTRODUCTION**

The transgender person represents a challenge to the notion of sex and sexuality as the problems to gendered and heterosexual subjectivities continue to persist. A number of judicial pronouncements particularly in U.S, Australia and New Zealand abandoned the role of chromosomes at birth as the governing factor, instead, articulated the test of psychological and anatomical harmony which gave prominence to sex reassignment surgery. Judicial anxiety over the homosexual body proves to be a consistent and central feature of transgender jurisprudence. Foucault has rightly argued “that the function of law as a judicial entity has greatly diminished and focused more on regulations governing norms”. This has been exemplified by the U.S. Supreme Court in *Bowers v. Hardwick*<sup>1</sup> and by the House of Lords in the infamous case of *R v. Brown*<sup>2</sup> how, the structural mindset of normative gender construct lead the way for stigmatization, discrimination, marginalization and violation of their rights exposes the transgender people to extreme vulnerabilities.<sup>3</sup>

Prior to 19<sup>th</sup> C the idea of recognizing deviant sexual actions were not prominent and social mindset was confined to cultural assumptions. Despite having existed throughout the history of human civilization, a large number of literature related to biological aetiology, failure to consolidate consensus as well as psychological accounts have tended to receive prominence in accessing and categorizing transgender persons.

In 1980, “Trans-sexualism” was recognised as a mental disorder by the American Diagnostic Association in the Diagnostic and Statistic Manual of Mental Disorder which was later substituted as “Gender Identity Disorder”. There have been several attempts made by various scholars and medical experts to identify such gender deviant behaviours and the need to align their perceived gender through surgical procedures.<sup>4</sup>

By 1990’s the term “Transgender” which was initially denoting “Transsexual” and “ Transvestite” has come to operate as an umbrella term to identify multiplicity of trans-subjectivities like gays, lesbians, bisexuals, intersex, queer, cisgender etc. In other words, it encompasses numerous gender identities including surgical, non-surgical as well as ‘male’ or ‘female’ with problematic understanding of their sex.

Raising awareness about their rights has challenged the previous notion of medical and psychological disharmony owing to wrong body. The case of *Corbett v. Corbett*<sup>5</sup> receives considerable importance in this regard because it impacts the perception about sex and also provides an understanding as to how judicial thinking influences the reform in transgender jurisprudence. In this case Ormrod J. held that determination of sex at the time of birth is the governing criteria as it is a congruence of chromosomal, gonadal and genital factors. This decision was criticised on the ground that Ormrod J. failed to take into consideration psychological and hormonal factors thus, evidencing the judicial restraint of thinking beyond the sex of male or female.

---

<sup>1</sup> *Bower v Hardwick* 478 U.S.186 (more) 106 S.Ct.2841

<sup>2</sup> *R v Brown* [1993] UKHL 19.

<sup>3</sup> Andrew N Sharpe, *TRANSGENDER JURISPRUDENCE*, Cavandish Publishing Ltd, London.

<sup>4</sup> *ibid*

<sup>5</sup> *Corbett v. Corbett* [1970] 2 All ER 33



In *Re X*<sup>6</sup>, *Anonymous v. Weiner*<sup>7</sup> and *Anonymous v. Hartin*<sup>8</sup> the Court rejected the applications of the trans women to change their birth certificates on the ground that they are only ostensibly female but chromosomally male. However, in a similar case of *Re Anonymous*<sup>9</sup> Pecora J held that the applicant is female because her anatomy has been brought into conformity with her psychological sex. His Lordship further added that the objective of surgical intervention is to bring into alignment one's anatomical sex with psychological sex.

The growing visibility of concerns pertaining to health, prostitution, marriage, adoption, identification, discrimination amongst the transgender persons globally made a forced shift to reimagining gender at national and international level. This in turn led to mapping a framework for protection, welfare and assimilation of the transgender persons.

### **JOURNEY FROM ISLOLATION TO ASSIMILATION: NEO-LIBERALISM**

The term 'transgender' has been used since early 1990's through a movement influenced by Leslie Feinberg's against pathologizing terminologies and bringing the non-conforming gender identities under one umbrella community. Denial of basic human rights and massive discrimination and marginalization faced by the transgender persons in all social institutions including family, labour market, housing, health, education and sexual instances of hate crimes including sexual abuse ignited the minds of the transgender activists. They initiated transgender movements to address the numerous issues faced by the gender non-conforming population across the globe.<sup>10</sup>

The transgender social activism gained resonance with the rise of feminism in 1960's. The first trans riots in U.S in 1966 followed by the infamous New York City Stonewall Riots of 1969 marked the foundation for contemporary LGBT movement in history.

This results into neo-liberal factionalism encompassing judicious rights and recognition, including State – issued ID's, citizenship rights, marital rights, inheritance rights, health, employment, sexual and reproductive freedom etc. A survey conducted by GATE (Global Action for Trans Equality) reported that although trans and intersex movements are rapidly growing worldwide but such movements are generally underfunded.<sup>11</sup>

In 2009, the U.S gender identity has been covered by federal hate crime law under Matthew Shepard Act. More than 30 European countries have also formulated legal provisions to recognise transgender person's gender identity.<sup>12</sup> In 2011, the UN Human Rights Council passes the UN Resolution on Human

---

<sup>6</sup> *Re X* [1957] Scot LT 61; 73 Scot L.Rev 203.

<sup>7</sup> *Anonymous v. Weiner* [270 NYS 2d 319 (1996)].

<sup>8</sup> *Anonymous v. Hartin* [347 NYS 2d 515 (1973)].

<sup>9</sup> *Re Anonymous* [293 NYS 2d 834 (19680)].

<sup>10</sup> *Id.* note 3.

<sup>11</sup> Daniela Jauk, "Transgender Movement in International Prspective", (2016). [www.researchgate.net/publication/316364157\\_Transgender\\_MOVEMENTS\\_IN\\_internatioal\\_PERSPECTIVE/LINK/5D8257BA458515CBD19730B0/download](http://www.researchgate.net/publication/316364157_Transgender_MOVEMENTS_IN_internatioal_PERSPECTIVE/LINK/5D8257BA458515CBD19730B0/download).

<sup>12</sup> *Ibid.*

Rights of LGBT. Countries like Brazil, Ecuador, Germany, Malta, Netherlands, Uruguay have used the Yogyakarta Principles to respond violence and discrimination.<sup>13</sup>

The development of transgender jurisprudence is a cumulative effort of accepting the transgender person as equal members of society and to ensure equal rights and guarantee equal protection. During 1850's-1950's the transgender phenomenon was mounting under medical regulations and socio-legal restrictions which encouraged isolation and furtive activities. During the same time the Prince Foundation for Personality Expression laid a key point in political history of transgender identities.

By mid 1960's U.S witnessed several transformations in the light of large-scale movements starting from Liberal feminism to challenging the binary generational notion on accepting gender identities and sexual expressions.<sup>14</sup>

In May 1959, an incident between customers and police took place at Cooper's Donuts as a result of continuous instances of police officials arresting transgender people whose appearance did not match the designated gender in their ID's on the suspicion of prostitution, vagrancy, loitering etc. A similar act took place in 1965 at Dewey's Coffee house where young customers with non-conforming clothing were denied services. This incident was recorded as the first act of civil disobedience over anti-transgender discrimination. This incident further illustrates how minority rights activism fertilized different cross-sectional movements.<sup>15</sup>

During the same time liberation and radical feminism movements were at rise which conceptualised homosexual people and women as oppressed social minority groups. The 1966 Crompton Cafeteria riots was another unpinning incident at Tenderloin, San Francisco where police atrocities has resulted in massive destruction to the restaurant, street fight and acts of vandalism.<sup>16</sup>

In the midst of such tensions the first gay and transgender youth organization was founded in 1966. The decade of 1960's witnessed significant development in transgender healthcare in U.S and Europe. This transformation of attitude to improve the quality of life of transgender people owes credit to Dr. Henry Benjamin's book "*The Transsexual Phenomenon*"<sup>17</sup>. This sudden shift in medical paradigm gave force to positive changes in the social constructions as well.

In 1967, the first transgender peer support group in U.S named "Conversion our Goal" was formed with the focal point of seeking medical services, along with group support sessions, psychological counselling, hormone therapy and 'sex change' surgery. The year 1970 saw the emergence of transgender men coming out of their closets but the same was short lived *firstly* because passing of a transgender men as a women is difficult than as a women. *Secondly*, transgender man has barely raised their voices against the

---

<sup>13</sup> Ibid.

<sup>14</sup> Susan Stryker, TRANSGENDER HISTORY, 74 Seal Press (2008), [www.transreads.org/wp-content/uploads/2019/03/2019-03-17\\_5c8eb1ebaced4\\_susan-stryker-transgender-history2.pdf](http://www.transreads.org/wp-content/uploads/2019/03/2019-03-17_5c8eb1ebaced4_susan-stryker-transgender-history2.pdf).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

discriminations or fought being part of the larger transgender community.<sup>18</sup>In 1968, Mario Martino founded the Labyrinth, first U.S organisation devoted to the specific needs of Transgender men.

The “Stonewall riots” of 1969 further provided impetus to gay revolution by sparking the years of political agitations and social marginalities. This resulted in the formation of Gay Liberation Frontier Cells across U.S. The Stonewall riots plays a significant role in the transgender legacy leading to Third World liberation and anti-imperialist movements. In 2009 U.S passed a Federal Law which provides protection to transgender persons is The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009. The Act expands the scope of the 1969 United States Federal Hate-crime Law by including offences motivated by actual or perceived gender identity

The year 1973 witnesses a low-point in the transgender political history of U.S whereby even after sex change surgery the discrimination in terms of family, housing, employment persisted. The AIDS pandemic 1981 further had devastating new threat to the transgender existence.

During the decade of 1990 there has been rapid evolution and expansion in the trans activities/initiatives. This lead to having the current definition of ‘transgender’ as a catchall term for all forms of non-conforming gender identities. The effort made by U.S. forms the starting point for transgender jurisprudence globally.

In *Planned Parenthood of Southeastern Pa. v. Casey*,<sup>19</sup> the United States Supreme Court had opined that matters which involve the most intimate and personal choices a person may make in the sphere of sexual orientation, , individual inclination, expression of emotional and physical behaviour are choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.

The International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organisations, had undertaken a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States’ human rights obligations.

In recent years, transgender people around the world have made tremendous strides toward achieving legal recognition. The South African constitution says that “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”<sup>20</sup> The Parliament of South Africa in the year of 2003, enacted Alteration of Sex Description and Sex Status Act of 2003.

The Anti Sodomy laws prevalent in England and America have been repealed. The European Convention on human rights says that the anti sodomy laws infringe the right to privacy under Art 8 of the Convention.

---

<sup>18</sup> Ibid.

<sup>19</sup> *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992)

<sup>20</sup> SOUTH AFRICAN CONSTITUTION, Sec.9. Cl.3.

---

Recital 3 of the Preamble to the Directive 2006/54/EC of European Parliament and the Council of 5 July 2006 makes specific reference to discrimination based on gender reassignment for the first time in European Union Law. The European Court of Justice in *P v. S*<sup>21</sup> in the context of rights of individuals who intend to or have undergone sex reassignment has observed, “where a person is dismissed on the ground that he or she intends to undergo or has undergone gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which he or she was deemed to belong before undergoing gender reassignment”.

The Hawaiian Supreme Court in *Boehr v. Lewin*<sup>22</sup> held that “if same sex marriage is prohibited then it is going against the principle of non-discrimination on the basis of sex”. The Canadian Supreme Court has also taken the same view that the spousal benefits must also be given to the gays and lesbians.<sup>23</sup> In *Toonen v Australia*<sup>24</sup>, the Human Rights Committee of United Nation stated that the Anti Sodomy laws of Tasmania are violative of Art 17 and Art 26 of ICCPR 1966.

United Kingdom passed the General Recommendation Act in 2004 which provided legal recognition to the obtained gender even without undergoing surgery by a person and also lays down guidelines highlighting the consequences of the newly acquired gender status. Following this Hungary enacted the Equal Treatment and the Promotion of Equal Opportunities Act of 2003. The Act includes sexual identity as one of the grounds for discrimination.

In *Obergefell, et al. v.Hodges, Director, Ohio Department of Health, et al.*<sup>25</sup> the U.S. Supreme Court while highlighting the plight of homosexuals, observed that, same-sex intimacy shall no longer be condemned as immoral by the State.

Australia in 2013 enacted the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act, 2013 which amends the earlier statute on Sex Discrimination Act of 1984. In Ireland under Gender Recognition Act of 2015 same sex marriage was allowed the government instituted identity-based legal gender recognition.<sup>26</sup>

The LGBT community in India has been travelling through a roller-coaster ride for the past 20years. From the liberating Delhi High Court Judgement in 2009 to the Supreme Court Bench decision in 2018 the sexual minorities have been marching parades insisting on their rights as equal citizens as guaranteed under the constitution.<sup>27</sup> The Delhi High Court judgement followed by the NALSA judgement in 2014 came like a massive thump on the back of a still born child making it breath huge gulps of fresh air and get a life.<sup>28</sup> Literally, thousands of people came out of the closet into the open spaces in homes and offices.

---

<sup>21</sup> Id. Note.11.

<sup>22</sup> *Boehr v. Lewin*, Supreme Court of Hawaii No. 20371(1999)

<sup>23</sup> *M v. H*, [1999] 2 S.C.R. 3.

<sup>24</sup> *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)

<sup>25</sup> *Obergefell, et al. v.Hodges, Director, Ohio Department of Health, et al.* 576 US (2015)

<sup>26</sup> *Ibid.*

<sup>27</sup> Legal Notes 46, (Feb. 2018), Vol. 1.

<sup>28</sup> *Ibid.*

In India, the LGBTQ movement started in 1994 when the AIDS Bhedbhav Virodhi Andolan (ABVA) filled a petition in Delhi H.C for deleting Section 377 on the ground that Section 377 violates one's right to privacy and health. To this Ruth Lister opines that "such laws undermine the exercise of citizenship rights and create an atmosphere not conducive to their enjoyment and anti-sodomy laws foster such atmosphere".

In September 2001 a signature campaign was started by NLS Bangalore which establishes "gay rights as human rights and Sec377 was upfront to Human Rights". In December 2001 NAZ Foundation filed a writ petition before Delhi High Court for reading down Section 377 as it breached Fundamental Rights under Articles 14, Art 15, Art 19 and Art 21 of the Constitution of India. It was finally in 2014 that a legal protection was granted to the transgender persons as 'third gender'.

The landmark judgement of Supreme Court in NALSA v. UOI <sup>29</sup> on 15<sup>th</sup> April 2014 has uplifted the transgender from the age old stigma and discrimination by recognising them as third gender but their social recognition is still at halt. Thereafter 2014 witnessed the enactment of the first piece of legislation for Transgender as The Rights of Transgender Persons Bill 2014 followed by the Transgender Persons(Protection of Rights) Bill 2016, Transgender Persons(Protection of Rights) Bill 2018 and Transgender Persons(Protection Of Rights) Act 2019.

### ***1.1. Constitutional Validity of the Transgender Persons (Protection of Rights) Act 2019.***

The Constitutional Validity of the Transgender Persons ( Protection of Rights) Act 2019 was challenged in the case of Grace Banu Ghaneshan & Ors v/s UIO & Anr<sup>30</sup> on the ground that Sec 4, Sec 5, Sec 6 Sec 7, Sec 12(3), Sec 18(a) and Sec 18(d) of the Act 2019 violates the fundamental rights of Transgender Persons pertaining to their life, liberty, privacy, dignity and autonomy guaranteed U/A 14, 19 and 21 of the Constitution of India. The challenges has been summaries as follows:

- Section 4,5 and 6 of the Act relates to rights of Transgender persons to be recognised as a Transgender persons. Section 4 provides that a Transgender shall have a right to self perceived gender identity. This indicates that the natural gender identity of a transgender person must be recognized.
- In the light of Sec 4 the requirement of Sec 5 and Sec 6 contradicts the provision of right to self identify their gender identity. Self- identification of one's own gender is a basic human rights to every individual in general. Hence, requiring a Transgender person to make an application to District Magistrate for issuing Certificate of Identity in accordance with prescribed form and manner contradicts one's right to self-determine one's gender identity. Requiring documentary proof's, further requires the transgender persons to undergo medical/ psychological test reports against their willingness as unconstitutional.
- Section 7 provides an additional grounds of discrimination/ violation by requiring the transgender persons to undergo medical surgery in order to align with identity of their choice.

<sup>29</sup> NALSA v. UOI [AIR 2014 SC 1863].

<sup>30</sup> Grace Banu Ghaneshan & Ors v/s UIO & Anr [W.P (Civil) No. 406/ 2020].

- Moreover, Certification process identifies of transgender person as a transgender, not as male or female unless the person has undergone Sex Reassignment Surgery.
- Section 12(1) compels a transgender person to continue living with their immediate family or to reside in rehabilitation centre upon the orders by a competent court are violative of Art 21. Denial of decisional autonomy for alternative arrangement to be violative of Art 21 . It was criticised that indulgence in forced / bonded labour as prescribed offence u/s 18 (a) as the same may be applied arbitration against the transgender community in terms of their equality and employment. Moreover, the punishment provided u/s 18 (a) and 18(d) are derogatory to the right to equality as the punishment prescribed are discriminatory as compared to other gender's under IPC. Hence, violative of Art 14.
- The 2019 Act is also silent on giving reservation in education and employment to transgender community which was recognised by the judiciary in NALSA v/s UOI<sup>31</sup>. The Petitioner strongly mirrors on the landmark S.C. Judgment in NALSA v/s UOI<sup>32</sup> which recognised the Fundamental Rights of transgender persons and other non-conforming gender individuals. Apart from referring to other relevant judgements upholding one's right to privacy and non-discrimination in Puttaswamy<sup>33</sup> and Navtej Johar<sup>34</sup> case respectively, the petition also relies heavily on the Yogyakarta Principles to deduce the International Human Rights Law pertaining to rights to self determination, dignity and freedom for the gender diverse individuals.
- Self identification has been upheld as a fundamental right U/A 19 (1) (a) and Art 21. Therefore, the Act 2019 falls short to recognise the same u/s 5, 6 and 7 of the Act thereby infringing the right to bodily integrity, autonomy and privacy.
- Section 4 of the Act 2019 provides merely the right to be recognised as transgender persons. There is no scope to self-determine oneself as male or female which is limiting their right, hence unconstitutional. Moreover, the requirement of undergoing sex reassignment surgery (SRS) u/s 7 in order to identify with the gender of their choice further violates one's right to bodily integrity, autonomy and privacy. This also contradicts the landmark judgement of NALSA<sup>35</sup>. Therefore, the petitioner sought that the direction given by the Supreme Court in NALSA case must be applied in totality and provisions u/s 4, 5, 6,7, 12(3), 18(a)and 18(d) or any other provision of the act which contravenes Fundamental Rights must be declared unconstitutional.

Hence, the Petitioners prayed for a stay order until the decision of the Honourable Supreme Court

---

<sup>31</sup> Id. Note 4.

<sup>32</sup> Ibid.

<sup>33</sup> Justice K.S.Puttaswamy v/s UOI (2017) 10 SCC 1.

<sup>34</sup> Navtej Singh Johar v. UOI (2018) 10 SCC 1.

<sup>35</sup> Id. Note 36.



**1.1.1. Critical Analysis of the Transgender Persons (Protection of Rights) Act 2019.**

1. The Act does not provide the appropriate authority who shall have jurisdiction to address grievances relating to violation of transgender rights.
2. Chapter V only provides the obligation of the establishments not to discriminate against transgender persons u/s 9, 10 and 11 but no such obligation is imposed upon the immediate family u/s 12 or upon the Government. Moreover, Sec 11 provides for designation of a complaint officer in every establishment but it is silent on similar requirement in relation to complaint against immediate family.
3. Section 13 is silent on the requirement of compulsory education as enshrined U/A 21A and Right to Education Act 2009. These three provisions must be aligned for better inclusive and quality education in line with the New Education Policy 2020. Section 13 is restrictive in nature as it limits the scope of the right to access education by a transgender person through a private institution. Section 13 is also silent on the requirement of reservation as directed by the NALSA<sup>36</sup> judgement.
4. Section 15 falls short to specify separate provision for mental healthcare of the Transgender persons. In the midst of existing social stigma and normative binary mindsets separate provision for 'healthcare safety' and "mental healthcare safety" is also mandated for better accessibility of the right to healthcare.
5. Sec 15 is silent on providing medical insurance. The appropriate government must take sufficient steps to provide holistic healthcare facility and reduce their financial burden in terms of Sex Reassignment Surgery, hormone therapy, medicines etc which falls heavily upon the transgender persons. Moreover, Government subsidies must be made available to them in terms of healthcare.
6. The requirement of Certificate of Identity u/s 5 and 6 must be limited to those who has undergone sex reassignment surgery. This would give an impetus and validity to sec 7 of the Act.
7. Section 4, Section 5 and Section 6 are contradictory in nature as on one hand section 4(2) provides the right to self perceived gender identity whereas Sec 5 and Sec 6 states the requirement of Certificate of Identity issued by the District Magistrates upon his personal satisfaction as to forms and procedures. This leaves ample space for normative biasness/prejudices at the hands of law enforcement agencies, leading to epistemic injustice. In other words, the legibility to be recognised as a transgender or self-perceived gender identity is at the mercy of the District Magistrate. Sec 5 is silent upon the right of the minor on whose behalf an application can or finally accept the same upon attaining maturity. Providing such right is mandatory because it is the child who would be experiencing the biological changes during adolescence and youth age transition. Denial of such right would be derogatory to the basic human rights of the minor to identify himself. In a nutshell the provision to enabling the parents/ guardians to apply for Certificate of Identity on behalf of the minor must be a provisional certificate and the final certification must be issued to the minor upon attaining majority u/s 5. The appropriate

---

<sup>36</sup> Ibid.

Government must make provision for online registration of Certification which would help in record keeping/ data base.

8. Provision of section 8(4) contradicts provision of section 12(3) as on one hand Sec 8 (4) provides the obligation of the government to take measures for rescue, protection and rehabilitation of transgender person whereas u/s 12 (3) states that in order to reside in a rehabilitation centre the order from competent court is required. This brings the executive and judiciary into a clash. Moreover, the Act falls short to define the term “Competent Court”. There is a need to bridge the gap in exercising powers between the executive and the judiciary.
9. Section 14 also fails to recognise the need for reservation in terms of employment, unless they are better assimilated in the society in terms of employment. A special comprehensive insurance scheme specially targeted for the transgender persons for SRS, hormonal therapy, laser therapy must be designed in pursuance of Sec15 (g) but till date no special scheme has been formulated.
10. Section 16 provides for the constitution of National Council for transgender persons. Out of 9 category representation only nine category has been provided for transgender representative. This under representation lays the foundation for marginality against the transgender community. The Council was constituted on 21<sup>st</sup> Aug 2020 but till date there no comprehensive National Policy has been formulated so far which is one of the core functions of the Council. There is a need for constituting a State Council because majority of the developments or initiatives are been taken at the State level rather than at National Level.
11. Section 17 is also silent on the procedure to be followed for addressing grievance by the transgender persons.
12. The punishment prescribed u/s 18 is minimal with no stringent measure been taken against any gross violation of human right of the transgender persons. This makes the entire legislation a toothless tiger.
13. The amount of revenue grant by the Central Government to the NCT must be included in the budget u/s 19. Allocation of revenue in the budget would enhance transparency. The Central Government must continuously monitor and audit the NCT for better accountability under Chapter IV. Without any monitoring the NCT might become an unruly horse.
14. Section 21 provides that no legal action can be brought against Government, local authorities or any government officials. Immunity from any action civil or criminal itself violates provisions of CPC and CRPC. In order to claim immunity from legal action the Government must define the term “good faith” for the purpose of this Act.
15. Section 17 does not provide the function of either advising the State Government in matters of formulation of rules nor provides the authority to monitor the rules framed by the State Government in pursuance of Section 22 (4). This may lead to formulation of arbitrary rules and policies by the State Government.



COMPARATIVE ANALYSIS OF THE RIGHTS OF TRANSGENDER PERSONS BILL 2014, TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL 2016 AND TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT 2019 IN TABULAR FORM.

BILL 2014	BILL 2016	ACT 2019	ANALYSIS
<p>Right to equality and non-discrimination (Sec 4)</p>	<p>Right to recognition (Sec4)</p>	<p>Right to recognition (Sec4)</p>	<p>Under Act 2019 Section 4 is subject to section 5 and section 6.</p>
<p>Section 4 (2) ensures reasonable accommodation for transgender  Freedom of choice in terms of community living/ residence (Sec7)</p>	<p>Sec 13 compels the transgender person to reside with their immediate family and denies the choice of alternate residence without prior approval/ order from the competent court.</p>	<p>Section 12(3) compels a transgender person to continue living with their immediate family or to reside in rehabilitation centre upon the orders by a competent court are violative.</p>	<p>Act 2019 denies a transgender person the right to alternate accommodation.  Act 2019 is also silent on who would be the competent court for the purpose of giving consent order u/s 12(3).</p>
<p>Guarantees equal enjoyment of human rights by transgender children at par with other children including the right to express themselves. (Sec 5)</p>	<p>D.M shall issue Certificate of Identity subject to section 6</p>	<p>Transgender children can identify themselves through their parents/ guardian subject to approval by District Magistrate. (Sec 5)</p>	<p>Act 2019 is silent on freedom of expression of transgender children which contravenes provision of Art 19 (1) (a) of the Constitution of India.  Denies the right to self identify themselves hence unconstitutional.</p>
<p>Right to respect for one's physical and mental integrity. (Sec 8)</p>	<p>No provision for one's right to respect.</p>	<p>No provision for one's right to respect.</p>	<p>Act 2019 falls short to include not only one's right to respect but also ignores one's right to mental</p>

			wellbeing.
Imposes obligation upon the local authorities as well the police (Sec10)	No provision imposing obligation on local authorities or police officials.	No provision imposing obligation on local authorities or police officials.	Act 2019 fails to incorporate the role of local authorities as a major stakeholder in relation to welfare and protection of transgender persons.
No provision for complaint officer	Appointment of complaint officer u/s 12	No provision for complaint officer	Act 2019 fails to incorporate such provision which deemed pertinent to address violation of transgender rights at the grassroots level.
Right to education in government funded or recognised institutions with an aim to ensure inclusive education.  2% reservation in education (Sec 13)	Sec 14 of the Act ensures the right to education of transgender persons only in Government funded institutions	Sec 13 of the Act ensures the right to education of transgender persons only in Government funded institutions.	The Act is silent on reservation.  Transgender Persons can avail benefit only through Government funded Institution.
Provision for vocational training and self employment u/s 15.  Government is to formulate schemes and programmes for the same	No provision	Provision only for vocational training.	Act 2019 fails to incorporate provision for self employment.
Sec 26-45 deals with constitution and functions of National	Sec 17 provides for constitution and functions of National	Sec 16 provides for constitution and functions of	There is underrepresentation of the transgender community in

Commission and State Commission for transgender persons respectively.	Council for transgender persons	National Council for transgender persons.	the Act 2019. The Act 2019 does not provide for the constitution of State Council.
Section 46 provides for the establishment of special Transgender Rights Court.	No provision for Transgender Court.	No provision for Transgender Court.	Act 2019 largely watershed such provision.
Sec 49 calls for vicarious liability for an offence committed in an establishment.	No provision for vicarious liability.	No provision for vicarious liability.	Act 2019 falls short to incorporate such provision.
Sec 50 imposes punishment only upto 1yr.	Sec 19 imposes punishment upto 2 years with fine	Sec 18 imposes punishment upto 2 years with fine	Both the Bills and Act fails to incorporate stringent punishment making both the laws paper tigers.

## 2. CONCLUSION

The demand for legal gender recognition provokes moral panic in many governments. But it is a crucial fight to wage. If transgender communities are to thrive, and if the rights to privacy, free expression, and dignity are to be upheld for all, the human rights movement needs to prioritize eliminating abusive and discriminatory procedures that arbitrarily impede the right to recognition. Governments should acknowledge that the state should no longer be in the business of denying or unjustly restricting people’s fundamental right to their gender identity. There must be a judicious nexus between the judicial reasoning and contemporary law reforms to establish an imprint around the transgender individuals. Failure to incorporate progressive legislation and equity makes a law repressive and regressive. In the light of the above analysis the following suggestions are put forward:

1. There is a need to revisit and redraft the law relating to transgender persons protection and rights in India.
2. Importance must be accorded to the directions pronounced by the Supreme Court in the laudatory judgement of NALSA case.
3. Re-sexing through sex reassignment surgery should be at the desire of the transgender person and not a criteria for availing benefits or accessing rights.

4. The appropriate government must make provision for online registration of certificate which would help creating a data base.
5. Stringent punishments must be incorporated to give justice to transgender victims of crime.
6. A minor transgender must have the right to alter the certificate of identity upon achieving majority.
7. A transgender person must have the right to choice of residence.
8. The comprehensive law demands active role of the State Government and other local authorities

# GLASS CEILING MAGNITUDE ON INDIAN WORKING WOMEN IN CONTEXT TO CORPORATE LAWS

**Reshma Yadav**  
Assistant Professor  
VES College of Law

---

## **ABSTRACT**

The Glass ceiling is cracked but still not broken. Indian corporate world has shown their discriminatory attitude by appointing only less than 4 percent women to be promoted as, 'Director' in their institution, even after enacting provisions under The Companies Amendment Act, 2013. Though women in India, share almost 50 percent of the total population of the nation, the representative aspect of women at senior positions are very much scarce in real world of Corporate in India.

“SUCCESS IS NOT PARTIAL TO MEN” .... NITI AYOOG

*Keywords: NITI Ayog, women in the corporate world*

**INTRODUCTION:**

Though women in India share almost 50 percent of the total population of the nation, the representative aspect of women at various senior positions is severely scarce.

Glass ceiling refers to the invisible and unofficial barriers in the corporate world for women and minorities, who keep gradually moving up at their jobs but do not reach the top, regardless of their education levels, experience and achievements (Eagly & Carly, 2007). Appelbaum *et al.* (2011) defined glass ceiling as “a barrier hindering qualified women in advancing upward in an organization’s hierarchy”.<sup>1</sup>

Due to the male-centric approach and the pre-conceived notion of male-centric society of Indian Corporate and political culture women have been declined to get promoted beyond a certain level and it has turned-out to be a major set-back against gender-equality and gender-sensitization.

The wide-spread illiteracy and other social evils like patriarchal system, socio-economic aspects and approach of Indian Society have also been considered as the “Contributory Factors”. As a result, it has further; worsen the problem of women in India.

Jain & Mukherji (2010) observed male domination in the senior positions and lack of commitment and enthusiasm of top executives for the support of women’s career development and advancement in Indian organizations, but the men denied the existence of a glass ceiling in the Indian corporate world.

Despite the fact that India leads in making the mandatory provisions for making a women’s participation compulsory in the Corporate Board Committee, only few publicly listed Indian Companies have abided by the norms. Even since 2013, we have had full-fledged laws and provisions to take-up women in the Board. However, the overall participation of women as ‘Directors’ is less than 4 percent of the total manpower we have in corporate-sector. It’s a system-failure on the part of the corporate governance of our government.

Though the government has shown it’s pro-active role by passing the revamped Companies Act, 2013, making it a mandatory provision for all the public and private sectors to have at least one women director representation by October, 2014, if their annual turnover is of at least, three billion rupees (50 \$ million), but, till date, the sanction lacks its execution. It has unfortunately not been complied with on a serious note.

---

<sup>1</sup> Bass & Avolio (1994) opine that women encounter a glass ceiling to advancement at the most senior ranks of the corporate hierarchy despite an enormous increase in the number of women entering the workforce in the past decades.

The role of a woman, be at home or at the workplace cannot be ignored. It has been remarkably observed worldwide that if a country wants to increase its GDP, the contribution of women's participation, (especially in European countries) have played a very pivotal role. The role of Entrepreneurship is not static. It is dynamic in its nature and therefore, the Planning Commission and our Indian Ministry have recognized the importance of women's participation as an integral part of the mainstream of a nation's economic and social development.

Also, the issue of unemployment can be drastically curbed, if women's participation in rural and urban entrepreneurship shall be given a high value. Today's women have also shown willingness and enthusiasm to become economically independent and mark their significant position, if the equal opportunities, as it had been conferred upon through our Directive Principles of State Policies and fundamental rights, would be given without being gender prejudiced work-culture. For example, one of the women entrepreneurs, Jaishree Kabra of Kothari Silk Mills, showed her excellent entrepreneurship skill by overcoming all her personal and positional challenges. Her zeal for success and relentless enthusiasm for success and willingness to mark her presence in the corporate world of India is remarkable. For a healthy and sound economic country, such highly skilled, semi-skilled labor class women's contribution cannot be ignored.

Thus, it can be evidentiary fact to note that the women have played and still, playing a very proactive and significant position in our country's present economy. From an angle of consumer market and from an angle of consumer market and its perspective, women hold a very strong segment of the market.

"She-economy" is a very popular concept, which is emerging rapidly as women's decisions have been considered as the most significant status in Indian families as a "Chief Household Manager" from the past few decades.

Globalization, educational participation and sensitization towards women's progress ideologies have also been attributed as one of the most important and core roles in women empowerment and their empowering policies of our country. There is a significant contribution of women in our national socio-economic growth. Despite this fact, there seems to be legislative, executive and judiciary insensitivity for the empowerment of working women in India.

More than 85 percent of decisions, pertaining to household items, decisions, including house and car buying, share investments have also increased the total accounting for more than 5 trillion dollars on annual basis and the credit goes to Indian women!

**AIMS & OBJECTIVES:**

Therefore, the primary & foremost need of carrying out this study is to:

1. To have corporate heads consistent support for the gender equity, sensitivity in order to curb their gender inequalities and parity;
2. To accept the gender neutrality concept so that even women can be promoted to the top managerial positions by changing the perceptions of their male counterparts;
3. To supervise and monitor female's representations meticulously in every organization;
4. To motivate women equality regimes and programs frequently;
5. To address and study the subject of gender equivalence in managerial sectors, etc.

**RESEARCH PROBLEM:**

As per the new guidelines under Securities and Exchange Board of India (SEBI), the new Companies Act, 2013 has made it compulsory for all companies which are listed, to have at least one woman director in their Board. The executive and non-executive directors must be nominated on or before April, 2015. But unfortunately though the law mandates the women representation compulsory, only 7-8 percent of the directors of such Indian companies are females. The scarcity of women in the boardroom is not unique to India, nearly one-fifth of the world's 200 largest companies have no women directors. Some western countries such as France, Italy and Norway have made it compulsory for larger firms to have women on their Boards.

The less number of women's representation in Indian boardrooms are just not the area of concern for our Nation. But in a real sense, it also exists in one of the most progressive countries such as Italy, Norway and France, these countries have thus made it compulsory for corporate sectors to have maximum participation in their boardrooms.

**RECOMMENDATIONS:**

From the past few years, it is a remarkable and highly impressive fact that the Indian government is continuously trying their level best to promote the Women participation in business sectors. The Indian government's obligation to ensure Gender Neutrality and Gender Equality has been intensified after the revamped Indian Companies Laws. The special focus has been given on the fact that Indian women have become more independent, educated and self-sufficed from the last few years.

The equal opportunity given to women not only brings-out the social equilibrium, but also, it also increases the GDP rate of the Indian economy. Creating job opportunities, business opportunities, skill development, especially designed for women, accelerates women empowerment and their participation in corporate ventures. Professional training like, "Beti Bachao, Beti Padhao", "Skill Development Awareness", "Make in India" and "Digital India", providing "Mudra Loan" facilities and such other



governmental programs, really enhances the chances and opportunities for the women's participation in corporate sector.<sup>2</sup>

Special Industrial Policy will give financial assistance to encourage women entrepreneurship in India by following ways:

- i. 15 L-1 Cr.: Capital resources and financial support must be given from the government for setting-up of women business ventures;
- ii. 20-40%: capital assistance to be given by the State government from time to time;
- iii. 5%: Concessions and tax relaxations should also be provided to women entrepreneurs and also, loans should also be provided at a subsidized rates for at least 5 years;
- iv. 2-4 per unit: Electricity rates should also be lowered down for new entrants such as, women entrepreneurs at their initial stage;
- v. Budget allocation- Rs.648 crores to be allocated for the policy in 2025-2030
- vi. Utilization of Rs.15 crores allocated in 2017-18

Road Ahead:

- i. More than 4,000 crores have been invested for such projects which shall be completed within 8-10 years
- ii. More than 1 lakh service opportunities are expected to be given by the year, 2030
- iii. VISION 2030: The plan of action shall be completed within five years so as to increase the women participation in managerial positions in the Indian market.

**INFRA BOOST FOR WOMEN- ONLY PARTNERSHIPS:**

- Reserved policy to be made for the MIDC areas to be specially booked and reserved for women entrepreneurs Few shops will be reserved in malls, commercial complexes & market yards.
- The builders and developers should be provided for the incentives to get 15-20%. Builders will get a 10-15% profit margin for executing such FSI projects which promotes women corporate governance.
- The provisions must be made for the reservations for the reserved spaces for women's stake in entrepreneurship. For e.g.; making subways, bus stops, display cabins for the products at commercial places and malls, at stations and so, on

---

<sup>2</sup> Times of India, (English Edi. (Mumbai) on 6<sup>th</sup> Dec., 2017)

- Stringent policies need to be implemented so as to curb disparity through gender neutrality to crack and break the glass ceiling in corporate governance and leadership.

# QUESTIONING TRANS-INCLUSIVITY: A STUDY OF QUEER DEPICTION IN INDIAN CINEMA

**Sarvesh Sitaram Gosavi**

Research Scholar

Anekant Education Society's,

Tuljaram Chaturchand College, Baramati, Pune

---

## **ABSTRACT**

Cinema is a vital medium that makes people aware about certain social and also builds perceptions of people. Although Indian cinema has seen a slight upswing in depiction of LGBTQIA+ themes lately, the movies tend to 'misrepresent' trans individuals by casting cisgender actors. Transgender individuals have been the victim of deplorable portrayals and characterized as sexually deviant, villainous in movies since ages. The (mis)representation of queer community contributes in 'othering' of sexual minorities and serves the male gaze. The heteronormative Hindi mainstream cinema has often portrayed queer characters as laughing stocks. The present research not only attempts to explore the authenticity of trans-inclusion in Indian cinema but also studies South Asian queerness at the intersection of caste, class and disability in movies like "Geeli Puchi", "Sheer Qorma" and "Margarita, With a Straw". The present study tries to critically investigate the queerness in Indian cinema and how it's perceived by homophobic people.

**Keywords:** *queer, misrepresentation, transgender, queerness, sexual minorities, heteronormative, cinema*

## **INTRODUCTION:**

Cinema is a powerful medium that has the capacity to bring about a social change in the society. Cinema, due to its compelling audio-visual mode and persuasive techniques, builds perception of people regarding gender and sexuality. Over the years, queer characters in Indian cinema are highly misrepresented. Gender stereotypes, myths and negative portrayals of LGBTQ individuals has contributed in the othering of sexual minorities. The present study attempts to navigate queer depiction and South-Asian queerness in movies like “Geeli Puchi”, “Sheer Qorma” and “Margarita, With a Straw”.

The Supreme Court decriminalized Section 377 of the Indian Penal Code in 2018 that criminalized Homosexuality. Though the draconian law has been ruled out, the community still has a hard time as it has been deprived of its fundamental rights. The real struggle of the community is to find an environment where gender nonconformity is acceptable. Neither the society nor the Cinema accepts the queer community as they are. Misrepresentation of LGBTQAI+ characters, using them as a ‘plaything’ to fulfill the comic quotient in movies leads to the stereotyping of queer community. Research in psychology proves that misrepresentation of queer character in cinema highly affects the psyche of queer youth, their perception of their own identity. Films shape the perception of people and media representation affects the lived experiences of queer individuals to a larger extent.

Gay depictions have been made in a variety of ways in Indian cinema in the late 1990’s. Firstly, gay characters were shown as hijras or third gender. Secondly, some actors intentionally practiced cross-dressing for entertainment purposes. Commercial Bollywood cinema is an example where we could find stars indulging themselves in cross-dressing to evoke transphobic laughter. Thirdly, queer characters were depicted as someone who are mentally deprived, sick and violent. Trans characters are subjected to pathetic treatment in mainstream cinema. The heteronormative culture tries to assimilate queer culture by appropriating the transgender characters. They are often shown to be someone who hoodwink the hero in a sexual manner without their consent. Exaggeration of effeminacy is done while sketching trans characters so that it would lead to entertainment and evoke laughter among the audience. Bollywood movies like ‘Kya Kool Hain Hum’, ‘Masti’, ‘Partner’, ‘Raja Hindustani’, ‘Dostana’, ‘Hum Hain Rahi Pyaar Ke’ etc. have played their part in presenting a shameful picture of queer characters.

Mahesh Bhatt, a mainstream Bollywood director has done a remarkable job by bringing out real issues of discrimination, violence, misgendering that transgenders face through his movies like ‘Sadak’ and ‘Tamanna’. Lesbian narratives like ‘Fire’ and ‘Girlfriend’ were encouraging queer stories that depicted true lives of Indian lesbians relegated to the fringes of Indian households. There is a welcoming change in the narrative and shift in the portrayal of queer characters. Lately, Indian movies like *Badhia Do*, *Aligarh*, *Chandigarh Kare Ashiqui*, *Shubmangal Zyada Savdhaan*, *Margarita with a Straw*, *Sheer Qorma*, *Geeli Pucchi*, *Kapoor and Sons* have tried to depict real issues, societal and personal conflicts that queer community goes through on a daily basis.

**RESEARCH METHODOLOGY:**

Content Analysis is the research methodology used for the present study. Content analysis of Indian Cinema featuring queer characters is carried out. At an initial stage, a pilot study on all the Indian movies comprising of queer characters between (2000-2021) was undertaken. The researcher takes the help of Queer theory that maps out general understanding of sexuality in medicine, Law, Religion, in general, and popular representation of the queer community in media and films, in particular. In order to study 'South-Asian queerness' at the intersection of caste, class and disability, Crenshaw's theory of Intersectionality has also been used.<sup>1</sup>

**CHANGING LANDSCAPE OF INDIAN CINEMA VIS. A. VIS LGBTQAI+ CHARACTERS:**

The socio-cultural hierarchies of Indian culture operate on the basis of caste and exploit Dalits, sexual minorities at a larger extent. 'Geeli Pucchi' genuinely describes how love is intervened and dismantled by sexual marginalization. It's also interesting to differentiate between two lead queer characters from the story- one is a privileged Brahmin and the other one being an unprivileged Dalit. Though subjugated by the patriarchy and othered by the bourgeois culture, Bharati is well aware of her own sexuality. On the other hand, Priya is struggling to make peace with her own sexuality due to societal pressures and patriarchal dominance.<sup>2</sup>

On a surface level, 'Geeli Pucchi' throws light on the caste-politics and discrimination at the workplace, but there are a lot of layers to the story if we try to dig deep into it. The colors and costumes in the movie speak volumes about the exploitation that is happening at the workplace. Blue collar workers, wearing blue uniforms and the brown cylinders at the background signify Ambedkarite resistance coping with caste discrimination.<sup>3</sup> In spite of having necessary qualifications and skill sets, Bharati Mondol is kept at the fringes and discriminated against based on caste and sexuality by the patriarchy and heteronormative world. On the contrary, Priya, who is underqualified and inexperienced gets a job by impressing the boss with her palmistry skills- a result of her belonging to a Brahmin household.

"Why can I not get that job, because I don't use make-up like her?"

Dashrath instantly reminds Bharati that-

---

<sup>1</sup> Chakraborty, K. (2014). *Deconstructing the Stereotype: Reconsidering Indian culture, literature and cinema*. Anchor Academic Publishing.

<sup>2</sup> Kaur, Pushpinder. "Gender, Sexuality and (Be) longing: The Representation of Queer (LGBT) in Hindi Cinema." *Amity Journal of Media & Communications Studies (AJMCS)* 7.1 (2017).

<sup>3</sup> Shahani, Parmesh. *Gay Bombay: Globalization, love and (be) longing in contemporary India*. SAGE Publications India, 2008

“No, because we are Dalits. Because your surname does not have Mishra or Sharma in it. We can be offered a desk to have our meals on, but they will never offer you a desk job. I worry that you may get singled in trying to reach a higher station.”<sup>4</sup>

Acknowledgement of love and desire goes hand in hand with the confirmation of caste and status in society. Bharati doesn't tell her real name to Priya as she fears rejection. At the end, when Priya comes to know that Bharati is a Dalit person belonging to a low caste, her affection for her fades away and she starts having reservations for her identity. Bharati discloses her Dalit identity in the hope that love would surpass all the boundaries of prejudice and caste but ends up alone getting rejected again.

In a scene, Bharati is seen sobbing and recollecting her memories and good old days with her ex-partner. After looking at the void in the room and in her life, it is evident that she tries to be vulnerable when she is all by herself. The most remarkable aspect about *Geeli Pucchi* is that the movie never tries to make a hero out of Bharati's character. On the other hand, Bharati is a gray character whose behavior and actions at the end challenge the moral quotient of being right and wrong. The movie not only navigates queerness at the intersection of caste, sexuality and power politics but also makes a point to depict queer characters of Bharati and Priya with utmost sincerity, authenticity and vulnerability and moral conflict.<sup>5</sup>

Neeraj Ghaywan's '*Geeli Pucchi*' unapologetically portrays a queer Dalit woman that goes beyond the filthy identity politics, games of caste hierarchies, and breaks into the mainstream to take over everything. Bharati is one of the most radical queer characters till date not only because she's a Dalit non-binary individual but that she does not yearn for inclusion. She doesn't want to get included in a heteronormative patriarchal casteist setting. Bharati does not crave for validation and acceptance from casteist society but fights back to get her dream job at the end.

In the times where Homophobia is rising and Heterosexuality is the norm, disabled sexuality is highly ignored and stigmatized. Shonali Bose's '*Margarita With a Straw*' addresses the inter-family conflict, disability and sexuality in a quite sensitive manner. The movie is successful in depicting the non-stereotypical, humane, true representation of the community. Laila, a girl dealing with cerebral palsy falls in love with a blind girl, Khanum while undertaking a creative writing course at New York University.<sup>6</sup> When Laila confesses her true sexuality of being a bisexual to her mother, she receives a cold response. Parents turning a cold shoulder to the child's sexuality speaks volumes about the social conditioning and preconceived notion about gender and sexuality in a heteronormative society like India.

Faraz Arif Ansari's '*Sheer Qorma*' throws light on a non-binary Muslim protagonist named Saira. This movie extensively talks about the lived experiences of the director who is queer, coming out to parents,

---

<sup>4</sup> Vanita, Ruth, and Saleem Kidwai, eds. *Same-sex love in India: Readings in Indian literature*. Springer, 2000

<sup>5</sup> Gauntlett, D. *Media, Gender and Identity*. Routledge.

<sup>6</sup> Choudhuri, Sucheta Mallick. *Transgressive territories: queer space in Indian fiction and film*. The University of Iowa, 2009

identity-crisis and relationship with parents. South Asian-Queerness is clearly evident through some south Asian symbols of 'Mehendi', 'Iftaar', 'Shirqurma', the couple sharing an intimate moment while offering prayers to God. Ansari incorporates religion and cultural aspects limited to non-western regions to depict South Asian queerness.

In the movie, 'Sheer Qorma', the queer narrative and homosexuality is never shown in conflict with the religion and Muslim culture. One scene in the movie where Swara Bhaskar's character Sitara says- "Mohabbat gunah nahi hai" ("Love is not a crime")<sup>7</sup> speaks volumes about how love has the potential to overcome all the prejudices and barriers of gender, caste, sexualities, and privileges. The use of Urdu dialogues in the movie reiterates South Asian queerness through a cultural lens and challenges so-called irreligious perceptions of same-sex love. Instead of using a Western phrase like "love is love" and "coming out of the closet", Ansari wisely uses regional tongue and vocabulary to relate with the cultural context and audience<sup>8</sup>.

'Sheer Qorma' depicts sexuality in a spectrum where the love story of Saira and Sitara could be perceived from a humane perspective<sup>9</sup>. The nature of the relationship that queer individuals share with their parents decides a lot about their journey towards acceptance. Though queer community is accepted worldwide with an open heart, an acceptance from their own parents is what queer individuals crave for.<sup>10</sup> The movie challenges the notion of Homosexuality being a Western phenomenon and brings out South Asian queerness within the culture quite effectively.

### **CASTING CIS-GENDER ACTORS APPROPRIATE QUEER CULTURE AND EXPERIENCE IN CINEMA:**

Although, movies like 'Badhia Do', 'Aligarh', 'Chandigarh Kare Ashiqui', 'Shubmangal Zyada Savdhaan', 'Margarita with a Straw', 'Sheer Qorma', 'Geeli Pucchi', 'Kapoor and Sons' have become the conversation-starters, casting of cis-gender actors for transgender roles defeats the purpose. Recent examples are the casting of Vijay Raaz to play Razia Bai in 'Gangubai Kathaiwadi', Arjun Mathur as a gay in web series 'Made in Heaven', Vaani Kapoor as a transwoman in 'Chandigarh Kare Ashiqui', Rajkumar Rao as a gay policeman in 'Badhia Do'. A straight or cis-gender actor could never relate and enact the lived experiences of queer individuals. Casting cis-gender actors for portrayal of queer characters not only deprives queer people from the job opportunities but also misappropriates the whole queer culture and experience in Indian cinema.

<sup>7</sup> Rao, R. Raj. *Criminal Love?: Queer Theory, Culture, and Politics in India*. SAGE Publishing India, 2017

<sup>8</sup> Wharton, A. S. (2012). *The Sociology of Gender- An Introduction to Theory and Research*. John Wiley & Sons Ltd.

<sup>9</sup> Branston, G. (2000). *Cinema and Cultural Modernity*. Open University Press

<sup>10</sup> Chowdhury, Ankita. "Gender Minority and its Changing Portrayal in Bollywood Films." (2021).

**CONCLUSION AND FINDINGS FROM THE STUDY:**

Ruth Vanita, a renowned queer theorist and writer says that-

“The British did not bring Homosexuality into India, what they imported into our civilization was Homophobia.”

Cinema was and will remain one of the significant mediums to persuade, influence and shape peoples’ perception. Alternative sexualities are slowly finding the space in Indian narratives. A human treatment of the subjects related to queer community would certainly help to dismantle heteronormative culture and bring all the sexualities on the same page. Casting queer characters for queer roles would be a brave step towards building an equal environment with equal opportunities for the community. Trans-inclusivity would certainly prevent the directors from misappropriating queer culture and depicting it as it really is on the big screen.



---

# THEORY OF MODERN FEMINISM

**Somya Bajaj**

Student

NMIMS Kirit P. Mehta School of Law

---

## ABSTRACT

Through the medium of this paper, the author attempts to re-create the trajectory of the four waves of feminism and the illustrious #MeToo Movement. The paper explores a wide array of popular and academic literature on the waves of feminism and is an attempt to make sense of a movement that prima facie might seem like a confusing jumble of personal encounters and individualistic claims but is more than what meets the eye.

The paper studies the 4 waves of feminism theoretically- what changed in each wave and the socio-political environment which was the backdrop of each wave. The first wave, the earliest act of feminism, involved voting rights and political participation for women. The second wave was a catalyst result to the anti-war and civil rights movements. The third wave is where radical activities made feminism an unpopular concept and the fourth wave is more about intersectionality and inclusivity for all genders. The paper explores as to how each of these waves have influenced modern feminism. The paper also discusses the #MeToo Movement, arguably one of the biggest social change movements of contemporary times. Not just the positive side, but the paper also brings to light the aftermath of the movement and its criticisms. The 4 waves of feminism and what importance they hold in the 21st Century, combined with the #MeToo Movement and its domino effect in India, the paper sets a tone of overall theoretical evolution of the concept of “feminism”.

It is of great magnitude that the movement is weighed in not only by its cons but also by its pros; the difference it has created. Hence, it is with an unbiased and critical approach that this humble author presents her “Theory of Modern Feminism.”

**Keywords** – *waves of feminism, #Me Too Movement, Aftermath. Domino Effect in India*

## INTRODUCTION

'Feminism' is defined as the "belief in and advocacy of the political, economic, and social equality of the sexes expressed especially through organized activity on behalf of women's rights and interests"<sup>1</sup>. As we proudly move to the 21st Century and boast about the fact that we are a more "open" and better world, analysis says we are not. We are not a safe society; we are not a tolerant society and we most certainly are not a feminist society. It has been more than 170 years since the first formal feminist movement – where men and women stood up for equal rights for women. Today, we are still fighting for the same issues and for the same equal representation. Every wave of feminism has brought different issues under the spotlight and answered many rhetorical questions in the "un-normal" way. Bringing about change one issue at a time, the saying "Well-behaved women seldom make history" came to life when the "un lady-like" ways of women were challenged repeatedly.

After more than a century and three waves of feminism, came the "#MeTooMovement." An iconic and game-changing revolution where victims of sexual abuse came forward and shared their experiences and named their abusers in some cases.

After millions started to use the phrase, it spread to dozens of other languages and expanded to different countries as well. While Tarana Burke accepts the title of the "leader", she considers herself a worker. She has stated time and again that the movement is no longer exclusively for women but is inclusive to people of all sexes and races and colours and ages while being the supporting hand of marginalized people of marginalized communities. There have also been movements for men aimed at changing the culture through personal reflection and future action, including the #IdidThat, #Ihave, and #Iwill. Continuing with the maxim of empowerment through empathy, the movement is not only about women raising voices against sexual assault but also asking their fellow gender to raise their voices when they see injustice happening.

The divergence it has created in society, by allowing females to open up about their trauma and changing the outlook of society on sexual harassment from victim-blaming to helping the victim get justice is unmatched. It is important to discuss these issues in their entirety and ignoring their exploitation and downfalls is not going to do society any good. It is to be investigated and made sure that it is not repeated. However, dismissing the good that feminism has brought in society just because of the actions of a few is unreasonable. Thus, with a critical approach to feminism, the evolution of the concept and its pros and cons have been discussed in light of the #MeToo movement. The paper attempts to find an appropriate place for this concept in contemporary times.

---

<sup>1</sup> (Feminism, 2022)

## **OBJECTIVES**

The objectives of this paper are-

1. To do a theoretical study to trace back the trajectory of the waves of feminism and understand the importance of each
2. To understand the origin and aftermath of the #MeToo Movement and study its domino effect on Indian society.
3. To critically comment on feminism in the 21<sup>st</sup> Century.

## **HYPOTHESIS**

Social movements have played a key role in the emergence of modern feminism.

## **REVIEW OF LITERATURE**

The author has used several research papers, newspaper articles, magazine articles and some old interviews as a medium to bridge the time gap and gain discernment of the public response and journalistic coverage during a specific wave.

The main research papers used are “Four Waves of Feminism” by Martha Rampton published in the Pacific University Oregon<sup>2</sup>, “What is third-wave feminism? A New Directions Essay”<sup>3</sup>, “The F Word: How the Media Frame Feminism” by Debra Baker Bock<sup>4</sup> and “Feminism Through the Ages: Making Waves”<sup>5</sup> Although numerous more papers have been referred to, it is the writing style and precision that makes these papers to be mentioned at the top. The papers proved to be an unimaginable asset as the trajectory was traced back to the 1960s. They present a comprehensive view of the waves of feminism and how each wave was received in the setback of different socio-economic-political global events. Papers that span across years also help in understanding how the media response and modern literature have changed and expanded. How they have become bolder, the language less subtle and more radical and switching back to subtle yet precise language.

For the MeToo Movement, the author also referred to several essays and articles. Some of them are as follows. “The #MeToo Backlash” from the Harvard Business Review”<sup>6</sup>, “#Me Too Movement: A Sociological Analysis of Media Representations” by Lindsay Tahan<sup>7</sup> and “Me Too Movement and its Impact” by Harsh Gupta in the Law Times Journal<sup>8</sup>. The articles are taken from different years and from authors of different continents to help in taking into account how the response of one of the biggest socio-

---

<sup>2</sup> (Rampton, 2015)

<sup>3</sup> (Snyder, 2008)

<sup>4</sup> (Beck, 1998)

<sup>5</sup> (Robertson, 2019)

<sup>6</sup> (Bower, 2019)

<sup>7</sup> (Tahan, 2022)

<sup>8</sup> (Gupta, 2020)

cultural movements has in totality affected the modern sociological landscape. These articles show the critical response of the movement and draw a rough measure of how much the movement has helped or harmed the situation.

Without the guidance of these authors, the author would have been unable to do justice to such a critical topic. The variety of resources provided a fresh take on the topic and helped the author understand the perspective of these writers. The news interviews also helped the author understand where not only the woman in question was coming from but also the awe of the society when the norms were challenged. The culmination of these viewpoints has allowed the author to put together a constructive paper with new-formed opinions and better factual knowledge.

### **THEORY OF THE WAVES OF FEMINISM**

The concept of Feminism and the feminist movements has been acknowledged in 4 waves tracking the perceptions and the popularity it had in different eras of modern history. Challenging the ‘cult of domesticity, the first wave of feminism in the 1960s and later saw women publicly speaking, demonstrating, and performing stunts in jail. Discussions revolved around women getting voting rights and made society consciously challenge gender inequality for the first time. A closer investigation of women’s participation in politics led to the conclusion that women being morally superior to men; would bring some much-needed reform in public behaviour and the political process if they stepped out in the civic sphere. The framework for the second wave was the anti-war and civil rights movements. What made it successful was the rising awareness of the growing self-consciousness of marginal groups. Feminists parodied what they held to be a degrading “cattle parade” that reduced women to objects of beauty dominated by a patriarchy that sought to keep them in the home or in dull, low-paying jobs. The radical New York group called the Redstockings staged a counter pageant in which they crowned a sheep as Miss America and threw “oppressive” feminine artefacts such as bras, girdles, high-heels, makeup, and false eyelashes into the trash can<sup>9</sup>. The third wave of feminism was when it turned into a detested concept. In order to subvert the sexist culture and dispossess the society around them of the disrespectful oral words and remarks of a “slut” and a “bitch”, women owned up to those words. However, due to the obscurity and denial of the “us-them” terms, the third wave was not very popular. The fourth wave speaks of intersectionality and genders and is a part of something bigger than just women’s rights and women’s empowerment. It is here to change the way they look at the world and how the world looks at them. Further, the fourth wave feminists are strong and bold and fierce.

### **ORIGIN OF THE #METOO MOVEMENT AND ITS AFTERMATH**

It is important to question the “where” and the “how” of anything we study. The humble beginning of an article being put up on a blog led to something so big. We credit Tarana Burke with the beginning of the Movement and rightly so. Started by Tarana Burke on Myspace in 2004, “Me Too” actually was to

---

<sup>9</sup> *Supra* note 2

promote empowerment through empathy among women of colour who had been victims of sexual abuse. The scandalous and yet controversial Harvey Weinstein allegations from 2015 are a mystery unsolved to date. The insufficiency of criminal evidence led to the dropping of the case by US Attorney's office but the NYPD office and the courts kept blaming each other for the failure of the justice system in this particular case.

In 2016, "#IAmNotAfraidToSpeak" started in Russia and Ukraine after Ukrainian journalist Anastasia Melnichenko's post went viral. Thousands of women and men joined the hashtag to share their stories of sexual abuse. However, the biggest eruption of the "Me Too Movement" happened in 2017. The saying "As you sow, so shall you reap" took a literal meaning when actress Alyssa Milano posted on her blog site about the sexual abuse she faced from Harvey Weinstein and triggered widespread allegations regarding predatory behaviour by the film producer. Along with Charlotte Clymer, the women duo brought back the use of "Me Too" as a way of sharing with the world that it has happened to them too. Spreading empowerment through empathy, it was a way to actually bring the spotlight to the magnitude of the problem. Linking it to the original "Me Too Movement" by Tarana Burke, the women were insistent on making a difference this time. After gaining support and participation from some of the biggest names of the industry including Gwyneth Paltrow, Ashley Judd, Jennifer Lawrence, and Uma Thurman among others. Each wave has its own prominence and its own set of challenges. #MeToo started many years ago and though people might have had enough of it, the author sides with the motto – "Nevertheless, She Persisted"<sup>10</sup>

#### Aftermath-

Many individuals were encouraged in the autumn of 2017 when the New York Times and other media outlets began reporting on rampant sexual harassment and assault by influential male entertainment personalities. The common thinking was that exposing the problem and punishing those guilty would serve as a deterrence. A management professor at the University of Houston, Leanne Atwater, had a different take. "Most of the reaction to #MeToo was celebratory; it assumed women were really going to benefit," she says.<sup>11</sup> But she and her research colleagues were sceptical. "We said, '*We aren't sure this is going to go as positively as people think—there may be some fallout.*'" After conducting a survey in 2018, right after the eruption of the MeToo Movement, the results were baffling. The study was about several different situations in workplaces, about the activities that engaged women at work in several ways. The questions were about activities that can be crucial for advancement. A follow-up survey in 2019 showed the results along the same lines but even worse than anticipated. The survey showed that men were reluctant to hire attractive women and even hire women for jobs that required interpersonal interactions. They also feared that the more women come forward about sexual harassment, the more likely it was that men will blame women for the problem. It was also found that men were likely to

---

<sup>10</sup> (Reilly, 2018)

<sup>11</sup> *Supra* Note 5

exclude women from after-work social interactions and even avoid one-on-one meetings with them. While 56% of women thought that men would continue to harass them but with greater precautions, 58% of men predicted that men, in general, would have greater fears of being unfairly accused. When men say, 'I'm not going to hire you, I'm not going to send you travelling, I'm going to exclude you from outings'—those are steps backwards.

### **DOMINO EFFECT IN THE INDIAN SOCIETY**

Like in different spots across the world, the #MeToo development produced conversation in India about inappropriate behaviour inside the working environment, especially in the diversion and entertainment worlds. As a quick eventual outcome, more ladies were urged to oppose their harassers, both freely and namelessly. Producer Vinta Nanda had opposed veteran Bollywood entertainer Alok Nath, whom she blamed for the assault. "Before the development, I was reluctant to move since I felt confined and alienated," she told DW. In any case, presently, she added, "I realize I am in good company." "The majority of the other people who have stood up feel the same way as I do and that is one gigantic advance forward that the ladies' strengthening development has taken" she said. Nath was blamed for lewd behaviour by different ladies from the entertainment world, including entertainer Sandhya Mridul and artist Sona Mohapatra. He was deprived of his participation in the Cine and TV Artistes' Association (CINTAA) after he neglected to show up before an exceptional board of trustees. While the entertainer confronted transitory reaction, there were no drawn-out results. The argument against him was in the end dropped because of the absence of proof. The argument against conspicuous entertainer Nana Patekar, who was blamed by entertainer Tanushree Dutta, was additionally dropped because of the absence of proof. While large numbers of the blamed confronted some misfortune for undertakings or tasks, the vast majority of them have had the option to look for employment and acknowledgement in the business. Other popular people, like marking proficient Suhel Seth and director Rajkumar Hirani, have had the option to slowly continue their expert interests later an underlying time of hiding out and avoiding the open arena. However, the #MeToo development that started in media outlets, it proceeded to hit the political field as well and popular characters came into the open ground. Notwithstanding being the world's biggest vote-based system, Indian governmental issues have forever been a sensation. The head of Mahila Congress, Shri. Sushmita Dev was of the view that development should not be given a political impact further she expressed "She was of the view that one of those issues should not be politicized and called it a group's development." She further explained, "#MeToo is a development that won't just rotate around proof however it is a brutal reality that must be acknowledged by the citizens. She accepted that women should concoct their experiences with no dread and disgrace. She vowed to ensure that laws are implemented appropriately and further laws to enable women would be passed. In any case, making these conversations part of the public talk itself has been a colossal triumph for survivors.

## **MODERN FEMINISM**

The idea of being a feminist is very intriguing and at the same time a very controversial allegiance to bear in the 21<sup>st</sup> century. The first question that is raised is what kind of feminist? The definition of feminism has not remained the same and has evolved to mean different things to different people. For some people, it is a bold choice, a weapon that helps them to hold their abusers accountable and raise their voices against the wrong that is being done to them and others around them. For others, it is a weapon that is being exploited to accuse people wrongly and do actions that cannot be justified. The author takes the liberty to call the latter “failing feminists.”

Feminism is no longer restricted to helping women claim their rights. It has extended to all marginalized groups such as the LGBTQ+ community. Men also identify themselves as feminists proudly and are seen being vocal about the rights of marginalized groups.

But, the other side of the coin is very different. The other side of the coin is full of fear and disbelief. Fear for one’s own survival and reputation and disbelief at how fast the number of failing feminists is increasing. A study by Harvard shows how men are afraid to hire women for jobs that require close relations and long hours. The employment rate of women is going down. Men are afraid of being wrongly accused and that fear is justified as well.

One thing that needs to be noticed, however, is the cruel irony of the circumstances and how the tables have changed. Men were the social group who had to start the “#NotAllMen” campaign to fight the hasty generalization of all men being abusers. Now, women have to fight against the stereotype of all of them being failing feminists and accusing people wrongly. And it is not just about making accusations left and right but also misconstruing some actions that were well-meant and making an accusation against a person who had nothing but good intentions. There can be no surety or an absolute guarantee of bona fide intention of both sides and it is something that one has to look into. That is the precise reason why each case and each allegation should be looked at from an unbiased point of view.

## **CONCLUSION**

Being a part of a society that looks at everything around it with a prejudiced opinion is gruelling and tiring. Being judged as a part of a group that is often labelled because of the mistakes of a few, we can say that we truly understand how men might feel when the entire community is questioned and branded and considered as dangerous and unsafe. We are a dynamic society; we change as the winds change and we change as the earth rotates. Certainly, not all changes are good, but it is essential to celebrate the milestones. After all, we have travelled a long way from “The rights of the man and citizen”<sup>12</sup> to “Equal rights of men and women”<sup>13</sup> With absolute conviction, this author can say that the darker shadows of the

---

<sup>12</sup> Declaration of Man and Citizen- French Constitution, 1789

<sup>13</sup> UN Charter – Declaration of Human Charter

mistakes should not be clouding the beams of sunlight. Because at the end of the day, even a beam of sunlight gives hope. And hope is important. Important to keep society going and changing. Change is coming at her own pace, and there will again come a day when she will rise and show no mercy, she will reign havoc on everything and rage and burn – because you asked her to fight like a girl.



# **ABORTION LAWS AND ITS CONSTITUTIONAL VALIDITY IN INDIA**

**Dr. Swapnil Choudhary**

Assistant Professor, VES Law College, Chembur, Mumbai.

---

## **ABSTRACT**

An abortion is the removal or expulsion of an embryo or foetus from the uterus, resulting in, or caused by, its death. This can occur spontaneously as a miscarriage, or be artificially induced through chemical, surgical or other means. Commonly, "abortion" refers to an induced procedure at any point in the pregnancy; medically, it is defined as a miscarriage or induced termination before twenty weeks gestation, which is considered nonviable.

Throughout history, induced abortions have been a source of considerable debate and controversy. An individual's personal stance on the complex ethical, moral, and legal issues has a strong relationship with the given individual's value system. It is a woman's individual rights, right to her life, to her liberty, and to the pursuit of her happiness, that sanctions her right to have an abortion. A women's reproductive and sexual health and shape her reproductive choices. Reproductive rights are internationally recognized as critical both to advancing women's human rights and to promoting development.

In recent years, governments from all over the world have acknowledged and pledged to advance reproductive rights to an unprecedented degree. The Supreme Court in the landmark case of Suchita Srivastava held that Article 21 of the Indian Constitution which guarantees right to life and personal liberty has a broader dimension which extends to liberty of a woman to make reproductive choices. These rights are the components of the woman s right to privacy, personal liberty, dignity and bodily integrity as enshrined by Article 21 of the Constitution of India which is the crux of libertarian law.

In the recent judgement of the Supreme Court by a nine-judge bench in Justice K. S. Puttaswamy case, which unanimously affirmed right to privacy as a fundamental right under the Constitution, reiterated Suchita Srivastava s case and held that the woman s right to abortion falls within the purview of right to privacy and hence all her reproductive rights should be ensured by the state. Thus, it has been established by the courts that the woman s right to abortion is a fundamental right.

---

Article 21 of the Indian Constitution guarantees Right to life only to a person. Now the main question which arises is whether the unborn child is considered as a person or not. Now, the child's status in the mother's womb is of foetus until birth. Section 2(bc) of the PCPNDT Act has defined the term foetus as a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding anytime in which its development has been suspended) and ending at the birth. The definition does not include the word person.

In the most famous US case - *Roe v. Wade*, the Supreme Court has observed that the foetus is not alive till after the period of quickening.

Dworkin says that the foetus has no interest before the third trimester. Scientists have said that the brain sufficiently develops to feel pain approximately after the twenty sixth week, thus the foetus does not feel pain before that. Hence, whether abortion is against the interest of the foetus or not depends on whether the foetus itself has any interests. A thing that is not alive cannot have interests. It is only after the third trimester that the foetus may have interests as it may live on its own.

The constitutionality of the MTP Act has been challenged regularly on various grounds. In a pending case before the supreme court - *Swati Agarwal & Ors. v. Union of India*, The Petitioners filed a PIL challenging the validity of Section 3(2), 3(4) and 5 of the MTP Act as violative of Article 14 and 21 of the Indian Constitution. Section 3(2), 3(4) (a) and section 5 was challenged as violative of Article 21. The researcher discusses these aspects of the question of abortion rights in the paper.

**Keywords:** - *Abortion, Rights of Unborn Child, Rights of Women*

### **INTRODUCTION:**

An abortion is the removal or expulsion of an embryo or foetus from the uterus, resulting in, or caused by, its death.<sup>1</sup> This can occur spontaneously as a miscarriage, or be artificially induced through chemical, surgical or other means. Commonly, "abortion" refers to an induced procedure at any point in the pregnancy; medically, it is defined as a miscarriage or induced termination before twenty weeks gestation, which is considered nonviable.

Abortion has always been a controversial issue since ancient times. In the past, abortion was considered as a taboo in India. In modern times, the famous propagator of non-violence, Mahatma Gandhi quoted, it seems to me clear as daylight that abortion would be a crime. But with changing times, the ideology of people has become more liberal and subsequently many laws have developed, legalising abortion in India.

---

<sup>1</sup> The Wikipedia Dictionary

**ABORTION AS HUMAN RIGHT:-**

Throughout history, induced abortions have been a source of considerable debate and controversy. An individual's personal stance on the complex ethical, moral, and legal issues has a strong relationship with the given individual's value system. A person's position on abortion may be described as a combination of their personal beliefs on the morality of induced abortion and the ethical limit of the government's legitimate authority.<sup>2</sup>

It is a woman's individual rights, right to her life, to her liberty, and to the pursuit of her happiness, that sanctions her right to have an abortion. A woman's reproductive and sexual health and shape her reproductive choices. Reproductive rights are internationally recognized as critical both to advancing women's human rights and to promoting development. In recent years, governments from all over the world have acknowledged and pledged to advance reproductive rights to an unprecedented degree. Formal laws and policies are crucial indicators of government commitment to promoting reproductive rights. Each and every woman has an absolute right to have control over her body, most often known as bodily rights.

**WOMAN'S RIGHT TO ABORTION: -**

The Supreme Court in the landmark case of *Suchita Srivastava*<sup>3</sup> held that Article 21 of the Indian Constitution which guarantees right to life and personal liberty has a broader dimension which extends to liberty of a woman to make reproductive choices. These rights are the components of the woman's right to privacy, personal liberty, dignity and bodily integrity as enshrined by Article 21.

In the recent judgement of the Supreme Court by a nine-judge bench in *Justice K. S. Puttaswamy* case<sup>4</sup>, which unanimously affirmed right to privacy as a fundamental right under the Constitution, reiterated *Suchita Srivastava*'s case and held that the woman's right to abortion falls within the purview of right to privacy and hence all her reproductive rights should be ensured by the state. Thus, it has been established by the courts that the woman's right to abortion is a fundamental right.

**A WOMAN HAS RIGHT TO ABORTION IF:-**

- i) The continuance of the pregnancy would involve risk to the life of the pregnant woman greater than if the pregnancy were terminated
- ii) The termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman
- iii) The continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman

---

<sup>2</sup> Preamble of Universal Declaration of Human Rights, 1948

<sup>3</sup> *Suchita Srivastava & Another v. Chandigarh Administration* (2009) 11 S.C.C. 409

<sup>4</sup> *Justice K. S. Puttaswamy (Retd.) & Anrs. v. Union of India and Ors.*, (2017) 10 S.C.C. 1

---

- iv) The continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, or injury to the physical or mental health of any existing child of the family of the pregnant woman
- v) There is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.
- vi) Or in emergency, certified by the operating practitioner as immediately necessary to save the life of the pregnant woman or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

**RIGHT OF THE UNBORN CHILD:-**

Article 21 of the Indian Constitution guarantees Right to life only to a person. Now the main question which arises is whether the unborn child is considered as a person or not. Now, the child's status in the mother's womb is of foetus until birth. Section 2(bc) of the PCPNDT Act<sup>5</sup> has defined the term foetus as a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding anytime in which its development has been suspended) and ending at the birth . The definition does not include the word person.

**MEDICAL TERMINATION OF PREGNANCY LAWS FROM 1971:-**

- i) The latest amendment to the MTP Act<sup>6</sup> was made in 2021. Before that new rules were introduced in 2003 to allow the use of then newly discovered abortion medicine misoprostol, to medically terminate a pregnancy up to seven weeks into it.
- ii) Under the Medical Termination of Pregnancy (Amendment) Act, 2021, abortion is permitted after medical opinion under stipulated circumstances.
- iii) The 2021 Act increased the upper limit of the gestation period to which a woman can seek a medical abortion to 24 weeks from 20 weeks permitted in the 1971 Act. This renewed upper limit can only be exercised in specific cases.
- iv) MTP could now be accessed on the opinion of a single registered medical practitioner up to 20 Weeks of the gestational age.

**WEEKS OF THE GESTATIONAL AGE.**

- a) From 20 weeks up to 24 weeks, the opinion of two registered medical practitioners is required.
- b) In the previous version of the Act, the opinion of one registered doctor was required to access a medical abortion up to 12 weeks of pregnancy, while two doctors were required to endorse the abortion up to 20 weeks.

---

<sup>5</sup> The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

<sup>6</sup> Bare Act "The National Medical Commission Act, 2019" Asia Law House

- c) Besides, if the pregnancy has to be terminated beyond the 24-week gestational age, it can only be done on the grounds of foetal abnormalities if a four-member Medical Board, as set up in each State under the Act, gives permission to do so
- d) The law, notwithstanding any of the above conditions, also provides that where it is immediately necessary to save the life of the pregnant woman, abortion can be carried out at any time by a single registered medical practitioner.
- v) Under the 2021 Act, Unmarried women can also access abortion under the above-mentioned conditions, because it does not mention the requirement of spousal consent. If the woman is a minor, however, the consent of a guardian is required.

### **CONSTITUTIONALITY OF THE MEDICAL TERMINATION OF PREGNANCY ACT:**

The constitutionality of the MTP Act has been challenged regularly on various grounds. In a pending case before the supreme court - Swati Agarwal & Ors. v. Union of India<sup>7</sup>, The Petitioners filed a PIL challenging the validity of Section 3(2), 3(4) and 5 of the MTP Act as violative of Article 14 and 21 of the Indian Constitution. Section 3(2), 3(4) (a) and section 5 was challenged as violative of Article 21. The petitioners argue that section 3(2) curtails the personal liberty and privacy of the mother and also fails the test of reasonability and proportionality as it is impossible to detect the harm that may be caused to mental and physical health of the woman or the abnormalities to the foetus within 20 weeks of pregnancy, especially considering the lack of robust health infrastructure in many areas of the country.

Section 3(4) (a) was challenged as it gives the guardian complete control over the woman's reproductive choice. Section 5 is considered arbitrary and disproportional under Article 21 on the grounds that termination of pregnancy can't be denied on the grounds that it has completed the gestation period of 20 weeks. The explanation to Section 3(2) (b) is discriminatory for unmarried or single women as it focuses only on married woman, thus treating equals unequally. The petitioners also contend that with the advent of science and technology, foetal abnormalities can be diagnosed at later stages and hence pregnancy can be terminated safely then too.

### **ABORTION UNDER INDIAN PENAL CODE, 1860:**

Sections 312 to 316 of the IPC 1860 have made induced abortions a criminal offence, except in cases to save the life of the mother. It has used the expression causing miscarriage to refer to abortion. Thus, according to these sections any person voluntarily causing miscarriage will be penalized by imprisonment for three years and/or payment of fine. The punishment may even extend to a period of seven years coupled with payment of fine in cases where the woman was quick with the child (foetus's motion is felt by mother)<sup>8</sup>

---

<sup>7</sup> Swati Agarwal and ors (01-07-2019) W.P. (C) 825/2019 Supreme Court.

<sup>8</sup> Indian Penal Code, 1860 (45 of 1860)

### **THE INDIAN PERSPECTIVE:**

Indian law allows abortion, if the continuance of pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health. The passing of the Act made medical termination of pregnancy legal, with certain conditions for safeguarding the health of the mother. Abortion is severely condemned in Vedic, Upanishadic, the later puranic (old) and smriti literature. Paragraph 3 of the Code of Ethics of the Medical Council of India says: I will maintain the utmost respect for human life from the time of conception.<sup>9</sup>

The Supreme Court has said that the right to privacy is implicit in Article 21 of the Constitution and a right to abortion can be read from this right.

The Medical Termination of Pregnancy Bill was passed by both the Houses of the Parliament and received the assent of the President of India on 10th August, 1971. It came on the Statute Book as the "The MTP Act, 1971". This law guarantees the Right of Women in India to terminate an unintended pregnancy by a registered medical practitioner in a hospital established or maintained by the Government or a place being approved for the purpose of this Act by the Government. Not all pregnancies could be terminated.<sup>10</sup>

### **JUDICIAL INTERVENTIONS IN CASES OF ABORTIONS:**

#### **1) D. Rajeswari vs. State Of Tamil Nadu and Others<sup>11</sup>**

The case, is of an unmarried girl of 18 years who is praying for issue of a direction to terminate the pregnancy of the child in her womb, on the ground that bearing the unwanted pregnancy of the child of three months made her to become mentally ill and the continuance of pregnancy has caused great anguish in her mind, which would result in a grave injury to her mental health, since the pregnancy was caused by rape. The Court granted the permission to terminate the pregnancy.

#### **2) Dr. Nisha Malviya and Anr. Vs. State of M.P.<sup>12</sup>**

The accused had committed rape on minor girl aged about 12 years and made her pregnant. The allegations are that two other co-accused took this girl, and they terminated her pregnancy. So the charge on them is firstly causing miscarriage without consent of girl. The Court held all the three accused guilty of termination of pregnancy which was not consented by the mother or the girl.

#### **3) Murari Mohan Koley vs. The State And Another<sup>13</sup>**

---

<sup>9</sup> Dr.K.S.Narayan Reddy "Medicolegal Manual" 6<sup>th</sup> Edn. ALT Publications.

<sup>10</sup> Mary Donnelly "Healthcare Decision-Making and Law 1st Edn. Cambridge University Press.

<sup>11</sup> (1996 CriLJ 3795)

<sup>12</sup> (2000 CriLJ 671)

In this case, a woman wanted to have abortion on the ground that she has a 6 months old daughter. She approached the petitioner for an abortion. And the petitioner agreed to it for a consideration. But somehow the condition of the woman worsened in the hospital and she was shifted to another hospital. But it resulted in her death. The abortion was not done. The petitioner who was a registered medical practitioner had to establish that his action was done in good faith (includes omission as well) so that he can get exemption from any criminal liability under section 3 of the MTP Act, 1971.

#### **4) Shri Bhagwan Katariya and Others vs. State of M.P<sup>14</sup>**

**Abortion without mothers consent.** The woman was married to Navneet. Applicants are younger brothers of said Navneet while Bhagwan Katariya was the father of said Navneet. After the complainant conceived pregnancy, the husband and the other family members took an exception to it, took her for abortion and without her consent got the abortion done.

The Court opined that if we refer Section 3 of the Medical Termination of Pregnancy Act, 1971, a doctor is entitled to terminate the pregnancy under particular circumstances and if the pregnancy was terminated in accordance with the provisions of law, it must be presumed that without the consent of the woman it could not be done. Present is a case where a permanent scar has been carved on the heart and soul of the woman by depriving her of her child. And the Doctor will be liable.

Thus, the case laws show that a woman has an absolute right to abortion and no one can take away this right from her. The Judiciary has been playing a vital role in securing these rights to women. Right to abortion is a fundamental right of privacy.

#### **CONCLUSION:**

The great Tamil Saint Thiruvalluvar said:- "The touch of children is the delight of the body; the delight of the ear is the hearing of their speech". A mother has got a natural duty to provide the maximum best possible to her offspring. However, situations may arise where she indulges in activities, which injuriously affect the foetus. It may be due to ignorance, carelessness or acts done wilfully. Abortion is an issue to be left to the decision of the mother. However, taking viability of a legal standard, necessary protection should be provided to the unborn. It is also beneficial to the mother, where the state or voluntary organizations are ready to take care of the unborn. There is no meaning in conferring a right to the mother to destroy the foetus. Her right is limited to have a termination of pregnancy. It is also said that delivering 20 million babies annually would be a greater strain on the nations medical services and economic resources than, say, performing one to five million abortions a year.<sup>15</sup>

---

<sup>13</sup> (2004) 3 CALLT 609 HC)

<sup>14</sup> (2001 (4) MPHT 20 CG)

<sup>15</sup> K.Kannan "A textbook of Medical Jurisprudence and Toxicology 24<sup>th</sup> Edn. 2022, Lexis Nexis

---

## *Abortion Laws and its Constitutional Validity in India*

---

Termination of pregnancy without reasonable reason is affect the reputation of woman and her family and where there is need to abort the child the law will be definitely help to the woman and families, according to various judicial interventions it is cleared that whether constitutional rights is to unborn but it will be in the interest of future of that unborn, unborn don't know future consequences and as a part of social responsibility it is duty of everyone to make awareness about in what circumstances the pregnancy can be terminated.



---

# LGBTG FACET OF HUMAN RIGHTS, BUT CAST A DARK CLOUD OF DESOLATION ON THEIR DIURNAL SUBSISTS

**Dr. Tejaswini Malegaonkar**

Assistant Professor

ILS Law College, Pune; tejaswini.malegaonkar@ilslaw.in

---

## ABSTRACT

Modern humans have come a long way from their neanderthal ancestors. Different laws and regulations were created with the sole aim of safeguarding our rights and liberties to live in the societies of our creation. At some point that's hard to fully specify, different forms of discrimination wriggled their way into the fabric of society and started gnawing at it resulting in the creation of a divide between different sections. Regardless of all that we have achieved and our progress, we as humanity have failed in curbing widely-prevalent unfortunate social evils such as stereotyping, gender discrimination, and oppression.

The Universal Declaration of Human Rights states that by virtue of being human beings, we are all entitled to different rights and freedoms irrespective of our race, political opinions, gender, birth, social status, sex, and other demographical factors. Unfortunately, there still exist some glaring inconsistencies in the application of doctrines about the above-mentioned rights. One such section of our global society that is severely marginalized is the LGBTQ community. They are not only denied some basic rights all humans should enjoy but are also discriminated against.

The blatant marginalization of communities due to appalling homophobia and other misguided beliefs about those belonging to the LGBTQ community has cast a dark cloud of despair on their daily lives and functioning. They not only live in fear of alienation from society but also of harassment and prosecution. They are also stigmatized and live with the unfair shame of rejection as well.

Even though there is growing awareness about the previous misconceptions about human sexuality being fixed, the modern world has a long way to go before equilibrium is said to have been established in our society. From the everyday attacks and underreporting of incidents about crimes against the LGBTQ community to the increasing trends in violence against them, the global scenario for them is disheartening.

This paper analyses different laws and doctrines associated with the rights of the LBTQ community.

**Keywords** – *Human Rights, Stigmatized and Marginalization*

---

## **INTRODUCTION**

Law has been an important aspect of societies since the beginning of civilization. It plays a crucial role in the lives of individuals across the globe regardless of their awareness of it. It plays an even bigger role for those identifying themselves as the LGBT community. Law is not only a means for obtaining justice but is needed for maintaining equality and freedom in society as well. All humans deserve to be treated with dignity and equality. This is a basic principle of law. Anything that violates this principle of the law becomes the stepping stone for discrimination in different forms. Unfortunately for those belonging to the LGBT community, the role played by law is rather paradoxical. In the sense that it's also used as a tool for obtaining arbitrary control and even oppression. However, it would be unfair to believe that law is not a means for liberation and resistance as well.

Unfortunately for those belonging to the LGBT community, their gender identity, gender expression and sexual orientation itself become a basis for discrimination and violence because it differs from the generally accepted standards and perceptions of gender and sexuality in society. In such situations, any discrimination or violence against them is a clear violation of their basic human rights. The only means to improve the overall quality of life along with a representation of this community is by not just implementing but safeguarding their human rights too. Therefore, it is a legal obligation of the state along with the entirety of society to ensure that individuals of the LGBT community are treated just like any other human beings in all facets of life. Any violation of this right of equality is a violation of human rights. The burning issue right now is to address discrimination against them and safeguard their rights.

## **SHEDDING LIGHT ON A PATHETIC SITUATION**

The inalienable and indivisible rights bestowed upon all humans by virtue of their birth are known as human rights. The Universal Declaration of Human Rights (UDHR)<sup>1</sup> not only grants some basic rights to all human beings but also stresses on the fact that these rights cannot be taken away by anyone or anything. Some human rights that we are all entitled to include the right to equality, freedom from discrimination in any form, right to life personal security and liberty, the freedom from torture or degrading treatment, right to equality before the law, right to marry or have a family, and the right to be recognised as an individual in the eyes of law. Even though these laws are universal and inalienable, those belonging to the LGBT community are usually marginalised. Their inherent claim to these rights is denied in most instances. This increases not just the risk of discrimination and abuse but reduces their overall quality of life and health and can even result in death in some extreme instances. Ultimately, it results in violation of basic and natural human rights that most in society take for granted.

A denial of recognising these rights of the LGBT community paints a sad state of affairs for humanity in general. The denial of human rights for the LGBT community usually results in unfair discrimination in all aspects of their life ranging from housing and security to health. As per studies, this has become a

---

<sup>1</sup> (Universal Declaration of Human Rights (UDHR), G.A. Res. 217A (III), UN GAOR, Res. 71, UN Doc. A/810 (1948).

source of excessive isolation for the members of this community and has made them the recipients of stress, physical abuse, injury, threats, torture, and even death<sup>2</sup>.

The year 2009 proved to be a step in the right direction for the LGBT community. The landmark judgement was passed by the Delhi High Court in *NAZ Foundation v. Government of N.C.T. Delhi*<sup>3</sup>. The Hon'ble Delhi High Court declared Section 377 of the Indian Penal Code (IPC) that criminalizes homosexuality in India to be unconstitutional. The Court also observed that the above-mentioned section was in direct violation of the fundamental rights granted by the Constitution of India in its Articles 14, 15, and 21. The Court went on to even state that consensual sexual activity between any two homosexuals above the consenting age of 18 is not a criminal offence.

The NAZ Foundation case is a much-needed emphasis on the vision that India's founding fathers had i.e. to build a Republic that is inclusive and tolerant. The positive decision also went on to become a reminder that the Indian Constitution is a living and powerful document that is vibrant and wide enough to be alterably translated to include all new circumstances. The respondents in the case argued section 377 of the IPC was based on traditional judo-Christian morals and ethical standards and was used as a tool to legitimize discrimination against sexual minorities such as the LGBT community. The respondents further contended this section was detrimental to the lives and health of such individuals because it directly hampered the lives of the severely marginalised community and became a weapon for police abuse.

It was also argued by the Respondents that Section 377 of the IPC which criminalises consensual activities between two adults of the same sex and heterosexual penile non-vaginal sexual intercourse between consulting adults is in violation of Articles 14, 15, and 21 of the Constitution. The petitioners in relation to the first issue argued Section 377 on the face of it does not mention or classify any specific group or gender and therefore, it is not a violation of the Constitution. This argument was accepted by the Court, and it was held Section 377 is not violative of Articles 14, 15 and 21 and carnal intercourse as intended and defined by the Petitioners would mean an unnatural lust that must be punished. Justice Sanghvi also mentioned that Section 377 is pre-constitutional legislation and if it were violative of the rights guaranteed under the Constitution, the Parliament would have taken note of it and repealed it a long time ago. Upon this reasoning, he declared the section to be constitutionally valid.

---

<sup>2</sup>Aidala A, Cross JE, Staff R, Harre D, Sumartojo E. Housing Status and HIV Risk Behaviors: Implications for Prevention and Policy. *AIDS Behavior*. 2005;9(3):251–65. Whitbeck LB, Chen X, Hoyt DR, Tyler KA, Johnson KD. Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents. *Journal of Sex Research*. 2004;41(4):329–42., Diaz RM, Ayala G, Bein E, Henne J, Marin BV. The Impact of Homophobia, Poverty, and Racism on the Mental Health of Gay and Bisexual Latino Men: Findings from 3 US Cities. *American Journal of Public Health*. 2001;91(6):141–6., Gruskin EP, Hart S, Gordon N, Ackerson L. Patterns of Cigarette Smoking and Alcohol Use Among Lesbians and Bisexual Women Enrolled in a Large Health Maintenance Organization. *American Journal of Public Health*. 2001;91(6):163–6.

<sup>3</sup> 2010 criilj 94.

Justice Sanghvi also mentioned that the doctrine of severability and the practice of reading a particular section flows from presuming its constitutionality and in the said case, the Delhi High Court's decision to read down this section was wrong because no part of the section can be severed without it affecting the entire section. Unfortunately, this is also the only legal provision responsible for governing cases of paedophilia and child sexual abuse and assault. The Supreme Court held section 377 of IPC does not suffer from any constitutional infirmity and left this matter up to the competent legislature to decide its desirability and legitimacy if the section was to be deleted from the statute book or if some alterations must be made to permit sexual activity between consenting adults of the same sex but on private.

The right to life and personal liberty and its protection are guaranteed by Article 21. Under the privacy and dignity claim included in Article 21 that is the right to personal liberty private consensual sexual relations are protected. The High Court while considering this issue of Article 21 detailed a broader extent of the right to life and liberty that also incorporates the right to protection of one's autonomy, dignity and privacy. The division bench referred to different judgments identifying sexuality as a part of an individual personality and the worldwide patterns in assuring the security and nobility of homosexuals.

In this case, the court also went on to explain the intention of the founding fathers about regulating article 21 and stated, “*Thus expanded and read for interpretative purposes, Article 21 clearly brings out the implication, that the Founding Fathers recognized the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by law.*” In this matter, Suresh Kumar Koushal and another v NAZ Foundation and Others<sup>4</sup> went on to appeal to the Supreme Court of India. The Supreme Court struck down the decision given by the Delhi High Court in this case. The constitutionality of IPC's Section 377 criminalises any sexual activity other than heterosexual penile and vaginal intercourse.

Throughout the world, the human rights of lesbian, bisexual, transgender, and intersex people (LGBTI) have been in sharper focus with important steps being taken by different countries in recent years including the adoption of new legal protections. The preamble of the Indian Constitution itself mandates that justice is available to all in all senses. Articles 14 and 21 of the Constitution grant right to equality before the law and equal protection under the law respectively. The Supreme Court of India in 2014 ruled in *NALSA v. Union of India AIR 2013 SC 1863* that rights, as well as freedoms of transgender individuals in India, were protected under the Constitution. The Court had an important decision to make about whether individuals who don't prescribe to the gender binary of male and female should be legally recognised as third-gender individuals or not. The Court deliberated and gave considerable thought to whether ignoring the non-binary gender identities breaches fundamental rights guaranteed by the constitution. The Court also referred to an “Expert Committee on Issues Relating to Transgender,” which was constituted by the Ministry of Social Justice and Empowerment to come to its decision.

---

<sup>4</sup> AIR 1978 SC 597

This decision given by the Apex Court is considered to be a landmark one because it legally recognised transgender persons or those belonging to the third gender for the first time. It also discussed gender identity quite comprehensively. It recognises that those identifying themselves as third-gender individuals are also entitled to all the fundamental rights guaranteed by the Constitution. It also directed the state governments to develop the needed mechanisms for the realization of the rights of such individuals<sup>5</sup>. It held that the right of all individuals to self-identify their gender and declared that eunuchs and hijras can be legally identified as the third gender. It further clarified that gender identity is not restricted to biological characteristics and instead is an innate perception of one's own gender. Therefore, it held that no third-gender individuals should be subjected to any biological test or examination that invades their inherent right to privacy. The term dignity as mentioned under Article 21 of the Constitution was interpreted by the Court to include diversity in self-expression that allows an individual to lead their life with dignity<sup>6</sup>.

The Court also went on to rightly note that the right to equality (Article 14 of the Indian Constitution) and freedom of expression (Article 19(1)(a) of the Indian Constitution) were included in gender-neutral terms — all persons. So, these same rights also encompass those identifying as transgender. It drew attention to the simple fact that such individuals were subjected to unfair discrimination in all spheres of society which is an abject violation of their right to equality. It also included that the scope of freedom of expression enshrined in the Constitution is broad enough to include the right to express one's gender via their behaviour, words, actions, and even clothing.

Explicit prohibition of discrimination on the basis of sex is included under Articles 15 and 16. In this regard, sex not only refers to biological attributes but includes gender as well. The Court, therefore, held any discrimination on the ground of sex is direct discrimination against an individual based on their gender identity<sup>7</sup>. Therefore, it was held by the Court that individuals are all entitled to fundamental rights guaranteed by Articles 14, 15, 16, 19, and 21 of the Constitution. Adult consensual same-sex relationships were decriminalised by the Supreme Court in 2018<sup>8</sup> while reviewing the judgement about section 377. These judgments are considered to be historical wins in perspective of the expansive reading of rights guaranteed by the Constitution and the empowerment of the LGBT community. These judgments became of significant importance for the movement of LGBT rights because they not only reversed a relic of British imperial rule but ordered that all rights and protections accorded by the Constitution are applicable to the LGBT Indians as well. Though it is a welcome victory, it does not necessarily mean those belonging to this community in India are fully free or even considered to be equal by their fellow citizens.

---

<sup>5</sup> National Legal Services Authority (NALSA) Vs. Union of India AIR 2014 SC 1863

<sup>6</sup> Article 21 reads as: "No person shall be deprived of his life or personal liberty except according to a procedure established by law."

<sup>7</sup> <https://translaw.clpr.org.in/case-law/nalsa-third-gender-identity/>

<sup>8</sup> Navtej Singh Johar v. Union of India

---

As harsh as it sounds, the LGBT community is not only a vulnerable minority but a rather unpopular one. For them, domestic and international law is an indispensable tool and at times, the only one available to claim the space they deserve in this world. Almost 20 years ago, the United Nations Human Rights Committee concluded the right to privacy for consenting adults to engage in same-sex practices in international law. When the Immorality Act was repealed by the South African courts in 1998, it was another move in the right direction for this community. The sodomy laws prevalent in the United States were declared unconstitutional in 2003. All these judgments and decisions seem like a step in the right direction. Unfortunately, over 70 countries across the world still maintain their discriminatory legal framework against the LGBT community. For instance, the sodomy laws prevalent in the British Empire were exported to the rest of the world and their colonies. The same unfortunate laws are in existence even today. These laws bring with them the threat of arrest and prosecution. Therefore, they have a rather profound implication for the LGBT community.

Most of the above-mentioned unfair laws are in place and are routinely used for blackmail and extortion in different countries. They continue to perpetuate a climate of prejudice and extreme hostility and violence without any impunity. While talking about these laws one aspect that is seldom discussed is their psychological impact. Different laws use archaic language such as the one included in Jamaican law that states homosexual acts as “the abominable crime of buggery.” Such unfortunate language casts a shadow over an individual’s desire and prevents them from one of the most personal forms of human expression — intimacy. A similar archaic language was a part of the Indian legislature before laws about homosexuality and sodomy were overturned by the Indian courts. The harmful psychological effect of such laws on the human psyche, especially for the marginalised LGBT community cannot and should not be overlooked.

An important thing to be understood is that any law about homosexuality is not just restricted to homosexuality itself. Homophobia is nothing but a ruse and is often used as an instrument for political repression. Any law that bans propagation, promotion, and support is given to the LGBT communities threatens their fundamental expression of freedom and association. It is important to understand that criminalising sexual practices between consenting adults is repression of one's identity and a direct attack on all their fundamental rights.

### **SAFEGUARDING LGBT RIGHTS**

The need of the hour right now is to safeguard the rights of all those belonging to the LGBT community. Even though it is no longer viewed as a minority it is still treated like one in most instances. The good news is that there is steadily growing awareness about sexual orientation across the world. Society can no longer turn a blind eye to them because demanding equality is an inherent right that everyone is entitled to. The marginalization of this community can no longer be justified by avoidance or ignorance. All human beings deserve equality and safeguarding such rights is essential.



Immediate steps must be taken to protect the interests of the LGBT community from hate crimes, discrimination, violence, and any other immediate risk of harm they are commonly exposed to. Different governments, political organisations, activists and international bodies must come together to achieve this objective and work as a cohesive unit. Unless a unanimous stand is taken by all of us, this community will not be inclusive.

All laws criminalising same-sex relationships and any other laws about gender identity must be challenged across the globe to protect these individuals from violence. There is also a need to actively discourage attempts made by political organisations to introduce new legislations and frameworks that criminalize such relations. States and countries need to work together at international, national and local levels to decriminalise homosexuality. Encouraging debate about free speech around decriminalization by calling upon different segments of the civil society including human rights is needed. Government should also consciously work to support ongoing efforts to provide the needed legal and other assistance to those whose rights are undermined by the prevalent laws right now.

It is time to actively encourage and support LGBT activism. Enforcement of these rights becomes realistic once all national and international organisations come together. The impunity for violent acts along with hate crimes against these individuals and communities should be addressed immediately. This means, constant monitoring is needed and corrective action must be taken regarding the rising instances and patterns of hate crimes committed against them.

When it comes to combating homophobia and transphobia, a shared responsibility exists to ensure the LGBT community receives its fair share of equality. Nations must repeal laws criminalising homosexuality. They must also remove any severe penalties for offences associated with gender expression and sexual orientation and relationships. Similarly, frameworks and mechanisms must be created that penalize those engaging in any attack on the LGBT community in any way that restricts their human rights. It is not just about enacting comprehensive anti-discriminatory laws, but a more comprehensive legal framework needs to be created devoid of vague legal language. This is a responsibility that falls upon all citizens, organisations, and governments alike to propagate an idea for a truly fair and just society that rests on human rights instead of irrelevant political ambitions.

## **CONCLUSION**

Discrimination based on race, ethnicity, religion, or gender is as undesirable as discrimination based on sexual orientation. Freedom from this discrimination is a fundamental right bestowed on all human beings.

The basic rights all human beings deserve are human rights and safeguarding them must be a priority regardless of the prevalent perceptions in society. Safeguarding these rights is not just restricted to protecting their interests. It also includes speaking up and taking a firm stand for them and acting immediately to ensure this unreasonably marginalised community is more visible. It is about

---

understanding the different challenges they deal with daily and becoming aware that their human rights violations must be tackled. The simplest way to tackle and rectify this unfortunate situation is to start codifying policies and implementing laws at national and international levels to recognise their rights and help overcome the prejudice they face. It's important to remember that even those belonging to the LGBT community are human beings and therefore, are worthy of being treated like any other human. The world has come a long way, but it has an even longer way to go before equality prevails in all senses of this word.



# **COMPARATIVE ANALYSIS OF SURROGACY LAWS IN INDIA AND THE THIRD WORLD COUNTRIES**

**Viral Dave**

In Charge Principal

KES' Shri. J.H. Patel Law College

---

## **ABSTRACT**

The term third world was coined by French historian Alfred Sauvy in 1952. It is a part of three world label systems and was generally used to describe the political alliances of a particular country. These countries were countries that remained neutral and did not ally by either first or second world countries. However, after fall of Soviet Union these countries lost their political roots and were referred to those countries which were economically poor, non-industrialized or newly industrialized. Generally, these countries are characterized by economic, social, political and environmental issues, including high poverty rates, economic instability and lack of human resources compare to the rest of the world.

The term surrogacy originates from the Latin word “Surrogatus” means “substitution” or to act in place of. In other words, surrogacy is a process where a woman carries a pregnancy and gives birth to a child of another woman. It is a process of assisted reproduction. According to Warnock Report on Human Fertilization and embryology of 1984, surrogacy is the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth to intended parents.

Increasing rates of infertility, easy availability of surrogates due to economic needs, highly qualified doctors, cheap labour, development of infra structure by the government to boost medial tourism and no legislative control for the same, surrogacy had become a booming business in India prior to the current legislation banning commercial surrogacy in December 2021.

The general conception has been that it is due to poverty that the surrogates agree to carry the child for another and thus surrogacy is in vogue in the third world countries including India. Through the present research paper, the researcher is going to focus on comparing the laws governing surrogacy in various third world countries and that in India and find out whether all the third world permit surrogacy because they are in need of financial resources especially foreign exchange or there are countries in the third

---

world that ban surrogacy. The researcher is going to make the comparison on various parameters which includes classification of the countries in to three categories that is whether the country has existing legal framework regulating surrogacy or not and if such regulatory framework is available whether commercial surrogacy is permitted by such legal framework or not. Further the researcher aims to analyze the legal framework of these countries as regards protection of reproductive rights of the parents, the protection of the rights of the child born out of surrogacy agreement. The researcher also aims to study whether the laws in these countries allow foreign couples and non -traditional families including Gay couples and single parent to use surrogacy services.

**Key words** – *Surrogacy, Third world countries, Reproductive Right*

## **INTRODUCTION**

The term third world was coined by French historian Alfred Sauvy in 1952. It is a part of three world label systems and was generally used to describe the political alliances of a particular country. These countries were countries that remained neutral and did not ally by either first or second world countries. However, after fall of Soviet Union these countries lost their political roots and were referred to those countries which were economically poor, non-industrialized or newly industrialized. Generally, these countries are characterized by economic, social, political and environmental issues, including high poverty rates, economic instability and lack of human resources compare to the rest of the world<sup>1</sup>.

The term surrogacy originates from the Latin word “Surrogatus” means “substitution” or to act in place of. In other words, surrogacy is a process where a woman carries a pregnancy and gives birth to a child of another woman. It is a process of assisted reproduction. According to Warnock Report on Human Fertilization and embryology of 1984, surrogacy is the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth to intended parents<sup>2</sup>.

Increasing rates of infertility, easy availability of surrogates due to economic needs, highly qualified doctors, cheap labour, development of infra structure by the government to boost medial tourism and no legislative control for the same, surrogacy had become a booming business in India prior to the current legislation banning commercial surrogacy in December 2021.

## **RESEARCH OBJECTIVES**

The general conception has been that it is due to poverty that the surrogates agree to carry the child for another and thus surrogacy is in vogue in the third world countries including India. Through the present research paper, the researcher is going to focus on comparing the laws governing surrogacy in various third world countries and that in India and find out whether all the third world permit surrogacy because they are in need of financial resources especially foreign exchange or there are countries in the third world that ban surrogacy. The researcher is going to make the comparison on various parameters which includes classification of the countries in to three categories that is whether the country has existing legal framework regulating surrogacy or not and if such regulatory framework is available whether commercial surrogacy is permitted by such legal framework or not. Further the researcher aims to analyze the legal framework of these countries as regards protection of reproductive rights of the parents, the protection of the rights of the child born out of surrogacy agreement. The researcher also aims to study whether the laws in these countries allow foreign couples and non -traditional families including Gay couples and single parent to use surrogacy services.

---

<sup>1</sup> <https://worldpopulationreview.com/country-rankings/third-world-countries>, accessed on 13<sup>th</sup> January 2022, 20.00 pm IST

<sup>2</sup> R.S. Sharma, Social, ethical, Medical and Legal Aspects of surrogacy: An Indian scenario, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4345743/>, accessed on 20-8-21 at 18:20.

---

## **RESEARCH METHODOLOGY**

The Current research paper is an analytical-doctrinal research paper wherein the researcher has used available secondary data for collecting information on the laws governing surrogacy and Artificial Reproductive Technology in five third world countries that is India, Nepal, Indonesia, Colombia and Cambodia. The researcher will be further using comparative analysis to compare the laws of these countries in contrast to the laws in India.

## **HYPOTHESIS**

Since poverty rates are high in third world countries, they all permit use of commercial surrogacy for their own citizens as well as for citizens of foreign countries.

## **COMPARATIVE ANALYSIS OF SURROGACY LAWS – COUNTRY WISE DISCUSSION**

### **India**

Till 2015 India permitted all sorts of Artificial Reproductive Technology, including surrogacy for everyone including foreign couples. However, after the famous Baby Manji Yamada Case<sup>3</sup> wherein the couple got separated after employing an Indian Surrogate to beget a child for them. After the birth of the child a legal battle followed and ultimately the Supreme Court in India gave custody to the grandmother of the child. The same was followed by Jan Balaz<sup>4</sup> case wherein a German Couple had to face legal battle to get citizenship for their children born in India through surrogacy. The Indian government there after took a decision and prohibited foreign couples from utilizing surrogacy services in India. The Law Commission of India in its 228<sup>th</sup> Report<sup>5</sup> showed concern over commercial surrogacy as a growing industry in India whereby poor woman entered into surrogacy contracts due to economic pressure and were lured into becoming surrogate without having any safety measures in their favor. The report also recommended that the Government of India should come out with an explicit legislation and prohibit commercial surrogacy in India. Till then Indian fertility clinic were being governed by the Indian Council of Medical Research National Guidelines for Accreditation, Supervision and Regulation of Art Clinics in India 2005, which were only regulatory in nature and lacked legal backing. The Government of India there after tired and introduced various Bill for legally regulating use of Artificial Reproductive Technology in India but none of the Bills turned in to a legislation. Finally in 2016 the Surrogacy (Regulation) Bill 2016 was introduced in Loksabha. The Bill was passed there and was circulated in Rajyasabha which referred the Bill to Select Committee. The select committee has forwarded its report and the Bill was reintroduced as Surrogacy (Regulation) Bill 2021. The Bill received the assent of the

---

<sup>3</sup> (2008) 13 SCC 518

<sup>4</sup> AIR 2010 Guj 21

<sup>5</sup> Taken from official page of Law Commission of India, available at: <https://lawcommissionofindia.nic.in/main.htm#a1>, accessed on 20<sup>th</sup> December 2021 at 12:51 PM IST

president on 25<sup>th</sup> December 2021 and has been passed as a Law. Following are the key features of the said Surrogacy (Regulation) Act 2021<sup>6</sup>:

The objective of the Act is to constitute National Assisted Reproductive Technology and surrogacy Board, State Assisted Reproductive Technology and surrogacy Board and appointment of appropriate authorities for the regulation of the practice and process of surrogacy and for matters connected therewith or incidental thereto.

The Act defines Altruistic surrogacy as surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage on the surrogate mother, are given to the surrogate mother or her dependents or her representatives<sup>7</sup>.

Commercial surrogacy has been defined as commercialization of surrogacy services or procedure or its component services or component procedures including selling, or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind to the surrogate mother or her dependents or her representatives except the medical expenses and such other prescribed expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother<sup>8</sup>.

The Act defines surrogacy as a practice whereby one woman bears and gives birth to a child for an intending couple with an intention of handing over such child to the intending couple after the birth<sup>9</sup>.

The Act requires that in order to carry out surrogacy a clinic first has to register itself according to the provisions provided under the Act. And that no such clinic shall carry out surrogacy in a commercial manner<sup>10</sup>.

The intending couple or intending woman who aim to opt for surrogacy have to apply to the Board and obtain a certificate of recommendation form the Board. Further such couples can only opt for altruistic gestational surrogacy<sup>11</sup>. A surrogacy clinic shall not carry on any procedure pertaining to surrogacy unless the director in charge of the clinic is satisfied that the intending couple or intending woman as the case may be have obtained the certificate of essentiality issued by appropriate authority. Such certificate of essentiality is to be issued by the District Medical Board certifying a medical indication necessitating gestational surrogacy and an order from magistrate first class concerning the parentage and the custody of

---

<sup>6</sup> The Surrogacy (Regulation) Act 2021, Available at: <https://egazette.nic.in/WriteReadData/2021/232118.pdf>, accessed on 18<sup>th</sup> January 2022 at 17:02 pm IST

<sup>7</sup> Ibid, section 2(b)

<sup>8</sup> Ibid, section 2(g)

<sup>9</sup> Ibid, section 2(zd)

<sup>10</sup> Ibid, section 3

<sup>11</sup> Ibid, section 4 (ii)(a) and (b)

the child to be born through such surrogacy<sup>12</sup>. The intending couple also has to obtain a certificate of eligibility from appropriate authority by satisfying following conditions<sup>13</sup>.

- The couple should be married and between 23 to 50 years of age in case of female and between 26 to 55 years of age in case of male.
- The intending couple should not have a surviving biological or adopted child or a child through surrogacy. (Unless such a child is mentally or physically challenged or suffers from life threatening disorder or fatal illness with no permanent cure. Such application should include a certificate from a registered medical practitioner certifying such medical condition of the child)

The Act also provides essential conditions which a woman has to fulfil before opting to be a surrogate<sup>14</sup>.

- Such woman should be ever married having a child of her own.
- She should be between the age group of 25 to 35 years.
- She should not have provided her own gametes.
- A woman can act as a surrogate only once in her lifetime.
- She should obtain a certificate of medical and psychological fitness from a registered medical practitioner.

In case of rejection of application either that of the intended couple or that of the surrogate, the aggrieved person can apply to State Government or central government as the case may be within 30 days of receipt of rejection of application.

The Act inflicts punishment which may extend to 10 years and fine which may extend to 10 lakh rupees for following offences<sup>15</sup>:

- Publishing, issuing, advertising, communicating about commercial surrogacy
- Abandoning, disowning or exploiting a child born out of commercial surrogacy
- Exploiting or cause to be exploiting a surrogate or a child born out of surrogacy
- Selling human embryo or gametes for the purpose of surrogacy or running an organization or racket for such purpose
- Importing or helping in importing a human gamete or embryo for the purpose of surrogacy.

## **Nepal**

Like India in Nepal too surrogacy was unregulated and highly prevalent due to poverty and loose legislative control. Prior to the Nepal Supreme Court verdict banning commercial surrogacy and permitting altruistic surrogacy only for Nepalese married couple, surrogacy was permitted for same sex

---

<sup>12</sup> Ibid, section 4 (iii)(a)(I) and (II)

<sup>13</sup> Ibid, section 4 (iii) (c)

<sup>14</sup> Ibid, section 4 (iii)(b)

<sup>15</sup> Ibid, section 38(1) (a) to (g) and (2)

couples, single individuals and for foreigners. The law in Nepal prior to 2015 did not require any legal formality to be fulfilled by the intending couple or the surrogate to opt for surrogacy procedure. Since there was no law regulating surrogacy, the medical clinics operated by following their own procedure and rules. The intended couples were also free to opt for an egg donor program and can choose the donor as per their requirements<sup>16</sup>. Due to the non-discriminatory treatment received by gay couple and single individual in Nepal, it had become a preferred destination for surrogacy<sup>17</sup>. In 2014 the government of Nepal issued National Health Policy 2014 which provides that Nepal will strive towards determining and developing the sectors that provide advanced and international standard services. Efforts will be made to develop Nepal as a study centre for health tourism and health standard.<sup>18</sup> The policy also provides that Nation will strive towards promulgating a law for reproductive health<sup>19</sup>. The health policy also promised addressing the issues relating to infertility through surrogacy laws<sup>20</sup>. However, the policy is silent upon the details regarding the basis for drafting such surrogacy laws and the rights and duties of parties involved in surrogacy transaction.

Due to mushroom growth of surrogacy clinics which were operating in Nepal without there being any legal grounds, Advocate Prabin Pandak filed a petition in the supreme Court of Nepal and in a landmark judgement on 25<sup>th</sup> August 2015 the Supreme Court of Nepal passed an order banning commercial surrogacy in Nepal for foreigners. According to the decision foreign woman are allowed to be surrogates in Nepal but Nepalese woman are not allowed to provide surrogacy services<sup>21</sup>. The decision came in backdrop of a massive earthquake in the year 2015 wherein 26 Israeli children were evacuated from Nepal but their birth mothers that is the surrogates, were stranded in Nepal and suffered the consequences of the natural disaster<sup>22</sup>. However, the evacuation of only the Israeli children and not the surrogates came up as a shock to the Nation.

The Israeli government explained its action by stating that Israeli surrogacy laws do not have any natural disaster clause and that is the reason why only the babies were air lifted but not the surrogates<sup>23</sup>. The Nepal government through a cabinet decision considering supreme court's decision as a cut-off date banned surrogacy. Thus, according to the final verdict of the supreme court declared on 12<sup>th</sup> December 2016, altruistic surrogacy will be permitted only for infertile Nepalese married couple but banned the same for same sex couples and single individuals and foreign national. Apart from the surrogacy services

---

<sup>16</sup> Nepal surrogacy laws, Available at: <https://www.surrogacyclinicnepal.com/surrogacy-laws-legal-nepal.html> accessed on: accessed on 31<sup>st</sup> January 2022 at 19:05 pm IST

<sup>17</sup> Surrogate mother Nepal, <http://www.surrogatemothemepal.com/surrogacy-laws-legal-nepal/> Accessed on 31<sup>st</sup> January 2022 at 19:13 pm IST

<sup>18</sup> National Health Policy 2071 Nepal, 2014, point 1.6 page 9, available at: <https://publichealthupdate.com/national-health-policy-2071-nepali-and-english-version/> accessed on 5<sup>th</sup> February 2022 at 18:58 pm IST

<sup>19</sup> Ibid, point 1.21 page 11

<sup>20</sup> Ibid, point 12.14 page 19

<sup>21</sup> Prabin Pandak, Nepal's top Court orders suspension of Surrogacy services, 26<sup>th</sup> August 2015, NDTV, Available at: <https://www.ndtv.com/world-news/nepals-top-court-orders-suspension-of-surrogacy-services-1211267>, accessed at 7<sup>th</sup> February 2022 at 12:06 PM IST

<sup>22</sup> Ishani Duttgupta, why surrogacy issue emerges after Nepal earthquake, 5<sup>th</sup> May 2015, Global Indians, economic Times, available at: <https://economictimes.indiatimes.com/blogs/globalindian/why-surrogacy-issue-emerges-after-nepal-earthquake/>, accessed on: 31<sup>st</sup> January 2022 at 19:19 pm IST.

<sup>23</sup> Ibid



other allied services are also banned including birth documentation and issue of Visa and other permits<sup>24</sup>. Though the supreme court issued directions to the Nepal government to formulate law governing altruistic surrogacy the government is still to pass a law relating to the same but work has been initiated by formulating policy relating to IVF<sup>25</sup>.

## **Indonesia**

Surrogacy as a practice is strictly prohibited in Indonesia. The legislations that remotely govern and prohibit surrogacy in Indonesia are, Health Law of 2009, Regulation of Ministry of Health no. 039 Menkes/SKS/2010 on the implementation of Assisted Reproductive Technology Services, Government Regulation No. 61/2014 on Reproductive Health and Fatwa of the Indonesian Ulama Council 2006<sup>26</sup>. The first case of transferring of embryo into another woman's Uterus was reported for the first time in 2006 in Indonesia to the Indonesian Ulama Council. The council stated that all jurist do not permit the womb to be rented in various forms. The jurists and Health experts further issued Fatwas whereby couples are permitted to use methods of fertilization that does not involve third party<sup>27</sup>. The health Law of 2009 under Article 127 permits the pregnancy outside the natural way only to the lawful couples by fulfilment of the following criteria that is a) the result of both sperm and ova fertilization from the concerned couple should be implanted in the womb of the wife from which the ovum originates, b) the process should be carried out by health workers who are experts in the field and have the authority to carry out the process c) the process should be carried out in certain health care<sup>28</sup>. Further unnatural modes of pregnancy shall be used by the couples only as a last resort. Permekens RI No. 73/Menkes/PER/II/1999 which relates to administration of Artificial Reproductive Technology provides that ART can be administered only to husband and wife who are legitimately married to each other and only when there is a medical indication which requires the use of ART. SK Dirjen Yan Medik Depkes RI (2000) layout IVF service guidelines for the hospitals as follows: i) ART can be carried out only with the help of the egg and sperm of the married couple, ii) ART is a part of infertility services, iii) It prohibits carrying out of surrogacy in any form. Iv)

---

<sup>24</sup> U.S. Embassy, Kathmandu, Surrogacy services are banned in Nepal, June 4, 2021, <https://np.usembassy.gov/surrogacy-services-are-banned-in-nepal/>, accessed on 31<sup>st</sup> January 2022 at 19:03 pm IST

<sup>25</sup> Ram Kumar kamat, No Law on altruistic surrogacy despite Supreme Court directive, 15<sup>th</sup> October 2018, The Himalayan, Available at: <https://thehimalayantimes.com/nepal/no-law-on-altruistic-surrogacy-despite-supreme-court-directive> , Accessed on 31st January 2022, at 19:08 pm IST.

<sup>26</sup> Mega Dewi and Ghina Azmita Kamila, The Evaluation of Surrogacy's Legal System in Indonesia as comparison to India's Legislation, page 167, October 2019, Diponegoro Law Review, Volume 4, Number 02, DOI:10.14710/dilrev.4.2.2019.167-180, available at:

[https://www.researchgate.net/publication/336191663\\_THE\\_EVALUATION\\_OF\\_SURROGACY'S\\_LEGAL\\_SYSTEM\\_IN\\_INDONESIA\\_AS\\_COMPARISON\\_TO\\_INDIA'S\\_LEGISLATION](https://www.researchgate.net/publication/336191663_THE_EVALUATION_OF_SURROGACY'S_LEGAL_SYSTEM_IN_INDONESIA_AS_COMPARISON_TO_INDIA'S_LEGISLATION), accessed on 14<sup>th</sup> February 2022, at 18:03 pm IST

<sup>27</sup> Mega Dewi Ambarwati and Ghina Azmita Kamila, The Evaluation of Surrogacy's Legal System in Indonesia as comparison to India's Legislation, page 255, Lentera Hukum, Volume 6 issue 2, ISSN 2621-3710, published by the University of Jember, Indonesia, DOI:10.19184/ejhl.v6i2.10842, available at:

[https://www.researchgate.net/publication/336010797\\_The\\_Evaluation\\_of\\_Surrogacy's\\_System\\_in\\_Indonesia\\_as\\_Comparison\\_to\\_India's\\_Legislation](https://www.researchgate.net/publication/336010797_The_Evaluation_of_Surrogacy's_System_in_Indonesia_as_Comparison_to_India's_Legislation), accessed on 14<sup>th</sup> February 2022 at 17:53 pm IST

<sup>28</sup> Mega Dewi and Ghina Azmita Kamila, The Evaluation of Surrogacy's Legal System in Indonesia as comparison to India's Legislation, page 168-169, October 2019, Diponegoro Law Review, Volume 4, Number 02, DOI:10.14710/dilrev.4.2.2019.167-180, available at:

[https://www.researchgate.net/publication/336191663\\_THE\\_EVALUATION\\_OF\\_SURROGACY'S\\_LEGAL\\_SYSTEM\\_IN\\_INDONESIA\\_AS\\_COMPARISON\\_TO\\_INDIA'S\\_LEGISLATION](https://www.researchgate.net/publication/336191663_THE_EVALUATION_OF_SURROGACY'S_LEGAL_SYSTEM_IN_INDONESIA_AS_COMPARISON_TO_INDIA'S_LEGISLATION), accessed on 14<sup>th</sup> February 2022, at 18:03 pm IST

---



use of ART is contradictory to moral norms and culture and is also contradictory to Islam as it is regarded as adultery<sup>29</sup>. The positive law in Indonesia provides that the process of delivering a human being must be through a legitimate marriage and if it takes place outside marriage, it will affect many aspects of law including laws relating to inheritance. The same is also considered as a violation of norms and is considered to be a crime. Kitab Undang-undang Hukum Pidana (KUHP) is the criminal code in Indonesia that protects the Rights and obligations of every law subject and also defines offences under the code. In Indonesia freedom of contract is permitted and parties are free to decide whether to enter into an agreement or not. However, once the parties enter into an agreement it becomes obligatory for them to carry out the same<sup>30</sup>. However, since surrogacy is regarded as opposed to morality it is illegitimate and does not satisfy the last element that is not having a legitimate cause and thus surrogacy agreement will not be binding in Indonesia<sup>31</sup>. Article 1332 of the Civil Code states that “only goods that can be traded can be subject of an agreement”. However, neither the womb nor the child is good that can be traded, thus nullifying the surrogacy agreement further. Article 1339 states that the parties to an agreement will not only be bound by the provisions stated in the agreement but also by the requirements under the proprietary law and customary laws and customary laws in Indonesian society do not accept surrogacy as a practice thus though the parties are free to enter into an agreement in Indonesia but surrogacy agreement will be null and void from its onset<sup>32</sup>.

However, a child can acquire Indonesian citizenship even if he is born outside the country provided the name of the intended parents appears on the birth certificate and the parents are Indonesian citizens. Thus, Indonesia does not prohibit its citizens to avail surrogacy services outside the country<sup>33</sup>.

The legislature in Indonesia came up with a Bill titled “The Family Resilience Bill”, which expressly prohibited surrogacy under Article 139. The Bill not only prohibited surrogacy but also prohibited sperm or egg donation and prescribed punishment up to five years and fine of Rp 500 million<sup>34</sup>. The Bill though

---

<sup>29</sup> Rizka Rizka and Rohzanah Ab. Rahman, Legality of Surrogacy in Indonesia Based on Transcendental Values, Page 844, European Journal of Molecular and Clinical Medicine, ISSN 2515-8260, volume 7, issue 10, 2020, available at: [https://ejmcm.com/article\\_4463\\_296378dd7a5c6369cc5a84c18167c990.pdf](https://ejmcm.com/article_4463_296378dd7a5c6369cc5a84c18167c990.pdf), accessed on 14<sup>th</sup> February 2022 at 18:04 pm IST.

<sup>30</sup> Filda Achmad Al Yadainy, Agreement Surrogate Mother And The Effect On Children’s Status Born, page 315, Journal of Law and Legal Reform, VOLUME 1(2) 2020, ISSN (Online) 2715-0968, available at: <https://journal.unnes.ac.id/sju/index.php/jllr/article/download/35418/15275/>, accessed on 14<sup>th</sup> February 2022, at 18:24 pm IST

<sup>31</sup> Rizka Rizka and Rohzanah Ab. Rahman, Legality of Surrogacy in Indonesia Based on Transcendental Values, Page 843, European Journal of Molecular and Clinical Medicine, ISSN 2515-8260, volume 7, issue 10, 2020, available at: [https://ejmcm.com/article\\_4463\\_296378dd7a5c6369cc5a84c18167c990.pdf](https://ejmcm.com/article_4463_296378dd7a5c6369cc5a84c18167c990.pdf), accessed on 14<sup>th</sup> February 2022 at 18:04 pm IST.

<sup>32</sup> Filda Achmad Al Yadainy, Agreement Surrogate Mother And The Effect On Children’s Status Born, page 319, Journal of Law and Legal Reform, VOLUME 1(2) 2020, ISSN (Online) 2715-0968, available at: <https://journal.unnes.ac.id/sju/index.php/jllr/article/download/35418/15275/>, accessed on 14<sup>th</sup> February 2022, at 18:24 pm IST

<sup>33</sup> Stephen Page and Dharma Gan, Surrogacy Law and Practice in Russia, Philippines, Indonesia and South Korea, American bar Association family law section spring conference Nashville 2018, Page Provan, Available at: <https://pageprovan.com.au/surrogacy-law-and-practice-in-russia-philippines-indonesia-and-south-korea/>, accessed on 14<sup>th</sup> February 2022 at 18:23 pm IST.

<sup>34</sup> Jakarta Post, Indonesian Family Resilience Bill would criminalize surrogacy, sperm donation, 20<sup>th</sup> February 2020, The Star, available at: <https://www.thestar.com.my/news/regional/2020/02/20/indonesian-family-resilience-bill-would-criminalise-surrogacy-sperm-donation>, accessed on 14<sup>th</sup> February 2022 at 18:28 pm IST.

debated against was included in the priority list of National Legislation Program<sup>35</sup>. However, since the Bill did not get required support from majority parties the Bill has been dropped<sup>36</sup>.

## **Colombia**

Presently Colombia does not have any specific law either permitting or banning surrogacy. The constitution of Colombia protects equally the rights of all the children whether born Naturally or by use of Artificial Reproductive Technology under Article 42-6. In 2014, the constitutional court of Colombia came up with a decision allowing same sex couple to adopt children or even opt for IVF or ART provided, one of the partners has given his or her own gamete which resulted in permitting the same sex couple to even opt for surrogacy<sup>37</sup>. The court further highlighted through another decision in 2009 that substitute motherhood was a positive mechanism and helped the infertile couple in resolving their issues. However, the Court further guarded that there was urgent need to pass a legislation governing surrogacy to avoid the profitable mediation that is involved and in order to safeguard the rights of the child<sup>38</sup>. Thus, it is through the decision of the Constitutional Courts in Colombia that surrogacy has been accepted. The court also came up with guidelines to be followed while opting for surrogacy which includes the following, i) presence of a physiological problem to conceive, ii) the gametes of the surrogate shall not be used iii) only altruistic surrogacy is permitted iv) the surrogate should be medically and psychologically fit and should be an adult with her own child v) neither the surrogate can retract the child nor the biological parents can refuse to accept the child vi) in case of death of biological parents the child's right should be protected vii) the child can be aborted only in cases of medical conditions indicated so by the doctors. Further The Constitution of Colombia through Article 100 grants same civil rights to foreigners that are available to the citizens implying that surrogacy is permitted even for foreigners in Colombia<sup>39</sup>. In November 2016 the parliament of Colombia introduced a Bill permitting altruistic surrogacy only and banning commercial surrogacy<sup>40</sup>. The Bill highlighted various aspects of surrogacy like definition of

---

<sup>35</sup> Budi Sutrisno, House continues deliberation of controversial family resilience bill , 21<sup>st</sup> September 2020, Jakarta Post, available at: <https://www.thejakartapost.com/news/2020/09/21/house-continues-deliberation-of-controversial-family-resilience-bill.html>, Accessed on 14<sup>th</sup> February 2022, 18:49 pm IST

<sup>36</sup> Jakarta Globe, The House Drops a Bill that will require Indonesians to turn in Gay family members, 24<sup>th</sup> November 2020, available at: <https://jakartaglobe.id/news/the-house-drops-a-bill-that-will-require-indonesians-to-turn-in-gay-family-members>, accessed on 24<sup>th</sup> February 2022 at 23:03 pm IST

<sup>37</sup> Gloria Torres, Anne Shapiro, Tim K. Mackey, A Review of Surrogate Motherhood regulation in South American Countries pointing to a need for an international legal framework, page 7, 19 Article no. 46 (2019) BMC pregnancy and child birth, available at:  
[https://www.researchgate.net/publication/330691317\\_A\\_review\\_of\\_surrogate\\_motherhood\\_regulation\\_in\\_south\\_American\\_countries\\_Pointing\\_to\\_a\\_need\\_for\\_an\\_international\\_legal\\_framework](https://www.researchgate.net/publication/330691317_A_review_of_surrogate_motherhood_regulation_in_south_American_countries_Pointing_to_a_need_for_an_international_legal_framework), accessed on 28<sup>th</sup> January 2022 at 18:19 pm IST

<sup>38</sup> Pereañez, J.A.G. and Echavarría, A.E.L. (2016) Surrogacy in Reproductive Medicine: Ethical and Legal Analysis of the Procedure, Page 47, Journal of Biosciences and Medicines, available at:  
[https://www.researchgate.net/publication/308753230\\_Surrogacy\\_in\\_Reproductive\\_Medicine\\_Ethical\\_and\\_Legal\\_Analysis\\_of\\_the\\_Procedure](https://www.researchgate.net/publication/308753230_Surrogacy_in_Reproductive_Medicine_Ethical_and_Legal_Analysis_of_the_Procedure), accessed on 25<sup>th</sup> February 2022 at 18:44 pm IST

<sup>39</sup> Sensible the surrogacy guide, Surrogacy in Colombia, Available at: <https://www.sensible-surrogacy.com/surrogacy-in-colombia/>, Accessed on 25<sup>th</sup> February at 18:23 pm IST

<sup>40</sup> Gloria Torres, Anne Shapiro, Tim K. Mackey, A Review of Surrogate Motherhood regulation in South American Countries pointing to a need for an international legal framework, page 7, 19 Article no. 46 (2019) BMC pregnancy and child birth, available at:  
[https://www.researchgate.net/publication/330691317\\_A\\_review\\_of\\_surrogate\\_motherhood\\_regulation\\_in\\_south\\_American\\_countries\\_Pointing\\_to\\_a\\_need\\_for\\_an\\_international\\_legal\\_framework](https://www.researchgate.net/publication/330691317_A_review_of_surrogate_motherhood_regulation_in_south_American_countries_Pointing_to_a_need_for_an_international_legal_framework), accessed on 28<sup>th</sup> January 2022 at 18:19 pm IST

surrogacy and provisions containing protection of the rights of dignity, privacy, equality autonomy, precreation and right to reproduction of woman. Though the Bill was approved in the by the House of Representatives it failed to pass in the senate<sup>41</sup>.

Like many other countries even in Colombia it is the Birth mother who is registered as the real mother however the same can be contested in constitutional court in case of surrogacy according to Article 335 of the Colombian Civil Code. The legal position regarding surrogacy contract in Colombia can be gauged from the verdict of the Constitutional court and from the Civil code according to which surrogacy contracts are acceptable<sup>42</sup>.

## Cambodia

Till 2016 Cambodia did not have any particular stance regarding surrogacy. As India tightened its surrogacy law and banned surrogacy for foreign nationals from 2015, Nepal, Thailand and Cambodia saw a sharp rise in cases of commercial surrogacy in their respective countries. Following the Indian suit even Thailand banned international surrogacy in 2015 which led to further rise in Cambodian surrogacy<sup>43</sup>. Thailand banned its nationals from working as surrogates for foreign national from 2015. In 2016 though Cambodia did not pass any particular Law governing surrogacy but declared commercial surrogacy as criminal offence and declared that the people involved in commercial surrogacy would be punished under the Anti Human Trafficking Law. Even after this stringent step surrogacy continued to operate in Cambodia at the underground level which led the government to further punish the people involved. During the year 2018-19 around 60 surrogates were arrested for their involvement in surrogacy industry. Ultimately 32 surrogates were punished and sentenced criminally in March 2020 for acting as surrogates along with two Chinese national and six other Cambodians for operating the racket. It is reported that one of such surrogates also gave birth in the hospital being handcuffed at that time. These surrogates were released later on the promise that they take up the responsibility of raising the child they gave birth to as a surrogate.

The U.N committee on the Elimination of discrimination against woman called Cambodia to stop criminalizing woman who acted as a surrogate and also to stop telling such surrogates to raise such children as it would add on additional financial and emotional burden on them who may already be victim of the situation. UN further called up the Government to repeal the decision taken in October 2016

---

<sup>41</sup> Gloria Torres, Anne Shapiro, Tim K. Mackey, A Review of Surrogate Motherhood regulation in South American Countries pointing to a need for an international legal framework, page 7, 19 Article no. 46 (2019) BMC pregnancy and child birth, available at:

[https://www.researchgate.net/publication/330691317\\_A\\_review\\_of\\_surrogate\\_motherhood\\_regulation\\_in\\_south\\_American\\_countries\\_Pointing\\_to\\_a\\_need\\_for\\_an\\_international\\_legal\\_framework](https://www.researchgate.net/publication/330691317_A_review_of_surrogate_motherhood_regulation_in_south_American_countries_Pointing_to_a_need_for_an_international_legal_framework), accessed on 28<sup>th</sup> January 2022 at 18:19 pm IST

<sup>42</sup> Pereañez, J.A.G. and Echavarría, A.E.L. (2016) Surrogacy in Reproductive Medicine: Ethical and Legal Analysis of the Procedure, Page 47, Journal of Biosciences and Medicines, available at:

[https://www.researchgate.net/publication/308753230\\_Surrogacy\\_in\\_Reproductive\\_Medicine\\_Ethical\\_and\\_Legal\\_Analysis\\_of\\_the\\_Procedure](https://www.researchgate.net/publication/308753230_Surrogacy_in_Reproductive_Medicine_Ethical_and_Legal_Analysis_of_the_Procedure), accessed on 25<sup>th</sup> February 2022 at 18:44 pm IST

<sup>43</sup> Susan Crockin JD, Surrogacy updates, 13 May 2021, American Society for reproductive medicine, available at:

<https://www.asrm.org/news-and-publications/news-and-research/legally-speaking/surrogacy-updates/>, accessed on 26<sup>th</sup> January 2022 at 17:40 pm IST

of only releasing woman in case they agree to grow such children till such children attain the age of 18 years. The women were released though from jail but they continued to be under the supervision of the court<sup>44</sup>.

CEDAW committee along with Cambodian government is working towards drafting a proper legislation for governing surrogacy in the country. The key features of the draft legislation are as follows<sup>45</sup>:

- 1) The draft contains following guidelines and conditions for doing surrogacy<sup>46</sup>:
  - ✓ Mental and physical fitness of both the surrogate and the intended parents have to be ensured by the clinic before to avoid any diseases that the child might contract.
  - ✓ The clinic should implant human embryo within 14 days and such embryo should be used for producing a human child only.
  - ✓ Neither of the parties or the clinic should engage into sex selection, cloning or experimentation of any kind with the embryo.
  - ✓ The intended couple should satisfy following eligibility criteria before opting for surrogacy: -
    - a) The intended couple should be between the age group of 25 to 45.
    - b) The couple should be heterosexual, married and Cambodian citizen
    - c) Such couple must be without children and should be ready to take the responsibility of the child irrespective of the condition of the child.
    - d) Such parents are further barred from commissioning then surrogate more than once.
  - ✓ The woman intending to be a surrogate should satisfy following criteria<sup>47</sup>:
    - a) The woman should be Cambodian citizen
    - b) She should have previously given birth
    - c) She should be related to the intended parents
    - d) She should voluntarily agree for being a surrogate
    - e) She should be married and her spouse should have consented to her surrogacy.
    - f) She should be between the age of 25 to 35 years of age
    - g) She should be healthy and should not be suffering from any such disease which might affect the foetus.

---

<sup>44</sup> Leonie Kijewski, UN Reiterates Call to Abolish Criminalization of Surrogates, 13 November 2019, Voa News, Available at: [https://www.voanews.com/a/east-asia-pacific\\_un-reiterates-call-abolish-criminalization-surrogates/6179318.html](https://www.voanews.com/a/east-asia-pacific_un-reiterates-call-abolish-criminalization-surrogates/6179318.html), accessed on 26<sup>th</sup> January 2022 at 18:24 pm IST.

<sup>45</sup> Ibid

<sup>46</sup> Ibid Article 8, Cambodia's draft legislation on surrogacy, Committee on elimination of discrimination against woman, Center for reproductive rights, Supplementary information on Cambodia's surrogacy situation and surrogacy draft law for consideration by the Committee during its 74th session, 30 September 2019, Available at: [https://reproductiverights.org/wp-content/uploads/2021/03/CEDAW\\_Cambodia\\_74thsession\\_GADC\\_GADNet\\_CRR-1.pdf](https://reproductiverights.org/wp-content/uploads/2021/03/CEDAW_Cambodia_74thsession_GADC_GADNet_CRR-1.pdf), Accessed on 26<sup>th</sup> January 2022 at 12:06 am IST

<sup>47</sup> Ibid Article 9 and 13

- ✓ The intended parents and the surrogate must enter into a written agreement which must be acknowledged by National Committee on the Management of Surrogacy. If the intended parents use a sperm donor then such donor should declare that he has agreed to provide his healthy sperms freely and willingly to the intended couple<sup>48</sup>.
- ✓ Following are the other requirements to be satisfied before initiating the process of surrogacy<sup>49</sup>:
  - a) The surrogate's egg should not be used.
  - b) The embryo used for surrogacy should have at least one gamete from either of the parents.
  - c) The child born through surrogacy will be regarded as the legitimate child of the legally married couple. Such child will have all such right as given under the Code in Cambodia.
  - d) If both the intended parents die before the birth of the child then the surrogate shall take care of such child till the court passes an order regarding guardianship of such child.

The CEDAW Committee suggested that Cambodia should stop criminalizing surrogates and should develop a human right based regulatory framework and protect the rights of surrogates ensuring to them equality and non-discrimination. The committee further suggested that Cambodia should also safeguard woman's right to bodily autonomy. The committee further suggested that Cambodia should try and revise the law to safeguard the interest of all the stakeholders and should secure access to reproductive and maternal health care to all the surrogates<sup>50</sup>.

## CONCLUSION AND SUGGESTIONS

The most pertinent point to note from the aforesaid discussion is that though surrogacy is a common phenomenon, apart from India none of the other countries studied by the researcher through this research paper have any direct laws governing surrogacy. Though the common notion is that commercial surrogacy is prevalent in poor countries but the aforesaid deliberations shows that all the countries studied by the researcher have banned commercial surrogacy. Though all the countries protect the rights of the child and that of the intended couples but none of the countries protect the rights of the Surrogate except India wherein the surrogates are protected to a limited extent that is by providing medical insurance cover to them. None of the countries establish any governmental authority to govern and oversee surrogacy contracts. Though most of the countries have started accepting LGBT community and have conferred them with various personal rights, none of the countries studied in current research paper permit them to have recourse to surrogacy. Although, surrogacy is the only option for them, especially for gay couples to have genetically related child of their own these countries have shown their back towards

<sup>48</sup> Ibid Article 10

<sup>49</sup> Ibid Article 13

<sup>50</sup> Ibid Article 8, Cambodia's draft legislation on surrogacy, Committee on elimination of discrimination against woman, Center for reproductive rights, Supplementary information on Cambodia's surrogacy situation and surrogacy draft law for consideration by the Committee during its 74th session, 30 September 2019, Available at: [https://reproductiverights.org/wp-content/uploads/2021/03/CEDAW\\_Cambodia\\_74thsession\\_GADC\\_GADNet\\_CRR-1.pdf](https://reproductiverights.org/wp-content/uploads/2021/03/CEDAW_Cambodia_74thsession_GADC_GADNet_CRR-1.pdf), Accessed on 26<sup>th</sup> January 2022 at 12:06 am IST

them. There is a high need to have common standardized laws throughout the world to govern surrogacy and there is a high need to have an international convention governing surrogacy in order to bring about uniformity and common standards for laws governing surrogacy in the world. There is need to create legislation from human rights perspective to govern surrogacy as the commissioning couples have already gone through the trauma of being childless and surrogacy is the only hope for them. Though many countries are permitting altruistic surrogacy but how many women will come forward to be a surrogate without receiving any remuneration is a question which is difficult to answer at this stage. By permitting altruistic surrogacy we are ignoring the reproductive labour which a woman performs are limiting her role as merely a birth giver. We are hereby therefore adhering to the patriarchal notions to the role played by women in the society. Thus, there is a dire need to regulate commercial surrogacy rather than banning it completely and at the same time having a humane approach towards the needs of the commissioning parents as well as the LGBTQ community for whom the only hope to get a biologically linked child is through surrogacy.



# **DEPICTION OF GENDER ROLES IN INDIAN PRIME-TIME TELEVISION SHOWS IN THE CONTEXT OF JUDITH BUTLER'S THEORY OF GENDER PERFORMATIVITY**

**Zainab Reza Razvi**

Coordinator and Educator

R.D. & S.H. National College of Arts and Commerce &  
S.W.A. Science College, Bandra (W) , Mumbai.

---

## **ABSTRACT**

Media is a strong propagator of gender roles as it influences the thought process of the masses very strongly by creating and reinforcing strong gender-identity ideas amongst all age groups. The Indian media, particularly the Indian Television, holds a significant place in the lives of the people of the country, especially the Television soaps and serials that cater to the female audience. These soaps/serials/shows have been a medium to project very strong stereotypical gender roles of both men and women. This paper will be analysing the role of the Indian Television in making a strong impact on the Indian viewers with respect to gender roles as well the demand of the viewers for such content. This paper will look into the portrayal of female characters particularly and the consequent portrayal of male characters that influence the expectations of the Indian viewers to adopt such traits in real life. This paper will also examine whether the media is entirely responsible for such gender portrayals or whether the viewers are responsible for such content too.

The theoretical framework that the researcher has used in this paper is Judith Butler's theory of Gender Performativity. In her theory, Butler's discusses the acts and roles of the genders as pre-decided. Thus, any individual who is born, has to perform these acts to fit into their gender which is decided by the society even before they were born. This theory makes one question one's behaviour and the entire belief on the division in gender roles. Any individual challenging these roles is punished by the society in different ways. The Indian Television shows portray these deviants as outcasts or in a negative role. These gender roles are portrayed within the dominant heterosexual framework. This paper will focus on

---

Indian Television shows in Hindi, aired in the prime-time slots which makes the gender representation and the resultant message even stronger. These serials/shows/soaps glorify these gender hierarchy as a result of gender roles. One of the effects of the gender hierarchal system is the discrimination against women that pushes them down to such an extent that they start questioning their own worth is.

This research delves into this structure of the society, that has strengthened by the day despite education and progression being widespread. Every individual is trained right from childhood for fitting well into this hierarchal structure. This portrayal of gender hierarchy on the Indian Television results into the degradation of the status of women. This paper examines the repercussions of downgrading the status of women by the Indian Television industry in particular by constantly reinforcing gender roles that results in the representation of conventional status of women. This research will be looking at various instances from shows that started such a trend since the beginning of the Twenty First century until the present. It aims to look closely at the roles that define men and women in these shows/serials/soaps.

**Key words:** *gender roles, hierarchy, gender performativity*



---

## INTRODUCTION

*“The media sells it and you live the role”*

-Ozzy Osbourne

The media has always been a reflection of what the society follows and believes. It has been a means of creating and propagating strong ideologies. There are plenty of instances where the media has set a trend for certain practices and beliefs. The Indian media, be it through the medium of television or films, has set and followed the trends and practices related to gender hierarchy, for a long time. Most of their content reflects gender hierarchy irrespective of the genre of the shows and the films. “Media is not only a mirror of the society but also an instrument of political, economical, cultural, social change. Its main aim is to spread noble ideas of the people and the expression, thought, perception, feelings and other aspects. It must expose social evils and help the eradication of discrimination, inequality, race, color, gender and other sources of violence.”<sup>1</sup> . Entertainment has always played an important role especially in the lives of the Indians. Specifically, T.V. has been an even more influential medium of entertainment for Indian households. Since it has such a strong influence on the viewers, its content plays an important role in terms of shaping the viewpoints and trends of the people. Television has played an important role in the lives of Indians, especially the middle-class families of India. Critics, researchers and the general viewers have started studying largely on the portrayal of women in the Television Industry in India as it is a very strong medium of propagating values and beliefs to every generation of the society.

“A large section of mass media portrayed women as submissive, docile, and home-bound. There were not many shown as leaders or professionals. Most weren’t even recognised as breadwinners.”<sup>2</sup>

## DOWNGRADING OF T.V. CONTENT

The Indian T.V. Industry plays a significant role in reflecting the expectations of the society from its men and women and vice versa. Thus, the portrayal of women in the T.V. serials is significant as it caters to a large group of viewers, not just in India but all over the world.

“Television is also one of the most popular electronic media in India. In the television programmes women are basically seen as performing the decorative functions and as being marginal to national growth and development. Another important aspect of television programming is that large chunks of the entertainment programmes are drawn from commercial film content. A crucial implication of this phenomenon is that as in commercial films, women on television entertainment programmes are projected as non-thinking, sacrificing and suffering beings while educated and motivated women are seen as the scourge of the patriarchal order of society. TV serials are depicting women and young females as involved in conspiracy, pre-marital, extra-marital, post illicit affairs, wearing costly, heavy golden, and

---

<sup>1</sup> Ahmad, Fareed 1-2 “Representation Of Women In T.V And Films In India”, Indian Streams Research Journal, Vol. 4 (2014)

<sup>2</sup> Huria, ‘Women’s Day: How Media Can Revolutionise Gender Equality In India’, Yourstory, March, 2020. Retrieved from <https://yourstory.com/herstory/2020/03/womens-day-media-revolutionise-gender-equality-india/amp>.

---

diamond jewellery, perpetuating their religious fundamentalism, spending time in family feuds, suicidal love affairs, mega parties, palatial houses, luxury cars, sleek mobiles, elegant make-ups, little care about anything else than the individual matters, and at all not even a word about the outside world.”<sup>3</sup>

The Indian T.V. industry has, in the past couple of decades, downgraded instead of progressing. It is appalling to see saree clad women trying to impress their in-laws through their homemaking skills and their submissive attitude. It's shocking, because the 21<sup>st</sup> century is the most progressive and forward moving era of all times, in terms of technology and education. But the prime time T.V. shows refuse to move forward and are still adamant in strongly emphasizing gender hierarchy and accepted forms of behaviour for both men and women in Indian society. The repetitive plots clearly depict the female protagonists to be submissive to their male protagonists.

“Fictionalized dramas reinforced the sex role stereotypes of men as decisive, assertive, dominant, and career- oriented, and of women as emotionally dependent, eager to please, sentimental, and primarily concerned with family relationships.”<sup>4</sup> This kind of T.V. content not only reinforces gender hierarchy but also slowly builds up such views in the minds of the viewers, both young and old. Such an attitude towards gender hierarchy has been nothing short of causing psychological and social harm amongst people. The young, educated generation, especially, suffers the most because of the backward mentality being projected and absorbed by the female members of the family. In short, the Prime-time T.V. serials of the last couple of decades have been creating a strong case in favour of the gender hierarchical system existing in society.

### **PRIME-TIME SERIALS PROMOTING GENDER HIERARCHY**

The T.V. serials in India, especially the prime-time T.V. serials, have been advocates of gender hierarchy and have been promoting content that supports these views, for the past couple of decades. Such content is majorly viewed by women who are influenced by the female characters of the serials in a major way. Thus, creating an army of propagators who will also enforce gender hierarchy. Despite education and development reaching an all-time high, the expectations and mentality of the people in the Indian society with reference to gender hierarchy refuses to change. Instead of upgrading such views, the mentality of the society is degrading. Since, these serials are telecasted during the prime time of the day i.e., during the slots that get the maximum views, which is even more alarming. Therefore, it can be said that these serials have stronger hold, fan-following and a resultant impact on the viewers which is why they play a crucial part in creating ideologies and stereotypes. Some instances are *Imlī*, *Anupama*, *Ye Rishta Kya Kehlata Hai* from the recent list and *Kyunki Saas Bhi Kabhi Bahu Thi*, *Kahaani Ghar Ghar Ki*, *Diya Aur Baati Hum*, *Iss Pyar Ko Kya Naam Doon?* etc, from the older list of serials that were telecasted during the prime-time slot and have created stereotypes in the minds of the viewers.

---

<sup>3</sup> Patowary, Himashree. “Portrayal of Women in Indian Mass Media: An Investigation”, *Journal of Education & Social Policy*, Vol. 1, No. 1, June 2014, 90.

<sup>4</sup> Behera, S K. “Gender Role Biases on Indian Television”. *Media Asia*, Vol. 16,3, 1989, 119.  
doi:10.1080/01296612.1989.11726308

Although these serials are women-oriented, women, in no way, are the centre of importance. The woman is always a second fiddle to the powerful man in her life who manipulates her emotions and actions according to his whims and fancies. These unreal expectations when faced with reality are really hard-hitting for such young women. The depiction of women as such passive beings sets wrong expectations even amongst men and their families who then are not able to handle assertive, strong and goal-oriented women. This leads to unhappy couples and dysfunctional families. Thus, the impact that the TV industry has on women is manifold and hampers her status in the society all the more.

### **INDIAN T.V. AS ENTERTAINMENT ORIENTED**

Television in India has changed from welfare-oriented content to entertainment and advertisement-oriented content. The focus group has always been middle-class families because they were the ones with sufficient capital to buy the television sets as well as the consumer products advertised on T.V.

“During the “good old days” of Door darshan, there had been several programmes like “Udaan” that dealt with the issues concerning a woman’s struggle, her dreams of becoming an IPS Officer. This was probably the first Indian television show on women empowerment. Inspired by the real-life story of Kavita Choudhary’s (the director of this series) elder sister Kanchan Choudhary who after several hardships went on to become the first female Director General of Police, it inspired its viewers and instilled in its female audience a desire for emancipation beyond the claustrophobic nets of society. However, with the advent of cable and satellite television and a major upheaval following it, things rapidly changed and serials stopped short of projecting those that could prove beneficial for uplifting these maimed sections of the society.”<sup>5</sup>

Thus, the beginning of the 21<sup>st</sup> century witnessed a major shift in the content on Indian television with the private channels being introduced to the Indian consumers/viewers. The economic development of the country resulted in the affordability of T.V. sets as well as private channels. These private channels saw the Indians as consumers and thus, sold their content as products which was why Indian soaps, serials and shows focussed on making profits by selling what the viewers wanted the most.

### **JUDITH BUTLER’S THEORY OF GENDER PERFORMATIVITY**

Judith Butler born as Judith Pamela Butler is a Jewish-American philosopher and gender theorist, whose work has influenced political philosophy, ethics, and the fields of feminist, queer, and literary theory. She is a 20<sup>th</sup>/21<sup>st</sup> Century American philosopher, a third wave feminist and theorist who discusses how society imposes gender roles in her theory of Performativity and Gender Perspectives.

---

<sup>5</sup> ROY, DEBANJALI 02 REALITY OR MYTH: REPRESENTATION OF WOMEN IN INDIAN TV SERIALS. (2012, June)

---

“*Gender Trouble*, published in 1990, made Butler a star: It introduced “performativity,” the idea that gender isn’t something we *are* but something we continually *do*, opening the door for “cultural configurations of sex and gender [to] proliferate,” as she put it in the book’s conclusion, “confounding the very binarism of sex, and exposing its fundamental unnaturalness.” If not for Butler’s work, “you wouldn’t have the version of genderqueer-ness that we now have,” says Jack Halberstam, a gender-studies professor at Columbia. “She made it clear that the body is not a stable foundation for gender expression.””<sup>6</sup>

Gender theory and Gender studies changed the way people perceived gender roles and behaviour that created stereotypes.

The theory of Gender Performativity was proposed by Judith Butler in the year 1990 in her book *Gender Trouble: Feminism and the Subversion of Identity* where she discusses the acts and roles of the genders as pre-decided. Any individual born, thus has these acts to perform to fit into their gender decided by the society even before they were born.

Butler states in *Gender Trouble*,

“Gender proves to be performance – that is, constituting the identity it is purported to be. In this sense, gender is always a doing, though not a doing by a subject who might be said to pre-exist the deed.”<sup>7</sup>

Butler in her theory *Gender Trouble* states that a person’s gender is constructed through an individual’s own repetitive performance of gender. This clearly explains the stereotypes that the society and the Indian T.V. Industry has created in terms of both men and women. The stereotypes that exploit the weaker gender and polices each gender to perform their roles as is the norm. The society and the media, together have reinforced this performance from time to time. This performative nature of gender proves to be a deterrent to both the genders in every aspect of their life.

She goes on to state in an Interview with Liz Kotz in *Artforum* that,

“Gender is an impersonation [...] becoming gendered involves impersonating an ideal that nobody actually inhabits”<sup>8</sup>

---

<sup>6</sup> Fischer, Molly. ‘Think Gender is Performance? You have Judith Butler to Thank For That’, *The Cut*, 13th June, 2016. Retrieved from <https://www.thecut.com/2016/06/judith-butler-c-v-r.html>

<sup>7</sup> BUTLER, J. *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY*. (2007) Mambrol, Nasrullah. “Key Theories of Judith Butler”, *Literary Theory and Criticism*, March 11, 2018. Retrieved from <https://literariness.org/2018/03/11/key-theories-of-judith-butler/>

<sup>8</sup> Mambrol, Nasrullah. “Key Theories of Judith Butler”, *Literary Theory and Criticism*, March 11, 2018. Retrieved from <https://literariness.org/2018/03/11/key-theories-of-judith-butler/>

This impersonation is considered as a compulsion. Any individual who decides to stray away from it, is penalised in various ways.

“As a corporeal field of cultural play, gender is a basically innovative affair, although it is quite clear that there are strict punishments for contesting the script by performing out of turn or through unwarranted improvisations.”<sup>9</sup>

Performativity is almost like inheritance of culture, beliefs and practices. One has no say in it. Rather, one is not allowed to have a say in it. Individuals, whether male or female, have to strictly abide by it and follow it in the same way as their predecessors did. This is true in every aspect of an individual whether it is one’s body, voice or way of thinking – factors one has no direct control over. For example: a man with a soft voice is often ridiculed as having a ‘girlish’ voice. A girl who does not have a delicate or curvaceous frame is referred to as ‘manly’ as an insult to her. All these norms are imposed and followed so strictly that it is almost brutal to those who vary or differ even slightly.

Butler has collapsed the gender/sex distinction in order to argue that there is no sex that is not always already gender. All bodies are gendered from the beginning of their social existence (and there is no existence that is not social), which means there is no “natural body” that pre-exists its cultural inscription. This seems to point towards the conclusion that gender is not something one is, it is something one does, an act. or more precisely, a sequence of acts, a verb rather than a noun, a “doing” rather than a “being”.<sup>10</sup>

This can be noticed right from the time the gender of the unborn child is revealed or right after the baby is born. The choice of colour for the clothes and the nursery for the baby, the toys and other accessories and gifts – all are gender specific. Commonly, blue is an accepted colour for a boy and pink is the accepted colour for a girl. Anybody trying to attempt vice versa raises eyebrows not just from strangers but from one’s own family. Dressing up one’s child in gender-specific clothes is an important performative norm. Those kids who dress up for school in the clothes of the opposite gender are often subjected to bullying by other kids. This is because the frame of gender performativity is so rigid and strongly ingrained even in children of school-going age group, that they are out to punish and outcast anyone who does not follow the norm and who doesn’t fall within the pre-decided frame.

Butler refers to this particular type of process as a “set of repeated acts within a highly rigid regulatory frame” in which the subject is not even free to choose the gender one is going to enact.<sup>11</sup> [11].

---

<sup>9</sup> Butler, Judith. “Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory.” *Theatre Journal*, vol. 40, no. 4, Johns Hopkins University Press, 1988, 519–31, <https://doi.org/10.2307/3207893>.

<sup>10</sup> Butler, Judith. “Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory.” *Theatre Journal*, vol. 40, no. 4, Johns Hopkins University Press, 1988, 519–31, <https://doi.org/10.2307/3207893>.

<sup>11</sup> Lovass, Karen E. & Jenkins, Mercilee M. *56 Sexualities and Communication in Everyday Life: A Reader*, (2006).

---

According to Butler, this regulatory frame limits the choice of an individual. Hence, if an individual does not follow these models (frame) then he/she faces the fear of rejection, ridicule, isolation etc. from the society. Gender roles, thus, are firmly decided in terms of heteronormativity that fits into this pre-decided frame.

Judith Butler's theory of Gender Performativity refers to Freud's notion of how a person's identity is modelled in terms of "the normal". It is clear that if a man or a woman behaves according to the standard roles set by the society then he/she is considered 'normal', hence the Gender Hierarchy and stereotypes hold a strong ground even in the contemporary society which is clearly depicted by the Indian T.V. serials.

### **STEREOTYPING OF GENDER ROLES IN PRIME-TIME T.V. SERIALS**

The prime-time serials aired in Hindi on the Indian Television channels have played a crucial role in portraying gender-specific characters and thereby creating a stereotype. These characters are represented as a role-model for society whether it is the male characters or the female characters and they embody certain character traits that creates very strong gender roles and gender discrimination. Some instances of such portrayals are Tulsi and Mihir from *Kyunki Saas Bhi Kabhi Bahu Thi*, Parvati from *Kahani Ghar Ghar Ki*, Anupama from the serial *Anupama*, etc. These characters portray traditional roles of a daughter, wife, mother, etc. and how an ideal woman should perform all these roles perfectly so that she is accepted and loved in the society and her family. The male characters, on the other hand, are portrayed to be tough, cold and insensitive; sending a strong message that to be accepted, a 'man' one should embody such traits and perform their roles in the manner that these characters do.

These male and female characters have been portrayed to conform to traditional norms. They are representatives of the age-old image of women and their expected roles in the society which is of a subdued housewife, a dedicated mother, a woman who is ready to sacrifice her all for her husband, children, and in-laws. These serials do not propagate women to love themselves and value their individuality. On the contrary, women who are selfish with regards to themselves, their desires, ambitions and careers are portrayed as evil beings who should be punished. Assertive and independent women are painted in a bad light. They are referred to as vamps and these women do not conform to the traditions and norms of the society. For instance, Pallavi from *Kahani Ghar Ghar Ki* and Payal and Mandira from *Kyunki Saas Bhi Kabhi Bahu Thi*, Kavya from *Anupama*, etc.

Men, in these serials, are usually props to the story. But these props are very strong and impactful who make the lives of the female protagonists complete and interesting. They are the breadwinners of their families and protectors of these women. Apart from the characteristic traits of these men in the prime-time serials, these men are dominant and make decisions for their women. Thus, there is a very clear demarcation of gender roles and gender hierarchy which brings to focus the impact of media on the



masses. The T.V. serial producers and channel heads have a clear motive of making profits from their content even if it means that they have to degrade their content. Thus, they give to the people what they ask for instead of creating content that would revolutionise and educate the masses on spreading awareness on gender equality and promoting the idea of gender justice.

Despite the themes of these prime-time Indian T.V. serials, they stick to the representation of the conventional gender roles of women and men. In these popular, prime-time Indian T.V. serials, the passage of time and progression of time, have had no impact on the content of these shows and the representation of women and men in them and the strong division of gender roles. The progression and change in the gender roles in the Twenty First century is not represented in these serials. The popularity of these serials means that the demand for such content is growing despite the advancement in economic, financial and social conditions in the Indian society. The roles of women have changed due to the increasing number of women who are educated, career-oriented and successful professionals. But such women don't find any representation in these serials. Similarly, men have grown to be supportive, sensitive and participative in their families, their relationships with their spouse and children, etc. Their role as a breadwinner has changed too with women joining the workforce and contributing equally to the family income. Thus, gender roles have drastically changed in reality but the Indian T.V. serials continue to stick to the old formula of depicting women and men in traditional roles that have been followed since ages as stated by Judith Butler in her Theory of Gender Performativity.

The media has a significant impact on viewers, which means it generates and reinforces ideas and prejudices. Since the media has such a strong influence over how people think and believe, it has an obligation to improve the status of women and the roles they should play in both their personal and professional lives. This can be achieved by creating revolutionary female characters, showing how difficult it is for women to succeed in their careers, etc., as well as showing how men's roles and personalities have changed. In order to affect change in viewers and society at large, the Indian television industry will need to stop thinking exclusively about its target audience—housewives and elderly women—and start prioritising the general populace. The T.V. industry (channels and production houses) should stop focusing only on its TRPs, popularity, and profits. Targeting a particular group of people will never result in change. Therefore, the job should be extensive in order to bring about a significant change in the society and the people. As the famous saying goes “With great power comes great responsibility”, therefore, this industry should use their power in a responsible manner to bring about a positive change in the society by moving away from stereotyping gender roles assigned to women (and even men) in their content.

## **CONCLUSION**

In order to keep up with the rapid change in contemporary times, viewers must likewise alter their way of thinking. Demanding material that supports inaccurate portrayals of women will make things worse. Such

---

a need for backwards-looking material would impede the advancement of women and continue to strengthen gender stereotypes. Because viewers play a significant part in driving demand for a particular type of material, they must also recognise their responsibilities and seek out/ demand for information that is both entertaining and educational.

This leads to the conclusion that the content that is offered on Indian television is influenced equally by both the media and the viewers. Both of these organisations must act responsibly if they want to help bring about meaningful social change, advance women, and dismantle traditional gender norms in Indian culture.