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# Social Struggles of Women's and LGBTQ Community for Legal Acceptance in India

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## Abstract

With the famous saying of Thomas Arnold "Law is primarily a great reservoir of emotionally important social symbols, it develops, as language develops, in spite of, and not because of, the grammarians. Though the notion of a 'rule of law' may be the moral background of revolt, it ordinarily operates to induce acceptance of things as they are. It does this by creating a realm somewhere within the mystical haze beyond the courts, where all our dreams of justice in an unjust world come true." The socio-legal issues include privacy and confidentiality, also issues pertaining and related to socially vulnerable, health insurance discrimination, employment discrimination, individual responsibility, issues related to race and ethnicity and implementation.

There are plethora of socio-legal issues emerging in the society, which are needed to be addressed and to be tackled under the lime light of the law, which is embedded in the territorial boundary of the nation. This paper aims to focus on the light issues related explicitly for the extreme groups of society, such as women, children, trans-genders, people belonging to SC's; ST's and other minority groups. But being considered the marginal communities of the nation women went to a lot to have equal status and get opportunity in the society. Are women actually getting any rights? There is no doubt that law treats every person equal before the law, under the legal setup provided under different Act and the Constitution of India, 1950 but when the question comes about the ground of implementation of the same, we see that majority of these communities do not even get the basic human rights. The goal of equality is still very far. The author through this paper wants to highlight the gaps that still persists in the Indian Society.

**Keywords:** Society, Laws, Gender Discrimination, LGBTQ Community, Justice.

## Introduction

What actually a society is? According to what Emile Durkheim said in his teachings that the society is a system of interrelated parts where no one part can function without the other. These parts make up the whole of society. If one-part changes, it has an impact on society as a whole, adding to what Aristotle told the world that Man is a social animal and a man is biologically and psychologically equipped to live in the groups which dealt in the society. With the imminent of the society, the forthcoming of the religion, customs, traditions all materialize, which is followed and believed by the people residing in that society. In fact, India is the blend of different socio-cultures, ethics and values where religion plays a vital role in the upbringing of the social norms in the society because of which these socio-legal aspects are always a matter of question.

We are living in that state of assorted society in which we are bound with the socio-legal taboos which not only hinders the generic living conditions of an individual but also plays a vital role in creating a social evil in one's mind. Though the Indian society have evolved through the ages and advancements have taken place in the diverse fields of the society, but we are still lacking behind in the mindset of the most common customs and traditions which was being followed from about 1000's of years. Security of an individual (explicitly for the extreme groups of society, such as women, children, trans-genders, people belonging to SC's; ST's and other minority groups), casteism, dowry, communalism, consumption of alcohols, drug addiction, and the list goes till nowhere. The vibrancy of the socio-legal problems exists in every sector of the society.

### Security of an individual:

We all know that Article 14 of the Indian Constitution, 1950 provides for the right to equality. But what is the actual meaning of equality? Does it mean that equality should be given to all? No, the true interpretation of this provides for equality among equals. Only those are equals in a particular society should be treated equal. But, in our society the women were not treated equal in the past decades due to which special provisions are given to women community. Article 14 also talks about the equal protection of laws, which says that for better public welfare, classification is must, that different factors existing in our country and we recognise them then only we can bring the new and better laws.

As per the Article 21 of the Indian Constitution concerning protection of life and personal

liberty - protects gender privacy, identity and integrity<sup>1</sup>. That means security of an individual. If we take special reference pertaining to the security of women and child which is mentioned in the Constitution of India under article 15(3)<sup>2</sup> which says that nothing in this article shall prevent the State from making any special provision for women and children. For past 5 decades, the government also promotes the weaker sections of the society with the special care, this includes the schemes that benefit the women community in whole, some of the government schemes are as follows:

1. **Beti Bachao Beti Padhao Scheme:** This was the scheme launched on January 22 2015, by our Hon'ble Prime Minister in the state of Haryana. The main target of this scheme was to ensure the welfare of the women and children. This scheme ensures the survival, protection and education of each n every girl child. This scheme also aims to re- address the issues relating to the declining of the sex ratio over the past few years. It also helps in creating social awareness for the girl child and renders itself in enhancing the efficiency of welfare services developed for girls.

The Beti Bachao Beti Padhao Scheme was applicable in the nationwide, which ensured the maximum outstretch, so the 3 groups were made for the commencement of this scheme.

- **Primary Groups:** which comprised of young and married couples, pregnant mothers and parents.
  - **Secondary Groups:** Which comprised of the youth of India, adolescents, in-laws, doctors, private hospitals, nursing homes, diagnostic centres.
  - **Tertiary Groups:** which comprises of general people of the country, religious leaders, voluntary organisations, frontline workers, officials, media and women SHGs Sector.
2. **One Stop Centre Scheme:** Next for the list for empowerment of the women comes the One Stop Centre Scheme, which is a centrally sponsored scheme of Ministry of women and Child Development, for the addressing of the problems of violence committed against the women community. The founding of this scheme was lead on 1<sup>st</sup> April, 2015 It is basically a string of umbrella scheme for National Mission for Empowerment of Women including Indira Gandhi Matritav Sahyog Yojana. In this scheme, One Stop Centre will be manufactured across the country both in private and public spaces to provide integrated support and assistance under one roof to women

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<sup>1</sup> Article 21, Indian Constitution 1950

<sup>2</sup> Article 15, Indian Constitution 1950

affected by violence irrespective of class, caste, region, religion, marital status or sexual orientation.

3. **Working Women Hostel:** For the promotion for the safe environment and safe accommodation for working women and to provide day care facilities for their children, the Government of India came up with a lucrative scheme of Working 'Women Hostel Scheme'. This scheme provides a particular preference for working women belonging to the disadvantaged sections of society. The Scheme guidelines also provide the reservation of seats for physically challenged.
4. **Women Helpline Scheme:** This scheme also ensures the women empowerment that intends to give 24\*7 emergency responses to women affected by violence in private or in public places. With the help of a single toll-free number (181), the universalisation of the women helpline number has been cooked through in every State and Union territory of India.
5. **Mahila E-Haat:** Mahila E-Haat is an initiative scheme launched by the Ministry of Women and Child Development. This scheme provides the wider opportunity for women entrepreneurs for using the technology and present their products on an online platform. This scheme helps the upcoming women entrepreneurs, women self-made groups (SHGs), NGOs. With only a telephonic devices and internet connections, women can show case their products along with descriptions and photographs. This initiative also supports the 'Make in India' program through an online platform.
6. **Mahila Police Volunteers:** The Ministry of Women and Child Development, along with Home Affairs, launched the Mahila Police Volunteers scheme in all States and Union Territories. This central government-sponsored scheme aims to create a link between police authorities and local communities to ensure police outreach on crime cases happening against women. This scheme works to create a safe woman-friendly environment and encourages women to join the police force.
7. **STEP (Support to Training and Employment Program for Women):** One of the most effective women empowerment schemes in India is STEP (Support to Training and Employment Program for Women). It was introduced to provide training in skill development and to assure employment to women. This government-backed scheme offers grants to institutions and organisations to conduct the training programme. With the help if this scheme, marginalised women (with special focus on SC/ST

households, women-headed households and families below the poverty line), asset-less rural women and urban poor will be benefited.

8. **SWADHAR Greh:** SWADHAR Greh, one of the Government schemes for women's empowerment in India, aims to provide shelter, food, clothing, social, economic and health security. This scheme provides legal assistance to women and helps them take initiative for readjusting in societies. Women who are deserted and do not have any economic and social support, homeless women (who survived natural calamity but do not have economic support), Women prisoners (released but do not have a family), Trafficked women or girls rescued or escaped from a brothel, Women suffering from AIDs, HIV will be benefited and ensure the security and safety of the women.
9. **Mahila Shakti Kendras (MSK):** Another popular women empowerment scheme in India is Mahila Shakti Kendra. This scheme was made basically for the rural women. It aims to provide one-stop convergent support services to women to develop skills, generate employment opportunities, and increase digital literacy. This scheme is operational at multiple levels, such as national level, state level, and district level. The Government intends to cover the 115 most backward districts by establishing 920 Mahila Shakti Kendras.
10. **Rajiv Gandhi National Creche Scheme:** The Government has introduced National Creche Scheme for the children of a working mother. This scheme provides day care facilities to the children and guarantees to improve the health and nutrition status of children. Further, this women empowerment yojana promotes physical, social, and holistic development of children and educates parents to enhance childcare methods or techniques.

These above-mentioned schemes improved the living conditions of the women to a certain extent. There were certain laws related also which fallen in the favour of women like **The Provision of the Protection of Women from Domestic Violence Act, 2005, Dowry Prohibition Act, 1961, The Maternity Benefit Act 1961, Muslim Women (Protection of rights on divorce) Act 1986, The Indecent Representation of Women (Prohibition) Act 1986, The Commission of Sati (Prevention) Act, 1987. In 1976, the Equal Remuneration Act** was passed to provide for equal remuneration to men and women for similar work.

Before a decade government also came up with the scheme for the protection of the girl child. The name given for this scheme was **Ladli 2008**, in which a particular amount was set aside at the time of the birth of a girl child by the government, she will receive this amount at the

time when she will turn to eighteen years. This certain amount will help her to for the completion of her education or for the marriage of the girl child. There was another scheme by the name of **Jaccha Baccha Scheme**, in which the state government take care of the girl child and take full expenses which are related to medical assistance for the upbringing of the child.

But, despite of having these provisions, these laws and schemes, the women are still unsafe and been harassed. It is not always easy for the women to take equal status in the society. The gender gap embedded in the mindset of the male chauvinism of demining and disregarding the character identity of a women. We do talk about and personally I have learned that in Hindu Mythology the women are treated as Goddess Laxmi of the house, the girl child is prayed in the holy Navratri festive as “Kanya Pujjan”. Even in Quran, the holy book of Islam, forbids female infanticide and instructs Muslims to educate daughters as well as sons. Yes, we are respecting and praying the girl child in every religion, but when it comes to the practicality of one’s life, the patriarchal society become blind folded.

### **Gender Discrimination:**

Since the time, Rise of the Magadh as an Empire in 558 BC took place till today, we have seen the plethora of harassment and violence incidents which occurred on women community. The work done by women is not valued and does not get any recognition. It was considered that the main responsibility of women is to do household chores and bring up the children.

We have seen that in the past the practice of sati system (which have been abolished, but is still practised in the backward areas of the nation), mental and physical tortures on women, the triple-talaq (abolished with the help of Shayara Bano Case). We also saw the practice of having male offspring as a blessing in the family and the female babies are being aborted.

Noy only in the Hindu Religion but the cruelty on women was also seen in other religion too. The taboo of male chauvinism grants a special provision to male counterparts in Muslim law to set off their women by just saying, or by writing TALAQ! TALAQ! TALAQ. The Muslim law sets three ways for the provision of divorce-

- Divorce by the unilateral act of the husband
- Divorce by mutual agreement
- Judicial Divorce

In Shayara Bano Case vs Union of India<sup>3</sup>, the first provision was challenged by the petitioner in the court, but before discussing the case let's first discuss the second point that by which means the Divorce in Muslim law can take place by mutual agreement.

Divorce by Mutual Agreement: So basically, by two different ways this mutual agreement on divorce can take place

**Khula:** In this category, the female counterpart concerns to her male counterpart for the termination of the marriage/ divorce of the marriage and if the male counterpart agrees to this decision, the divorce of that tie-up meant to be completed.

**Mubaraat:** for this Category of this divorce, both the male counterpart and female counterpart has the mutual consent for divorce in the Muslim Law. Ask Ma'am

Divorce by the unilateral act of the Husband: For the commencement of the divorce there are three categories also mentioned under the Divorce by the unilateral act of the Husband-

**Talak-e-ahasan:** In Talak-e-ahasan, a single pronouncement of Talaq word has been used by the male counter part to the female counter part. But, a time period of 90 days is given to the couple for the consultation to revoke the divorce. Elsewise, if the conciliation is not maintained in 90 days, then the divorce will be completed.

**Talak-e-hasan:** In Talak-e-hasan, three times pronouncement of Talaq word has been used by the male counter part to his female counter part, but the word Talaq is not being used in one go, it is said in time span of three months. If in the time span of 2 months, the re-conciliation of the couple for staying in the marriage takes place, then the revocation of divorce can be done. Elsewise, after 3 months if the last Talaq word has been said by the male counter-part, then the divorce becomes irrevocable. The period of 90 days is called Iddat.

**Talak-e-biddat:** In Talaq-e-biddat, if the male counter-part says Talaq, three time in one go, then no one can revoke the divorce process in this category.

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<sup>3</sup> Shayara Bano V Union of India and Ors, 2017 W.P.(C) No. – 000118-000118/2016

For the abolition of Talaq-e-biddat, the landmark case Shayara Bano vs Union of India<sup>4</sup> came into picture. Shayara Bano filed a Writ Petition in the Supreme Court pleading to declare three practises talaq-e-biddat, polygamy and nikah-halala as unconstitutional as they violate the fundamental rights of women.

The issues which raised by Shayara Bano Case was-

- whether the practise of Triple Talaq is constitutional?
- whether the practise of Triple talaq is an essential religious practise of Islam?

With the arguments, presented by the Advocates of both the sides, the Constitutional Bench of the Supreme Court, by 3:2 majority, set aside and declare the practice of instantaneous Triple Talaq or Talaq-e- biddat to be unconstitutional under Article 14. The Supreme Court of India also talks about the essential religious practice of Islam and why they entered in the matter of a religion. The court quoted that if removing a practice cause a significant change in religion, that practice is referred to as an ‘essential religious practice’ protects only such practices.

Some other analysis came in the picture when we talk about this case, that whether constitutional law can interfere in the personal law, as the practise of any religion comes under strata of Personal law, the Court said that any law which is silent at any its discretion, the Court can interfere in it and can make the suitable law which can be beneficial for the any community or religion.

Now, what happened when the judgement was given by the Hon’ble Justices, the Triple Talaq Bill, the Muslim Women (Protection of Rights on Marriage) Ordinance 2019 was made and the bill was passed in Rajya Sabha on 30 July 2019, and the punishment was added in the bill that any male counterpart practising Talaq-e-biddat or pronouncing the word TALAQ! three times in one go will be imprisoned for a term of three years and also be liable for fine.

## **Dowry System:**

The practise of dowry is one of the worst social practices that has affected our culture. For the independent India, one of the land mark legislations is the passing of The Dowry Prohibition Act in 1961 by the Government of India. Despite the fact that the practise of both as giving as accepting the dowry is banned by law and such acts are punishable under the Article 4 of The

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<sup>4</sup> Shayara Bano Vs Union of India and Ors, (2017) 9 SCC 1

Dowry Prohibition Act, 1961<sup>5</sup> which says that If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees. Whether it is a rural or urban India the system is so thoroughly imbedded in our cultural that it continues unabated. The scope of the dowry does not rest only till the given and take of the resources, it also leads to the domestic violence, marital rapes, cruelty by in-laws against women not only psychological but also the physical torture are related to the matters of dowry. Domestic violence in India is an entrenched problem, and it has only been exacerbated in the recent years. About 70 percent of women in India are victims of domestic violence.

National Crime Records Bureau's (NCRB), 'Crime in India' 2019 report was worrisome but not startling. As per the report, in India, a woman is raped every 16 minutes, and every four minutes, she experiences cruelty at the hands of her in-laws.

An analysis of National Family Health Survey (NFHS) 2015-16 data indicates that an estimated 99.1 percent of sexual violence cases go unreported and that the average Indian women is 17 times more likely to face the sexual violence from her husband than from others.

In spite of the recent amendments in the criminal law, various laws meant to protect women from domestic violence and sexual assault have largely remained ineffective.

*Is Lady Justice, just a statue placed blindfolded or really giving some unbiased justice?*

## LGBTQ

Under the light of the law, our constitution gives equal rights to men and women in every field and in the new contemporary world we are now giving equal rights and equal opportunities to those communities who were not recognized as the part of our society – Lesbian, Gay, Bisexual and Transgender (LGBTQ Community).

The rights for the LGBTQ Community had to fight against the two hundred years previous British Law era, that tend to criminalised the homosexual intercourse, which was meant against the order of the nature. It's roots for the criminalisation of the homosexuality emerge from The Buggery Act of 1533 when Thomas Macaulay drafted the non-amended Section

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<sup>5</sup> The Dowry Prohibition Act, 1961

377. This law defined 'buggery' as an unnatural sexual act against the will of God and man and after wards it was published in the Indian Penal Code, 1860 which was drafted by Thomas Babington Macaulay.

But, the fight for the de-criminalise of homosexuality started in before two decades when in the month of November, a report 70-page report was released by AIDS Bhedbhav Virodhi Andolan (ABVA) addressing the social issues, violation, the extent of blackmail, extortion faced by the Gay people, especially at the hands of the police. The report calls for the repeal of legislation that discriminated against the members of the LGBTQ community, including section 377. When this report was published, even the journalist didn't aske any question because of the embarrassment faced by them in asking the question regarding the community. In May 1994, the same organisation AIDS Bhedbhav Virodhi Andolan (ABVA), filed a writ petition in the Delhi High Court, demanding for providing the free condoms to the prisoners in Tihar Jail, for those inmates who are in the sexual intercourse and also demanded that section 377 be recognised as unconstitutional. Controversy erupts when Kiran Bedi, the inspector general of Tihar Jail in Delhi, refuses to provide condoms for inmates, by saying it would encourage the ground of homosexuality, besides that inmates indulge in it. The petition was eventually dismissed in 2001.

In the month of December 2001, the Naz Foundation, a sexual health NGO working with gay men, files a Public Interest Litigation (PIL) in the Delhi High Court, challenging the constitutionality of section 377 and calling for the legislation of homosexuality. Then in the month of September 2004, the High Court of Delhi dismissed the case, saying there is no cause of action and that purely academic issues cannot be examined by the court. A review petition filed by the Naz Foundation was also dismissed a few months later. After the dismissal of the petition by the Delhi High Court, in February 2006 the Naz Foundation files a special leave petition in the Supreme Court, the Supreme Court reinstates it in the Delhi High Court citing the fact that it is an issue of public interest. The voices that were against the criminalisation of homosexuality and section 377 came together and joins the petition, while the India's ministry of home affairs files an affidavit against the decriminalisation of homosexuality. Finally, after a long hustle, in the month of July 2009, a landmark judgement by Delhi High Court bench consisting of the then Chief Justice Ajit Prakash Shah and Justice S Murali Dhar decides to strike down the section 377, saying it violates the fundamental rights to life, liberty and equality as mentioned in the Indian Constitution<sup>6</sup>.

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<sup>6</sup> Naz Foundation v Government of Nct of Delhi 2009, 160 Delhi Law Times 277

In December 2013, in the leading case of Suresh Kumar Koushal and Anr. Vs. NAZ Foundation and ors<sup>7</sup>, where Suresh Kumar Koushal, a Delhi-based Astrologer, challenged the Delhi High Court's decision in the Supreme Court. The LGBTQ community suffers a significant blow when the Supreme Court overturns the Delhi High Court's judgment, saying "Section 377 does not suffer from the vice of unconstitutionality and the declaration made by the division bench of the High Court is legally unsustainable".

Finally in the next case of the Supreme Court of India, National Legal Services Authority (NALSA) vs Union of India AIR 2014 SC 1863. With the benches of Hon'ble Justice K S Radha Krishnan and Hon'ble Justice A K Sikri, the Court has directed the Centre and the State Governments to grant legal recognition of gender identity whether it be a male, female or a third-gender. For the first time in the history of attaining the criminalisation of homosexuality, the step has been taken in the favour of the LGBTQ Community.

But, in today's world with the help of a landmark case i.e., Navtej Singh Johar v/s Union of India<sup>8</sup>, the five bench judges of the Supreme Court of India delivered a historical verdict on sexual orientation in which the homosexuality, partially de-criminalised as it was mentioned in the section 377 of Indian Penal Code, 1860. the section basically tells those Unnatural offences. —Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation. —Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

The main issue raised here was about the unconstitutionality of section 377 of IPC

With the remarkable judgement the court said that it doesn't matter how small is the LGBTQ section, they also have the right to privacy which includes intimacy. Court also stated that the main objective behind retaining section-377 is to protect women and children from being abused and harasses by carnal intercourse but consensual carnal intercourse which is performed by the LGBT Community is neither injurious to children and women.

Court further added that Right of Choosing a partner for intimate relations is completely a matter of personal choice which cannot be restricted. Any act done in affection by the LGBTQ Community in public does not disturb the public order or moral values until it is decent enough and is not obscene. Every person has a right to live with *DIGNITY*.

The Supreme Court declared that section-377 is unconstitutional as it violates Articles 14, 15,

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<sup>7</sup> Suresh Kumar Koushal and Anr. v Naz Foundation and Ors., Civil Appeal No. 10972 of 2013

<sup>8</sup> Navtej Singh Johar v Union of India, AIR 2018 SC 4321 W.P. (Crl) No. 76

19 and 21 of the Indian Constitution and therefore overruled the judgment given in Suresh Koushal and Ors Vs Naz Foundation and Ors.

We often heard a slang used by the Legal officials that *Justice Delayed is Justice Denied*, though the community of LGBTQ suffered for round about more than 200 years, but not only they are greeted in the society but also being recognised as the citizen of the nation. There are many such incidents which mark the presence and acceptance of the community.

- India's first transgender lawyer Sathyasri Sharmila, a citizen of Tamil Nadu enrolled her name in the Bar Council of Tamil Nadu and Puducherry.
- India's first transgender judge Joyita Mondal, at the age of 29, she was appointed at Lok Adalat in North Bengal in October 2017.
- India's first transgender police officer, Prithika Yashini, she was appointed to the post of sub-inspector.
- India's first transgender college principal, Manabí Bandopadhyay, she became the college of Krishnagar Women's College on June 7, 2015.
- India's first transgender person to contest elections, Mumtaz, she came out to contest elections in Punjab from Bahujan Samaj Party (BSP). She contested elections from the Bhuchho Mandi constituency. She has been working with BSP for over 11 years.
- India's first transgender who became an MLA, Shabnam Mause, she constituency elections from Sohagpur constituency in district Shahdol, Madhya Pradesh.
- India's first transgender soldier, Shabi, she joined the naval base in Vishakhapatnam.
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## Conclusion:

Thus, Social Legal Issues are now being recognised by the authorised government officials by filling the gap at different levels of social, economic and political fronts by addressing the issues, by giving equal opportunities and by making schemes and policies to exterminate these legal issues (Gender discrimination, dowry system, rights pertaining to LGBTQ community) persisting in the society.

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