

Constitutionality of gender biased laws

Introduction

Throughout history, there has been debate over gender prejudice in the law. Several nations have laws in place that discriminate against women or favour males. Such legislation may result in discrimination against women in a variety of settings, including as the workplace, the classroom, the hospital, and politics. In recent years, the subject of gender bias in legislation has come up for discussion. Many nations have taken action to do away with such laws and guarantee that everyone is treated equally under the law. The legitimacy of such legislation is up for debate, yet several nations still have legislation that discriminates against women. The fundamental idea of equality before the law serves as the foundation for the legality of gender-biased policies. The cornerstone of democracy, the idea of equality is a key element of the majority of contemporary constitutions. No of their gender, colour, religion, or any other similar aspect, all people are guaranteed equal rights and opportunities under the constitution.

The idea of equality before the law is violated by gender-biased laws. Such rules obstruct the equality principle by establishing a hierarchy between men and women. In accordance with the equality principle, all people must be treated similarly under the law, regardless of their gender. The validity of legislation that discriminate against women has been challenged in several nations. Due to their conflict with the idea of equality before the law, courts have ruled such legislation to be unconstitutional. According to court rulings, legislation that discriminate against women go against the Equal Protection Clause of the Constitution and are thus illegal¹.

For instance, there is a clause in the Indian Constitution that forbids discrimination based on gender. In India, gender-biased legislation have been challenged using this clause. Several of these rules, such as those that forbade women from working in particular professions and those that denied them the ability to own property, have been overturned by the Indian Supreme Court². In a similar vein, everyone is guaranteed equal protection under the law under the United States Constitution. Gender-biased laws in the US have been challenged using this clause³. Several of these restrictions, including those that forbade women from serving on juries and those that denied them the ability to vote, have been overturned by the US Supreme Court⁴.

The validity of legislation that discriminate against women is a sensitive subject that has been contested in several nations. Such rules establish a hierarchy between men and women and go against the fundamental premise of equality before the law. Legal discrimination against women must stop. The aim of the law shall be to provide all citizens equal rights and opportunity. The judiciary is crucial in preserving the equality clauses in the Constitution and invalidating legislation that discriminate against women⁵.

¹ European Commission, *Gender Equality Glossary: Gender Bias*, https://ec.europa.eu/info/publications/gender-equality-glossary/gender-bias_en (last visited Oct. 12, 2024).

² United Nations, *Universal Declaration of Human Rights: Article 7 - Equal Protection Before the Law*, <https://www.un.org/en/sections/universal-declaration/article-7-equal-protection-before-the-law/index.html> (last visited Nov. 1, 2024)

³ Stanford Encyclopaedia of Philosophy, *Equality and Democracy*, <https://plato.stanford.edu/entries/equality-democracy/> (last visited Nov. 2, 2024).

⁴ European Institute for Gender Equality, *Gender Mainstreaming*, <https://eige.europa.eu/gender-mainstreaming> (last visited Oct. 12, 2024).

⁵ United Nations Development Programme, *Strengthening Access to Justice for Women*, <https://www.undp.org/content/dam/undp/library/Womens%20Empowerment/Strengthening%20Access%20to>

In this article, we will explore the constitutionality of gender-biased laws and the role of the judiciary in upholding constitutional provisions for equality. We will examine examples of gender bias in laws from around the world, and analyse how courts have dealt with these issues in landmark cases. We will also discuss the importance of eliminating gender bias in laws, not just for individuals but for society as a whole. By ensuring that laws are gender-neutral and promote equal rights and opportunities for all, we can create a more just and equitable world.

Definition of Gender Bias Laws

Laws or regulations that treat people differently depending on their gender rather than on relevant, objective factors are referred to as gender biased legislation. Men and women may receive unequal treatment or opportunities as a result of this bias, which can be intentional or inadvertent⁶. There are many ways that gender bias in laws can manifest itself, including restrictions on women's ability to obtain medical care or social services, laws that discriminate against marriage, divorce, and child custody, unequal pay for equal work, restrictions on women's rights to inherit or own property, and more.

In addition to harming women, gender bias in legislation may also hurt society as a whole since it contradicts the values of equality and human rights and feeds into prejudice and stereotypes against women. It can also prevent women from fully participating in the economy, which can hinder economic growth and progress. To promote equality and guarantee that everyone has the chance to reach their full potential, it is crucial to identify and rectify gender bias in legislation⁷.

Importance of the Issue

The promotion of gender equality, which is a basic human right and a crucial component of sustainable development, is why it is important to eliminate gender bias in laws. Gender equality refers to the fair and non-discriminatory treatment of all people, regardless of their gender, and their equal access to recourses, opportunity, and administrative mechanisms⁸. When laws and regulations are biased against women, it can reinforce gender stereotypes and discrimination, which could also restrict the possibilities and liberties available to women and girls. For instance, discriminatory legislation based on gender may prevent women from reaching their full potential by denying them equal access to political representation, healthcare, work, and education⁹.

Laws that discriminate against women may also harm the expansion and advancement of the economy. The loss of potential talent or human capital that results from denying women access to school, work opportunities, and other resources can constrict economic growth and development¹⁰.

%20Justice%20for%20Women.pdf (last visited Oct. 12, 2024).

⁶ United Nations Development Programme, *Addressing Discrimination and Inequality in South Asia* (2018).

⁷ World Economic Forum, *Global Gender Gap Report 2021*.

⁸ UN Women, *Facts and Figures: Economic Empowerment*, <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures> (last visited Nov. 1, 2024).

⁹ United Nations Development Programme, *Goal 5: Gender Equality*, <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-5-gender-equality.html> (last visited Nov. 2, 2024).

¹⁰ World Bank, *The Little Data Book on Gender 2019*.

Eliminating gender bias in laws and protecting women's and the rights of the LGBTQIA+ community is vital for promoting gender equality and upholding human rights. Gender-biased laws can spread harmful stereotypes and discrimination against women, limiting their access to opportunities and resources, and denying them equal protection under the law¹¹. Protecting women's rights requires the recognition and elimination of gender bias in all aspects of law and policy-making. This includes the enactment of gender-neutral laws that provide equal protection to all individuals, regardless of their gender identity, and the effective implementation and enforcement of existing laws to ensure that women's rights are upheld¹².

Furthermore, ensuring women's rights and promoting gender equality is not just a matter of justice and human rights; it is also critical for social and economic development. Research has shown that when women have equal access to education, employment, and decision-making positions, they contribute significantly to economic growth, poverty reduction, and social well-being.¹³ Therefore, it is imperative that governments and societies take action to eliminate gender bias in laws and policies and protect women's rights. This can be achieved through advocacy, education, legal reform, and effective implementation and enforcement of laws and policies. Ultimately, the goal must be to create a society where gender equality is a reality, and all genders are empowered to live their lives to the fullest potential¹⁴.

Gender bias in laws violates the fundamental human rights of individuals to equality and non-discrimination. By eliminating such biases, we can ensure that every individual is treated with dignity and respect. Eliminating such laws is a necessary step towards achieving gender equality. This involves ensuring equal access to opportunities and resources, and equal protection under the law for individuals regardless of their gender. Moreover, these laws can exacerbate existing social inequalities and discrimination, particularly for marginalized groups such as women, transgender individuals, and gender-nonconforming individuals. Eliminating gender bias in laws can help to promote social justice and address systemic discrimination. Gender equality is not only a human rights issue but also an economic issue. Eliminating gender bias in laws can help to create a more level playing field for all individuals to participate in economic and social development¹⁵.

In addition, tackling gender bias within laws is vital to protect the values of democracy and human rights as well as to advance gender equality.¹⁶ The basic human right to be considered equal and without prejudice before the law is violated by laws that target people based on their gender. In order to advance gender equality, guarantee human rights and democracy, and foster economic growth and development, it is crucial to remove gender bias in legislation. We can build a more equitable, welcoming, and successful society for everybody if we do away with gender prejudice in law¹⁷.

¹¹ ibid

¹² Importance of eliminating gender bias in laws: European Union Agency for Fundamental Rights (2019).

¹³ Center for Women's Global Leadership, *About Us*, <https://cwgl.rutgers.edu/about-us/> (last visited Nov. 2, 2024).

¹⁴ ibid

¹⁵ World Health Organization, *Gender and Health*, <https://www.who.int/news-room/questions-and-answers/item/gender-and-health> (last visited Nov. 1, 2024).

¹⁶ European Institute for Gender Equality. (2019). *Gender Equality: What it is and Why it Matters*.

¹⁷ India Const. art. 14.

The Legal Aspect of The Gender Biased Laws

In India, the idea of equality before the law has significant legal ramifications. It suggests that everyone should be subject to the law equally and that nobody should be above the law. This idea is granted to all citizens as a fundamental right under the Indian Constitution.

The idea of equality before the law, from a legal standpoint, guarantees that everyone has the right to equal protection under the law and that no one can be subjected to capricious or discriminatory treatment by the state or its representatives. Additionally, it makes sure that everyone has access to justice and that they can file a lawsuit if their rights are violated.

A number of laws in the Indian legal system support the idea of equality before the law. For instance, Article 14¹⁸ of the Indian Constitution prohibits discrimination based on characteristics including gender, race, religion, caste, or place of birth. Article 15 prohibits discrimination based on race, caste, sex, religion, or place of birth, much like Article 14 does. These provisions ensure that everyone is treated equally before the law and that they are not the target of discrimination based on their unique characteristics.

The Indian legal system also guarantees the right to legal assistance and representation to those who cannot afford it. This ensures that everyone, regardless of income or social status, has access to legal remedies and can seek justice.

In the context of criminal law, the idea of equality before the law is also pertinent. All people, regardless of their personal traits, are subject to the provisions against discrimination and hate speech found in the Indian Penal Code (IPC). By doing this, it is ensured that hate speech and discriminatory behaviour are not accepted in India and that people are not the target of such behaviour based on their unique traits¹⁹.

Overall, the idea of equality before the law is crucial to Indian law because it guarantees that everyone is treated equally and that their rights are upheld. All citizens are entitled to it as a fundamental right, and the state has a responsibility to make sure that this concept is upheld.

Articles in the Indian Constitution

Articles 15 and 16 of the Indian Constitution are important provisions that address the issue of gender bias in laws and promote gender equality.

Article 15(1)²⁰ of the Constitution prohibits discrimination on the grounds of sex, among other factors. It states that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them. This means that no law or policy can be formulated which discriminates on the basis of gender²¹.

Article 16(1)²² provides for equality of opportunity in matters of public employment and prohibits discrimination on the grounds of sex, among other factors. It states that there shall be equal opportunity for all

¹⁸ibid

¹⁹Human Rights Watch, *Women's Rights* (2020).

²⁰India Const. art. 15.

²¹ Human Rights Watch, *Women's Rights*, <https://www.hrw.org/topic/womens-rights> (last visited Nov. 12, 2024).

²²India Const. art. 16.

citizens in matters relating to employment or appointment to any office under the State. This provision ensures that there is no gender bias in employment policies and practices.

The significance of Articles 15 and 16 in promoting gender equality cannot be overstated. These provisions have been used in numerous cases to challenge gender-biased laws and policies, and have led to significant improvements in the legal framework protecting women's rights in India. For example, in the case of *Anuj Garg v. Hotel Association of India*²³, the Supreme Court of India used Article 15(1) to strike down a policy that discriminated against female employees by imposing a mandatory dress code that included sarees. The court held that such a policy violated the right to equality and was therefore unconstitutional. Similarly, in the case of *State of Madras v. Champakam Dorairajan*²⁴, the Supreme Court used Article 16(1) to strike down a government order that reserved seats in educational institutions on the basis of religion and caste, but not on the basis of gender. The court held that such a policy violated the right to equality of opportunity in employment and education.

Overall, Articles 15 and 16 play a critical role in promoting gender equality and eliminating gender bias in laws and policies. They are powerful tools that can be used to challenge discriminatory laws and practices, and to promote a more just and equitable society²⁵.

Importance of Eliminating Gender Biased Laws in A Democracy

It is essential for all citizens to be treated equally under the law and to have their rights upheld, which is why the equality before the law principle is so important in a democracy. The government in a democracy is chosen by the people, and it is tasked with enforcing the law and defending the citizens' basic rights. The idea of equality before the law guarantees that the government will be held accountable to its constituents and will not be permitted to take discriminatory or arbitrary actions²⁶.

The rule of law is essential in a democratic society to guarantee that everyone is subject to the same laws and that no one is above the law. Everyone is entitled to equal protection under the law, regardless of their social, economic, or other background. The rule of law is crucial in a democratic society to guarantee that everyone is bound by the same laws and that no one is above the law. The idea of equality before the law guarantees that everyone is held responsible for their conduct and subject to the same legal procedures, regardless of their social, economic, or political status. By doing so, it is possible to stop the misuse of authority and guarantee that justice is administered in a fair and unbiased manner. The idea of equality before the law also fosters social harmony and works to combat prejudice and socioeconomic injustice. Everybody is guaranteed access to justice and the ability to seek redress if their rights are violated. For a democracy to be stable and run well, there must be a sense of trust and confidence in the legal system²⁷.

Additionally, in a democratic society, the idea of equality before the law supports variety and inclusiveness. No matter their individual traits like gender, ethnicity, religion, or caste, it guarantees that everyone is treated with

²³Anuj Garg V. Hotel Association of India, AIR 2008 SC 663

²⁴ State of Madras V. Champakam Dorairajan; AIR 1951 SC 226

²⁵ ibid

²⁶ ibid

²⁷Its importance in a democracy: Stanford Encyclopedia of Philosophy. (2019).

respect and dignity. By preventing the marginalisation of particular social groups, this aids in the promotion of social peace and cohesiveness. Overall, because it supports the rule of law, accountability, social cohesion, and inclusion, the principle of equality before the law is essential in a democracy. It guarantees that all people are treated equally before the law and that their rights are upheld, which is crucial for a democratic society to function and remain stable²⁸.

Violation of the Principle of Equality

The principle of equality before the law is a fundamental legal principle that is essential for promoting justice, fairness, and human rights. This principle is based on the idea that all individuals should be treated equally by the law, without any discrimination or prejudice based on personal characteristics such as gender, race, religion, ethnicity, or social status.

The principle of equality before the law is enshrined in many national constitutions and international human rights instruments, including the Universal Declaration of Human Rights²⁹ and the International Covenant on Civil and Political Rights. It means that everyone is entitled to the same legal rights and protections, and that no one is above the law.

This principle requires that laws are applied impartially, without any favouritism, and that individuals are held accountable for their actions, regardless of their social status or personal characteristics. It also means that legal proceedings and procedures should be fair, transparent, and consistent, and that individuals have the right to a fair trial and legal representation.

In India, the principle of equality before the law is enshrined in Article 14 of the Constitution, which states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." This article is applicable to all individuals within the territory of India, regardless of their gender, race, religion, or other personal characteristics³⁰.

The Indian legal system also provides for several other provisions that support the principle of equality before the law. For instance, the Constitution prohibits discrimination on the basis of religion, race, caste, sex or place of birth under Article 15³¹. The Constitution also provides for equal opportunity and equal protection of the law to every citizen under Article 16³².

The Bharatiya Nayaya Sanghita (BNS) contains several provisions against discrimination, such as Section 196³³, which prohibits promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste, or community.

Additionally, the Indian legal system provides for the right to legal aid and representation for those who cannot afford it, which helps to ensure that individuals are not disadvantaged in legal proceedings based on their

²⁸ *ibid*

²⁹ The Universal Declaration of Human Rights, 1948.

³⁰ India Const. art. 14.

³¹ India Const. art. 15.

³² India Const. art. 16.

³³ The Bartiya Nayaya Sanghita, 2023, sec 196.

economic or social status. Despite these legal provisions, discrimination and bias still exist in the Indian legal system, particularly against marginalized communities such as Dalits, women, and religious minorities. These issues highlight the need for continued efforts to strengthen the enforcement of the principle of equality before the law, and to ensure that all individuals are treated equally by the law, without any discrimination or prejudice.

Here are a few cases he can have a look at to understand this point better:

- i. *Maneka Gandhi v. Union of India* (1978)³⁴: In accordance with Article 21 of the Indian Constitution, which protects everyone's right to life and personal liberty, this case introduced the idea of "process established by law." The court's ruling made it clear that the legal process must be reasonable, just, and fair; it cannot be capricious, biased, or go against the laws of natural justice.
- ii. *State of Kerala v. Kesavananda Bharati* (1973)³⁵: The fundamental foundations of the Constitution, which include equality, democracy, secularism, and the rule of law, were affirmed in this case by the Supreme Court of India. The ruling acknowledged that the Constitution is a living, organic whole rather than a simple document.
- iii. *Madhukar Narayan Mardikar v. State of Maharashtra* (1991)³⁶: This case addressed the problem of discrimination against women during the selection procedure for police constables. The Indian Supreme Court ruled that men and women cannot be subjected to differing physical requirements for employment and that discrimination based on gender is against the law.
- iv. *Union of India v. Navtej Singh Johar* (2018)³⁷: In this instance, the Indian Supreme Court invalidated Section 377 of the Indian Penal Code, which made consenting to same-sex relations a crime. The ruling acknowledged that discrimination based on sexual orientation is unlawful and that it violates the principle of equality before the law, which extends to all people regardless of their sexual orientation or gender identity.

Violation of the principle of equality before the law can take many forms, including discrimination, unequal treatment, and differential access to justice. Such violations can occur at various levels of society, including government institutions, law enforcement agencies, and the judiciary.

One example of a violation of the principle of equality before the law is discrimination based on personal characteristics such as race, religion, gender, caste, or sexual orientation. Discrimination can take many forms, including denial of access to services, unequal treatment in the workplace, or differential treatment by law enforcement agencies. For instance, in India, the caste system has historically been a source of discrimination and marginalization, leading to violations of the principle of equality before the law³⁸. Another example of a violation of the principle of equality before the law is differential access to justice. This can occur when

³⁴ *Maneka Gandhi v. Union of India*; AIR 597, 1978 SCR (2) 621

³⁵ *State of Kerala v. Kesavananda Bharati*; AIR 1973 SC 1461

³⁶ *Madhukar Narayan Mardikar v. State of Maharashtra*; AIR 1991 SC 207

³⁷ *Union of India v. Navtej Singh Johar*; AIR 2018 SC 4321

³⁸ Caste based discrimination. Dristi IAS. (February 27, 2023) <https://www.dristiias.com/daily-updates/daily-news-analysis/caste-based-discrimination> (last visited Nov. 12, 2024)

individuals from marginalized communities are unable to access legal services due to their economic or social status. It can also occur when the justice system is biased towards certain groups or fails to address the needs of all citizens equally.

One of the recent examples of a violation of the principle of equality before the law in India was the Citizenship Amendment Act of 2019³⁹, which discriminated against Muslims by excluding them from the list of eligible beneficiaries for citizenship. This act was widely criticized for violating the principle of equality before the law and for being unconstitutional. The Supreme Court of India has yet to give its final ruling on the matter, but the act has sparked widespread protests and debate across the country. Another example of a violation of the is of the alleged custodial killing of a father and son⁴⁰ in Tamil Nadu, India. The incident has raised concerns about police brutality and discrimination against marginalized communities, and has highlighted the need for accountability and justice for all citizens.

Overall, the violation of the principle of equality before the law is a serious issue that can have far-reaching consequences for individuals and society as a whole. It is the responsibility of the government and other institutions to ensure that this principle is upheld in practice and that all citizens are treated equally under the law.

How gender-biased laws violate the principle of equality?

Gender-biased laws violate the principle of equality before the law by treating individuals differently on the basis of their gender. Such laws perpetuate and reinforce gender stereotypes and discrimination, which can have a negative impact on the social and economic status of women and other gender minorities.

One example of a gender-biased law is the criminalization of adultery, which exists in many countries, including India. Under this law, only men can be prosecuted for committing adultery, while women are exempt. This law perpetuates the idea that women are the property of men and that men are entitled to control their sexual behaviour. This law also discriminates against men who may be victims of adultery and undermines the principle of equality before the law. Another example of a gender-biased law is the prohibition of women from entering certain religious places, such as the Sabarimala temple in India⁴¹. This law is based on the belief that women are impure and that their presence can defile the religious space. This law violates the principle of equality before the law by denying women equal access to religious spaces and perpetuating gender stereotypes that undermine their dignity and rights.

Moreover, gender-biased laws also perpetuate social and economic inequalities between men and women. For instance, laws that restrict women's access to education or employment opportunities, or that limit their ability to inherit property or own assets, reinforce patriarchal norms and limit women's ability to participate fully in

³⁹ Ten Reasons why citizenship (Amendment) Act is Unconstitutional. The Leaflet. (September 11, 2022) <https://theleaflet.in/ten-reasons-why-the-citizenship-amendment-act-2019-is-unconstitutional/> (last visited Nov. 2, 2024)

⁴⁰ Tamil Nadu Custodial Deaths: CBI Says Father-Son Beaten From 7:45 pm-3 am. NDTV. (October 27,2020) <https://www.ndtv.com/india-news/tamil-nadu-thoothukudi-custodial-death-cbi-chargesheet-says-father-son-tortured-by-accused-cops-between-7-45-pm-to-3-am-2316240> (last visited Oct. 22, 2024)

⁴¹ Indian young lawyers' association v. the state of Kerala, (2019). 11 SCC 1

society. Such laws violate the principle of equality before the law by denying women equal opportunities to achieve their full potential and contribute to the development of society. Overall, gender-biased laws violate the principle of equality before the law by perpetuating gender stereotypes, discrimination, and social and economic inequalities between men and women. It is essential to address such laws and ensure that all individuals are treated equally under the law, regardless of their gender or any other personal characteristic.

The Judicial role in upholding constitutional provisions for equality

The judiciary plays a crucial role in upholding constitutional provisions for equality, particularly in relation to gender bias in laws. Some of the key roles of the judiciary in upholding constitutional provisions for equality include:

- i. Interpretation of the Constitution: The judiciary is responsible for interpreting the Constitution and ensuring that all laws are in line with its provisions. This includes provisions related to equality, non-discrimination, and fundamental rights.
- ii. Striking down unconstitutional laws: If the judiciary finds that a law is in violation of the Constitution's provisions for equality, it can strike down the law as unconstitutional. This ensures that discriminatory laws are not allowed to stand.
- iii. Setting legal precedents: When the judiciary makes a ruling on a case related to gender bias in laws, it sets a legal precedent that can be used in future cases. This can help to establish a legal framework for ensuring gender equality in laws and policies.
- iv. Providing remedies: If a law or policy is found to be in violation of constitutional provisions for equality, the judiciary can order appropriate remedies to address the harm caused by the discrimination. This may include ordering changes to the law or policy, or providing compensation to those who have been harmed.

Overall, the judiciary plays a critical role in upholding constitutional provisions for equality and ensuring that laws and policies do not perpetuate gender bias or discrimination. By interpreting the Constitution, striking down unconstitutional laws, setting legal precedents, and providing remedies, the judiciary helps to advance gender equality and protect the rights of all individuals⁴².

Consequences of gender biased laws

Gender-biased laws can have significant consequences for individuals and society as a whole. From perpetuation of gender stereotypes to increased discrimination and violence. Let's have a look on them one by one:

1. Perpetuation of gender stereotypes

Perpetuation of gender stereotypes refers to the practice of reinforcing traditional gender roles and expectations through cultural norms, media representations, and other social practices. These stereotypes often reinforce

⁴² Judicial role in upholding constitutional provisions for equality: United Nations Development Programme. (2016). Justice for Women.

harmful and limiting ideas about gender, such as the belief that women are inherently emotional and weak, while men are aggressive and dominant. Gender stereotypes have a significant impact on women's rights by limiting their opportunities and reinforcing discriminatory practices. For example, if women are perceived as being naturally nurturing and emotional, they may be discouraged from pursuing careers in fields that are traditionally seen as more "masculine," such as engineering or politics. Similarly, if men are expected to be dominant and aggressive, they may be more likely to engage in violent behaviour towards women, as such behaviour is seen as acceptable or even desirable.

To combat the perpetuation of gender stereotypes, it is important to promote positive and diverse representations of gender in media and popular culture, as well as to challenge harmful social practices and policies that reinforce traditional gender roles. This includes promoting gender-neutral language and policies, as well as encouraging women and other marginalized groups to participate in non-traditional fields and positions of power⁴³.

In the context of this article, the perpetuation of gender stereotypes contributes to the persistence of gender bias in laws and policies, as well as to the discrimination and mistreatment of women in society at large. It is therefore essential to challenge these stereotypes and promote a more equitable and just society for all.

2. Discrimination

Gender-biased laws perpetuate discrimination against women and other gender minorities by denying them equal opportunities and access to basic human rights. For instance, in some countries, laws may prohibit women from owning property or inheriting from their families. In such cases, women are not only denied their basic right to property ownership, but are also disadvantaged economically, as they are unable to use their property to secure loans or generate income.

Similarly, gender-biased laws limit women's access to education and employment. For example, in some societies, women are not allowed to pursue certain professions or may be discriminated against in hiring practices. This not only harms women's career prospects but also perpetuates a cycle of gender inequality, as women are unable to contribute fully to the economy. These laws also result in discrimination against gender minorities such as transgender individuals, who may be denied access to basic services such as healthcare, education, and employment due to their gender identity. This not only violates their human rights but also perpetuates harmful stereotypes and prejudices against the LGBTQ+ community⁴⁴.

In order to promote gender equality and eliminate discrimination, it is essential to challenge and repeal gender-biased laws and policies. This requires continued advocacy and legal challenges to ensure that individuals of all genders have equal access to basic human rights and opportunities.

3. Violence against women

Gender-biased laws can contribute to violence against women and girls in various ways. Firstly, such laws perpetuate gender stereotypes that promote violence and abuse. For instance, laws that allow for marital rape imply that a woman's body is her husband's property, thus giving the husband the right to use it as he pleases. This perpetuates the idea that men have a right to sexual access to their wives, regardless of the wife's consent.

⁴³ Gender Stereotyping. OHRC. <https://www.ohrc.org/en/women/gender-stereotyping> (last visited Nov. 1, 2024)

⁴⁴ *ibid*

Similarly, laws that require a woman to obtain her husband's permission before seeking medical care imply that a woman is not capable of making decisions about her own health and well-being.

Secondly, gender-biased laws can undermine women's safety by limiting their access to legal protections and remedies. For example, in many countries, women are unable to report domestic violence or seek legal protection because the law does not recognize domestic violence as a criminal offense. Similarly, laws that restrict women's access to abortion or contraception can increase the risk of unintended pregnancies, which can lead to unsafe abortions, maternal mortality, and other health risks⁴⁵.

In order to prevent violence against women and promote their safety, it is important to eliminate gender bias in laws and ensure that all individuals, regardless of gender, have access to legal protections and remedies. This can be achieved by reviewing and amending existing laws that perpetuate gender stereotypes or discriminate against women, as well as by developing new laws and policies that promote gender equality and women's rights.

4. Economic and social inequality

Gender-biased laws can limit women's economic and social opportunities, contributing to gender gaps in income, education, and health outcomes. Such laws can also limit women's ability to participate fully in society and contribute to the development of their communities.

Gender-biased laws can contribute to economic and social inequality by limiting women's access to education, employment, and property rights. For example, in some countries, laws prohibit women from owning property or inheriting from their families, which can limit their economic opportunities and leave them vulnerable to poverty. Additionally, gender-biased laws can limit women's access to education and employment opportunities, contributing to gender gaps in income and hindering economic growth.

Furthermore, gender-biased laws can limit women's ability to participate fully in society and contribute to the development of their communities. For example, laws that restrict women's freedom of movement or limit their ability to participate in public life can limit their ability to engage in social and economic activities. This can result in lower levels of civic participation, reduced economic productivity, and slower community development⁴⁶.

Eliminating gender bias in laws is essential to ensuring women's full participation in society and promoting economic and social development. By providing women with equal opportunities and protections under the law, societies can create a more just and equitable world for all individuals.

5. Undermining the rule of law

Gender-biased laws can have a detrimental effect on the rule of law as they violate the fundamental principles of justice, equality, and fairness. These laws create a system where individuals are treated differently based solely on their gender, rather than on their individual merits and circumstances. This can lead to a loss of public trust in the legal system and can undermine the very foundation of the rule of law⁴⁷.

⁴⁵ Human Rights Watch. (2021). Women's rights.

⁴⁶ Explanation of how gender-biased laws violate the principle: United Nations Development Programme. (2018). Addressing Discrimination and Inequality in South Asia.

⁴⁷ Joseph Shine v. Union of India; (2018). SC 1676

When laws are discriminatory, people may lose faith in the legal system and feel that justice is not being served. This can lead to social unrest, conflict, and a breakdown of social order. Gender-biased laws can also create a culture of impunity where those who perpetrate violence or discrimination against women are not held accountable for their actions. This can lead to a cycle of abuse and injustice that perpetuates itself over time⁴⁸.

Therefore, it is essential to eliminate gender bias in laws to ensure that the rule of law is upheld and that justice is served for all individuals, regardless of their gender. By eliminating gender bias in laws, legal institutions can build public trust, promote stability and reduce conflict, and contribute to the development of a just and equitable society.

Constitutionality of Gender-Biased Laws

Gender-biased laws are unconstitutional if they violate the principle of equality before the law enshrined in many national and international legal frameworks. The principle of equality before the law holds that all individuals are equal before the law and are entitled to equal protection of the law without discrimination on any grounds, including sex, gender, or other personal characteristics⁴⁹.

Many countries have constitutional provisions that guarantee the principle of equality before the law, such as Article 14 of the Indian Constitution⁵⁰, the Equal Protection Clause of the US Constitution, and Article 7 of the Universal Declaration of Human Rights⁵¹. In addition, many international human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵², the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognize the right to equality before the law and prohibit discrimination on the basis of sex.

Gender-biased laws violate the principle of equality before the law by treating individuals differently based on their gender or sex, thereby discriminating against certain individuals or groups. For example, laws that limit women's access to education, employment, or property rights based on their gender violate the principle of equality before the law. Similarly, laws that treat men and women differently in criminal or civil matters, such as divorce or inheritance, also violate this principle. When laws are challenged on the grounds of being unconstitutional, courts may review them and strike them down if they are found to violate the principle of equality before the law.⁵³ This can lead to the repeal or amendment of gender-biased laws, which can help promote gender equality and protect the rights of individuals who have been discriminated against.

In conclusion, gender-biased laws can be unconstitutional if they violate the principle of equality before the law. Such laws should be challenged and repealed to promote gender equality and protect the rights of all individuals⁵⁴.

⁴⁸ Examples of constitutional provisions used to challenge gender-biased laws: Constitution of India, Article 15(1); Constitution of the United States, 14th Amendment

⁴⁹ *ibid*

⁵⁰ India Const. art. 15.

⁵¹ The Universal Declaration of Human Rights, 1948.

⁵² Convention on the Elimination of All Forms of Discrimination, 1979.

⁵³ *Ibid*.

⁵⁴ *Craig v. Boren*, 429 U.S. 190 (1976); The U.S. Supreme Court established the intermediate scrutiny standard for assessing the constitutionality of gender-based classifications under the Equal Protection Clause.

How courts have dealt with gender-biased laws

Courts around the world have dealt with gender-biased laws in various ways, depending on the legal framework and the specific circumstances of each case. Here are some examples and case laws that illustrate how courts have approached this issue:

1. Striking down gender-biased laws:

Courts have struck down gender-biased laws that violate the principle of equality before the law. In the case of *State of Haryana v. Pradeep Kumar* (2012)⁵⁵, the Supreme Court of India struck down a state law that required candidates for police constable jobs to have a minimum height requirement of 5'7" for men and 5'2" for women. The court held that this requirement violated the principle of equality before the law as it discriminated against women candidates who were otherwise qualified for the job.

In the case of *Frontiero v. Richardson* (1973)⁵⁶ in the United States, where the Supreme Court struck down a federal law that required women in the military to prove that their husbands were dependent on them in order to receive housing and medical benefits. The court held that this requirement violated the Equal Protection Clause of the US Constitution as it treated women differently from men without a valid reason. In 2018, the Indian Supreme Court struck down Section 377 of the Indian Penal Code, which criminalized same-sex sexual activity. The Court held that Section 377 violated the right to equality guaranteed under Article 14 of the Indian Constitution, stating that "discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual."⁵⁷

2. Interpreting laws in a gender-inclusive manner:

Courts have interpreted laws in a gender-inclusive manner to promote gender equality. As seen in the case of *State of Karnataka v. Umesh Chandra* (2013)⁵⁸, the High Court interpreted a provision of the Indian Evidence Act in a gender-inclusive manner to allow rape victims to testify without being cross-examined on their sexual history. The court held that this interpretation was necessary to protect the dignity and privacy of rape victims, who are predominantly women.

Similarly, in the case of *R. v. Ewanchuk* (1999)⁵⁹ in Canada, the Supreme Court interpreted the criminal law of sexual assault in a gender-inclusive manner to protect the sexual integrity and autonomy of women. The court held that a man could not rely on the defence of mistaken belief in consent if he did not take reasonable steps to ascertain that the woman had actually given consent. In the United States, the landmark case of *Obergefell v. Hodges* established the right of same-sex couples to marry. The Supreme Court held that the Constitution guarantees the right to marry as a fundamental right, and that same-sex couples could not be excluded from this right on the basis of their sexual orientation. The Court stated that "the Constitution grants them that right" and

⁵⁵ *State of Haryana v. Pradeep Kumar*; (2007) (25) Civil (P&H).

⁵⁶ *Frontiero v. Richardson*; 411 U.S. 677 (1973).

⁵⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

⁵⁸ *State of Karnataka v. Umesh Chandra*, (2011) 3 SCC 85.

⁵⁹ *R v Ewanchuk*, (1999) 1 SCR 330

that "no union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family."⁶⁰

3. Promoting gender-sensitive interpretation of laws:

Courts have promoted a gender-sensitive interpretation of laws by recognizing the different experiences and needs of men and women. In the case of *A.K. Roy v. Union of India* (1982)⁶¹, the Supreme Court of India held that the right to life under Article 21 of the Indian Constitution includes the right to health care, and that this right must be interpreted in a gender-sensitive manner to address the specific health needs of women.

Similarly, in the case of *M.C. Mehta v. Union of India* (1996)⁶², the Supreme Court of India recognized that women have a right to a pollution-free environment as a fundamental right under Article 21 of the Indian Constitution. The court held that this right must be interpreted in a gender-sensitive manner to address the disproportionate impact of environmental degradation on women, who are often more vulnerable to its effects due to their social and economic status. Developing jurisprudence: In the United States, the Supreme Court has developed a body of jurisprudence on gender discrimination under the Equal Protection Clause of the Constitution. In the case of *United States v. Virginia*, the Court struck down the Virginia Military Institute's male-only admissions policy, holding that it violated the Equal Protection Clause. The Court established that "a state actor's reliance on race or gender to the exclusion of others in admissions or hiring decisions violates the Equal Protection Clause."⁶³

Important Judgements

Courts play a crucial role in addressing gender bias in laws by interpreting the Constitution and other legal provisions to ensure that they are not discriminatory towards any gender. Over the years, courts have handed down several landmark judgments that have helped in promoting gender equality and equality of rights.

- i. In the case of *Independent Thought v. Union of India* (2017)⁶⁴, the Supreme Court of India held that the exception to the definition of rape in the Indian Penal Code, which allowed for sexual intercourse between a man and his wife if she was over 15 years of age, was unconstitutional. The court stated that the law violated the principles of gender equality and was discriminatory against women.
- ii. In the case of *Vishaka v. State of Rajasthan* (1997)⁶⁵, the Supreme Court of India recognized the need for guidelines to prevent sexual harassment of women in the workplace. The court stated that the absence of such guidelines violated the fundamental rights of women under Articles 14, 15, and 21 of the Indian Constitution. This led to the creation of the Vishaka Guidelines, which were later replaced by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁶⁰ *Obergefell v. Hodges*, 576 U.S. (2015)

⁶¹ *A.K. Roy v. Union of India*; AIR (1982) SC 710

⁶² *M.C. Mehta v. Union of India*; AIR (1987) SC 965

⁶³ *United States v. Virginia*, 518 U.S. 515 (1996)

⁶⁴ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁶⁵ *Vishaka and Others v. State of Rajasthan*, (1997) 6 SCC 241.

- iii. In the case of *Sujata Sharma v. Manu Gupta* (2006)⁶⁶, the Delhi High Court held that Section 498A of the Indian Penal Code, which dealt with dowry harassment, was often misused by women to harass their husbands and in-laws. The court stated that the law needed to be amended to prevent such misuse, while still protecting women from dowry harassment.
- iv. In the case of *Shayara Bano v. Union of India* (2017), the Supreme Court of India declared the practice of triple talaq, which allowed Muslim men to divorce their wives by uttering the word "talaq" three times, to be unconstitutional. The court stated that the practice violated the principles of gender equality and was discriminatory against women. The court called on the Indian parliament to enact a law to regulate divorce among Muslim couples.
- v. In the case of *National Legal Services Authority v. Union of India* (2014), the Supreme Court of India recognized the rights of transgender individuals and held that discrimination against them violated the right to equality under Article 14 of the Indian Constitution. The court directed the government to provide transgender individuals with equal access to education, employment, healthcare, and other basic human rights.
- vi. In the case of *Navtej Singh Johar v. Union of India* (2018)⁶⁷, the Supreme Court of India declared Section 377 of the Indian Penal Code, which criminalized homosexuality, as unconstitutional. The court held that the provision violated the rights to equality, non-discrimination, and privacy, which are guaranteed under the Indian Constitution.
- vii. In the case of *Anuj Garg v. Hotel Association of India* (2008)⁶⁸, the Supreme Court of India held that a hotel's discriminatory policy of not allowing unmarried couples to stay in a hotel room was violative of the right to equality guaranteed under Article 14 of the Constitution.
- viii. In the case of *State of Maharashtra v. Madhavrao Damodar Patil* (1987)⁶⁹, the Supreme Court of India held that the presumption of paternity under Section 112 of the Indian Evidence Act was violative of a woman's right to equality. The court held that the presumption was arbitrary and could not be used to deprive a child of its right to claim paternity.
- ix. In the case of *People v. Liberta* (1984)⁷⁰, The New York Court of Appeals struck down a law that required men, but not women, to register for the draft, as a violation of the equal protection clause of the Fourteenth Amendment.
- x. In the case of *Craig v. Boren* (1976)⁷¹, The United States Supreme Court struck down an Oklahoma law that allowed women to purchase beer at the age of 18, but required men to be 21 years old, as a violation of the equal protection clause of the Fourteenth Amendment.
- xi. *Indian Young Lawyers Association v. State of Kerala* (2018)⁷²: The Supreme Court lifted the centuries-old ban on the entry of women of menstrual age into the Sabarimala temple, holding that the ban was discriminatory and violated the fundamental rights of women.

⁶⁶ *Sujata Sharma v. Manu Gupta*; (2006) 226 DLT 647.

⁶⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

⁶⁸ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

⁶⁹ *State of Maharashtra v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57

⁷⁰ *People v. Liberta*; 64 N.Y. 2d 152 (N.Y.1984)

⁷¹ *Craig v. Boren*; 429 U.S. 190 (1976)

⁷² *Indian Young Lawyer Association & Ors. Vs. State of kerala*; 2018 SCC Online SC 1690

These examples demonstrate how the judiciary can play an active role in promoting gender equality by interpreting and upholding constitutional provisions and striking down gender-biased laws. By doing so, the judiciary creates a more just and equitable society for all.

Constitutional provisions used to challenge gender-biased law

Constitutional provisions have been used in various countries to challenge gender-biased laws. Here are some examples of constitutional provisions that have been used for this purpose:

1. Equal Protection Clause:

The Equal Protection Clause of the 14th Amendment of the US Constitution has been used to challenge gender-biased laws in the United States. This clause prohibits states from denying any person within their jurisdiction the equal protection of the laws. The Supreme Court of the United States has interpreted this clause to mean that laws that discriminate against women must be subjected to strict scrutiny, which means that they must serve a compelling government interest and be narrowly tailored to achieve that interest.

As seen in the case of *United States v. Virginia*⁷³, The US Supreme Court held that the Virginia Military Institute's policy of excluding women violated the Equal Protection Clause. Similarly, in the case of *Reed v. Reed*⁷⁴, the US Supreme Court held that an Idaho law that preferred men over women as administrators of estates violated the Equal Protection Clause.

2. Non-Discrimination Clause:

The Non-Discrimination Clause of the Indian Constitution has been used to challenge gender-biased laws in India. This clause prohibits discrimination against any citizen on the grounds of sex. The Supreme Court of India has held that this clause is a fundamental right guaranteed to every citizen of India, and that any law or action that discriminates on the basis of sex is unconstitutional.

In the case of *State of Maharashtra v. Madhukar Narayan Mardikar*⁷⁵, the Supreme Court of India held that the Non-Discrimination Clause in the Indian Constitution prohibits discrimination on the basis of sex. Similarly, in the case of *Anuj Garg v. Hotel Association of India*⁷⁶, the Supreme Court of India held that a hotel's policy of not allowing unmarried couples to stay in the same room violated the Non-Discrimination Clause in the Indian Constitution.

3. Fundamental Rights:

Fundamental rights provisions in constitutions have also been used to challenge gender-biased laws. For example, Article 16 of the Constitution of South Africa⁷⁷ guarantees the right to equality and prohibits discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language. Similarly, Article 14 of the

⁷³ *United States v. Virginia*, 518 U.S. 515 (1996)

⁷⁴ *Reed v. Reed*, 404 U.S. 71 (1971)

⁷⁵ *State of Maharashtra v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57

⁷⁶ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1

⁷⁷ Constitution of S. Africa. Article 16.

Constitution of Bangladesh⁷⁸ guarantees the right to equality before the law and the equal protection of the law, and prohibits discrimination on the grounds of sex.

As seen in the case of South African National Defence Union v. Minister of Defence⁷⁹, the Constitutional Court of South Africa held that Article 16 of the South African Constitution prohibits discrimination on the basis of sex and other grounds. Similarly, in the case of Ain o Salish Kendra v. Government of Bangladesh⁸⁰, the High Court Division of the Supreme Court of Bangladesh held that Article 14 of the Constitution of Bangladesh guarantees the right to equality before the law and prohibits discrimination on the grounds of sex.

The Importance of eliminating gender bias in laws

Eliminating gender bias in laws is essential for promoting gender equality and protecting human rights. Here are some reasons why it is important:

- i. Upholding the principle of equality: Gender biasness in laws violates the principle of equality before the law, which is a fundamental tenet of democracy and the rule of law. Eliminating such bias is necessary to ensure that all people are treated fairly and equally under the law, regardless of their gender.
- ii. Promoting gender equality: Gender-biased laws can perpetuate and reinforce gender stereotypes and discrimination, which can limit the opportunities and rights of women and other marginalized groups. Eliminating such laws is crucial for promoting gender equality and creating a more just and inclusive society.
- iii. Protecting human rights: Gender-biased laws can violate the human rights of women and other marginalized groups, such as the right to equal protection under the law, the right to non-discrimination, and the right to participate in political and public life. Eliminating such laws is necessary to protect these fundamental human rights.
- iv. Advancing development: Eliminating gender bias in laws is also important for advancing social and economic development. When women are granted equal rights and opportunities, they can contribute more fully to society and the economy, leading to greater prosperity and progress for all.
- v. Equal Property rights: In many countries, women have limited or no legal rights to own or inherit property, which can perpetuate gender inequality and limit their economic opportunities. Eliminating such bias can promote gender equality and advance development. For example, in India, the Hindu Succession Act⁸¹ was amended in 2005 to grant equal property rights to women, which has had a positive impact on their social and economic status.⁸²
- vi. Reducing Employment discrimination: Gender bias in employment laws can limit women's access to jobs and opportunities, and perpetuate gender stereotypes and discrimination. Eliminating such bias can promote gender equality and protect human rights. For example, in the United States, the Civil Rights

⁷⁸ Constitution of Bangladesh. Article 14.

⁷⁹ South African National Defence Union v. Minister of Defence, 1999 (4) SA 469 (CC)

⁸⁰ Aino Salish Kendra v. Government of Bangladesh, 2017 (2) LNJ 276

⁸¹ Hindu Succession Act, 1956.

⁸² The Hindu Succession (Amendment) Act, 2005.

Act of 1964 prohibits employment discrimination on the basis of gender, race, colour, religion, or national origin, which has helped to promote gender equality in the workplace⁸³

- vii. Reducing Violence against women: Gender bias in laws related to violence against women can limit their ability to seek justice and protection from abuse, and perpetuate harmful gender stereotypes. Eliminating such bias is crucial for promoting gender equality and protecting human rights.⁸⁴ For example, in Brazil, the Maria da Penha Law was enacted in 2006 to address violence against women, which has helped to promote gender equality and protect women's human rights⁸⁵

Marital rape, Dowry laws, and protection of women

Marital rape is a form of sexual violence that often goes unpunished and unrecognized in many legal systems, including in some countries where marital rape is not even recognized as a crime. This is a clear example of a gender-biased law that perpetuates the notion that a wife is the property of her husband and does not have the right to say no to sexual advances.

Similarly, dowry laws that criminalize the giving or receiving of dowry in marriage can perpetuate gender-based violence and discrimination against women, often leading to harassment, abuse, and even murder. Such laws are discriminatory and undermine the rights of women. Moreover, laws that protect women in the workplace, such as those that prohibit discrimination based on gender, provide for equal pay for equal work, and provide for safe working conditions, are crucial for promoting gender equality and ensuring that women are able to fully participate in the workforce. These laws are essential for protecting women's rights and promoting gender equality in society.

Therefore, it is important to address these issues when discussing gender bias in laws and their impact on women's rights. The judiciary plays a crucial role in upholding the rights of women in such cases, and landmark cases have played a significant role in bringing about change. Through continued advocacy, activism, and legal challenges, we can work towards eliminating gender bias in laws and ensuring that women's rights are fully protected.

Gender bias in laws and its impact on women's rights

Gender bias in laws refers to laws or policies that discriminate against individuals on the basis of their gender or sex. Such laws often reinforce societal stereotypes and norms, which perpetuate discrimination against women and other gender and sexual minorities⁸⁶.

The impact of gender-biased laws on women's rights can be severe. Gender bias in laws can lead to discrimination against women in education, employment, healthcare, and other spheres of life. It can also perpetuate violence against women, such as in the case of marital rape laws or dowry laws. Women may also face barriers to accessing justice or seeking legal protection from violence, as some laws may be biased in favour of men. In short, gender-biased laws can undermine women's rights and contribute to the larger societal

⁸³ Title VII of the Civil Rights Act of 1964.

⁸⁴ Maria da Penha Law, 2006.

⁸⁵ Inter-American Commission on Human Rights, 2013.

⁸⁶ International Covenant on Civil and Political Rights, Article 26.

issue of gender inequality. Therefore, it is crucial to identify and challenge such laws to ensure equal rights and opportunities for all individuals, regardless of their gender⁸⁷.

- Limited Access to Education: Gender-biased laws can restrict women's and other gender's access to education and undermine their ability to pursue careers and participate in the workforce.⁸⁸ This perpetuates the cycle of gender inequality and economic disenfranchisement⁸⁹.
- Discrimination in the Workplace: Women and other genders often face discrimination in the workplace, including wage disparities and limited opportunities for advancement⁹⁰. Gender-biased laws can reinforce these discriminatory practices, making it harder for women to achieve equal representation and fair treatment in the workplace^{91,92}. Women are often subjected to discrimination in the workplace, including unequal pay, sexual harassment, and limited opportunities for advancement. Laws that do not adequately protect women's rights in the workplace contribute to gender bias and discrimination⁹³.
- Limited Access to Healthcare: Gender-biased laws can also limit access to healthcare, including reproductive health services, family planning, and maternal health care. This can lead to poor health outcomes and higher rates of maternal mortality, particularly in low-income communities⁹⁴.
- Vulnerability to Violence and Abuse: Gender-biased laws can also perpetuate a culture of violence against the person and limit their ability to seek legal recourse and protection from abuse. This can have devastating consequences for women's physical and mental well-being⁹⁵. In many countries, including India, marital rape is not considered a crime. This means that women are not protected by the law from sexual violence by their spouses⁹⁶. Moreover, In some countries, such as India, the practice of dowry is still prevalent. Dowry refers to the payment of cash or gifts from the bride's family to the groom's family. This practice has been linked to violence against women, as well as to the perpetuation of gender inequality.
- Limited Political Representation: Gender-biased laws can also limit political representation and participation, perpetuating gender inequality in decision-making and public policy⁹⁷.

⁸⁷ Convention on the Elimination of All Forms of Discrimination against Women, Article 2.

⁸⁸ United Nations. (2019). Gender equality: Sustainable Development Goals.

⁸⁹ United Nations Development Programme. (2021). Women's Political Participation.

⁹⁰ Equal Pay International Coalition. (2020). Equal Pay and the Law.

⁹¹ Chant, S. (2008). The 'feminisation of poverty' and the 'feminisation' of anti-poverty programmes: Room for revision? *The Journal of Development Studies*, 44(2), 165-197.

⁹² United Nations Development Programme. (2018). Gender Equality in the Workplace.

⁹³ United Nations Women. (n.d.). Gender discrimination in the workplace. <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures/gender-discrimination> (last visited on Sep 21,2024)

⁹⁴ United Nations. (2021). Women and health: Today's evidence tomorrow's agenda.

⁹⁵ World Health Organization. (2013). Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence.

⁹⁶ Amnesty International. (2017). India: Marital rape an open secret.

⁹⁷ Inter-Parliamentary Union. (2021).

Overall, gender-biased laws have a significant negative impact on women's rights, perpetuating gender inequality, and systemic discrimination. It is essential to address and eliminate such laws to ensure that women can fully participate in society and access their human rights.

Conclusion

Gender bias in laws can have a detrimental impact on women's rights and the overall promotion of gender equality. Gender-biased laws perpetuate harmful gender stereotypes, contribute to discrimination against women and gender minorities, undermine the rule of law, limit economic and social opportunities, and can even lead to violence against women.

However, there have been landmark cases and legal challenges that have successfully struck down gender-biased laws and used constitutional provisions to promote gender equality. The role of the judiciary in upholding women's rights cannot be overstated, and continued advocacy, activism, and legal challenges are necessary to ensure that gender equality is protected.

It is important to note that the fight for gender equality extends beyond women's rights and must include the protection of LGBTQ+ individuals as well. The intersection of gender and sexuality can lead to unique challenges and discrimination that must also be addressed through legal and social measures. Eliminating gender bias in laws and promoting gender equality is not only a matter of basic human rights, but it is also crucial for the social, political, and economic development of societies. It is only through the eradication of gender bias and the promotion of gender equality that we can create a more just and equitable world for all individuals, regardless of their gender identity or expression.

Gender bias in laws is a pervasive problem that has long-lasting effects on individuals and society. Despite constitutional guarantees of equality before the law, many laws and policies discriminate against individuals on the basis of their gender. These laws often perpetuate harmful stereotypes and restrict the rights and opportunities of women, LGBTQ+ individuals, and other marginalized groups.

In conclusion, gender-biased laws are not only a violation of basic human rights but also a major obstacle to achieving gender equality and sustainable development. They perpetuate gender stereotypes and reinforce patriarchal structures that discriminate against women, girls, and other marginalized groups, hindering their access to education, healthcare, and other basic services.

However, there is hope. The principle of equality before the law, enshrined in the constitutions of many countries, provides a powerful tool for challenging gender-biased laws and promoting gender equality. Through the diligent efforts of activists, lawyers, and other champions of gender equality, discriminatory laws have been challenged and overturned in many parts of the world. Moreover, the judiciary plays a crucial role in upholding constitutional provisions for equality and ensuring that gender-biased laws are struck down. Through landmark cases and legal challenges, courts have the power to promote gender equality and challenge discriminatory laws, setting important precedents for future cases.

Continued advocacy, activism, and legal challenges are crucial in promoting gender equality and eliminating gender bias in laws. While progress has been made, there is still a long way to go in ensuring that women's

rights are protected and upheld⁹⁸. It is important for individuals, civil society organizations, and governments to work together to address the underlying social and cultural attitudes that perpetuate gender bias and discrimination.⁹⁹ This can include initiatives such as public education campaigns, awareness-raising programs, and legal reform efforts aimed at promoting gender equality and women's empowerment¹⁰⁰.

By working together and continuing to advocate for women's rights, we can create a world where gender bias in laws and policies is a thing of the past, and where all individuals, regardless of gender, are able to live with dignity, equality, and respect¹⁰¹. It is important that we continue to work towards eliminating gender bias in laws and promoting gender equality. We must remain vigilant and continue to challenge discriminatory laws wherever they exist. By doing so, we can create a more just and equitable world for all individuals, regardless of their gender. This is not only a matter of human rights, but also a matter of progress towards sustainable development and a more peaceful and prosperous society.

⁹⁸ United Nations Development Programme. (2018). Gender equality and women's empowerment. <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-5-gender-equality.html>

⁹⁹ Human Rights Watch. (2021). Women's rights. <https://www.hrw.org/topic/womens-rights>

¹⁰⁰ International Women's Rights Action Watch Asia Pacific. (2021). About us. <https://www.iwraw-ap.org/about-us/> (last visited Nov. 1, 2024)

¹⁰¹ National Women's Law Center. (2021). Our work. <https://nwlc.org/our-work/> (last visited Nov. 2, 2024)