



**ROLE OF RULE OF LAW IN DEALING WITH THE GENDER
STEREOTYPES**

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ABSTRACT

Gender Stereotype is a belief or an assumption made by the society itself towards a particular social group or either towards men or women about their attributes and characteristics and expects them to perform according to their prejudiced perception. Gender stereotyping can limit the development of the natural talents and abilities of girls and boys, women and men, as well as their educational and professional experiences and life opportunities in general. Stereotypes about women both result from and are the causes of, deeply ingrained attitudes, values, norms and prejudices against women. They are used to justify and maintain the historical relations of power of men over women as well as sexist attitudes that hold back the advancement of women.¹ Gender Stereotypes shall not be restricted as a single transaction. Even the characterization of men towards a particular attribute leads to gender stereotyping. Rule of Law makes a breakthrough in combating with such fatalities persisting in our society and its role shall be considered of paramount importance. In this backdrop, this paper deals with why there is a need for such a breakthrough and whether lawmakers have done enough to overcome this issue. This paper puts forward some of the striking instances in breaking Gender Stereotypes with a thought-provoking conclusion.

Keyword: Gender Stereotypes, Attributes, Characteristics, Prejudice, Men, Women, Rule of Law

¹ *Gender Stereotypes*, EUROPEAN INSTITUTE FOR GENDER EQUALITY (April 25, 2018, 7:58 PM), <http://eige.europa.eu/rdc/thesaurus/terms/1222>.

INTRODUCTION

“Rule of Law” is a supreme manifestation of the human civilization and culture and is a new “lingua franca” of global moral thought.² Rule of proper law balances the needs of society and the individual. As a higher law, the rule of law provides an ideal which society can emulate. It is possible in democratic societies, where it puts restraints on the majoritarian rule. In a democratic society like India, it becomes mandatory to adhere to the rule of law if a societal menace needs to be curbed through the routes of legislation.

Gender Stereotype has been ingrained in the society since time immemorial. As a custom, it is being followed consistently. Any gender may it be a male, female or a transgender has the right to express themselves as they desire. This is a right guaranteed under *Article 19(1) (a)* of the Constitution of India, 1949 i.e. Right to Freedom of Speech and Expression. Nevertheless, women continue to remain targeted and sanctioned by the society which adheres to the stereotypical roles as a socially defined gender norm. Even at the times, for instance, motherhood could be a primary role for women or women cannot administer property and therefore cannot inherit it, is a stereotype which if broken could be condemned by the society, therefore, there must be a break in this existing notion to achieve transformative equality.

Gender Equality and Gender Stereotype are synonymous terms and promoting the former could lead to a significant reduction in the effects of the later. The goal of full Gender Equality has yet to be achieved only then the incidents of breaking the gender stereotype would pop up. Even the United Nations Human Rights Office of the High Commissioner (OHCHR) prohibits gender stereotypes and stereotyping which undermine the enjoyment of human rights and fundamental freedoms.³ *Article 10* of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) ensures equality of men and women and elimination of any form of stereotype. Since India is a signatory to CEDAW it is under an obligation to abide by its provisions either through domestic legislation or in its absence, directly.

² I.P.MASSEY, ADMINISTRATIVE LAW 22-23 (Eastern Book Company 2018)(1980).

³ *Gender Stereotyping*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER [Accessed on (March 20, 2020)], <https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>.

QUEST TO BREAK THROUGH THE GENDER-STEREOTYPICAL BELIEF

The stereotypical beliefs ingrained in society are a decisive factor in decision-making. It distributes the roles to be performed by men and women and its non-execution might invite sanctions from society. The most significant one are the social roles to be performed by men and women at work and home respectively. This narrows the approach of both men and women to participate in diverse areas of work. Most often women are attributed to the domestic sphere adopting the role of a caretaker whereas men are attributed to the competitive work environment.⁴ Lack of growth of women in the education sector due to male-female gap in educational opportunities led to a disturbing figure of illiteracy.⁵ Almost 60% of 313 million illiterate people is women.⁶ Employment opportunities for women have risen but it still needs to rise and it could be possible if the gender gap is reduced and people resort against the practice of Gender stereotyping. Inability of woman employees to work in night shifts is another aspect of gender stereotype. Marriage and inheritance are some other overlooked sectors where stereotypical images and views play a major role.

Law must take recourse in combating with stereotypes. Access to justice must be an easy transaction. The rule of law should not stand on the pillars of prejudices. Biases remain an obstacle and it does occur on social and economic patterns which could be for both men and women. When dealing with a stereotype, the legal institution does create special barriers for women. The lack of legal guarantees and the existence of unequal or gender-blind legal provisions⁷ hinder women's access to justice in a situation like restrictions in courts, administrative bodies due to economic (lack of money) and social (mobility and time constraints) reasons.

Judicial and administrative bodies must be trained to identify these stereotypical problems and proper laws and policies must be evaluated and structured to tackle these problems. These laws must confront and overturn the social norms that promote gender stereotyping.

⁴ Tanja Hentschel et al., *The Multiple Dimensions of Gender Stereotypes: A Current Look at Men's and Women's Characterizations of Others and Themselves*, FRONTIERS IN PSYCHOLOGY (Jan., 30, 2019), <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00011/full>.

⁵ Azza Karam, Education as the Pathway towards Gender Equality, 4 UN Chronicle (2013).

⁶ Tanushree Chandra, "Literacy in India: The Gender and Age Dimension", Issue Brief No. 322 OBSERVER RESEARCH FOUNDATION (2019).

⁷ *Role of Law and Justice in Achieving Gender Equality*, WORLD DEVELOPMENT REPORT (April 26, 2012, 12:50 AM), <http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Chi-ongson-law-and-justice.pdf>.

LEGISLATIVE APPROACH IN COMBATING GENDER STEREOTYPES

States have obligation to eliminate discrimination against women and men in all areas of their lives. This obligation requires States to take measures to address gender stereotypes both in public and private life as well as to refrain from stereotyping.⁸ The drafters of the Constitution of India were not immune from the gender inequality and gender discrimination prevailing in the Indian society. They intended to include such provisions in the Constitution which could protect women from discrimination and ensuring gender justice in the current times.⁹

THE CONSTITUTION OF INDIA, 1949

Article 14 of the Constitution establishes a duty on the state not to deny equality before law and equal protection of laws to any person within the territory of India. This provision provides immunity to women against any discrimination and declares the state as its protector.

Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. It also empowers state to make special provisions for the upliftment of women and children. Thus State even has the authority to take positive steps through legislation to prevent gender discrimination as well as gender stereotyping.

Article 16 even provides equality of opportunity in the matters of public employment. This provision forbids discrimination between males and female in matters of public employment.

Article 51A ensures that it shall be the fundamental duty of the State to protect the dignity of women.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The objective of this Act is to provide protection to women against sexual harassment at workplace. Sexual Harassment constitutes discrimination against gender. Women at the workplace had inadequate safety and their dignity was jeopardized. In the wake of this such legislation is a boon for work-centric women. This legislation is a replacement of the Vishakha Guidelines established in

⁸ *supra* note 2.

⁹ Sree Krishna Bharadwaj H., *Laws Protecting Women From Gender Discrimination In India - A Critical Analysis*, 4 IJR 74, (2015).

the case of *Vishakha & Ors. v. State of Rajasthan*¹⁰. This Act fosters women to work with dignity and making their shoulders meet with men. This legislation assists in eliminating gender stereotyping at the workplace by mitigating the gender gap at work and thereby enhancing opportunities for women at the workplace.

HINDU SUCCESSION ACT, 1956

Since old days women has been consistently considered as a weak gender and providing ownership rights and control of the property to them was a vague concept. It is after the Hindu Succession Act, 1956 that females were granted ownership rights and their “limited owner” status was abolished. Further amendment in this Act in 2005 brought wonderful changes that stated that women shall have the equal rights in the share of the property. This legislation put forward the status of women at par with men in case of regulating the property. This is a big blow to gender-stereotypical belief of the society where women were not considered capable enough to regulate the property matter. This invariably grants females property rights.¹¹

EQUAL REMUNERATION ACT, 1976

The Equal Remuneration Act, 1976 is another step taken in the wake of gender equality and gender justice. This legislation eliminates a discriminatory practice of less payment of wages to women for the same or similar nature of work done by them. The drafters through this legislation uphold the principle of “*equal pay for equal work*” which is also enshrined under *Article 39(d)* of the Constitution of India as Directive Principle of State Policy. This legislation makes it mandatory for the employer to pay equal remuneration to men and women for the conduct of work which is the same or similar nature. It also prohibits any kind of discrimination against women in case of promotions, training or transfer.

¹⁰ 1997 (6) SCC 241 at 253.

¹¹ Vinita, *Top 10 Women's rights in India*, LEGODESK (Jan., 31, 2020), <https://legodesk.com/legopedia/laws-womens-rights-in-india/>.



WOMEN'S RESERVATION BILL

Women's Reservation Bill is a long term pending Bill since 1996 which was first introduced in Lok Sabha by the United Front government of HD Deve Gowda.¹² This Bill proposes to fix a cap of 33% reservations in the seat of the lower house or Lok Sabha for women. This Bill, if passed, would be a big leap for women to have a strong foothold in the era of politics. It would help in mitigating gender stereotypical-belief at the very place which is the pillar of democracy and where the rule of law is praised the most.

STRIKING INSTANCES OF BREAKING THE STEREOTYPE

Currently, the inclusion of three women fighter pilots, *Avani Chaturvedi*, *Mohana Singh* and *Bhavana Kanth*, in the Indian Air Force¹³ and elevation of Senior Lawyer Indu Malhotra directly to the bench of Supreme Court judges, being the first woman in the Indian history to get elevated as a Supreme Court judge from the post of senior advocate, Gita Gopinath becoming the first Indian woman to be selected as Chief Economist at International Monetary Fund (IMF) are the best examples of breaking of gender stereotype. These steps not only foster the growth but also inspire thousands of others to overcome the orthodoxical views of the society and to make contributions towards a positive development. Breaking stereotypes shall not limit to women. There shall be an equal obligation upon men too. Men taking up the jobs of nurses, babysitters as well as air host are the best examples and could contribute positively in gender equality.

CONCLUSION

Equalizing of gender is not something that “men granted” but it is something which the society required and “women demanded”. Promotion of gender stereotyping can also lead to human rights

¹² *Women's Reservation Bill: All you need to know about the bill which will bring 33 percent reservation for women in Lok Sabha*, INDIA TODAY (March 7, 2020, 5:57 PM), <https://www.indiatoday.in/education-today/gk-current-affairs/story/women-s-reservation-bill-all-you-need-to-know-about-the-bill-which-is-yet-to-be-passed-in-lok-sabha-1653451-2020-03-07>.

¹³ Syed Mohhamed, *For IAF's first women fighter pilots Mohana Singh, Bhavana Kanth & Avani Chaturvedi, sky is no limit*, ECONOMIC TIMES (July 14, 2018, 01:59 PM), <https://economictimes.indiatimes.com/news/defence/for-iafs-first-women-fighter-pilots-mohana-singh-bhawana-kanth-avani-chaturvedi-sky-is-no-limit/articleshow/52816373.cms?from=mdr>.



violation, so it is important to modify and transform beliefs that are harmful to women and directly to the society. State and individual practice of applying stereotypical belief must be abolished. Thus, Rule of law is like a promotional strategy through which gender equality could be achieved.

