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## ONE CONSTITUTION, DIFFERENT LAWS: THE DEBATE OVER GENDER-SPECIFIC LEGISLATION

~ *Ujjayani Debnath*

Although everyone is guaranteed equal protection under the Constitution, numerous laws discriminate against persons based on their gender. This raises a crucial legal question: When does gender-specific law become discriminatory, and when is it necessary?

This argument is important because certain legislation may unintentionally reinforce old gender stereotypes, while others correct historical inequalities.

This article looks at:

- How gender equality is addressed in the Constitution.
- Arguments in favour of and against laws that are gender-specific.
- Challenging problems with work, criminal justice, healthcare, inheritance, and military duty.

Whether disparate legal treatment may foster true equality or result in an unjust and divided legal system is the main question.

## UNDERSTANDING THE CONSTITUTIONAL FRAMEWORK AND GENDER EQUALITY

### HOW THE CONSTITUTION GUARANTEES EQUAL RIGHTS

The Constitution supports the principle of equal protection. The **Equal Protection Clause of the Fourteenth Amendment** prevents states from treating similarly situated people differently without sufficient justification.

However, constitutional equality does not always require identical treatment. Courts examine whether a gender-based classification has a sufficiently strong justification.

## KEY CONSTITUTIONAL PROVISIONS

| Provision                                | What It Does                                                                                       |
|------------------------------------------|----------------------------------------------------------------------------------------------------|
| 14th Amendment – Equal Protection Clause | Prevents states from denying equal protection of the laws.                                         |
| 14th Amendment – Due Process Clause      | Protects individuals against arbitrary government action affecting liberty.                        |
| 19th Amendment                           | Protects women's right to vote.                                                                    |
| Equal Rights Amendment (proposed)        | Would expressly prohibit discrimination based on sex, but has not become part of the Constitution. |

## THE GAP BETWEEN CONSTITUTIONAL PROMISES AND LEGISLATION

Legislators occasionally enact legislation that treat men and women differently, despite the fact that equality is supported by constitutional values. While some may represent gender stereotypes, others seek to address historical injustices.

Criminal sentence, family law, military service, and employment protections are some of the topics that are debated. Therefore, the concept of equality is established by the Constitution, but its practical application is determined by legislation.

## THE CASE FOR GENDER-SPECIFIC LEGISLATION

### PROTECTING GROUPS FROM SYSTEMIC INEQUALITY

Advocates contend that because historical prejudice has produced unequal starting grounds, gender-specific regulations may be required. It might not be possible to completely eradicate current drawbacks by applying the same rule to everyone

### BENEFITS IN EDUCATION AND EMPLOYMENT

Examples include:

- **Title IX:** Expanded women's participation in educational athletics.
- **Maternity and parental leave:** Provides protection during pregnancy, childbirth and childcare.
- **Women's political reservations in India:** Increased women's representation in local governance

These illustrations bolster the notion of substantive equality, when further steps might be required to establish really equal possibilities.

## THE CASE AGAINST GENDER-SPECIFIC LEGISLATION

### REINFORCING HARMFUL GENDER STEREOTYPES

Gender-specific regulations might reinforce presumptions that men are inherently aggressive or women are inherently fragile. For instance, severe workplace rules that are solely applied to women may be meant to protect them, but they may also limit their career options.

### ARGUMENTS AGAINST SEPARATE LAWS

Critics argue that:

- Justification is needed for differential therapy. Elevated constitutional examination is required for gender classifications.
- Barriers may arise from special treatment. One group's protection may inadvertently reduce opportunity equality.
- Stereotypes can be strengthened by gender categories. Frequently classifying individuals based on their gender could reinforce antiquated beliefs

| Argument For                          | Argument Against                   |
|---------------------------------------|------------------------------------|
| Addresses real-world disadvantage     | Can reinforce stereotypes          |
| Compensates for historical inequality | May conflict with equal protection |
| Protects vulnerable groups            | Can create new unfairness          |

### RISK OF DISCRIMINATION AGAINST MEN AND NON-BINARY INDIVIDUALS

Laws that are gender-specific may also leave gaps in protection. In areas like custody, parental rights, and domestic violence, men might not be given enough credit. It may also be challenging for non-binary people to conform to regulations that solely classify people as male or female.

The difficulty lies in offering safety without generating a new kind of exclusion.

### KEY AREAS OF DEBATE

#### A. WORKPLACE AND PARENTAL LEAVE

Longer maternity leave can be justified because of pregnancy and physical recovery. However, major differences between maternity and paternity leave may reinforce the idea that childcare is primarily a woman's responsibility.

## **B. CRIMINAL LAW AND SENTENCING**

Research has raised concerns that men may receive harsher sentences than women for comparable offences. This creates debate about judicial bias, criminal history and gender-based assumptions.

## **C. PROPERTY AND INHERITANCE**

Women have historically faced disadvantages in property ownership and inheritance. Even where formal equality exists, social customs may continue to affect access to property and financial resources.

## **D. HEALTHCARE AND REPRODUCTIVE RIGHTS**

Reproductive rights involve bodily autonomy, healthcare and government regulation. Because pregnancy directly affects women's bodies, reproductive legislation creates gender-specific legal consequences.

## **THE ROLE OF COURTS**

### **LANDMARK CASES**

Courts have played an important role in defining the constitutional limits of gender classifications:

- **Reed v. Reed (1971):** Struck down a law preferring men over women in estate administration.
- **Frontiero v. Richardson (1973):** Examined unequal military benefits based on sex.
- **United States v. Virginia (1996):** Rejected Virginia Military Institute's male-only admissions policy.

### **JUDICIAL REVIEW OF GENDER CLASSIFICATIONS**

Courts generally ask:

1. Does the law classify people differently because of sex?
2. Is the difference supported by an important and genuine justification?

The purpose is to distinguish legitimate protection from laws based on outdated stereotypes.

| <b>Classification</b>  | <b>Standard</b>       | <b>Government Must Show</b>                   |
|------------------------|-----------------------|-----------------------------------------------|
| Race, religion         | Strict scrutiny       | Compelling interest + narrow tailoring        |
| Sex/gender             | Intermediate scrutiny | Important interest + substantial relationship |
| Economic/social policy | Rational basis        | Legitimate interest + rational relationship   |

## **CONCLUSION**

There is no easy solution to the gender-specific law debate. Laws that address true inequality can offer significant protection and generate worthwhile opportunities.

Laws founded on antiquated presumptions, however, have the potential to perpetuate prejudice and cause injustice to others.

A legal system that upholds justice, decency, and equal opportunity while eschewing needless gender-based categorization should be the ultimate objective. Courts and legislators must keep reevaluating what true equality under the Constitution implies as society evolves.