

“Constitutional Provisions for the Protection of Gender Inequality in India”

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ABSTRACT

The aim of the present paper is to present the picture of gender inequality in India. Being the second largest democracy of the world India is very complex and diversified, and it is present in many ways, many fields and many sections of the society. The opportunities in the field like- education, political, social, economical, religious, employment etc. where men are always preferred over women. The second issue in the paper is discussing about the various practices that resulted in a wide gap between the position of men and women in the country. In India, a woman still needs the richer of a husband and a family. Their dominating nature has led women to walk with their head down. It

was all practiced from the beginning and is followed till date. Consider the woman's reservation case in parliament. The opposing party believes that women are born to do household work and manage kids, and not to corrupt the country by taking hold over politics. What the society need today are trends where girls are able not only to break out of the culturally determined patterns of employment but also to offer advice about career possibilities that look beyond the traditional pail of jobs. It is surprising that in spite of so man laws, women still have miles to go. Thus, it is rightly said – Man and Woman are like two wheels of a carriage. The life of one without the other is incomplete.

INTRODUCTION

No community society, nation can hold is head high and claim to be part of the civilized world if it condones the practice of disseminating against- against one half of humanity represented by women. The only concern here is gender inequality. Even in the era of 21st century in our country in our country we rejoice in celebration when a boy is born, and if it is a girl, a muted or no celebrations is the basic proactive. Desire for a male child is so much so that from the times immemorial we are killing our daughters before existence in this world, and if, fortunately, she is not killed we find various ways to discriminate against her throughout her life. Our attitude towards women; our thoughts and preaching are different than our actions and



we are living in a double standard society. In its social, historical and cultural aspects, gender is a function of power relationship between men and women where men are considered superior to women. Therefore, gender may be understood as a man-made concept, while 'sex' is natural or biological characteristics of human beings. Gender Inequality, in simple words, may be defined as discrimination against women based on their sex. Women are traditionally considered by the society as weaker sex. She has been accorded a subordinate position to men. She is exploited, degraded, violated and discriminated both in our homes and in outside world. This peculiar type of discrimination against women is prevalent everywhere in the world and more so in Indian society. Gender inequality in India refers in India. Various international gender inequality indices rank India differently on each of these factors, as well as on a composite basis, and these indices are controversial. Gender inequalities, and its social causes, impact India's sex ratio, women's health over their lifetimes, their educational attainment, and economic conditions. Gender inequality in India is a multifaceted issue that concerns men and women alike. Some argue that some gender equality measures, place men at a disadvantage. However, when India's population is examined as a whole, women are at a disadvantage in several important ways. The root cause of gender inequality in Indian society lies in its patriarchy system. Women's exploitation is an age old cultural phenomenon of Indian society. The system of patriarchy finds its validity and sanction in our religious beliefs, whether it is Hindu, Muslim or any other religion. Even the ancient Hindu law given Manu described that "Women are supposed to be in the custody of their father when they are children; they must be under the custody of their husband when married

and under the custody of her son in old age or as window. In no circumstances she should be allowed to assert herself independently". The above described position of women as per Manu is still the case in present modern day social structure. Barring few exceptions here and there, women have no power to take independent decisions either inside their homes or in outside world.

In Muslims also the situation is same and there too sanction for discrimination or subordination is provided by religious texts and Islamic traditions. Similarly in other religious beliefs also women are being discriminated against in one way or other. The unfortunate part of gender in equality in our society is that the women too, through, continued socio-cultural conditioning, have accepted their subordinate position to men. And they are also part and parcel of same patriarchal system. Extreme poverty and lack of education are also some of the reasons for women's low status in society. Poverty and lack of education derives countless women to work in low paying domestic service, organized prostitution or as migrant laborers. Women are not only getting unequal pay for equal or more work but also they are being offered only low skill jobs for which lower wages are paid. This has become a major form of inequality on the basis of gender. Educating girl child is still seen as a bad investment because she is bound to get married and leave her paternal home one day. Thus, without having good education women are found lacking in present day's demanding job skills; whereas, each year's High School and 10+2 standard results show that girls are always doing better than boys. This shows that parents are not spending much after 10+2 standard on girl child and that's why they lack in job market. Not only in education, in case of family food

habits, it is the male child who gets all the nutritious and choicest foods while the girl child gets whatever is left behind after the male members have taken their meals or the food which is low in both quality and nutrition. And this becomes a major health issue in her later years. One of the main reasons for the high incidences of difficult births and anemia in women is the poor quality of food which a girl always gets either in her paternal home in her in-laws as also is the excessive workload they are made to bear from their early childhood. So the inequality or discrimination against women is at various levels in the society, either in home or outside home.

Gender Inequality is also reflected in India's poor ranking in various global gender indices.

- UNDP's Gender Inequality Index – 2014 : India's ranking is 127 out of 152 countries in the List. This ranking is only above Afghanistan as far as SAARC countries are concerned.
- World Economic Forum's Global Gap Index - 2014 : India's ranks at 114 in the list of 142 countries of the world. This index examines gender gap in four major area and the India's position on these indicators as follows:
 - Economic participation and opportunity: 134th
 - Educational achievements: 126th • Health and Life expectancy: 141st
 - Political empowerment: 15thThese two important Global Indices show the poor state of affairs in India as far as gender equality is concerned.

Forms of Inequality

Economical Inequalities

Labour participation and wages :

Approximately about 50% of Indian labour is employed in agriculture. A majority of rural men work as cultivators, while majority of women work in livestock maintenance, egg and milk production. Rao states that about 78 percent of rural women are engaged in agriculture, compared to 63 percent of men. About 37% of women are cultivators, but they are more active in the irrigation, weeding, winnowing, transplanting, and harvesting stages of agriculture. About 70 percent of farm work was performed by women in India in 2004. Women's labour participation rate is about 47% in India's tea plantations, 46% in cotton cultivation, 45% growing oil seeds and 39% in horticulture. There is wage inequality between men and women in India. The largest wage gap was in manual ploughing operations in 2009, where men were paid 103 per day, while women were paid 55, a wage gap ratio of 1.87. For sowing the wage gap ratio reduced to 1.38 and for weeding 1.18. For other agriculture operations such as winnowing, threshing and transplanting, the men to female wage ratio varied from 1.16 to 1.28. For sweeping, the 2009 wages were statistically same for men and women in all states of India.

Property Rights:

Women have equal rights under the law to own property and receive equal inheritance rights, but in practice, women are at a disadvantage. This is evidenced in the fact that 70% of rural land is owned by men. Laws, such as the Married Women Property Rights Act of 1974 protect women, but few seek legal redress. Although the Hindu Succession Act of 2005 provides equal inheritance rights to ancestral and jointly owned property, the law is weakly enforced, especially in Northern India.

Education inequalities:

India is on target to meet its Millennium Development Goal of gender parity in education by 2015, UNICEF's measure of attendance rate and Gender Equality in Education Index (GEEI) capture the quality of education. Despite some gains, India needs to triple its rate of improvement to reach GEEI score of 95% by 2015 under the Millennium Development Goals. In rural India girls continue to be less educated than the boys. According to a 1998 report by U.S. Department of Commerce, the chief barrier to female education in India are inadequate school facilities (such as sanitary facilities), shortage of female teachers and gender bias in curriculum (majority of the female characters being depicted as weak and helpless vs. strong, adventurous, and intelligent men with high prestige jobs). Though it is gradually rising the female literacy rate in India is lower than the male literacy rate. According to Census of India 2011, literacy rate of females is 65.46% compared to males which is 82.14%. Compared to boys far fewer girls are enrolled in the schools, and many of them drop out. According to the National Sample Survey Data of 1997, only the states of Kerala and Mizoram have approached universal female literacy rates. According to majority of the scholars, the major factor behind the improved social and economic status of women in Kerala is literacy. From 2006-2010, the percent of females who completed at least a secondary education was almost half that of men, 26.6% compared to 50.4%. In the current generation of youth, the gap seems to be closing at the primary level and increasing in the secondary level. In rural Punjab, the gap between girls and boys in school enrollment increases dramatically with age as demonstrated in National family Health Survey-

3 where girls age 15-17 in Punjab are 10% more likely than boys to drop out of school. Although this gap has been reduced significantly, problems still remain in the quality of education for girls where boys in the same family will be sent to higher quality of private schools and girls sent to the government school of the villages.

Health and Survival Inequality: On health and survival measures, international standards consider the birth sex ratio implied sex-selective abortion, and gender inequality between women's and men's life expectancy and relative number of years that women live compared to men in good health by taking into account the years lost to violence, disease, malnutrition or other relevant factors. The 2011 Census birth sex ratio for its States and Union Territories of India, in 0 to 1 age group, indicated Jammu & Kashmir had birth sex ratio of 128 boys to 100 girls, Haryana of 120, Punjab of 117, and the states of Delhi and Uttarakhand to be 114. This has been attributed to increasing misuse and affordability of fetus sex-determining devices, such as ultrasound scan, the rate of female feticide is rising sharply in India. Female infanticide (killing of girl infants) is still prevalent in some rural areas. Girl babies are often killed for several reasons, the most prominent one being financial reasons.

The economical reasons, as when the girl is married she would part ways with her family and the most important one, the payment of dowry. Even though, it is illegal by Indian law to ask for dowry, it is still a common practice in certain socio-economic classes which leads to female infanticide, as the baby girls are seen as an economic burden. Gender selection and selective abortion were banned in India under Pre-conception and Pre-natal Diagnostics Technique Act in 1994. The practice continues

illegally. Other institutional efforts, such as advertisements calling female feticides a sin by the Health Ministry of India and annual Girl Child Day can be observed to raise status of girls and to combat female infanticide. The male to female suicide ratio among adults in India has been about 2:1. This higher male to female ratio is similar to those observed around the world. Between 1987 and 2007, the suicide rate increased from 7.9 to 10.3 per 100,000 with higher suicide rates in southern and eastern states of India. In 2012, Tamil Nadu, Maharashtra and West Bengal had the highest proportion of female suicides. Among large population states. Tamil Nadu and Kerala had the highest female suicide rates per 100,000 people in 2012.

Gender-based violence: Average annual crime rates per 100,000 women in India by its States and Union Territories. Crime rate in this map includes all Indian Penal Code crimes such as rape, sexual assault, insult to modesty, kidnapping, abduction, cruelty by intimate partner or relatives, importation or trafficking of girls, persecution for dowry, dowry deaths, indecency, and all other crimes identified by Indian law. Domestic violence, rape and dowry-related violence are sources of gender violence. According to the National Crime Records Bureau 2013 annual report, 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by relative or neighbor; in other words, the victim knew the alleged rapist in 98 per cent of the cases. Compared to other developed and developing countries, incidence rates of rape per 100,000 people are quite low in India. India records a rape rate of 2 per 100,000 people compared to 8.1 rapes per 100,000 people in Western Europe, 14.7 per 100,000 in Latin America, 28.6 in the United

States, and 40.2 per 100,000 in Southern African region.

Political Inequalities: Women turnout during India's 2014 parliamentary general elections was 65.63% compared to 67.09% turnout for men. In 16 states of India, more women voted than men. A total of 260.6 million women exercised their right to vote in April-May 2014 elections for India's parliament. India passed 73rd and 74th Constitutional Amendments in 1993, which provides for 33 per cent quotas for women's representation in the local self-government institutions. These Amendments were implemented in 1993.

Other Area of Gender in Inequalities:

Patriarchal society:

Patriarchy is a social system of privilege in which men are the primary authority figures, occupying roles of political leadership, moral authority, control of property, and authority over women and children. Most of India, with some exceptions, has strong patriarchal and matrilineal customs, where men hold authority over female family members and inherit family property and title. Examples of patriarchy in India include prevailing customs where inheritance passes from father to son, women move in with the husband and his family upon marriage, and marriages include a bride price or dowry. This intergenerational contract provides strong social and economic incentives for raising sons and disincentives for raising daughters. The parents of the woman essentially lose all they have invested in their daughter to her husband's family, which is a disincentive for investing in their girls during youth. Furthermore, sons are expected to support their parents for investing in their girls during youth. Furthermore, sons are

expected to support their parents in old age and women have very limited ability to assist their own parents.

Son preference:

A key factor driving gender inequality is the preference for sons, as they are deemed more useful than girls. Boys are given the exclusive rights to inherit the family. In a survey-based study of 1990s data, scholars found that son are believed to have a higher economic utility as they can provide additional labour in agriculture. Another factor is that of religious practices, which can only be performed by males for their parents' afterlife. All these factors make sons more desirable. Moreover, the prospect of parents 'losing' daughters to the husband's family and expensive dowry of daughters further discourages parents from having daughters. Additionally, sons are often the only person entitled to performing funeral rights for their parents. Thus, a combination of factors has shaped the imbalanced view of sexes in India. A 2005 study in Madurai, India, found that old age security, economic motivation, and to a lesser extent, religious obligations. Continuation of the family name, and help in business or farm, were key reasons for son preference. In turn, emotional support and old age security were main reasons for daughter preference. The study underscored a strong belief that a daughter is a liability.

Discrimination against girls: While women express a strong preference for having at least one son, the evidence of discrimination against girls after they are born is mixed. A study of 1990s survey data by scholars found less evidence of systematic discrimination in feeding practices between young boys and girls, or gender based nutritional discrimination in India.

In impoverished families, these scholars found that daughters face discrimination in the medical treatment of illnesses and the administration of vaccinations against serious childhood diseases. These practices were a cause of health and survival inequality for girls. While gender discrimination is a universal phenomena in poor nations, a 2005 UN study found that social norms-based gender discrimination leads to gender inequality in India.

Dowry: In India, dowry is the payment in cash or some kind of gifts given to bridegroom's family along with the bride. The practice is widespread across geographic region, class and religions. The dowry system in India contributes to gender inequalities by influencing the perception that girls are a burden on families. Such beliefs limit the resources invested by parents in their girls and limits her bargaining power within the family. The payment of a dowry has been prohibited under the 1961 Dowry Prohibition Act in Indian Civil Law and subsequently by Sections 304B and 498a of the Indian Penal Code (IPC) Several studies show that while attitudes of people are changing about dowry, the institution has changed very little, and even continues to prevail.

Marriage laws: Men and women have equal rights within marriage under Indian law, with the exception of Muslim men who are allowed to unilaterally divorce their wife. The legal minimum age for marriage is 18 for woman and 21 for men, except for those Indians whose religion is Islam for whom child marriage remains legal under India's Mohammedan personal laws. Child marriage is one of the detriments to empowerment of women.

Legal and Constitutional Safeguards against Gender Inequality in India: Indian Constitution

provides for positive efforts to eliminate gender inequality; the Preamble to the Constitution talks about goals of achieving social, economic and political justice to everyone and to provide equality of status and of opportunity to all its citizens. Further, women have equal right to vote in our political system. Article 15 of the Constitution provides for prohibition of discrimination on grounds of sex also apart from other grounds such as religion, race, caste or place of birth. Article 15(3) authorizes the State to make any special provision for women and children. Moreover, the Directive Principles of State Policy also provides various provisions which are for the benefit of women and provides safeguards against discrimination.

Other than these Constitutional safeguards various protective Legislations have also been passed by the Parliament to eliminate exploitation of women and to give them equal status in society. For instance, the Sati; the Dowry Prohibition Act, 1961 to eliminate the practice of dowry; the Special Marriage act, 1954 to give rightful status to married couples who marry inter-caste or inter-religion, Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill (introduced in Parliament in 1991, passed in 1994 to stop female infanticide and many more such Acts. Furthermore, the Parliament time to time brings out amendments to existing laws in order to give protection to women according to the changing needs of the society, for instance, Section 304-B was added to the Indian Penal Code, 1860 to make dowry-death or bride-burning a specific offence punishable with maximum punishment of life imprisonment. So there are varied legislative safeguards and protection mechanisms for women but the ground reality is very different. Despite all these provisions

women are still being treated as second rate citizens in our country; men are treating them as an object to fulfill their carnal desires; crimes against women are at alarming stage; the practice of dowry is still widely prevalent; female infanticide is a norm in our homes.

Conclusions

The list of legislations as well as types of discriminations or inequalities may go on but the real change will only come when the mentality of men will change; when the male species of human beings would start treating women as equal and not subordinate or weaker to them. In fact not only men but women also need to change their mindset as through cultural conditioning they have also become part of the same exploitative system of patriarchy and are playing a supportive role in furthering men's agenda of dominating women.

Therefore, what is needed is the movement for Women's empowerment where women can become economically independent and self-reliant; where they can fight their own fears and go out in the world fearless; where they can snatch their rights from the clutches of men and they don't have to ask for them where women have good education, good career, ownership of property and above all where they have freedom of choice and also the freedom to make their own decisions without the bondages of age old saying of Manu. Let's hope and wish that our participative democracy, in times to come, and with the efforts of both women and men, would be able to found solutions to the problem of gender inequality and would take us all towards our cherished dream of a truly modern society in both thought and action.

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