

Legal and constitutional safeguards against gender inequality in India: Critical analysis

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Abstract

India has constantly had the scornful legacy of executing female child. The advancement in medical science has been widely and grossly misused rather abused in the Indian orthodox. The popularity of female deselection in India could be attributed to various reasons. Our Indian society is patriarchal in nature with inborn desire for the male child. This desire along with the many prevailing superstitions, leads to indiscriminate abortion of female foetuses. There is a belief by certain people that female children are inherently less worthy because they leave home when they marry. The girl is considered as a liability on account of dowry. At present there are three laws aiming to prevent the evil practice of female foeticide. These are Indian Penal Code, 1860, Medical Termination of Pregnancy Act, 1971 and the Pre-Natal Diagnostic Techniques (prohibition of sex selection) Act, 1994. We have laws but we are not implementing them strictly. Though the Indian constitution provides equal rights and privileges for men and women and makes equal provision to improve the status of women in society, majority of women are still unable to enjoy the rights and opportunities guaranteed to them. The attitude of Gender Inequality is the core responsible for the female foeticide. Now there is a need to do some research and identify the causes for gender inequality and make some concrete suggestions for effective implementation of laws and their loopholes.

Keywords: female foeticide, gender inequality, sex determination, laws

Introduction

The phenomenon of Gender Inequality have been prevalent since time immemorial. There are various proofs that millions of selective deaths throughout the history. In the age knowledge Gender-based inequalities in India translate into greater importance being placed on the health and empowerment of males. Gender Inequality and Sex determination are closely related to each other. The main reason being the desire for a male child and low value associated with the birth of female child. The bias against female child in India is related to the fact that sons are called the income providers/supporters to the family. Love for male child is so much. From times immemorial daughters are being killed at birth or before birth but unfortunately if she is alive we find various ways to discriminate her throughout her life.

Our religious beliefs make women Goddess but we fail to recognize her as human being. We worship Goddess but we exploit girl child. Traditional and Patriarchal norms have relegated women to secondary status within the household and also at workplace. This drastically effects women's health, financial status, education and political involvement. Women are commonly married at young age and quickly became mothers and are then burdened by stringent and financial responsibilities. They are typically malnourished as they are last members in the household to eat and the last to receive medical aid/attention. We are the society of people with double standards as far as our attitude towards women in concerned. Our thoughts and preaching are different from actions.

Though the Indian constitution provides equal rights and privileges for men and women and makes equal provision to

improve the status of women in society, majority of women are still unable to enjoy the rights and opportunities guaranteed to them. The attitude of Gender Inequality is the core responsible for the female foeticide. As on today it is a serious problem and it directly effects the sex imbalance in the country. Keeping in this view there is a need to do some research and identify the causes for gender inequality and make some concrete suggestions for effective implementation of laws and their loopholes thereby leading to the betterment of women in the society.

Gender Inequality

“Gender” is a socio-cultural term referring socially defined roles and behaviors assigned to ‘males’ and ‘females’ in a given society; whereas, the term ‘sex’ is a biological and physiological phenomenon which defines man and woman. 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 equality is the measurable equal representation of women and men. Gender inequality refers to unequal

treatment or perceptions of individuals based on their gender. Though gender discrimination and sexism refers to beliefs and attitude in relation to the respective gender of a person. Such beliefs and attitudes are of a social nature and do not normally carry any legal consequences. Sex discrimination on the other hand, may have legal consequences. Socially, sexual differences have been used to justify different role for man and women. The reality of gender inequality in India is very complex and diversified, because it is present in many ways, fields and classes like education and employment opportunities, where mostly preference given to men.

The preamble of constitution promises to secure to all its citizens justice for economic, social and political. Gender Inequalities refers to the obvious or hidden disparities among individuals based on the performance of gender. This problem in simple term is known as gender bias which in simple terms means the gender stratification or making difference between a girl and a boy i.e. a male or a female.

Major Causes of Gender Inequality in India

Attaining gender justice is not an easy task in India. From time immemorial, a girl child has been considered as an unwanted entity and a burden whom the parents would not mind doing away with. Discrimination against women begins even before her birth. The gruesome evils of female feticide and infanticide prove how brutal the world could be to women. Traditional value system, low level of literacy, more house hold responsibilities lack of awareness, non-availability of proper guidance, low mobility, lack of self-confidence family discouragement and advanced science and technology are some of the factors responsible to create gender disparity in our society. The most important causes of gender disparity such as poverty, illiteracy, unemployment, social customs, belief and anti-female attitude are discussed here.

Poverty

In India of the total 30 percent people who are below poverty line, 70 percent are women. Women's poverty in India is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources including credit, land ownership and inheritance, lack of access to education and support services and their minimal participation in the decision making process. The situation of women on economic front is no better and men still enjoy a larger share of the cake. Thus poverty stands at the root of gender discrimination in our patriarchal society and this economic dependence on the male counterpart is itself a cause of gender disparity.

Illiteracy

Despite the notable efforts by the countries around the globe that have expanded for the basic education, there are approximately 960 million illiterate adults of whom two thirds are women. Educational backwardness of the girls has been the resultant cause of gender discrimination. The disparities become more visible between male and female literacy rate, during 2001. The literacy rates for males increased from 56% in 1981 to nearly 76% in 2001. The corresponding change in female literacy rate from 30 to 54%. On the whole the decline on gender gap peaked in 1981 at 26.6% and was 21.7% in

2001 is less impressive. The interstate variation in literacy rate for males was much lower in comparison to females. At the state level female literacy rate varies from 35% in Bihar to 88% in Kerala In states like Arunachal Pradesh, Assam, Bihar, Jammu and Kashmir and Rajasthan, the female literacy rate is below 50%. The progress towards education by girls is very slow and gender disparities persist at primary, upper primary and secondary stage of education. Girl's account for only 43.7% of enrolment at primary level, 40.9 % at upper primary level, 38.6% at secondary level and 36.9% at degree and above level. More over girl's participation in education is still below 50% Gender differences in enrolment are prevalent in all the state at all levels. They are not able to realize full identity and power in all spheres of life only due to illiteracy.

Lack of Employment Facilities

Women are not able to resolve the conflict between new economic and old domestic roles. In both rural and urban India, women spend a large proportion of time on unpaid home sustaining work. Women are not able to respond to new opportunities and shift to new occupations because their mobility tends to be low due to intra-house hold allocation of responsibilities. Rights and obligations within a house hold are not distributed evenly. Male ownership of assets and conventional division of labor reduce incentives for women to undertake new activities. In addition, child bearing has clear implications for labor force participation by women. Time spent in bearing and rearing of children often results in de-skilling, termination of long term labor contacts. Thus women are not being able to be economically self-sufficient due to unemployment and their economic dependence on the male counterpart is itself a cause of gender disparity.

Social Customs, Beliefs and Practices

Women are not free from social customs, beliefs and practices. The traditional patrilineal joint family system confines women's roles mostly to the domestic sphere, allocating them to a subordinate status, authority and power compared to men. Men are perceived as the major providers and protectors of a family while women are perceived as playing only a supportive role, attending to the hearth. Boys and girls are accordingly drained for different adult roles, status and authority. In Indian culture since very early periods, men have dominated women as a group and their status has been low in the family and society.

The preference for sons and disfavor towards daughter is complex phenomenon that still persists in many places. Sons especially in the business communities are considered to be economic, political and ritual assets whereas daughters are considered to be liabilities. Thus anti female social bias is the main cause of gender disparity in our society. The boy receives a ceremonial welcome on his birth where as everyone is sad at the birth of a girl child. The preference for male child is due to lower female labor participation, prevalence of social evils like dowry and many others causes. The typical orthodox mentality is present even in this modern era leading to sex determination tests and abortion in an illegal way. Parents often think that teaching a girl child to manage the kitchen is more important than sending her to school. Many feel that it is an unnecessary financial burden to send a girl child to school

as subsequently she will be married off and shifted to some other family. This orthodox belief of parents is responsible for gender disparity.

Social Attitude

Though many social activists and reformers carried their crusade against all social odds to restore honor and dignity to women, attitudinal disparities still hunt our rural masses. Despite pronounced social development and technological advancement, women in our society still continue to be victims of exploitation, superstition, illiteracy and social atrocities. The social stigma that women are housekeepers and should be confined to the four walls of the house is perhaps a viable cause of gender disparity. They should not raise their voice regarding their fortune for the sake of the prestige of the family. In patriarchal society a lot of weightage is given to men. In the health and nutritional field, male members of family are supposed to take fresh and nutritious food in comparison to women because either they are earning members or head of the family or they are supposed to be more important than female members. This type of social attitude is conducive to create the problem of gender discrimination.

Lack of Awareness of Women

Most of the women are unaware of their basic rights and capabilities. They even do not have the understanding as to how the socio-economic and political forces affect them. They accept all types of discriminatory practices that persist in our family and society largely due to their ignorance and unawareness. Article 15 of the Indian constitution states that the state shall not discriminate any citizen on the grounds of only sex. The irony is that there still is widespread discrimination which is a form of injustice to women. Hence at the onset of the new millennium let this generation be a historic example by putting an end to the gender – based discriminations by unfurling the flag of gender justice in all our action and dealings.

If women get equal opportunities like men, they can work in every field like men. Today if she lags behind a little, it is not her fault but the fault of traditions which have suppressed them for centuries. In order to change the situation along with economic growth social progress is also greatly required. Hence the need of the hour is to effectively combat gender disparity as to promote gender equality by sufficiently empowering the women.

Gender Inequality Statistics - Dwindling Numbers

Gender inequality manifests in varied ways. And as far as India is concerned the major indicators are as follows;

Female Feticide

Female Infanticide

Child (0 to 6 age group) Sex Ratio: 919

Sex Ratio: 943

Female literacy: 46%

Maternal Mortality Rate: 178 deaths per 100000 live births.

These above mentioned indicators are some of the important indices which show the status of women in our country. Female feticide and female infanticide are most inhuman acts and it is a shame that in India these practices have been

prevailing at large scale. The data shows that despite stringent laws in place via Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 sex selective abortion is still on the rise. One estimate done by MacPherson shows that more than 100000 illegal abortions are being performed every year in India mainly for the reason that the fetus is of girl child.

Due to this, there is an alarming trend which has come to the notice in 2011 census report. The report shows Child Sex-Ratio (i.e. sex-ratio of children between the age group 0 to 6) at 919 which is 8 points lesser than the 2001 data of 927. The data indicates that sex-selective abortion is increasing in our country. As far as overall sex-ratio is concerned, it's 940 in 2011 report as compared to 930 of 2001 which is 10 points increase. Though it is a good sign that overall sex ratio is increasing but it is still tilted against females. Female literacy is at 65.46% in 2011 as against 82.14% of male literacy^[1]. However, consider the massive population of India of over 1.22 billion, and do your math right and you'll see the gravity of the situation. A deficit of 60 females per 1000 males, translates into a deficit of about 37 million (3.7 core) females in India – and that is a huge figure this gap indicates a wide gender disparity in India that Indians do not give enough importance to the education of girls.

These figures are seriously startling and establish this issue as a major cause of worry. India's figures lie far below what they are supposed to be. Naturally India's sex ratio is lower than the world average of 990 females per 1000 males, and it ranks third in lowest secondary sex ratios in the world and fourteenth in lowest primary sex ratios. These statistics are enough to set alarm bells ringing, and inevitably call for immediate and severe action and points towards the sorry state of affairs in India regarding gender justice and women's human right. Though every year government starts various schemes and programs apart from law and constitutional safeguards for the benefit and empowerment of women but on the ground there are not enough visible changes. The change will appear only when the mind set of Indian society would change and treat male and female on equal footing.

Legal and Constitutional Safeguards Against Gender Inequality

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. 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^[2]. Indian Constitution authorizes the State to make any special provision for women and children^[3]. Moreover, the Directive Principles of State Policy also provides various provisions which are for the benefit of women and provides safeguards against discrimination.

In India the right to life is a very broad concept and is the

¹ <http://www.indiacelebrating.com/social-issues/gender-inequality-in-india/>

² Article 15 of the Indian Constitution 1950

³ Article 15(3) of the Indian Constitution 1950

most fundamental of all. It is recognized under the Constitution which says that “*No person shall be deprived of his life and personal liberty except according to procedure established by law*”^[4]. Among various rights which are available to a woman, the right to abortion is also believed to be one of the most essential and fundamental right. India has also ratified various international conventions and human rights forums to secure equal rights of women, such as ratification of Convention on elimination of all forms of discrimination against women in 1993. Women have been finding place in local governance structures, overcoming gender biases. Over one million women have been elected to local panchayats as a result of 1993 amendment to the Indian Constitution requiring that 1/3rd of the elected seats to the local governing bodies be reserved for women

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 (Prevention) Act, 1987 was enacted to abolish and make punishable the inhuman custom of 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.

The Indian Judiciary plays pivotal role for protection of women against gender discrimination. In *Air India Vs. Nargesh Mirza*^[5]. The Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society. And again in the case of *Gita Hariharan Vs. Reserve Bank of India*^[6], in this case the court interpreted sections 6 of the Hindu Minority and Guardianship Act 1956 and held that the mother could act as the natural guardian of the minor during the father’s lifetime if the father was not in charge of the affairs of the minor.

Again in the landmark judgement in *Pratibha Rannu V Suraj Kumar*^[7], the Supreme Court held that the Sridhan property of a married women has to be placed in her custody, and she

enjoys complete control over it. The mere fact she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over them. The Supreme Court in one imminent judgement narrates certain important guidelines. This case is *Vishaka and others V State of Rajasthan*^[8], here Vishaka is a NGO, The Supreme Court held that sexual harassment of working women at her place of an employment amounts to violation of rights of gender equality and right to life and liberty which is clear violation of Article 14, 15 and 21 of the Indian Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. Further Supreme Court in this case said that, as there is no law relating to sexual harassment in India. Therefore, the provisions of International Conventions and norms are to be taken into consideration and guidelines to be observed at all work places or other institutions, until a perfect legislation is enacted to maintain gender equality in the human right perspective.

Gender inequality in the human right perspective

The human rights framework provides the principle of social justice is the cornerstone of rights and under lies the goal of gender equality. As a general estimate, women constitute almost half of the human population on this planet. In true spirit women have been instrumental in reproduction of human beings. But unfortunately there are treated as a weaker sex. Sex discrimination is rampant in all societies. Women are considered weaker and exploited in all walks of life individually and collectively. The women are equally entitled for human rights. The violation of human rights of women takes many forms like sexual and physical assault, dowry death and female feticide and infanticide. The deplorable position of women has attracted the human rights approach. The economic, social, cultural dependence of women degraded their position and subjected them to exploitation and torture. Scientific and technological invasion further deteriorated their position with mark of general killing of baby girl. A human right issue, which affects women in particular, plays a pivotal role in maintaining the peace and prosperity of society.

Literal meaning of “Right to life” means right to born and remain alive which is one of the natural, fundamental and unalienable basic human right of women. The denial of above human rights to the girl begins within the four walls of her home by avoiding her birth as soon as possible. Protection of women against violence in general and the girl child in particular has acquired a prime place in the agenda of legislature and policy of government since last two to three decades. In this context, the eradication of female feticide is not the obligation of the government alone. The general public, medical fraternity and NGO’s and all concerned must join hands to curb this evil.

Conclusion and suggestions

Besides having specific legislation and policy proclamations

⁴ Article 21 of the Indian Constitution 1950

⁵ 1981 AIR 1829, 1982 SCR (1) 438

⁶ AIR 1999, 2 SCC 228

⁷ 1985 AIR SC 628

⁸ AIR 1997 SC 3011

to deal with this menace, in India, the genocide against girl child in form of foeticide and infanticide continues unabated across irrespective of castes, class and communities. Today, no major state in India is free from this menace. The prenatal diagnostic Technique (Prevention and Misuse) 1994 is a master piece of legislation which prohibits female foeticide in India. The object behind this act is to maintain the balance the sex ratio and gender inequality. There is a need to take protective measures by the legislature, administrator, non-governmental organization and society. The provisions of PCPNDT Act 1994 should be strictly implemented. Legal measures will not bring about revolutionary change in existing women's conditions but it acts as supplement. Media both print and electronic plays a very significant role in removing gender bias and developing a positive image of the girl child in the society. It is not easy to change overnight the attitude of women towards female foeticide. It takes time to change the mind-set of the public.

The government has initiated many programmes like Beti Bachao, Beti Padhao And Sukanya Samridhi Account to encourage the birth rate and education of girl child and also end gender discrimination practices. Government should see these schemes should be properly implemented and finally the directions of the courts regarding the prevention of female foeticide should be strictly followed by the Central Advisory Board and Appropriate Authority. 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, a multipronged strategy encompassing legal, economic and social reforms is required. "Women is the companion of man gifted with equal mental capacities. She has the right to participate in the minutest details, in the activities of man and has an equal right of freedom and liberty with him."

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