

GENDER EQUALITY AS A NEW HUMAN RIGHT IN INDIA

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Abstract

Gender equality is central to the very concept of human rights. "Equal rights of men and women" is a fundamental principle of the United Nations Charter adopted by world leaders in 1945. The principle of gender equality is enshrined within the Constitution of India as well. As per Constitution, women are in no way inferior to men. Similar laws govern the two sexes. In addition, there are many special laws to ensure equality for women in every sphere of life. From time to time, Indian government has passed Acts like 'Prohibition of Child Marriage Act', 'Dowry Prohibition Act', 'Indian Divorce Act', 'Maternity Benefit Act', 'Sexual Harassment of Women at Workplace Act', 'Equal Remuneration Act' etc. All these measures are aimed at empowering women. However, the sad truth is that we have still a long way to go before we can proclaim full equality of rights and opportunities between men and women. Barring a very small minority, the women in India are discriminated against in the matters of education, employment, safety, financial security and inheritance etc. To state the truth, gender equality is a far cry as far as the status of women in Indian society is concerned. Mere enactment of laws is evidently not sufficient. A thorough understanding of our social structure and more specifically the power relations that govern the two sexes is required, so that the present condition of women may be worked upon and improved. Harmful gender stereotypes also have to be dismantled so that gender equality in the Indian society becomes a concrete reality.

Key words: equal rights, Indian Constitution, laws, gender stereotypes.

INTRODUCTION

Gender equality is central to the very concept of human rights. "Equal rights of men and women" is a fundamental principle of the United Nations Charter adopted by world leaders in 1945. The word "human" itself means the total humanity. As Hillary Clinton famously said, "Human rights are women's rights and women's rights are human rights, once and for all."¹ The principle of gender equality is enshrined within the Constitution of India as well. In fact, the words "We, the people of India" in the Constitution encompass all the Indians – men and women, rich and poor, irrespective of their colour, caste, religion and gender. As per Constitution of India, women are in no way inferior to men as far as rights are concerned. Same laws govern the two sexes. A woman has the right to live a life free from violence, slavery and discrimination. She has the right to get education, equal pay for equal work, to cast a vote and to own property. In addition, there are many special laws to ensure equality for women in every sphere of life.

Looking back at the past of India, we see that the position of woman in Indian society was not at all secure. If we do not go back very far, it is historically a fact that the beginning of the nineteenth century saw her in quite a pitiable condition. Her state in fact seemed to bely the glorious details of her position in the Vedic Age. The women during the pre- independence era were a suppressed lot, subject to various deprivations. They were denied equal rights in familial, social, educational, economic and political fields. Parents did not consider it necessary to educate their daughters. A few rich girls received education in their homes but there were no public schools exclusively for girls. The customs of child marriage and purdah system also prevented girls from attending schools. The power and authority exercised by the joint family, their own illiteracy, age-old traditions, seclusion within the four walls of the house were powerful road-blocks in the development of full personalities in the case of women. Referring to their status at the end of nineteenth century, Cousins writes, "The condition of womanhood as a generality all over India is seen at the end of 1837 as at its lowest point of illiteracy, of individuality, of health, of social status, of freedom of movement or initiative of economic status or powers."² Bereft of any property rights, Indian woman was regarded no better than a piece of property with no say in the matters pertaining to her interest. She was uneducated and married before their characters were fully developed. As S.C. Dubey puts it, "They had no status in society; none in their own estimation. They were more like puppets which move when someone else pulls the strings, than individual human beings with minds of their own."³ Cormack also states, "The ideal Hindu woman was supportive, was the perfect helpmeet, no meaning save in relationship to family and serving that family."⁴

Child marriage was quite common. In some cases, even infants in the cradle were married to each other. Much more horrifying than this practice was the practice of female infanticide. Since the girl child was considered to be an unwanted burden, it was thought best to kill her after she was born. Widow remarriage was frowned upon and heinous practice of 'Sati', where Hindu widows climbed the funeral pyres of their husbands and got burnt along with them, was prevalent in many parts of the country. The social pressure and the awareness of

the stark reality of the life of a widow forced the widows to take this extreme step willingly. Women had no right to own property either. A little ray of hope at the end of an interminably long and dark tunnel for the women was the awareness and the consequent efforts on the part of social reformers like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Dayanand Saraswati, Mahadev Ranade. It was through their consistent and untiring efforts that a ban on sati was imposed in 1829 in the British territories in India, Hindu Widows Remarriage Act was passed in 1856 and the Child Marriage Restraint Act was passed in 1929.

Though the reforms initiated by the social reformers in the pre- independence era went a long way to uplift the status of women, the major impetus however in changing the attitude of society towards women came from the Indian National Movement. In order to build a mass movement, the participation of the women was thought to be essential. In the early years, women's participation was practically nil. It was only through the initiative and untiring efforts of great leaders like Mahatma Gandhi particularly that women were brought into active participation and political leadership. Like an astute leader, Gandhiji could correctly gauge "the strength inherent in women and realized that the only way to rouse them from their traditional role of domesticity was to appeal to their sense of patriotism and awaken in them national consciousness and social responsibility."⁵ Sarojini Naidu was the first Indian woman to enter into active politics. Gradually, the number of women freedom fighters swelled. They took over positions of responsibility, courted arrest and were imprisoned in large numbers. The mass participation in the struggle for country's independence gave women a sense of equality with men which was unheard of in a not very distant past. Consequently, the Indian women after independence received rights that could be won only after a long struggle by women in the West. As Devaki Jain points out "The initiative, courage and leadership women displayed in the political movement towards national independence or liberation from colonial rule assured them a ready and abiding place in India's new resurgent life."

Women in India have indeed come a long way as far as human rights are concerned. Women rights can be broadly classified into two categories- constitutional rights and legal rights. Those granted by the Constitution of India are the constitutional rights, whereas legal rights are available to women in the form of prevailing laws or enactments in the country from time to time. Under the Constitution, women are provided with a number of fundamental rights. **Article 21** grants women right to life and personal liberty. **Article 15(1)** guarantees right to equality. **Article 19** gives women right to freedom which includes freedom of speech and expression, freedom of movement, freedom of practising trade and profession etc. **Article 32** gives women "the right to seek constitutional remedies through the Supreme Court of India for violation of fundamental rights mainly."⁶ **Article 15(3)** empowers the state to make any special provision for women and children without any hurdles or obligations. **Article 16(2)** guards women against discrimination in respect of employment or office under the state. **Article 23(1)** prohibits the practice of human trafficking in India. As per **Article 39(a)**, men and women have the right to an adequate means to livelihood. In addition, there are some constitutional laws for women related to Panchayats and Municipality. **Article 243 D(3)** guarantees not less than one third of the total number of seats in every Panchayats to be reserved for women. **Article 243 D(4)** aims at ensuring one- third of the total number of offices of chairpersons in the Panchayats to be reserved for women. **Article 243-T (3)** grants one-third of the total number of seats to be filled by direct election in every Municipality to the women, whereas **Article 243-T (4)** reserves the same proportion in the Municipalities for the offices of chairpersons.

Along with constitutional safeguards, there are further rights that have been guaranteed to women under the laws. According to **Equal Remuneration Act, 1976**, women have a right to equal pay for equal work. **The Sexual Harassment of Women at Workplace Act, 2013** gives women the right to file a complaint against sexual harassment. Protection of Women from **Domestic Violence Act, 2005** was framed "to protect a wife, a female live-in partner or a woman living in a household like a mother or a sister from domestic violence at the hands of a husband, male live-in partner or relatives."⁷ The person found guilty of domestic violence is liable to be imprisoned for a term which may extend up to three years along with a fine. It is a non-bailable offence. The Act also ensures right to anonymity for sexual assault victims. **Legal Services Authorities Act (1987)** grants all female victims the right to free legal aid. **Code of Criminal Procedure (1973)** gives every woman a right of not to be arrested at night. A woman cannot be arrested after sunset and before sunrise, except in exceptional cases on the orders of a first class magistrate. A woman can also not be detained at night at the police station without legal permission. She can also lodge a complaint via e-mail or send it to a police station from a registered postal address. **Indecent Representation of Women (Prohibition) Act (1986)** prohibits indecent projection of the female form. **Section 354 D** of the IPC recommends legal action against a person who is guilty of stalking a woman. There is also the provision for the victim to register her complaint at any police station under the zero FIR ruling. The zero FIR is an FIR that can be filed at any police station irrespective of the location where the incident occurred.

Apart from these, **Hindu Marriage Act, 1955** has been instrumental in introducing monogamy and in bringing Indian men and women on the same platform in terms of marriage and divorce. Another very significant Act is the **Hindu Succession Act, 1956** which recognizes the right of women to inherit parental property equally

with men. Another Act also enacted in 1956 is the **Hindu Minority and Guardianship Act** which recognizes mother as the natural guardian and father is wholly indifferent to the matters of the minor or if he is physically unable to take care of his minor child. Women in India have indeed come a long way as far as human rights are concerned. Theoretically at least, they have been granted equality of status. After nearly seven decades of independence, the time has come for us to make a pause and ask ourselves – where do we stand today in terms of promises made as enshrined in our Constitution? In the light of various rights granted to them, are the Indian women really the masters of their destiny? To a superficial eye, the situation appears to be quite rosy and bright. More girls go to schools and colleges today than ever before. With the steady growth of education and awareness of their rights, women of post independent India have started working in different fields hitherto monopolized by men alone. Their worth is being recognized as competent pilots, bureaucrats, technocrats, executives and entrepreneurs. Today, women are visible everywhere. They are apparently moving freely and participating in a wider range of activities than ever before. With the passage of time, in fact, women have come to dominate certain fields of endeavour.

To a discerning eye, however, the situation of women is not as good as it appears to be. Frankly speaking, the present condition of women is bifaceted. Urban women are enjoying all the facilities and opportunities while their counterparts in the remote villages are still struggling hard. It is a fact that conditions in especially the remote areas present an altogether different picture of women. In these set-ups women still exist in illiteracy and ignorance. They suffer from discrimination, deprivation and social disability. Their plight is really pitiable. Even for the seemingly emancipated urban woman, a new set of problems has cropped up such as the increasing violence against women and marginalization of women in their areas of work.

A gigantic problem, common to both urban and rural areas, is the issue of female foeticide. It seems that discrimination against the women begins in the womb itself. Thanks to the advancement in the medical science and mercenary approach of its practitioners, the sex-selective abortion over the past many years have resulted in a skewed girl-boy ratio all over the country. As per the latest statistics, sex ratio of India is 107.48 i.e. 107.48 males per 100 females in 2019. It means that India has 930 females per 1000 males.⁸ Horrifying images from the distant past come to mind when the girl child was buried alive or put to eternal sleep with an overdose of opium. The Indian society seems to have regressed further. From the cruel and inhuman practice of female infanticide, it has moved on to female foeticide. The statistics are staggering and a chill runs down the spine as one tries to visualize the kind of times we are heading to. Indeed, we are fast moving to an arid land having very few females, where evils like rape, incest, prostitution, molestation and abduction will be so rampant that it will be virtually impossible to curb them. In short, the murder of the girl child today may spell doom for our society and its norms in a not very distant future.

Our social customs also perpetuate inequalities. The practice of giving dowry to the daughter dates back to ancient times. Dowry is basically the cash, jewellery, furniture, property or other special items given by the bride's family to the bridegroom and his parents. The supporters of dowry system providing huge amount of gifts to the groom and his family raises the status of bride in the family. However, the truth remains that this custom has always done more harm than good to the society as a whole. Rather than uplifting the status of a woman in her family, it has made her vulnerable to physical and mental torture. Cases of bride burning are a sad reality of Indian society. In many cases, the bride turns to her family to meet the demands of her in-laws, while others end up taking their own lives to end the torture with a view to eradicate this social evil, the Dowry Prohibition Act was passed in 1961. In order to give teeth to the law, the Act was amended in 1984 and then again in 1986. In spite of all these measures, the sad reality is that the menace of dowry continues unabated. Rather, the demand for dowry has increased manifold. Parents vie with one another to give more and more dowry to their daughters. Rather than showing a decline, dowry is gaining higher social acceptance day by day.

Domestic violence is another sad reality in India. Due to the gender inequality prevalent in our society, men do not consider it very inappropriate to use a little force now and then to keep women in their place. Due to the consistent efforts of the feminist groups in India, **Protection of Women from Domestic Violence Act, 2005** was enacted. It was brought into force in October, 2006. The Act provides for the first time in Indian law a definition of domestic violence. The definition includes not only physical violence, but also other forms of violence such as emotional, verbal, sexual, and economic abuse. However, it has been found that legislation is of little use, since big number of victims do not approach the law-enforcing agencies for the simple reason that the victims are dependent on their assailants in a big percentage of cases. Many women have to face violence particularly sexual violence in public spaces in urban as well as rural areas. They are frequently subject to violence and abuse ranging from unwanted sexual remarks to improper touching, groping, serious assault and even rape on city streets, public transport, workplaces, movie theatres and parks. This problem restricts women's and girls' freedom of movement, their ability to give their hundred percent at their workplace and their enjoyment of cultural and recreational opportunities. It also has negative effects on their health and well-being. As more and more women are venturing out in the public domain, violence against women has rather increased with time and shows no signs of abating in the near future.

Discrimination against women at workplaces is another form of gender inequality in India. Despite a big number of women joining workforce in India every day, gender bias is a harsh reality of Indian workplaces. Although women excel and bag top positions while they are studying in schools, colleges and universities, there are very few women in senior management roles i.e. decision- making rests largely in the hands of the males. At the lower levels, there are glaring gaps in their salaries. According to a survey, "Women earn between 35% and 85% of men's earnings depending on the type of work and the level of education of the worker." 9

Indian society has a long way to go before it can proclaim full equality of rights and opportunities between men and women. To state the truth, barring a very small variety, the women in India are discriminated against in the matters of education, employment, safety, financial security and inheritance, etc. Mere enactment of laws is evidently not sufficient. Besides legislation, other measures have to be taken to strengthen the hands of women. Woman empowerment is clearly the key to ensure equality between the two sexes. The magnitude of the problems of women is not small, there are millions of stories of women's misery. But instead of shedding tears over the sad plight of women, it would be better if every woman is encouraged to wage her own battle for her due position in the society at her own level in her given circumstances. Giving a good education to the daughter should be the first priority of every parent. By education is not meant only the formal education but the education which will make her a complete person- capable of independent thinking and a rational approach towards life and its problems. Also it is the education which enables a girl to cultivate inherent dignity and self respect on which she will never compromise. Indeed, helping her develop her sense of self- worth is very important. Unconditional love and constant support from parents may help to build up a solid self esteem in a woman from a very young age. It is very important to help a daughter grow into a young woman with poise and self assurance. As they say, charity begins at home. Gender-neutral inheritance laws, implemented in both letter and spirit in every household may help strengthen her position. Not only that, this may also help in finally doing away with the menace of dowry altogether.

Lessons of gender equality drilled into the minds of the boys of the family may also aid in bridging up the gender gap in the society. Involving the women of the family in the process of decision making may enhance the status of the mother in the family and may help in the setting up a healthy precedence for the future. Teach your boys to treat every woman as an equal, be it their home, workplace or a public place. Social media can also put to good use in spreading this valuable message since the modern generation is very receptive to it.

To conclude, it is not wise to look towards the government for giving women their rights. Let each of us put our own house in order and everything else will fall into place.

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