

Research Article on Gender Discrimination in India

Anubhav Upadhyay

LLB 2nd Year 4th Semester, Campus Law Centre, Faculty of Law, University of Delhi

Abstract:

Female foeticide is a very common persisting practice to date in various parts of the country and if fortunately, the girl child is not killed she is subjected to discrimination and exploitation throughout her life specifically if from urban to rural parts of the country. In many religions like Hinduism, women are given the designation of a goddess but unfortunately, our society fails to even identify her as a human being in the very first place thus showing our double standards as far as our mindset and attitude towards women is concerned. Thus, to progress as a nation, we need to get rid of this social evil of gender discrimination and go forward in a united manner. This Article deals with the issue of gender discrimination and what are the steps taken by the government to tackle the same and also the role played by the judiciary to deal with it via landmark judgments.

Keywords: Gender, Discrimination, Girlchild, Foeticide, Protection

INTRODUCTION

We Indians in the 21st century feel very proud as our nation has been making tremendous progress across various fields from science and technology, finance and infrastructure to the urbanization of the rural areas thus marching towards the dream that the constitution makers saw of making India an absolute welfare state where a government is completely of the people, for the people and by the people thus making it a true democracy. But even after so many years some issues are still persisting at an alarming level and one of the most significant ones is gender discrimination in the country as far as men and women are concerned. We have seen and experienced how most people in society celebrate it as a moment of glory when a male child is born but there are almost muted or no celebrations when the girl child is born. Female foeticide is a very common persisting practice to date in various parts of the country and if fortunately, the girl child is not killed she is subjected to discrimination and exploitation throughout her life specifically if from urban to rural parts of the country. In many religions like Hinduism, women are given the designation of a goddess but unfortunately, our society fails to even identify her as a human being in the very first place thus showing our double standards as far as our mindset and attitude towards women is concerned. Thus, in order to progress as a nation, we need to get rid of this social evil of gender discrimination and go forward in a united manner.

What is gender discrimination?

There's a difference in the interpretation of the terms sex and gender in contemporary times. While sex means whether the person is a male based on biology and physiological aspects, the term gender is a socio-cultural term that is socially defined roles and behaviour that have been assigned to males and females by

society through ancient times. Simply put, gender inequality is the treatment of women differently than men due to their sex and based on their gender. Traditionally, society has viewed women as the weaker sex. Women have always been given a position that is subordinate to men. They were abused, humiliated, and exploited in various forms and were subjected to discrimination both inside and outside of their homes. This issue of discrimination has persisted through historical times and is a prevalent global problem in modern times and more strongly encountered in India.

The root cause of this problem is the existence of **PATRIARCHY**. Sociologist *Sylvia Walby* has defined it as “*a system of social structure and practices in which men dominate, oppress and exploit women*”. This practice of patriarchy finds its validation and justification in the religious texts of Hinduism, Islam, and various others who make up the majority of the population in India. According to the ancient Hindu law, *Manu* says -: “*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 widows. In no circumstances she should be allowed to assert herself independently*”.

The situation is in synchrony as far as Islam and Christianity are also concerned and the unfortunate part is that even though this concept is obsolete but is still followed sternly in present-day society. What's even more unfortunate is that through time and gradual social-cultural conditioning, women have accepted their subordinate position to the men and that they are a part and parcel of this patriarchal system which is completely justified. Women's poor position in society is attributed to several factors, including extreme poverty and a lack of education. Numerous women are forced by poverty and a lack of education to participate in migrant labour, organized prostitution, or low-paying domestic employment. Women are not only paid less for doing the same or more labour than males, but they are also only given low-skill positions, which pay lower earnings. This has grown to be a significant instance of gender inequality.

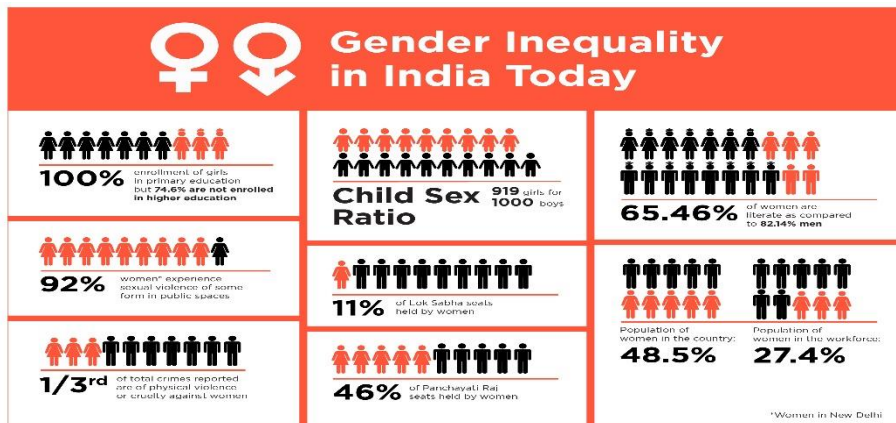
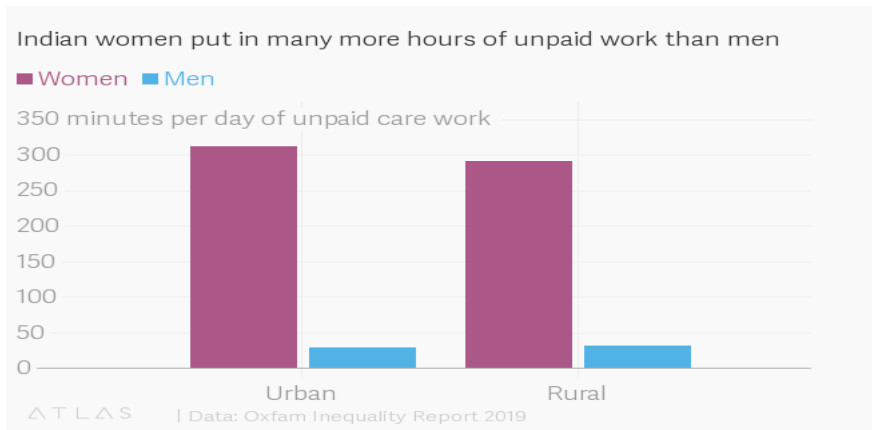
Stats and Indices-

The ranking of our nation on various indices makes it quite evident what the prevailing situation of the country is in this particular aspect and that the problem of gender discrimination is real and has to be dealt with on an urgent basis.

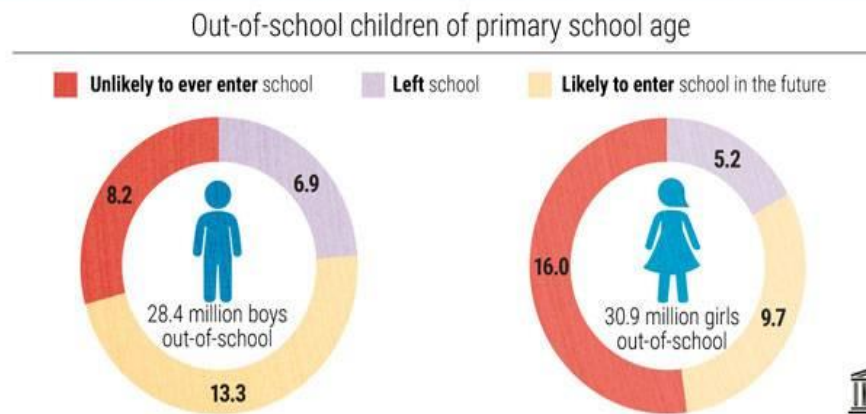
1. **Global Gender Gap Index 2022 (by World Economic Form)**: India ranks **135** among a total of 146 countries.
2. **UNDP's Gender Inequality Index- 2021-** India ranks **140** out of 156 countries.
3. **Economic Participation and Opportunity Index 2022-** India attained a very low rank of **143** out of 146 countries in this regard.
4. **Educational achievements index:** India was in the **126th** position in this chart.

Some various other stats-

- **Female foeticide-** Despite the law of Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 in force a survey carried out by MacPherson it was estimated that over 100,000 illegal abortions are carried out in India each year, due to the sole reason that foetus is a female.
- **Female literacy rate-** In 2021, women had a literacy rate of 65.46%, compared to 82.14% for men. This discrepancy shows that there is a significant gender gap in India and that girls' education is not given adequate priority by Indians.



TWICE AS MANY GIRLS AS BOYS WILL NEVER START SCHOOL



Source: UNESCO eAtlas of Gender Inequality in Education - <http://on.unesco.org/gender-map>



All of these factors speak to the appalling status of gender justice and women's rights in our country. The government launches new initiatives and programs each year in addition to those already in place to benefit and empower women, but still not many noticeable improvements can be seen taking on the ground reality. Even though there is progress not as much as it is required to bring the revolution and get rid of this social evil.

Laws and Constitutional provisions-

The constitution of India provides for the protection and empowerment of women and children through many provisions in order to give them the dignity they deserve and an equal stand as that of a man. Some

of the important provisions in brief are –

1. Article 14- *Equality before the law and equal protection of laws for women.*
2. Article 15 (i)- *The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.*
3. Article 15 (3)- *The State is to make any special provision in favour of women and children.*
4. Article 16- *Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*
5. Article 39(a)- *The State is to direct its policy towards securing for men and women equally the right to an adequate means of livelihood.*
6. Article 39(d)- *equal pay for equal work for both men and women.*
7. Article 39 (A)- *To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.*
8. Article 42 -*The State to make provision for securing just and humane conditions of work and for maternity relief.*
9. Article 46-*The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation.*
10. Article 51(A)(e)- *To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.*
11. Article 243 D(3)- *Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat.*
12. Article 243 D (4)- *Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.*

Important laws made for women's safety and protection-

Under the Indian Penal Code-

1. Section 376– RAPE
2. Section 363-373- Kidnapping and Abduction
3. Section 302 and 304B – Killing for dowry, dowry deaths, and their attempt
4. Section 498-A – Physical and Mental torture
5. Section 354- Molestation
6. Section 509- Sexual Harassment
7. Section 366 B- Importation of girls (below 21 years of age)

Various special laws have been made out of which not all are not gender specific but constant amendments are being made to provide safeguards for women in the same. These are-

1. The Protection of Women from Domestic Violence Act, 2005
2. Indecent Representation of Women (Prohibition) Act, 1986
3. Commission of Sati (Prevention) Act, 1987
4. The Prohibition of Child Marriage Act, 2006
5. The Equal Remuneration Act, 1976

6. The Medical Termination of Pregnancy Act, 1971
7. Dowry Prohibition Act, 1961
8. The Maternity Benefit Act, 1961 (amended in 1995)
9. Immoral Trafficking (Prevention) Act, 1956
10. The Hindu Succession Act, 1956 with amendment in 2005
11. The Plantation Labour Act, 1951
12. The Family Courts Act, 1954

Some important cases are-

1. **Vishaka v state of Rajasthan**¹-The Vishaka rules were laid out by the Supreme Court that gave sexual harassment's definition and mandated that employers give women a safe working environment.
2. **Lata Singh v State of UP**²- Supreme court gave the right to women to marry or live in a live-in relationship with anyone of their choice. The court also directed the police to file criminal charges against anyone who assaults someone who chooses an interfaith or intercaste union.
3. **Roxann Sharma Vs Arun Sharma**³- The Supreme Court decided that the mother will continue to have custody of a child under the age of five when estranged parents are engaged in a legal battle over the kid's custody.
4. **Laxmi v UOI**⁴- The Supreme Court established strict limitations on the sale of acid in 2013 after becoming aware of the growth in the number of instances involving acid assaults against women.
5. **Centre for inquiry into Health and Allied Themes (CEHAT) Vs UOI**⁵- The Supreme Court ruled that all ads for methods of determining the sex of unborn children must cease immediately and ordered the federal and state governments to implement the PNDT act's provisions.

Analysis and Conclusion-

The number of laws prohibiting various forms of discrimination or inequality may go on forever, but genuine change won't occur until society begins to respect women equally, rather than as inferior to or submissive to males. India needs to take proactive measures to lessen gender inequality. Rethinking the ideas and tactics for advancing women's rights and dignity is necessary in light of the ongoing issue. There is a need for new types of institutions with new standards and laws that promote just and equal relationships between both the genders. The two wheels of a carriage are like a man and a woman, without the other, one's life is lacking. Promoting a shift in people's mindsets is the only sure fire way to reduce gender disparity. Few people cannot address this issue; instead, we all must work together to end inequality.

REFERENCES -

1. Critical Views on the Issues, Rights and Legislation of Women in India and across the Globe - <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijlmhs10&div=159&id=&page=>

¹ Vishaka v state of Rajasthan (1997) 6 SCC 241 (INDIA)

² Lata Singh v state of UP (2006) 5 SCC 475 (INDIA)

³ Roxann sharma v Arun Sharma (2015) 8 SCC 318 (INDIA)

⁴ Laxmi v Union of India (2014) 4 SCC 427 (INDIA)

⁵ Centre for enquiry into Health and Allied themes (CEHAT) Vs Union of India (2003) 8 SCC 412

2. THE ROOTS OF GENDER INEQUALITY IN INDIA-

<https://deliverypdf.ssrn.com/delivery.php?ID=855089082102113067096100081080097113102082065014007039108084067002094118076006093111050117107034029039046029092031120123000097039086075069039065005113110021091111119020043021065087071090119020122028005001076117119082118122094079105085071119110104020028&EXT=pdf&INDEX=TRUE>

3. The State of Gender Inequality in India-

https://www.researchgate.net/publication/315060336_The_State_of_Gender_Inequality_in_India

4. The epic battle of gender equality in law

<https://www.lexisnexis.com/community/insights/legal/tags/Gender%2BDiscrimination>

Legal Databases used-

1. Manupatra
2. HeinOnline
3. Legitimate Quest
4. LiveLaw