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Constructed Genders & Systemic Inequalities: A Study of India's Gender Divide

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ABSTRACT

This article analyses the ubiquitous phenomenon of gender-based discrimination in India, focusing on the structural, historical, and socio-cultural processes that continue to reinforce gender inequality throughout India. Despite the constitutional provisions and various legislative reforms designed to safeguard and empower marginalized genders, deeply ingrained societal norms tend to defeat such legal frameworks in practice. This analysis goes above the systemic exclusions that women experience, also involving transgender, non-binary, and gender non-conforming people who are still massively excluded in public and private areas of life.

Historically, the paper lays out the changing status of gender minorities and women from ancient India's Vedic times to colonial regimes to modern day India, showing how patriarchal interpretations of culture and religion have led to longstanding inequalities. It showcases inequalities in mortality, education, work, property rights, and family dynamics, emphasizing the workings of intersectionality to focus on these difficulties.

Further, the paper also goes into detail regarding major legal provisions such as the Protection of Women from Domestic Violence Act, the Dowry Prohibition Act, and major judgments pertaining to transgender rights and examines their effectiveness and shortcomings. It contends that legal change, although important, is not enough without simultaneous changes in public awareness and societal values.

Finally, the paper demands a multi-dimensional intervention involving legal enforcement, integrated education, and policy changes. By viewing gender discrimination as a social construction and not as a natural order, India can progress toward realizing true equality. The paper encourages an understanding, study-based, and action-oriented response to break the systemic impediments and create a society where everyone, be it male or female, can participate and flourish fully.

I. INTRODUCTION

Gender-based discrimination is still a significant challenge in India. After thousands of years of struggle, discrimination, and inequality faced by people all over the country, it continues to persist. Despite the presence of multiple constitutional remedies and laws to promote equality,

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certain deep-rooted beliefs hinder the applicability of these laws in real-life scenarios. In India, gender-based discrimination is faced not only by women but by a spectrum of genders, including transgender people, non-binary people, and gender non-conforming people, etc.

The types of gender discrimination in India can be classified across various dimensions, such as education, economic participation, and social attitudes, which are some of the most critical areas. Educated women, among many others, experience discrimination due to traditional gender norms and roles. This occurs regardless of their potential and unnecessarily restricts them to household duties, thereby diluting their probable contributions to both national and universal development. Furthermore, religious and caste diversity also complicates the nature of gender inequality, with discrimination often being the result of these intersectional identities.

To improve matters, there has to be a belief system at the societal level regarding the ability of women to create equal access to opportunities. This cannot be addressed solely through government policy reform but also requires a shift in paradigms surrounding gender norms in society. By recognizing that gender discrimination is not a biological fact but a socially constructed problem, India can begin making the necessary adjustments to empower women and establish greater equality across all aspects of life.

II. HISTORY AND BEGINNING

During the ancient vedic period, women were highly respected and enjoyed prominent positions in the society. They could participate freely in Sabhas and Samhitis by actively voicing their opinions. However, as time passed, the status of women declined because of the emergence of practices like child marriages, polygamy, and women being barred from participating in societal activities.

During the medieval period, too, these practices continued along with newer trends like dowry system in the form of “varadakshina”, sati system, pardha system etc. Women in hindu society in the 19th century were misled by false religious information that Hindu scripture did not sanction female education and that education of girls lead to wrath of Gods leading to their widowhood.

“Transgender” is an umbrella term that can be used to encompass people whose gender identity is different from the gender ascribed at birth. India, within the South Asian socio-cultural context, carries one of the richest histories of the ‘Hijras’—who represent only one segment of the transgender community among other gender non-conforming identities. Evidence of this community is referenced in various temple carvings and religious scriptures.

Even during the Mughal era, *hijras* held prestigious positions in the royal court. However, this community did not find a place within Western perceptions of gender and was classified as “criminals” under the Criminal Tribes Act of 1871 by the British colonisers. This marked the institutionalisation of the transgender community's marginalization—a situation that persists to this day.²

SATI ABOLITION ACT (1820)

The term sati literally means a “Pure and Virtuous Women”. It was applied in case of a devoted wife who contemplated perpetual and uninterrupted conjugal union with her husband's life and burnt herself with the dead-body of her husband. Regulation XVII of the Colonial Government of 4 December 1820 declared the practice of Sati, on burning or burying alive of widow illegal and punishable by criminal court as culpable homicide. Raja Roy popularized the act of 1829 and created a mighty public opinion in its favour through his writing and speeches. The regulation of 1829 was applicable the first instance of Bangal Presidency alone, but was extended in slightly modified form to Madras and Bombay Presidencies in 1830.³

The Sati of Ramabai, wife of Madhavrao Peshwa, c.1772-75 (watercolour & gold on paper)

In spite of such acts and reforms like Widow remarriage act (1856), Ban on female infanticide (1870), Native remarriage act II (1872), Married women's property act III (1874), even after India attained independence, the status and roles of women remained more or less the same.

III. TYPES OF GENDER INEQUALITY IN INDIA CURRENTLY

According to Nobel Laureate Amartya Sen, India currently experiences seven types of gender inequalities.

Mortality Inequality: More women than men in India face higher mortality rates due to inadequate nutrition and limited access to healthcare, resulting in a higher male population.

Natality Inequality: A preference for male children over female children leads to sex-selective abortions, which are punishable under the law but still prevalent in India.

Employment Inequality: Women in India face higher unemployment rates than men. They also experience discrimination, harassment, and lower minimum wages in the workplace.

Ownership Inequality: Historically, women in India have been denied property rights,

² Leaving no one behind: Transgender inclusion in India's sustainable development: Sharon Sarah Thawaney

³ Position of Women in Colonial Era: Samuel Stanely and Santosh Kumari, Department of History, St. John's College

limiting their voices and making participating in economic and commercial activities challenging.

Special Opportunity Inequality: Women in India are deprived of special opportunities such as work and education.

Fundamental Facility Inequality: Unreported injustices and inequalities persist due to societal pressures related to name, honor, and reputation, impacting women's access to basic facilities.

Household Inequality: Women face inequality within households, such as the preference for sons over daughters and restrictions on women's employment and higher education opportunities.⁴

In India transgender people face gender discrimination too. The major problems that are being faced by the transgender community are of social exclusion - in social and cultural life, economy, discrimination, unemployment, lack of educational facilities, homelessness, lack of medical facilities like HIV care and hygiene, depression, hormone pill abuse, tobacco and alcohol abuse, and problems related to marriage and adoption.

Denial of the fundamental rights, discrimination and other problems faced by the transgender community have been articulated in two public interest litigation (PIL) petitions WP No. 400 of 2012 & 604 of 2013 filed in Supreme Court of India and High Court of Mumbai. They are deprived of many of the rights and privileges which other persons enjoy as citizens of India; deprivation of social and cultural participation by family and society; restricted access to education, health services and public spaces, restricted rights available to citizens such as right to marry, right to contest elections, right to employment etc and thus the transgender community is treated as a legal non-entity in violation of Article 14, 15, 16 21 of the Indian Constitution.⁵

In order to make implementation of laws and acts regarding gender equality efficient and realistic, the government of India should focus more on educating people regarding the same and influencing their beliefs by holding campaigns, advertisements, legal aid camps etc. Teaching people to hold onto their roots while also embracing everyone as they are and promoting equality amongst everyone irrespective of their gender or sexuality is extremely important. India, as a developing country has a high potential of growth in terms of education, economic and cultural aspects, and much more.

⁴ Gender Inequality in India - History, Major Causes, Impact, Political, Legal Reforms & Possible Solutions: Testbook

⁵ Transgender Persons in India: Problems, Policies and Interventions K. Visweswara Rao * K. Nikhita **

Teaching younger generations about these sensitive topics while their cognisance is still developing should be recommended, so as to ensure awareness regarding gender and equality.

IV. LAWS FOR WOMEN IN INDIA

In India there are laws that safeguard the rights of women, in aspects such, as family matters, criminal offenses, employment conditions and property ownership. Our constitution provides rights to ensure the protection and progress of women.

The Protection of Women from Domestic Violence Act, 2005

Protection of Women from DVA, 2005 is one of the key Acts and laws for women in India meant for protecting women who are oppressed by domestic violence. The law provides for strict legal actions against husbands that harass, abuse and maltreat women in their own houses. The law strives to provide protection orders, residence orders, as well as monetary relief, which is meant to secure their safety and general wellbeing.

The Dowry Prohibition Act, 1961

The main intention of the Act was to stop the menace of dowry in India. It completely prohibited the giving and taking of dowry. It also aims to protect woman who want to get married but aren't able to because of frivolous dowry demands from the prospective groom's side. However, still there are a lot of cases surrounding dowry and it has been very difficult to enforce this law because of the huge population of the country and cases not being filed due to fear.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

It deals with sexual harassment of women at the work place. It provides a legal basis that will help curb any such harassments and protects women, hence creating a safe and fair working atmosphere free from sexual harassment of women and their abuse. The Act mandates establishing of internal committees and POSH Policy for addressing complaints and prompt redressing of the cases.

The Medical Termination of Pregnancy Act, 1971

In India, termination of pregnancy is regulated under the Medical Termination of Pregnancy Act, 1971 (MTP Act). Under this act a woman is allowed to end her pregnancy within 20 weeks if it's essential, for preserving her life poses a risk to her physical or mental wellbeing or if the pregnancy resulted from rape.

The Maternity Benefit Act, 1961

It is difficult for working mothers to work during childbirth and in pre-child birth stage. Hence, the Maternity Benefit Act, 1961 was established. The Act mandates for a minimum of 12 weeks of maternity leave to mothers. In the 2017 Amendment, this was increased to a maximum of 26 weeks.

The Equal Remuneration Act, 1976

The Equal Remuneration Act, 1976 (ERA) provides for a gender non-discriminatory and equality based legislation that mandates that men and women both should be paid equal remuneration for the same or equal work that they do, thus providing them with equal benefits and economic opportunities at work.

Women's participation in politics

In 1952, women made up just 4.41% of the strength of the Lower House.

India has elected 74 women MPs to Lok Sabha this year, four fewer than in 2019 and 52 more than in India's first elections in 1952.

These 74 women make just 13.63% of the elected strength of the Lower House, much less than the 33% that will be reserved for women after the next delimitation exercise.

India was ranked 149th out of 193 nations in terms of the percentage of women who serve in the lower house of parliament.

In the Global Gender Gap Report 2023, India ranked 127th out of 146 countries.

Global study- India still lags behind several countries 46% of MPs in South Africa, 35% in the UK, and 29% in the US, are women.

Asia specific study- IPU data of 2022 showed that women's representation in Nepal was 34 percent, in Bangladesh 21%, in Pakistan 20%, in Bhutan 17% and in Sri Lanka 5%.⁶

CHANGE IN WOMEN'S STRENGTH IN LOK SABHA OVER THE YEARS



⁶ Women's Participation in Politics: Shankar IAS Parliament

V. CONCLUSION

There is an urgent need of implementation of gender equality-based laws, and modifying societal values. It is only through a combination of legal reforms, societal awareness, and inclusive policies that India can hope to create a more just and equitable society for all genders.

Addressing gender discrimination in India requires a multi-pronged approach targeting the root causes. Providing equal opportunities in education, employment, and leadership roles can empower underprivileged and socially-suppressed girls to thrive. Promoting girl's education is vital for breaking the cycle of gender disparity and empowering them to make informed choices. Non-governmental organisations (NGOs) play a pivotal role in reducing gender issues in India. They work to remove gender biases by educating people and raising awareness, holding the government responsible for enforcing fair policies and laws, and getting communities involved in stopping gender-based problems.

If India, and the world at large does reach a point of equity among all genders, all individuals will be able to significantly contribute to the society, leading to a massive rise in all aspects of growth – be it economic, social, cultural, legal, political and a plethora of other aspects. Encouraging all individuals to realise and implement their potential in the best possible manner notwithstanding their gender, race, caste or sexuality is the path to the betterment of society and its people.
