

## **Gender neutrality in India: rights v. Reality**

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### **Abstract**

“There are a plan and a purpose, a value to every life, no matter what its location, age, gender

Or disability.”

-Sharron Angle

We the proud Indian citizen of 21<sup>ST</sup>-century pleasure to celebrate the birth of a baby boy, if a baby girl is born, we are stifled or no celebrations. Girl child are killed even before they take delivery from long-standing time as love for a male child is more, if likely she is not killed there are diverse ways to distinguish against her in every part of her life. Gender inequality is also termed as sexual inequality. Gender inequality defined as discrimination between the men and women on the ground of their sex. She is treated as subordinate to him. Gender neutral laws mean the laws where both the gender male and female are not given importance, but it prefers only people in general. Our religion worship goddesses but we exploit girls. The women are exploited, degraded, violated and discriminated not just inside her home but also outside the home. After the incident of Delhi gang rape and much another case, there is a terrible need to amend the laws and make harsh laws for crime against women. In the recent judgments of the apex court on triple talaq and section 498A find out an ambiguity in the women protection laws. We should also know the importance of law and justice in the gender inequality and also deals with the barriers in the laws. In India, the loopholes in the laws for women are gender specific and punished only the male This type of discrimination against women is universal. Let's try to analyze the ongoing protective legislation in shining of gender-neutral laws and come to an end with suggesting protecting all the gender equality.

**Keywords:** Gender inequality, Gender Neutral laws, Human right, Discrimination, Religion.

## **Introduction**

The women contributed in all sphere of life and had a unique status in the society, country and the world. Women also undergo many disadvantage position and many barriers in silence. The country of self-contradiction India with no exception here to the woman is symbolized as a Shakti, and had a noble status; women also need to be empowered. The women need to be empowered in social, legal, political and economic. The gender issues such as man dominating society where the man is the supreme power over the woman, gender inequality in the various fields. Empowerment and equality are the essential ground on the basis of which these problems are solved. Also, we had many laws that are Indian penal code and the constitution of India which help in the fight against such barriers and issues.

The Indian constitution had escaped the provision of article 14 that is of equality before the law and equal protection of the law. The reason is the equality is always divided among equals till the judges did not accept that men and women were equal. Gender equality did not seem to them to be a legally forbidden inequality.<sup>1</sup> The constitution maker had drafted the constitution very sensitive towards the problems faced by the women also provide specific provision to resolve and face the problems.

According to the Oxford dictionary, the term gender neutrality is an adjective that is acceptable for and applied to, or typical for both the gender male and female. The Indian penal code is the leading criminal code of the country, with lists of all the cases along with their punishment that a person shall be liable if he commits the offense or crime. It is applicable only to the citizen of the country. The section 2 of the Act states that every person shall be liable for punishment under this code and otherwise for every act or omission contrary to the provision thereof, of which he shall be guilty within India.<sup>2</sup> According to this section, the law doesn't tell part of criminals and whoever committed the offense shall be liable for the punishment under this code. Well, the mindset of all the society is that all violence is male generated which provide a shield to women against crime perpetrated by them. Women also commit the crime in the same sense as the men do. Crime does not have any gender nor should the law have.

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<sup>1</sup>*Rehabilitation of Sick Units Concepts, process and developments*, Shodhganga, [http://shodhganga.inflibnet.ac.in/bitstream/10603/3804/10/10\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/3804/10/10_chapter%204.pdf).

<sup>2</sup>Avrati Sirvastava, *Gender-neutral Indian Penal code*, LEGALSERVICESINDIA, <http://www.legalservicesindia.com/article/2011/Gender-neutral-Indian-Penal-Code.html>.

## **Factors behind growing gender inequality**

### **1. Illiteracy:**

Despite the notable efforts by the countries around the globe that have expanded for the necessary education, there are approximately 960 million illiterate adults in which more than half of them are women.<sup>3</sup> It is one of the ingredients accountable for gender inequality. According to census 2011 literacy rate of India is 74.04% in which 82.14% are male, and 65.46% are female.<sup>4</sup>The progress towards educating girls is plodding and gender imbalance at different levelsof education such as primary, upper primary and secondary. The women are not able to realize their full identity due to illiteracy.

### **2. Lack of employment facilities**

There are some everyday inequalities that take place in the workplace are gender-based inequality of individuals in power and command over the authority of the organization. They are not able to compare to men. In both suburban and urban areas, women spend a significant proportion of time on household work. They are not able to be economically sufficient by themselves due to unemployment and their financial dependence on the male counterpart is itself a cause of gender inequality.

### **3. Social customs, beliefs, and practices**

Women are not free from social customs, beliefs and practices like Dowry system, Sati system and many more. In India, women have less power than men to legal recognition and conservation. They have the lower access to general knowledge regarding the surrounding environment and less decision making power within the home and outside the home. The most critical factor is dowry system which contributes the gender inequality by influencing that girls are a burden on families and society.

### **4. Poverty**

In India, around 30 percent population is below the povertyline, and from them, 70 percent are women.<sup>5</sup> The poverty percent of women is directly related to the absence of economic opportunities, lack of access to education, land ownership,

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<sup>3</sup> Shuani, Gender Discrimination in India (6 major causes), yourarticlelibrary, <http://www.yourarticlelibrary.com/india-2/gender-discrimination-in-india-6-major-causes/47671>.

<sup>4</sup> Literacy Rate of India 2011, INDIAFACTS, <http://indiafacts.in/india-census-2011/literacy-rate-india-2011/>.

<sup>5</sup> *Id.* at 3.

inheritance and their minimal participation in the decision-making process. Poverty stands at the root of gender inequality in our patriarchal system in our society.

## **Types of gender inequality**

### **Inequality at home**

People of India are debating forever whether the Bharatiya Janata Party or The Indian National Congress or any party will resolve their worry. People are dependent on the government to unfold the issue faced by them. The state has the power to make the laws and frame the policies. Additionally, many problems cover women whatever the field it is economic or opportunity, educational, health, and survival need to speak to the individual, household, family, and social level.<sup>6</sup> The trouble is that gender inequality is the soul of the Indian cultural system. Gender inequality is connected to a great extent with ancestry and social security.

### **Natality inequality**

The Indian societies are male-dominated as the male is given more preference over female. Gender inequality evident in the mind of the parents when they want just born to be a male instead of female. With the help of modern techniques, it became easier to determine the gender of the embryo, due to this abortion are often done in many countries. In ancient time sex determination was just a wish or nightmare.<sup>7</sup> To neglect the care of the mother and the baby girl leads to gender inequality also reflect maternal undernourishment, deprivation, distress and underweight babies. The traditional way to change the gender inequality is to influence female education and female participation in society.

### **Professional or employment inequality**

Women suffer inequality in respect to profession and success in the work. Women are facing many barriers to success and profession rather than men. In government and private industries, there is less number of women participants than the men. Mostly men are given high position in the institution. In some progressing countries, the level of employment

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<sup>6</sup> Naresh Agrawal, *Addressing gender inequality in homes*, SIMMONS, (Mar. 8, 2014), <http://slis.simmons.edu/blogs/naresh/2014/03/08/international-womens-day-addressing-gender-inequality-in-indian-homes/>.

<sup>7</sup> Amartya Sen, *Many faces of gender inequality*, FRONTLINE, Oct. 27- Nov. 09, 2001.

and occupation are more complicated for women in balance with men.<sup>8</sup> In recent years women are being to engage in the industry. As our society is men-dominating society, the female has to face harassing comments from their male co-worker. To improve the status of a woman, they should be trained well multi-dimensionally, and incentives should also be provided to encourage them. Rural women also face many problems such as low wages and other problem in a job. The security of women in the job is still imaginary in the society.

### **Ownership inequality:**

Indian society is male dominate society. Therefore, the ownership of the property is shared unequally among the people. Assets of the ancestors like homes, land and other are unequally shared. Only the male has the right to claim the property of the ancestor's female are not given any share of the ancestor's property. Women had to face barriers to obtaining their property. The husband and brother of women are having the control over the property of women; women are not allowed to have possession of any property.

### **Special opportunity inequality:**

Gender inequality is not only a problem of India, but it is also seen in many other developed countries such as North America and Europe. Schooling, higher education is far from young women than men.

### **Importance of law in gender equality**

Law is universal. Law influences the people in many alternative ways of action. Law is an essential tool in empowering the people, and it guides in the development of the country. Law affects both social and legal sphere of the citizens. Inequality in inheritance, entry to wealth and healthy, social or household status, many other are such field where women's are subordinate to the men.<sup>9</sup> Dismiss women the female from her rights such as the right to manage, acquire, and dispose of assets in their name restricts their equality of ownership, productivity and bargaining power in the world. According to a report on gender equality

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<sup>8</sup>*Supra note 1 at 2.*

<sup>9</sup>Chiongson, *Role of Law and justice in achieving gender equality*, WORLD BANK, <http://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1322671773271/Chiongson-law-and-justice.pdf>

by world development report<sup>10</sup>, 2012 highlights the importance of laws and justice toattaining gender equality. Due to the central role of the law and justice plays an essential in hindering gender equality. The laws have to consider how the word gender comes into. Also how the two genders are dissimilar in social, economic, political and legal fields. Both the male and female often face same challenges in the society and in attaining the justice. Due to lack of a legal warrant and due to alive unequal gender in many legal provisions that is an area of labor, property and personal status law hinders woman to attain the justice. The females are given many ways to attain the justice they have being provide free legal aid clinics, educational factors, and administrative bodies,etc.

### **Laws favoring the woman**

There are many laws in the Indian penal code 1860 which are typically favoring the women, or we may say anti-male provisions of the code. Limiting the discussion let's have a look at the four major areas of law which are: -

#### **1. Dowry death and cruelty against women**

The meaning of dowry death had a vast imagination in everyone's head that is the women are being harassed, a put-down for money and hanged to death in her house. The unnatural death of a married woman is dowry death. Not only dowry death but also bride killing and dowry harassment present the position as the men eerie tendency to commit violence on their better half for money and valuable security.

Section 498A of the Indian penal code specifies that husband or relatives of the husband subjecting cruelty and harassment to women shall be punished with imprisonment for a term which may extend to three years and shall also be liable toextreme monetary charges.<sup>11</sup> Cruelty also to section 113A of Indian evidence act punishes a husband for abetment of suicide to wife.

#### **2. Rape**

Sections 375 of Indian penal code specify that for committing the offense under this section, you have to be a man and women to get raped! This section doesn't

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<sup>10</sup>*Ibid.*

<sup>11</sup> Section 498A of The Indian Penal Code 1860, No. 45, Acts of Parliament, 1860.

identify the man as a rape martyr. The law is fraught with challenges.<sup>12</sup> In the cases where the male is a victim of sexual offenses by a male attacker will not be recognized as rape. In case, if the female is the attacker, then the male victim is left with no option to seek justice. Rape and murdercases do not consider age, nationality, caste, the color of skin, sexual orientation or gender. Rape is being visible around geographical boundaries among all the age groups and sex.

### **3. Adultery**

Section 497 of the IPC says, "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexualintercourse not amounting to the offence of rape, is guilty of the offence of adultery shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not beably punishable as an abettor." <sup>13</sup>

Points to be highlighted: -

1. The offense of adultery is against a man only, not by women. If sexual intercourse is committed by a man to married women and does not obtain the consent of the husband of the woman for the same, it is considered as a crime but not for vice-versa situation. Section 198 of the criminal procedure 1973 doesn't allow the husband to charge his wife for the offense of the adultery.
2. If a man (husband) had extramarital affairs with unmarried women, no one could take or initiate any action against anyone.
3. The women are considered as the powerless victims, and the man is the seducer.

Adultery is not an offense in most of European Union countries, like U K, Netherlands, Belgium, and Finland many more. Whereas in India the adultery is a crime and the accused is punished. Many countries don't recognize adultery as a criminalize act but as a ground for divorce.

### **4. Laws dealing with the modesty of a woman**

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<sup>12</sup>*Supra Note 2* at 3.

<sup>13</sup> Section 497 of The Indian Penal Code 1860, No. 45, Acts of Parliament, 1860.

Section 354 states that assault or criminal force with intent to outrage a women's modesty.<sup>14</sup> In India, we did not have any law to protect the modesty of the man. The law doesn't protect the man from such crimes where women bully men. The current position in the country is like if a man accidentally touches a woman in a crowded bus, and the woman protests even slightly the man shall be beyond doubt invited by the public for the offense without listening to him.

### **Barriers to accessing justice**

Barriers to accessing justice: - There are many laws that protect the women and also support them in the improvement of women. There are also many discriminatory laws which discriminate between the two genders. Some illustration is, unequal inheritance, unequal rights and accountability in marriage, the bride have to seek permission from her husband to travel or to do any job and many more. Evidence given by women consider equally as of a man. There are limited legal options for women.

1. There are many protective laws with the aim to protect the women against the harmful and dangerous activity. They support the female to choose their employment opportunities. Laws also restrictions on women that they should not work in the night, or engage in what is considered harmful for them.
2. There are many gaps in the legal structure which is the specific reason for the inequalities in society. Near about 30-40% of women suffer from sexual harassment on their job. They have to face verbal, physical and sexual harassment. The women are left with limited protection.
3. Gender neutral laws are known as unbiased, but they impact uneven on one sex. Example, the general provision on assault. Laws are formal and informal similar they had an impact on the development of the state.

### **Lack of education**

Awareness and skills, women should be aware of all the rights provided to her. She should be the entitlement to her rights and how to seek the remedies. There may be many harmful activities against her in the outside the house she should be supported to raise their voice against the crime

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<sup>14</sup>Section 354 of The Indian Penal Code 1860, No. 45, Acts of Parliament, 1860.

1. **Resources**

The barriers in the law are that the women are not aware of the laws. Therefore, she fails to take a step towards the wrongdoer. There are many women who are unable to file complaints about the divorce due to the lack of money.

2. **Mobility and geography**

The laws are different for the different people or communities such as Hindu laws and Muslim laws. Women are unable to seek their claim. No support and child care facilities restrict the women to travel as they are always treated subordinate to their man. They have to seek permission from her husband to do an act and to perform acts.

3. **Support**

In upper class also women are dominated as there are aware of their right, but they cannot seek their claim due to dependency on their husband. The women should be provided the proper support to maintain her and rise against the crime. They feel shame to sue their husband, and they have to maintain the relationship.

4. **Power**

Due to lack of power women are not able to seek their rights. Society dominates the women as the society from the long time considered the female as subordinate to male. The male gender is considered as a powerful in the society. The women have less space to speak out. Therefore, she cannot seek their rights and remedies.

**Ineffective justice:**

1. **Gender bias**

Due to lack of sensitivity, justice may be biased. There is still believe that the domestic violence and marital rape are private matters. Therefore, women also feel shame to disclose their personal life with society. The ordinary climate says that there is a difference between women rights in society.

2. **Limited capacity**

Sometimes the judges, magistrates are also personally biased and also unable to understand the gender issues. They may also don't have the capacity to judge the case of inequalities.

3. **Limited structures**

There are many limited structures too consciously and respond to gender concerns because in many cases there is fear of repercussions, the perpetrator or defendant knows the victim and claimant. Then they think there is lack of protective mechanisms for women to seek justice.

### **Health issues**

The women are facing most of the problems due to gender discrimination. The riskiest period in their lives is early childhood period and reproductive years. Poor and Inadequate nutrition, not having access to primary healthcare, poor reproductive health and girls discrimination are significant causes for higher female mortality between the age group of 1-5 years and high maternal mortality rate.<sup>15</sup> The healthcare sector has broadly focused on maternal healthcare for women. These are obstacles in the health sector which are not giving justice to women. Malnutrition is an elemental cause of death among the girls below the age of five. It leads to anemia and abnormal growth. Sexually transmitted diseases, like HIV, have significance for women. They get medical help only when the illness is advanced; thereby they are reducing the chances of surviving.

### **Conclusion**

There are lists of legislation and types of discriminations or inequalities may go on, but the original change will only come when the mindset of the men will change; when the men start treating women as equal and not inferior or weaker to them. In fact, not only men have to change the mindset but women also because they are playing a supportive role in furthering men's agenda of dominating women. They are faced with unwanted discrimination everyday of their lives, due to their gender-specific, which they have no control over. They have been subjected to discrimination, domination, and deprivation which lead to harsh violence against women in the form of molestation, rape, harassment, dowry death, bride burning, etc. But Gender inequality is mostly found at workplaces because they are denied fair wage or equal pay. These heinous and horrific crimes and thus emphasizing much on the need for upcoming stringent laws for punishing men and enacting pro-women legislation and implementing them wholly.

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<sup>15</sup>Ashapatel, *Gender Inequality and women's health: Indian Perspective*, RESEARCHGATE, [https://www.researchgate.net/publication/268086011\\_Gender\\_Inequality\\_and\\_Women's\\_Health\\_Indian\\_Perspective](https://www.researchgate.net/publication/268086011_Gender_Inequality_and_Women's_Health_Indian_Perspective)

**Laws for Indian Women : A Publication of Jus Dicere**

We need to reach a stage where we see every human life as precious and sacred! Each person, irrespective of gender, has a right to grow, right to make one's life choices and the right to realize one's real potential! If we deny this right to the women in our lives – be it our wife, daughters, sister daughter- in laws, we are doing wrong.