



Women Empowerment and Gender Justice: An Indian and Indonesian Perspective

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Abstract

The rights and status of women have been a major concern across all nations throughout the world. Their role and status have witnessed significant changes over centuries. In India and Indonesia, post-independence efforts and the rights assured to women under the Constitution paved way for significant progress in the area of women's rights. Gender equality in forms such as equal pay for equal work, equality of opportunity, rights of political participation, protective legislations or schemes and similar measures reflect the advances made in respect of women empowerment. However, even after several years of independence, women are subjected to several forms of discriminations. The author has attempted to analyze the various women rights enshrined under the Indian and Indonesian laws and the measures adopted for women empowerment and to ensure gender equality. The author seeks to examine the extent of women empowerment and upliftment ensured through various laws, policies and schemes and whether the same have helped in achieving gender equality. The author also highlights the current standing of women in the modern world.

Keywords: women, discrimination, equality, rights, gender.

Introduction:

“There is no chance for the welfare of the world unless the condition of women is improved, and it is not possible for a bird to fly on only one wing.”

- Swami Vivekananda

The position and status of women the greatest concern in contemporary time. This is because the status ascribed to women has been a very dynamic concept since ages. The status of women has undergone numerous changes from the Vedic period to the present day. Women all over the world have tasted all the flavors of life; from its glory and honor in Vedic age to its denial and subordination in the post-Vedic age and ultimately to the fight for equality, identification and survival in today's world. However one thing has remained common in these stages is the subordination of women. Discrimination against women is not particular to any country, but is rather a global issue. Women's discrimination and the goal of gender equality are long-standing societal concerns that transcend borders and cultures. Women have endured systemic discrimination in different sectors of life throughout history, limiting their opportunities, rights, and general well-being. Patriarchal expectations, cultural prejudices, and conventional gender roles are frequently at the basis of this discrimination. Various spheres such as leadership roles, equal pay, education opportunities, political representation, offences and violence against women, reproductive rights, etc. reflect upon the extend of subjugation, deprivation and unequal treatment. Practices such as sati pratha, child marriage, dowry, female foeticides and infanticide, denial of education, lack of decision-making power, financial dependency, etc. have been witnessed throughout ancient times and exist even today in some parts of the country.

Early efforts to protect women against discrimination could be seen through legislations in India such as the Sati Abolition Act that was passed by the Governor-General of India, Lord William Bentinck, in 1829, making the practice of Sati illegal across India. The statute made it a crime for anybody to promote, encourage, or engage in Sati practice. Such later legislative attempts have sought to secure basic rights of women. For instance, laws like "Bengal Sati Regulation Act, 1829" and related anti-Sati legislation in other states such as Madras and Bombay, the "Hindu Widow Remarriage Act, 1856", the "Hindu Women's Right to Property Act, 1937", the "Shariat Act, 1937", and the "Dissolution of Muslim Marriages Act, 1939" are few examples. However, it is worth noting that since its inception, India has had gender inequality which has led to significant differences between men and women in society due to social, economic and religious factor.

Similarly, efforts in Indonesia to end discrimination against women have been adopted at international and national levels. Indonesia ratified "UN Convention on the Elimination of All Forms of Discrimination against Women". Gender norms and stereotypes continue to

limit human potential worldwide. Women's role in Indonesia is largely determined by formal and informal institutions and are shaped by long-standing gender constraints. Often, these standards prevent women from accessing their rights and opportunities in finance, education, health and politics. While Indonesia has made some significant progress in addressing gender inequality, significant gender gaps still remain in the country.

INDIA

Subjugation of Women in Ancient India

Women were seen as equal to males in ancient Indian culture, and there was absence of gender discrimination; rather, women were honored by society, and society at the stage referred to women as "Janani", which means mother; even in Hindu scripts, women are referred to as Devi. There were women rishis throughout this time period, and they were highly respected. Women are respected in the royal family and also play an important role in decision-making and administration. They were educated in many disciplines and played a vital role in politics as well. Thus, women were treated as capable of contributing to societal and family welfare.

It was during the later vedic period that the position and relationship of women witnessed change. Several forms of discriminations were practices against women, especially in the field of education and social participation. The frequency of child marriage, sati, polygamy, and the purdah regime weakened women's positions even more. In the epics and puranas, women were largely associated with property. Women's situation was also deteriorating throughout the Mauryan period. Despite the fact that the kings used female soldiers and spies. Women from higher castes were expected to adopt the purdah regime. Men were polygamous throughout this time, and sati was considered the norm. Even as per arthashastra, they were not allowed to go anywhere without their husbands' consent and were not allowed to make decisions independently.

Despite assertions that women had enormous freedom and equality in ancient India, the Manusmriti states that "a woman should never be independent. As a girl, a daughter must be controlled by her father; as a wife she must be controlled by her husband; as a widow, she should be led by her son". The right to own property and make independent decision was denied; and was expected to respect the husband and be faithful to him, whether alive or dead, in all circumstances.

By the end of the Vedic period, women lost their social and religious rights. They were not permitted to attend meetings, religious or cultural events. Over time, the status of women gradually declined and even having a daughter was considered unlucky. The dependence of women over husbands, fathers and sons is mainly due to their lack of property rights. They lost their Independence and followed the male-dominated society. The patriarchal framework is the foundation of the social, cultural and religious system of Indian society. Women were treated as inferior beings under the patriarchal framework. Existence of practices such as child marriage, female foeticide and infanticide emerged and became a norm during this time. The same was also reflective in the census data that indicated lesser number of females per 1000 males.

Rights of Women under the Indian Constitution

Since social conditions never remain steady, social change is an inevitable part of every civil society. If social change occurs as a result of legislation or judicial rulings, it manifests as a shift in the socially acceptable standards of living or even the pursuit of a better standard of living. “Changes affect the laws and the life of society, the law must keep swiftness with the changing socio-economic tendency, and political motion of the society, while maintaining certain balance between rights and duties of the individuals. Thus, law and equity provide the potential for social change.”

Constitution of India plays a vital role in shaping and preserving the rights of women. Constitutions maintains a fine balance between society and the rights of the women so as to maintain an equilibrium in the society. There are certain key provisions under Constitution of India which provides certain basic set of rights to the women also, these provisions create a mandate that positive discrimination should be adopted so as to favour the girls and women, and thereby providing them with equal opportunities as that of men in the society.

Part III, of Indian Constitution talks about fundamental rights. These fundamental rights ensure equality before law and equal protection of law, and with the passage of time the courts have interpreted these articles and thereby expanding the ambit and scope of these articles. Courts have asserted that these articles provide certain rights to every citizen of India, but there are certain basic rights which provides certain basic rights and privileges only to women, these constitutional entitlements are as

- Article 15 (i) provides that the “*State shall not discriminate against any citizen solely on the basis of religion, caste, class, race, sex, place of birth or any of them.*”
- Article 15 (3) further provides for the State to make any special provision in favour of women and children.
- Article 16 enshrines “equality of opportunity” for all citizens in matters relating to employment or appointment to any office under the State.
- Article 39(a) provides that the State shall direct its policy to secure equal right of men and women to adequate means of livelihood.
- Article 39(d) provides for “Equal pay for equal work” for both men and women. The supreme court in the landmark judgment of “*Kishori Mohanlal Bakshi v. Union of India 1962*” for the first time held that both, women and men, should be paid equally.
- Article 39 A suggests to promote justice, on the basis of equal opportunity and to provide free legal aid by appropriate law or scheme or by any other means so that no citizen is denied opportunities to access justice for economic or other disability
- Article 42 further suggests that the State must provide for “just and humane conditions of work and maternity relief”.
- Article 46 directs 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”.
- Article 47 provides for raising the level of nutrition and the standard of living of its people.
- Article 51(a)(e) suggests to promote the spirit of harmony and equal brotherhood among all the people of India and to “abandon practices degrading to the dignity of women”.
- Article 243D(3) provides for Not less than one-third of the total number of seats (including the number of seats reserved for Scheduled Caste and Scheduled Tribe women) to be filled by direct election in each Panchayat to be reserved for women and such seats shall be allotted by rotation to various constituencies in the Panchayat.
- Similarly, Article 243 d (4) suggests Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.
- Article 243 t (3) provides that “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 Municipality to be reserved for women” and such seats to be allotted by rotation to different constituencies in a Municipality.

- Article 243 t (4)- “Reservation of offices of Chairpersons in Municipalities for Scheduled Castes, Scheduled Tribes and Women in such manner as the State Legislature may by law provide.”

Not only Part III i.e., fundamental rights, there are special amendments to the Constitution of India which emphasis on the rights of women. One of such amendments is 73rd Constitutional Amendment Act which was passed in the year 1992, provides guarantee that 1/3rd of the total seats of offices of local bodies of both rural and urban zones will be reserved for women candidates.

Women’s rights guaranteed under Indian Constitution provides them with certain qualifications so as to place them at equal footing with men in the society. By the help of these rights’ standardisation has taken place and thereby the overall structure of the society in the new era of has been preserved by striking a fine balance between rights of men and women.

Laws Relating to Women Protection and Empowerment in India

Gender biasness is inherent in Indian society. It is important to address such biasness to protect and empower women in India. The legislative framework in India provides for a comprehensive set of rules to protect and empower women by addressing such gender biasness.

Although there are many ways for women to express themselves in India, the operational and legal rights to property are where it is most often seen. To reduce women's economic dependency and advance their status and equality, countless laws have been created. A further provision of equality in the Indian Constitution strengthens the ownership rights and chances for economic progress of women. According to some theories, early Hindu law was especially harsh on women, denying them both financial and physical liberty. It is in this regard that the parliament enacted the Hindu Succession Amendment Act 2005 to strengthen the economic liberties of women in the country. The amendment brought in a paradigm shift to uplift the socio-economic status of women in the country. Prior to the 2005 amendment, the Indian succession Act was essentially patriarchal in its content and only male descendants were allowed to inherit property. The 2005 amendment allowed women to acquire such rights

over their property. Under the amendment, women are now also allowed to freely dispose their own property.

The concept of dowry has plagued the country for centuries. It has resulted in further deprivation of women in the country. Thus, it is imperative to prohibit such practices in the country. It is in furtherance of this objective that the Indian Government passed “Dowry Prohibition Act, 1961”. The practice of offering or accepting dowry is forbidden by “the Dowry Prohibition Act, 1961”. To counteract the societal ill of dowry and stop the exploitation of women, the act was passed. According to the law, receiving or donating dowry is an offense punishable with imprisonment of up to five years and a fine of up to Rs 15,000. “*Any property or security of value given or agreed to be given in connection with the marriage, either directly or indirectly*”, is referred to as dowry in the act. It includes both moveable and immovable goods, including cash, jewellery, real estate, and other valuables. Additionally, the act makes it illegal to explicitly or indirectly demand dowry. The law aims to advance gender equality and safeguard rights of women. The government and law enforcement authorities actively implement the legislation, which is a crucial instrument for empowering women. The act has assisted in lowering the prevalence of dowry-related crimes in the nation, but more must be done to totally eradicate this societal ill.

Women have often been a victim of domestic violence and abuse within the country. Gender biasness is inherent within most of the familial structures in the nation. Often, domestic abuse is not even recognized as a form of social ill. The problem gets confounded by the fact that such instances of domestic abuse are seldom reported. Thus, there was a need for a legislative framework to address and eradicate such practices within the nation. It is in furtherance of this objective that “Protection of Women from Domestic Violence Act, 2005” was passed to safeguard women from domestic abuse. The legislation extends its protection to women living in a household, such as sisters, widows, or mothers, with the primary goal of protecting the wife or female live-in partner from domestic violence committed by the husband or male live-in partner or his family. According to the legislation, domestic violence encompasses real abuse or the threat of abuse, whether it be verbal, emotional, financial, sexual, or physical. This description would also include harassing a woman or her family members by making illegitimate dowry demands.

Women often face several forms of discrimination within their workplace. Sexual harassment is one such abhorrent form of social ill faced by women at their workplace. Often, such acts

of sexual harassment go unnoticed and unreported. Lack of proper mechanism to address such issues further aggravates the problem. After the Indian Supreme Court's landmark decision in "Vishaka and Ors. v. State of Rajasthan" (the "Vishaka Judgement"), the "Prevention of Sexual Harassment of Women at Workplace Act" and Rules were passed. By establishing guidelines in the Vishaka Judgment, the Supreme Court imposed a mandate upon every employer to establish a procedure for resolving complaints of workplace sexual harassment and uphold the right of working women to gender equality ("Guidelines"). The Indian Ministry of Women and Child Development put into force the "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" (also known as the "Prevention of Workplace Sexual Harassment Act"). "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013" (the "Prevention of Workplace Sexual Harassment Rules") have also been published by the government as regulations under the Prevention of Workplace Sexual Harassment Act.

Indian government has passed a number of welfare legislations to protect women's rights within the country. Within our social milieu it is extremely important to ensure financial independence for women in the country. It is important to secure women's interest during their pregnancy. The "Maternity Benefit Act of 1961" is a piece of legislation that safeguards women's rights during pregnancy. It provides maternity rights to female employees, which include benefits such as fully paid salaries for the time they take leave from work in order to have a child and provide for their care. Any establishment having ten or more employees is subject to the obligation under the Act. The "Maternity (Amendment) Bill 2017" was approved by the Lok Sabha in 2017, and it makes amendments to the Maternity Benefit Act of 1961. Additionally, on March 27, 2017, the President of India gave his approval. On April 1, 2017, the Maternity Benefit (Amendment) Act, 2017 (the "Amendment Act") went into effect.

India has undertaken a number of International Obligations to further its objective of protecting women's rights in the country. India ratified the "Convention on Elimination of all kinds of Discrimination against Women (CEDAW)" in the year 1994. The convention imposes a general mandate upon its member nations to eradicate all forms of discrimination against women. The convention is also commonly referred to as "*international bill of rights for women*". The convention comprehensively delineates various forms of discrimination arising against women under the global regime. Accordingly, it formulates a defined set of

actions plan for its member nations to follow. India has incorporated a number of policies to further its commitment under the convention.

INDONESIA

Subjugation of Women in Indonesia

Gender equality is one of the basic human rights. The right to be respected and freedom of choice are not only the rights of men but also women. Unfortunately, Women in any society are seen as an additional figure because of historically assigned role to women as homemakers, working in kitchen, taking care of house and children. Whereas men in any society are seen as a primary player because they are seen as breadwinners of the house, who are more rational and strong and more capable than women to go outside in the public sphere.

Indonesian feminism has a long history that has promoted equality in bringing social change. So far, discussing women's rights and movements, including their ideologies and histories remains problematic in Indonesia. This is because Feminism is often accused of being influenced by western ideology and accepting western culture and is criticised for not upholding social and cultural aspects of Indonesian society. However, there are still relevant and evolving changes taking place in present times, with women in the country enjoying more share of freedom and rights in respect to social, economic and cultural empowerment. This relative freedom was especially evident after the end of President Suharto's regime.

Although feminism has made progress in Indonesia, mainstream religious groups, conservatives and right-wing populism still oppose it.

Rights of women under Indonesian Constitution

The 1945 Constitution of the Republic of Indonesia does not have gender specific provisions per se. However, the Constitution guarantees some significant rights and acknowledges some rights as 'human rights'. Under its Article 27, it accords equal status to all citizens and places upon them the obligation to respect the law and the government. It further grants the citizens the "right to work and to have a reasonable standard of life". Post 2002 amendment, the Constitution also recognizes right to life, the right to freedom from torture, the right to freedom of thought and conscience, freedom of religion, freedom from enslavement and the right not to be tried under retrospective laws as human rights that cannot be abridged under any circumstances.

At the domestic level, Indonesia has also ratified the majority of international human rights instruments that prohibit sex discrimination, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), CEDAW, etc. which means that the Government of Indonesia is obligated to protect, respect, and fulfill all of the rights enshrined in these instruments, which also relate to women. Furthermore, the human rights law guarantees, among other things, women's representation in all governmental bodies (Article 46), and women's right to education at all levels (Article 48), and women's rights to work and at work (Article 49). Since 1998, Indonesia also has its "National Commission on Violence against Women" as part of its national human rights institutions.

Laws Relating to Women Protection and Empowerment in Indonesia

There are specific legislations particularly applicable to women that have been introduced in Indonesia. For instance, in the year 2007, Indonesia set up Women and Child Service Units to handle gender-based violence against women/ domestic and intimate partner violence as well as sexual violence, rape and trafficking. Another 2007 law attempted to eradicate human trafficking by criminalizing the acts of human trafficking and prescribing the punishment for the same. Indonesia also implemented a law on Health in 2009 relating to abortion and reproductive health rights for prohibiting abortion except in case of medical emergency or rape. Several laws on elimination of domestic violence, against gender-based employment discrimination, gender-based offences, etc. have been introduced from time to time, in addition to the existing penal code of Indonesia that recognizes offences like statutory rape. Even Indonesia. The state also regulates the age of marriage. Indonesia has also ratified UN treaty on the Convention on the Elimination of All Forms of Discrimination Against Women (adopted by the UN General Assembly on December 18, 1979 (resolution 34/180)) to aid in the prevention of gender-based discrimination against women and to ensure that women have equal rights and opportunities in all aspects of life. The state also ratified the UN treaty on the Convention on the Political Rights of Women 1953, which recognizes that everyone has the right to participate in their country's government and recognizes women's right to vote and join in the country's political matters and procedures.

The Present Status of Women and their Rights: Analysis

The deep-set patriarchal framework of the Indian society is still visible in several parts of the country today. Despite the introduction of several laws and policies for the upliftment of

women and ensuring equal status in the society, there are several spheres of social, political and economic life where inequality is apparently visible. The state has ensured necessary framework for protection of women and affording equal rights and opportunities. Several laws on areas such as constitutional and fundamental rights, dowry prohibition, reproductive rights, protection against indecent representation, immoral trafficking, protection against child marriage and violence, gender specific offences and penalties, prevention and prohibition of sexual harassment at workplace, etc. have helped women to participate, compete and stand at equal footing with men. Several women have started to seek job opportunities, compete in competitive exams, hold significant services and positions, complete basic and advanced educations. Other initiatives for women upliftment include government schemes such as setting up of National Commission of Women in 1992, the National Plan for Action for Girl Child 1991-2000, National Policy for the Empowerment of Women, 2001, *Beti Bachao, Beti Padhaao* Yojana of 2015, etc.

However, the deep-rooted patriarchal expectations and the role of women as providers and care-givers is still prevalent in significant areas of the world. Women are being discriminated against in workplaces even today. Though one may see equal opportunities to work, however, participation in managerial activities and decision-making is still within the domain of the male counterparts. There may emerge exceptions to the given idea, however, they are limited few.

Even in the present times, lack of privacy in personal choices such as education, marriage, family planning, etc. persist. The debate on disparity in pay also is evident in several sectors. There are several instances of violence and offences against women reported in the past. Offences such as rape, sexual harassment at workplace, acid attacks, dowry deaths, etc. are reported every other day, despite there being a lot of laws and norms ensured by the legislative mechanism. Domestic violence, sexual assault, and dowry-related offences are all examples of gender-based violence in India. The government has enacted a number of legislation and measures to address this issue, but implementation and public awareness remain major issues. These conditions may be attributed to the physical, biological and patriarchal trends and mind-sets or religious, socio-economic or cultural backgrounds. However, over the decades, the overall environment and general conditions have become conducive to the interest of women. Women have entered traditionally male-dominated sectors such as politics, science, technology, and business. Girls' educational access has expanded, and attempts have been undertaken to close the gender gap in elementary and

secondary school. However, considerable gender discrepancies persist, especially in rural regions and specific industries. Women's representation in politics has increased in India at all levels, but their presence remains relatively low in comparison to males.

In respect of Indonesia, the above discussion reflects upon the equal treatment accorded to women under the Constitution. Also, the safeguards implemented for women rights are comparatively more liberal and progressive, such as in case of personal laws. For example, women enjoy property rights in Indonesia since ages. Practices like triple talaq have not been practiced in the republic. Even for obtaining divorce, a proper formal procedure is to be applied. In respect of employment, the position of women is similar to that of women in India. Also, there is more activism in Indonesia from the NGOs and women organizations as compared to India. Also, women representation and participation in political activities is more visible in Indonesia.

Conclusion:

Gender equality is promoted through opposing discriminatory practices and encouraging legislation and actions that empower women. It will necessitate not just legislative changes, but also a shift in society's perspective regarding gender roles and expectations. Promoting female participation in leadership roles, encouraging women's education, and offering equitable career opportunities are all critical measures towards attaining gender equality. Gender equality helps not only women, but society as a whole. Women's rights, when properly understood and enforced, may assure their safety and protection. True equality may create a stronger democratic system, ideals, and best rights for women, which is critical at this time. When women have equal opportunities and are empowered, businesses grow, communities flourish, and the possibility of a fairer and more equitable world becomes a reality.

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