

16. Freedom Unfilled: The Curse of Gender Bias in Independent India

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Abstract:

"Equality Knows No Gender"

A century ago, women were seen as strong as men and on par with the gods, protecting their country, defending their territory, and providing for their family. But in the 18th century, girls were stifled by male domination and superstitious beliefs in society, which limited their rights from an early age because of social constraints and customs. Social activists and freedom warriors fought for women's rights after independence, arguing that no one else could restrict or hold them back. Since then, women have adapted to the newfound independence and created their own lives. There are still gaps in the realization of women's rights, despite the fact that laws have been passed to guarantee their safety, protection, and equality. This paper discusses the rights guaranteed for women's protection and development, as well as remedial measures to address these issues.

Keywords:

women, protection, equality, gender, bias.

16.1 Introduction:

In the aftermath of India's independence, the nation embarked on a journey of self-determination, unity, and progress. The ideals of freedom, equality, and justice became foundational to the country's democratic framework. However, despite these lofty principles, one of the most pervasive and enduring challenges in post-independence India has been gender bias. While India has made significant strides in various domains, the freedom promised to women's particularly in terms of social, political, and economic equality - remains largely unfulfilled.

To explore the persistent gender disparities that have plagued the nation since its inception. While the Constitution of India enshrines gender equality, the reality on the ground tells a different story. Gender bias, deeply ingrained in cultural, social, and economic structures, continues to hinder women's full participation in public and private spheres. This paper will delve into how traditional patriarchy, systemic discrimination, and socio-economic factors intersect to limit the opportunities and rights of women, despite the democratic framework that promises them freedom and equality.

This study attempts to draw attention to the discrepancy between the aspirations of a free nation and the actual experiences of its women through historical analysis, case studies, and the testimonies of innumerable women. We seek to reveal the ways in which gender bias still influences Indian culture by looking at politics, work, education, and social conventions. This is more than just a summary of past shortcomings; it is an essential demand to action for a society in which women's rights are a reality in daily life rather than merely an abstract idea. Finally, "Freedom Unfilled" examines the pervasive negative effects of gender bias and how to overcome them in order to provide genuine freedom to all Indians, regardless of gender.

Gender Bias:

Gender bias or gender inequality refers to the inequality of treatment or discrimination against individuals based on their gender. Disparities between men and women in various social, political, cultural, and legal spheres are referred to as gender inequality. Male domination has always been the root cause of gender inequity. A woman still requires a spouse and a family, at least in India. Women tend to walk with their heads down because of their domineering temperament. Everything was practiced from the start and is still done today. The opposing parties to a woman's reservation in parliament contend that women are innately suited to manage families, children, and home chores. Women are perceived in many Indian communities as an economic and financial liability despite contribution in several ways to our society, economy and by their families. The number of crimes committed against women is rising daily. These days, workplace sexual exploitation, forced prostitution, rape, molestation, eve teasing, sexual harassment, and domestic violence are all too widespread. Thus, it's a concerning problem for our nation. The requirement for a male heir for the family, the large dowry, the ongoing financial and physical maintenance of a girl child, poverty, domestic violence, the caste system, and farming as a primary occupation for the impoverished are the main causes of gender disparity.

What is Gender Equality?

When access to rights, duties, and opportunities is unaffected by a person's gender, this is referred to as gender equality. We may also declare that gender equality is a fundamental human right that must be upheld by the state at all costs, without any justifiable limitations. According to the UN research, gender equality means that men and women, as well as girls and boys, have the same rights, obligations, and opportunities. Women and men won't be treated the same as a result of gender equality. By stating that men's and women's rights, obligations, and opportunities will not be based on their gender, it instead aims to eradicate gender inequality.

Bias or Gender Disparity in India:

The UNDP has issued India's Gender Inequality Index (GII), 2022. According to the report, India has placed in 108th out of 193¹ nations as calculating the overall reproductive health,

¹ Ministry of Women and Child Development,
<https://pib.gov.in/PressReleasePage.aspx?PRID=2014513>

empowerment, and economic stability are the three variables that make up the valuation of GII, a composite measure of gender inequality. India's GII ranking has continuously improved over the past ten years, demonstrating the nation's progress towards gender equality.

Gender-Based Violence:

In India, women and girls frequently experience a variety of violent crimes, such as honour killings, rape, sexual harassment, domestic abuse, and violence tied to dowries. The gender prejudice in India is greatly exacerbated by these problems. According to the fifth report of the National Family Health Survey, just one-third of Indian women have been the victims of physical or sexual abuse. The other side is unequal access to education distribution: in the past, only kings and priests could receive an education; not all women could access the key to knowledge, cleared the path for universal access to education in the latter half of the 20th century, regardless of caste, gender, or ethnicity. Disparities between boys and girls persist despite initiatives to increase access to education in terms of There are persistent differences between boys and girls in terms of enrolment, retention, and completion rates despite efforts to increase access to education. Additionally, cultural norms, financial limitations, and safety concerns frequently prevent girls from pursuing higher education.

Gender Wage Bias:

The **gender wage bias** refers to the partial payments is allotted to the average earnings between men & women for similar work done by them just because of same gender. It is a persistent issue globally, and India is no exception. Despite legislative measures aimed at ensuring equal pay for equal work, the wage gap between genders in India remains significant, driven by a range of social, economic, and structural factors. According to reports, the gender wage gap in India is among the highest in the world. According to a 2020 report by the **World Economic Forum (WEF)**, India ranked 112th out of 153 countries in the Global Gender Gap Report, with women earning considerably less than men across various sectors. The **International Labour Organization (ILO)** estimates that women in India earn approximately 19% less than men, with the gap widening in rural areas compared to urban ones.

Child marriage:

A legal or informal relationship in which one or both individuals are younger than 18 is referred to as a "child marriage." It is a detrimental practice that disproportionately impacts females, especially in developing nations, and is connected to a number of gender-related, socioeconomic, and cultural problems. India is home to one in three child brides worldwide, according to UNESCO. Girls under the age of eighteen who are already married and women of all ages who got married as children are examples of child brides. From 47% in 2006 to 23.3% in 2019 - 2021², the prevalence of child marriage has decreased by half (NFHS-5). But compared to the national average, child marriage is more common and in practice in a

² Dev, S. M. 2010, *Inclusive Growth in India*, New York: Oxford University Press, 2010.

few states in India in south side and in north side also like AP, UP, Assam, Bihar, Jharkhand, Rajasthan, Tripura, telugana and West Bengal³.

Education Inequality in India:

Inequality in access to the quality of education across varies from social, economic, and geographical groups. This imbalance is caused by a number of things, including Socioeconomic Status: Children from low-income families frequently encounter obstacles including the inability to pay for transportation, school supplies, or uniforms, which raises the dropout rate. Access to educational resources and private tutoring is also impacted by poverty.

Gender disparities persist in India, particularly in rural areas, where girls are more likely to drop out of school due to early marriage or family obligations, and face cultural and safety barriers. Social discrimination and caste discrimination also affect children from tribal and lower-caste communities, reducing their enrollment, attendance, and completion rates. Additionally, education quality is hampered by a shortage of qualified teachers, outdated curriculums, and inadequate facilities in both private and public schools. Despite government initiatives like the Right to Education Act and campaigns to improve enrollment, facilities, and gender equality, there are still obstacles in ensuring fair access to high-quality education for all children nationwide⁴.

16.2 Legislative Framework on Abolition of Gender Bias in India:

India has a number of legislative frameworks aimed at abolishing gender bias and promoting gender equality, especially in education and broader societal contexts. These laws and policies address various aspects of gender discrimination and work towards creating an equitable environment for women and girls⁵.

Protection guaranteed under the Fundamental Rights of Indian constitution:

"Equality before the law or the equal protection of the laws to all" is guaranteed by Article 14 without regard to any class or group. In constitutional democratic systems, in order to protect citizens' rights, the article 14 has been framed in accordance with the "Rule of Law" in the United Kingdom and the Equal Protection Clause in the United States. Article 15(1) forbids discrimination based solely on a person's gender. The state has an obligation to safeguard its inhabitants against any circumstances that could result in a handicap, liability, limitation, or condition pertaining to access to public areas and entertainment activities.

All citizens, including women, are guaranteed equal opportunities in employment and appointment to any state office under Article 16. Additionally, it forbids discrimination or

³ Economic Survey, Various Issues, Govt. of India

⁴ Priti Jha, Niti Nagar, A Study of Gender Inequality in India, The International Journal of Indian Psychology, ISSN 2348-5396 (e) | ISSN: 2349-3429(p) Volume 2, Issue 3.

⁵ Critical Analysis of Gender Equality in India, NailaKabeer, Volume 13, 1st March, 2005.

disqualification for any state-sponsored job or position based only on a person's sex. The women's have the right to be treated with dignity and decency is one of the most important measure guaranteed by Article 21, it gives the Protection of Life & Personal Liberty. In the 1992, the case of *Mohini Jain v. State of Karnataka*, it was decided that Article 21A, which set the path for the advancement of education rights in India. Following the ruling, our legislature passed the Right to Education Act of 2005 and included it in both the Fundamental Duty and the DPSP. Following the RTE Act of 2005, parents were required to provide their children with an education regardless of their gender or sex. Major issue pertaining Trafficking in human beings, including the buying and selling of women, prostitution, and other unethical trafficking in women, is forbidden under Article 23.

Directive Principles of State Policies

- **Article 39⁶** of the Constitution of India has lays the foundation for gender equality in the workplace by directing the State to ensure **equal pay for equal work**. While significant strides have been made in addressing gender-based wage disparities, challenges such as persistent societal norms, weak enforcement, and discrimination continue to hinder its full implementation. Strengthening enforcement mechanisms, increasing awareness about gender equality, and improving transparency in pay structures are essential steps to realize the constitutional promise of equal pay for women and men.
- **Article 42⁷** of the **Indian Constitution** is a part of the **Directive Principles of State Policy (DPSP)** and focuses on ensuring just and humane conditions of work and maternity relief for workers, particularly women. Like other DPSPs, it provides guidance to the state in framing policies and laws, though it is not enforceable by courts.
- The State is bound by Article 44 to ensure that all citizens have access to a consistent civil code across the nation. Women will have equal rights under such a code in areas like inheritance, marriage, and divorce.
- Until the age of six, the State is required by Article 45 to provide early childhood care and education for all children, including girls.

Fundamental Duties:

Every citizen is obligated by Article 51A (e)⁸ to abstain from actions that diminish women's dignity. Every parent or guardian has a fundamental duty under Article 51A (k) to give their child or ward, who is between the ages of six and fourteen, access to education.

Important Constitutional Provisions Pertaining to Women's Empowerment Include:

Articles 243D and 243 T guarantee women at least one-third of the seats in PRIs and ULBs at all levels. Three new provisions covering women's reservation in the Lok Sabha and

⁶ Article 39 of COI, 1950

⁷ Article 42 of COI, 1950

⁸ Article 51(A) e and k, part IV A of COI, 1950.

Legislative Assemblies have been inserted by the Nari Shakti Vandan Adhiniyan (Women's Reservation Act) 2023 [128th Constitutional Amendment Act].

16.3 Socio – Economic Stabilized Scheme to Prohibit Gender Bias⁹:

The following are some of the main legal provisions in India that support women's empowerment and gender equality:

The Indian Penal Code (IPC): includes parts on crimes against women, such as acid attacks, kidnapping, dowry deaths, rape, and sexual harassment. One of the biggest threats to women in this society is the dowry. Due to an ancient custom in India known as "shrithan," women are typically required to pay a certain amount of money, an asset, or anything else in exchange throughout the marriage process. Later on, women are forced to participate in marriage. Compulsory dowries have led to serious issues like torture, mental and physical abuse, and even suicide. To forbid dowry giving or receiving and in addition to providing victims of domestic abuse with a civil remedy and enabling them to seek protection orders and habitation under the Protection of Women from DV Act, 2005 and the Dowry Prohibition Act, 1961, forbids the giving or receiving of dowries and specifies penalties for violations.

The Prohibition of Child Marriage Act (2006): This law forbids girls under the age of 18 and boys under the age of 21 from getting married. One of the biggest barriers to schooling for females is child marriage, which disproportionately impacts them. The law seeks to safeguard girls' wellbeing, abolish gender-based violence, and defend their right to an education

Beti Bachao Beti Padhao Scheme (2015) Launched by the Government of India, This program seeks to improve girls' education and alleviate the falling child-to-sex ratio. Its main goals are raising awareness and enhancing the welfare services provided to females. This program supports gender equality in education and encourages families to send their girls to school.

Eliminating gender imbalances at all educational levels is emphasised in the National Policy on Education (1986). It encourages gender-sensitive textbooks and pedagogies and includes steps to increase girls' access to education, particularly in rural and poor areas. It also urges the establishment of schools that focus only on the education of girls and the introduction of programs like scholarships for girls. Our Indian legislature recently revised the National Education Policy to better balance it with the 1986 NEP policy to balance the recent development in the field of education.

⁹ Dr. Saroj Chhabra, LEGISLATIVE-AND-JUDICIAL-PERSPECTIVE-OF-WOMEN-EMPOWERMENT.

Economic Protection of Women's Rights:

Women has received only half of the salary or wage due to gender bias, to prohibit the violation against them. The **Minimum Wages Act, 1948** has initiated to sets a standard of minimum wages for all workers irrespective of gender across various sectors.

The Equal Remuneration Act, 1976: This Act mandates equal wages for men and women for the same work or work of equal value, promoting gender equality in employment. Though it is not specific to education, it encourages gender equality in professional and academic spheres, motivating women to pursue careers and higher education & for working women's in businesses are entitled to maternity leave and other benefits under the Maternity Benefit Act of 1961.

The Act on the Prevention, Prohibition, and Redress of Sexual Harassment of Women at Work (2013): A legislative foundation for preventing and addressing sexual harassment in the workplace, especially in educational institutions, is provided by this Act. In addition to advancing gender equality and eliminating gender-based violence in schools and colleges, it guarantees women a safe and secure environment in which to work and study.

Political Empowerment of Women - The RPA, 1950 gives protection to the women's to cast their vote and contest elections on an equal footing with men and with respect to mandates consideration of the number of women voters while determining constituencies, potentially increasing their electoral potential by implementing the **Delimitation Commission Act, 2002**.

16.4 Role of Judicial Activism in Protection and Promotion of Women Empowerment in India¹⁰:

Education plays a role in how people's personalities, especially those of womens development. In *P. Sagar v. State of Andhra Pradesh 1968(SC) 93* - Article 15(3) is an exception inscribed to clause (1) of Article 15, according to the Andhra Pradesh High Court. Therefore, it is impossible to deny women's reservations in light of Article 15(3). In a similar vein, the Constitution's Articles 15(1) and 29(2) are not violated by the reserve for athletes. The allocation of some seats for female students in medical colleges was contested in *Padmaraj Samarendra v. State of Bihar (1978)* on the grounds that it is purely dependent on sex. The Court argued that the distribution of seats for female students was reasonable and could not be considered discriminatory.

Judicial Approach in the Matters of Employment:

In the *Randhir Singh v. Union of India (1982)*, *Peoples Union for Democratic Rights v. Union of India(1982)SCR 456*, and *Sanjit Roy v. State of Rajasthan, Uttarakhand, Mahila Kalyan Parishad v. State of Uttar Pradesh*, the judiciary has actively contributed to upholding and bolstering the constitutional objective of "equal pay for equal work" as stated

¹⁰ social-issues/women-empowerment/ Author: NamitSrivatsva

in Article 39(a), which is implied in Articles 14 and 16. Equal compensation has been introduced by the court within the parameters of the fundamental right to equality.

Prevention of Sexual Abuse at Work Places

The Supreme Court established rules and guidelines for protecting working women in the workplace in *Vishaka v. State of Rajasthan* (1997), ruling that it is the duty of the employer to protect women from sexual abuse, which are later parliament, recognized and enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Judicial Approach to Sex Workers and Women Against Sexual Abuse:

The *Budhadev Karmaskar v. State of West Bengal* (2011) case highlighted the societal disregard for the precarious circumstances of prostitutes, despite their traditionally poor character. The court acknowledged their right under Article 21 and directed state and federal governments to address their welfare. The bench also actively directed the government to develop plans for providing technical and vocational training to sex workers and women who had experienced sexual abuse.

The Role of the Judiciary in Preventing Acid Attack on Women's:

In *Laxmi v. Union of India* (2014) 4 SCC 427, the Supreme Court ordered the Home Secretary of the Ministry of Home Affairs, along with the Secretary of the Ministry of Chemical & Fertilisers, to call a meeting of the Chief Secretaries/Concerned Secretaries of the State Governments and the Administrators of the Union Territories to limit and stop the sale of acid nationwide due to the rise in acid attacks on women in recent years.

Women Freedom to Choose their Partner:

In *Lata Singh v. State of Uttar Pradesh*, it was decided that people have the freedom to select their partners without coercion and that the right to marriage is a fundamental component of the right under Article 21. Additionally, it said that "A person can marry whoever they choose once they reach the age of majority in this free and democratic nation." If a boy or girl's parents disapprove of an inter-caste or inter-religious marriage, their only option is to cut off social ties with the child; however, they are not allowed to threaten, carry out, or encourage acts of violence against, or harassment against the individual involved in the marriage.

16.5 Conclusion:

India has made substantial progress in creating a legislative framework aimed at eliminating gender bias. However, ensuring effective implementation and addressing cultural and socio-economic barriers are critical to achieving true gender equality. In spite of, so many legislations, rules by the administrators and judicial pronouncement have framed to focus on the development, protection, safety, empowerment of women in India.

However, due to ignorance and a lack of interest on the part of women and society at large, she did not receive enough credit. Women who are knowledgeable and empowered are desperately needed. An empowered woman defends those around her in addition to herself. Women should fight for their position in this male-dominated culture; it is time to end the silence and it ought to begin with the family and peer groups. Only when the attitude and patriarchal views that have pervaded Indian society for generations are altered can women truly benefit from the legislative and administrative measures from the state.

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