

2016

Pledge for Parity ~  
Gender Justice & the Judicial  
Framework Down the Ages

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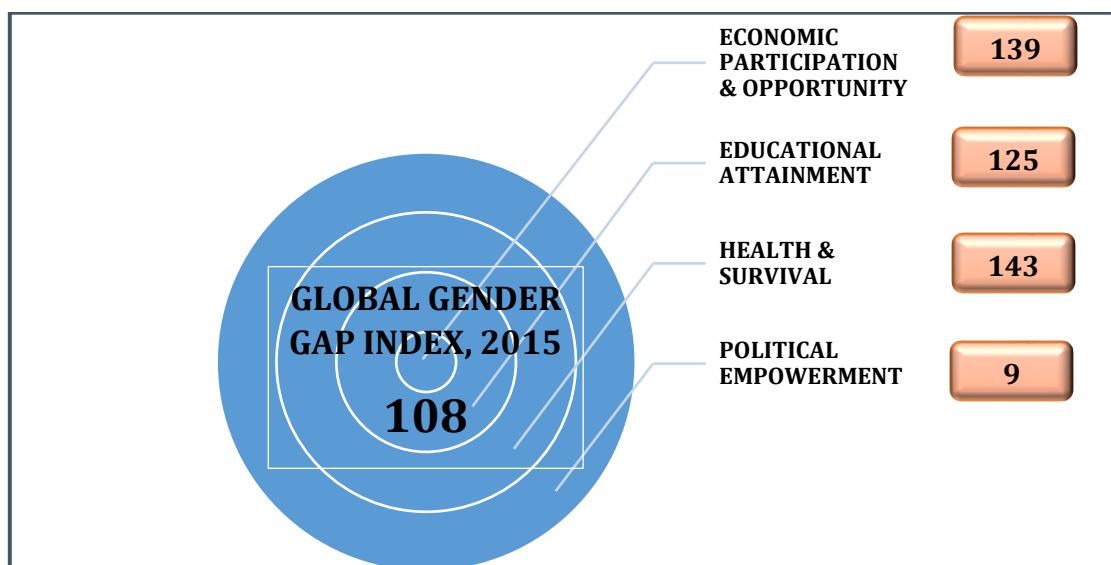
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## Introduction

It must count as one of the great ironies of the Indian reality that strength and power in Hindu mythology are represented by Goddess Shakti in all her forms, and that the statue of Justice presiding over every courtroom in this country has a female form, yet in truth India women - living, breathing female humans, not sculptures or deities - are denied justice and lack power in every realm of their existence.

While a sea change may be visible between women's rights now and what they were at the time of independence or even during the late eighteenth century, the nineteenth and early twentieth centuries, the struggle to achieve gender parity in India continues and is far from over.

A look at the World Economic Forum's Global Gender Gap Index of 2015 will provide some insights into India's current position in closing the gender gap. In 2015 India moved up 6 positions from 2014, to 108 (out of 145 countries in 2015 and 143 in 2014). This is primarily attributable to the more than double the percentage of women in ministerial positions (from 9% to 22%).



India continues to be at the bottom rung in the other sub-indices. While rankings under educational attainment and health and survival have improved, in economic participation and opportunity India has fallen due to a decrease in wage equality for similar work and lower female labour force participation. Since WEF introduced the index in 2006, the gender gap in India has only improved marginally - from 60% in 2006 to 66% in 2015. It has significantly closed the gap in the sub-indices of educational attainment (from 82% to 90%) and political empowerment (from 23% to 43%, much above the global average of 24%). But has actually declined in the other

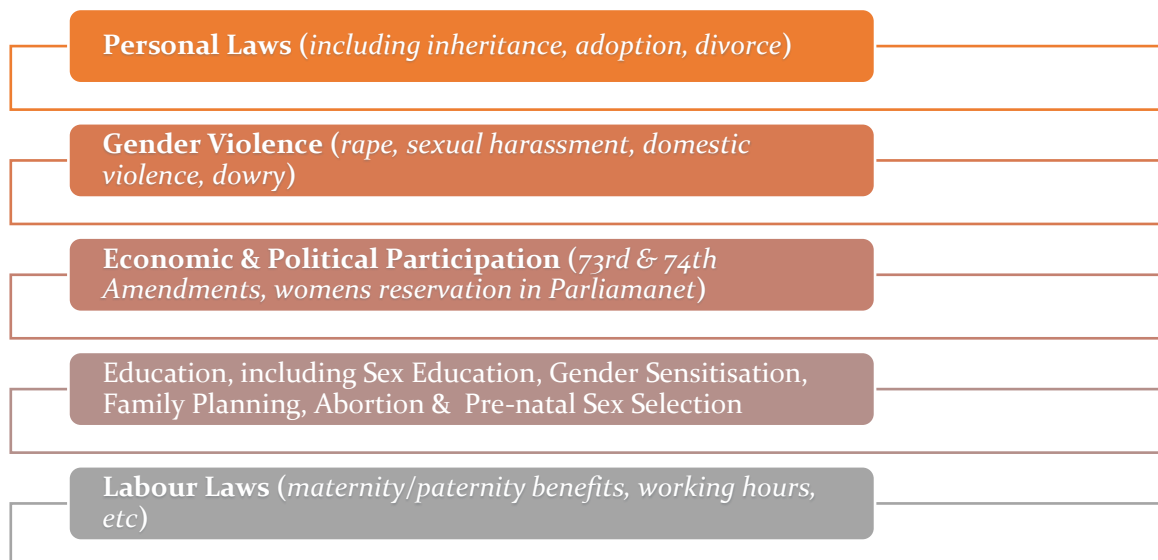
two - economic participation and opportunity from 40% to 38% and health and survival 96% to 94%.

Clearly, despite being one of the fastest growing economies in the world, India's performance in most aspects of the gender gap is abysmal, to say the least. This is primarily due to patriarchy perpetuated by laws that are favourable to men and unfavourable to women. Stereotypical portrayals of women in mass media, as subordinate to men, inferior and as housewives "only" meant to take care of the house, children and elderly parents with limited or no financial independence or decision making authority, only exacerbate the situation.

"When women are fully involved, the benefits can be seen immediately: families are healthier and better fed; their income, savings and reinvestment go up. And what is true of families is also true of communities and, in the long run, of whole countries." Kofi Annan (United Nations, Secretary General, 1997-2006) said this in his message on International Women's Day in 2003. India is yet to see the benefits of such involvement, even if from a selfish economic perspective.

***The 2016 theme for International Women's Day - 'Pledge for Parity' therefore aptly sums up the need of the hour, for women across the world including in India.***

The paper will cover legal statutes in the following areas:



## Indian Feminist Movement – A Brief History

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Indian history is filled with women who have broken from the norm and paved the way for other women to stand up, fight for their rights and make their own choices – Rani Lakshmi Bai, Savitribai Phule, Swarnakumari Devi, Chand Bibi, Razia Sultan, Devika Rani, Vijay Lakshmi Pandit and Anna Chandy are some of the women who did just that. This however does not imply that these women did not face a fair share of resistance – they also benefited from the struggles of women before them and men who supported that struggle.

By the end of the 20th century, the world had seen **three major waves** of feminism emerging from western ‘developed’ nations where women won legal remedies to back them up when they faced discrimination by virtue of their gender.

Unlike feminist movements in the west, in India, the movement was initiated first by men and then joined by women. The Indian feminist movement or Indian women’s movement is often categorised in literature on women’s studies into 3 or 4 broad phases. These are:

### *a) The First Phase*

This phase is largely considered to be the period between the late 19<sup>th</sup> and early 20<sup>th</sup> century (1880 to 1915-1940). It saw the rise of the social reform movements related to caste and gender relations. As mentioned earlier, the first phase of feminism in India was initiated by men (and not women), to remove social evils like sati, polygamy and child marriage, improve the plight of widows, etc. Those who took up these causes included social reformers like Raja Ram Mohan Roy, Dayanand Saraswati Ishwar Chandra Vidyasagar and Justice Ranade among others. “Although records of the independent initiative of Indian women during this phase are sketchy, we know that they did participate in the Swadeshi Movement in the early 1900s and continued to play a crucial role in the struggle for independence from British colonial power.

### *b) The Second Phase*

The second phase saw women participating in the freedom struggle covering the period 1915 to 1947, where nationalism became the primary focus. This period witnessed the rise of all-women’s organisations (such as All India Women’s Conference or AIWC, which campaigned for suffrage, marriage reform, participation in municipal and legislative politics, etc.). These organisations helped the mass mobilisation of women in the freedom struggle including participation in the Civil Disobedience Movement. Mahatma Gandhi was largely instrumental in encouraging female participation in such public activities.

During these two phases though, it is pertinent to note, that while issues that meant a change in the public life were accepted, the very notion of equal citizens in both caste and sex terms was not. Particularly, equality in the private sphere was not accepted. Any change that would threaten the Indian male privilege or position in the private sphere was left unchanged such as, for example, inheritance rights, issues relating to domestic violence, etc.<sup>1</sup>

### *c) The Third Phase*

In the third phase, post-independence, according to Vina Mazumdar (1985: 4),<sup>2</sup> ‘for all practical purposes, the women’s question disappeared from the public arena for ... over twenty years’. With the Constitution guaranteeing ‘equality’ to all citizens irrespective of caste, creed or gender (Articles 14 and 16), the need for the same demand from the women’s movement seemed redundant. Then the new government development programmes temporarily silenced the militant feelings of unrest that prevailed pre-independence. However, the mid 1960s onwards saw the birth of new socio-political movements as poverty and unemployment were widespread and people grew disillusioned with government development policies, prevalent economic rights, land rights and price rise.

### *d) Towards Equality Report – The Fourth Phase & Post*

This report was published in 1974 by the National Committee on the Status of Women. The Committee had been set up to assess the impact of the constitutional, legal and administrative provisions on the status of women, their education and employment in India, particularly in the rural sector; to investigate the status of women in the changing social pattern; and to suggest remedial measures in the fields of law, education, employment, population policy, etc. which would enable women to play their full and proper role in building the nation. The authors say, in their introductory note to the Minister of Education and Social Welfare at the time (Prof. S. Nurul Hasan) – “*Our investigation has revealed that large masses of women in this country have remained unaffected by the rights guaranteed to them by the Constitution and the laws enacted since independence. Our recommendations are made primarily with a view to make these rights more real and meaningful.*” This report is, by several accounts, supposed to be the foundation for the women’s movement in India post-independence.

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<sup>1</sup> Mapping the Women’s Movement (Page 5) → <http://flyernews.com/feminist-gloria-steinem-awarded-dayton-literary-peace-prize-for-baking-a-new-pie/>

<sup>2</sup> *ibid*

## Status of Indian Women – Social Attitudes & Legal Statutes over the Years

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Despite the diverse feminist movements the world has witnessed, the battle for parity is still being waged. The issues that plague the gender divide currently are not compartmentalised and are greatly overlapping. Context, situation, region and religion are amongst the few factors that are crucial to understand the current fight for parity. One main feature that can be seen in this battle across the world is women demanding protection and equality through legal remedies. To understand this, it is important to look at the way society functions. For centuries, the world has been steeped in a patriarchal framework where men are entitled to absolute power and women are expected to be subservient. The situation is no different for women in India too, even in the 21<sup>st</sup> century. This, despite the fact that the Constitution accords equality to all irrespective of gender, religion, caste, etc., and protection of the rights of women. Various legislative provisions through Acts of Parliament, as well as the Code of Criminal Procedure, 1973, have also conferred rights to women.

### *a) Personal Laws*

In the Indian context, rights and duties of men and women were accorded down the ages through rites, rituals and customs that were governed by scriptures. Manusmriti, regarded as the bed rock of Hindu law and jurisprudence and one of eighteen dharmashastras, lays down rules for social conduct, discipline and duties that were to be followed by various sections of society in general and specially the roles and expected social conduct of women. The inherent social inequality and injustices towards women has its genesis in the Manusmriti, written for the so called 'Sat Yug' which exemplified the classical benefits of division of labour without strict implications of superior and inferior positions. Over time this division of labour morphed into a situation where the position of women in society was that of complete subservience and subjugation. When the British came to India, some of these existing inequalities were questioned and led to abolition of sati and education of women. However, British rule had more negative than positive effects on women's rights in the Indian subcontinent.<sup>3</sup> Although they managed to outlaw widow burning, female infanticide and improve age of consent, scholars agree that overall women's legal rights and freedoms were restricted during this period.<sup>4</sup> The British abolished local custom laws in favour of separate religious codes for Hindus and Muslims

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<sup>3</sup> Smith, Bonnie G (2008). The Oxford Encyclopaedia of Women in World History: 4 Volume Set. London, UK: Oxford University Press. pp. 445–446. ISBN 978-0-19-514890-9.

<sup>4</sup> *ibid*

which had harsher treatment of women.<sup>5</sup> These religious codes lead to women having poorer rights when it came to landholding, inheritance, divorce, marriage and maintenance.<sup>6</sup>

### ***Hindu Personal Law***

The Anglo-Hindu Law of 1772 was the first step in legal terms towards liberating women and narrowing the gender divide. It went through various changes over the course of time. The Hindu Code Bill or Personal Laws of 1955-56 is an extension of this Anglo-Hindu Law which aims to further bridge the gender divide and provide women with the much needed equality. Till the codification of Hindu law in 1955-56 Hindu women did not enjoy equal rights as men, polygamy was prevalent among Hindu men, Hindu women did not have a right over their parents' property (which was limited to *Streedhan* they received at the time of marriage), etc.

The Hindu Marriage Act, 1955 made polygamy illegal, various provisions for dissolution of marriage were created where women could also initiate divorce proceedings.

Subsequent amendments (2010) to The Hindu Adoptions and Maintenance Act, 1956 made adoption more gender neutral permitting married women also to adopt with the consent of the husband. Women and men were also granted equal rights in giving a child up for adoption.

The Hindu Succession Act, 1956 codifies laws related to intestate or unwilled succession (when a person dies without a will). With amendments in 2005 the daughter of a coparcener would become a coparcener by birth in the same manner as the son, have the same rights and be subjected to the same liabilities in respect of the coparcenary property as the son.

Thus, the Hindu Personal Laws which initially envisaged significant changes in the situation of women and bringing parity between men and women, were still highly biased and tilted towards men. Over time, judicial activism as well as legislative amendments brought about greater parity and these laws made great strides in aligning with the essence of what the Constitution envisioned, of providing justice, equality and liberty to all.

Change however is ongoing and complete equality continues to be a far cry. Even as recently as February 2016, the Delhi High Court in a revolutionary judgement ruled that the eldest female member of a Hindu Undivided Family (HUF) can also be a "Karta" or the head of the family.

### **Muslim Personal Laws**

Muslim Personal Law is based on the Quran, which Muslims believe to be God's own word. Though the Quran does contain legal prescriptions, it is mainly concerned with general ethical

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<sup>5</sup> ibid

<sup>6</sup> ibid



principles and guidelines rather than strict instructions. Therefore, the Quran is supplemented by other sources to form the basis of Sharia (Mashhour, 2005).<sup>7</sup>

There are many practices under Muslim Personal Law that are discriminatory against women; these include the practice of polygamy, divorce or *talaq*, maintenance, etc.

A Muslim man may marry a number of wives but not exceeding 4 but a Muslim woman can marry only one husband and if she marries another husband, she is liable for bigamy under section 494 of Indian Penal code and the offspring of such a marriage are illegitimate. In the matter of divorce, the Muslim man has an unrestricted right to divorce his wife without assigning any reason, while a woman does not enjoy similar unrestricted rights and can divorce only under certain circumstances.

Under Muslim law, a wife is entitled to maintenance only up to the *iddat* period (or three months from the date of divorce). In the famous Shah Bano Begum case of 1985, the Supreme Court upheld the wife's right to be maintained and it stated that the *mahr* returned to her at the time of divorce was an obligation imposed on the husband as a mark of respect for the wife. It is not an amount in consideration of divorce. This judgement led to a huge hue and cry by the Muslim community obviously led by men, and under immense pressure, the then ruling government passed the "Muslim Women (Protection of Rights on Divorce) Act, 1986", overturning the Supreme Court judgement and reinstating the Muslim law as it was previously understood. This was a setback for women's rights among the Muslim community. Fortunately however, subsequent judgements particularly in the case of Danial Latifi the court interpreted the Act to hold that "reasonable and fair" provision during the *iddat* period had to be sufficient to maintain the divorced woman for the rest of her life.

### **Other Religions**

Citizens of other religions are governed by their personal laws, except, Buddhists, Jains and Sikhs who get covered under the Hindu Personal Law. Christians and Parsis, like Muslims, have their own set of laws.

Gender discrimination under Christian Personal Law was highlighted in the Mary Roy case. Mary Roy returned to her parental home with her children after a divorce from her husband and was thrown out of her father's house and refused any claim in the family property. The Supreme Court verdict in her favour upheld Syrian Christian women's equal rights with men to

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<sup>7</sup> Mashhour A. Islamic law and gender equality- Could there be a common ground? : A study of divorce and polygamy in sharia law and contemporary legislation in Tunisia and Egypt. Human Rights Quarterly, 2005; 27(0):562-596.

family wealth. It held that the Travancore Cochin Christian Succession Act, 1916, violated women’s constitutional rights to inherit property.<sup>8</sup>

In 2001 certain amendments were made to the Indian Divorce Act, 1869 (among other marriage law reforms), which have proved to be a milestone in the Personal Law reforms as well as social reforms and widely welcomed by all sections of women. They are also intended to alleviate the miseries, traumas and personal agonies of women in distress. Besides, the inequity between men and women especially the injustices and discrimination against Christian women in matters of divorce and alimony have been rectified.<sup>9</sup>

*b) Gender Based Violence (rape, sexual harassment, domestic violence, dowry)*

“Gender-based violence against women” shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately (Art. 3 d, Council of Europe Convention on preventing and combating violence against women and domestic violence).

Women in India are as vulnerable to sexual and violent crimes as in the rest of the world. The nature of the crimes varies due to the cultural peculiarities of the country. Susceptibility to violence increases if the women belong to an already marginalised section of society determined by caste, class, religion or even age. Dowry related harassment and death is still rampant despite a long standing law on the subject (The Dowry Prohibition Act, 1961). The continuing burden of dowry and related harassment is one of the important causes of female infanticide.

The table below shows data on the states that have the most number of crimes against women in India.

<i>State / UT</i>	<b>Crimes Against Women* (%age to National Total)</b>	<b>Rate of Cognisable Crimes<sup>#</sup></b>
<i>Madhya Pradesh</i>	8.50%	79%
<i>Uttar Pradesh</i>	11.40%	38.30%
<i>West Bengal</i>	11.30%	85.40%
<i>Rajasthan</i>	9.20%	91.40%
<i>Maharashtra</i>	7.9%	47.60%
<i>Total</i>		56.30%

Source: National Crime Records Bureau Statistics 2014

\* Crime Against Women consist of crime heads namely Rape, Attempt to Commit Rape, Kidnapping & Abduction of Women, Dowry Deaths, Assault on Women with intent to Outrage her Modesty, Insult to Modesty of Women, Cruelty by Husband or his Relatives, Importation of Girls from Foreign Country, Abetment of Suicides of Women(Sec 306 IPC), Dowry Prohibition Act, Indecent Representation of Women (P) Act, Commission of Sati (P) Act, Protection of Women from Domestic Violence Act and Immoral Traffic (P) Act

<sup>8</sup> A.I.R. 1986 SC 1011 quoted in “Religion and Personal Law in Secular India – A Call to Judgement” (edited by Gerald James Larson, Indiana University Press, 2001

<sup>9</sup> <http://pib.nic.in/feature/fevr2001/fnov2001/f221120011.html> - Marriage Law Reforms

<sup>#</sup>Rate of Total Cog. Crime = (Incidences of Crimes against Women/Female Population) x 100000 i.e., Incidence of Crime per one lakh of Female Population

One very important law legislated due to sustained pressure from the women's movement is the 'Protection of Women from Domestic Violence Act, 2005,' which also provided further protection to women from dowry harassment. It provides a definition of "domestic violence" under Indian law for the first time, to include not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalise criminally.<sup>10</sup> It also covers women who are in or have shared a relationship with the abuser and where both parties have lived together and are related by cohabitation, marriage or adoption, thus going beyond the patriarchal definitions of relationships.

It cannot be denied that India has achieved several milestones in helping combat the gender divide by granting women several legal protections relating to crimes against them. While laws have existed to prevent and deter these crimes, though often vague (e.g.: the definition of rape, non-criminality of sexual harassment, etc.), we have only seen the number of cases rise over the years. The rise, to some extent is also attributed to increased awareness and therefore increased reporting of such crimes.

The passage of the Criminal Law Amendment Act 2013 is an important legislation, which stemmed from the horrific rape of the young physiotherapy student in Delhi in December 2012. A landmark act which resulted from the Criminal Law Amendment Act, is the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.' It provides protection against sexual harassment of women at the workplace and for the prevention and redress of complaints of sexual harassment that violates the fundamental rights of a woman to equality, right to life and to live with dignity under articles of the Constitution. Prior to passage of this Act, the guidelines that came from the Vishakha and others v State of Rajasthan case in 1997 is credited with establishing sexual harassment as illegal. Most of the guidelines were endorsed by the Act which has been hailed as a ground-breaking one, as for the first time, a safe, non-hostile work environment became a right which could be fought for legally if violated.

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<sup>10</sup> Annex 4 – Overview of the Protection of Women from Domestic Violence Act 2005 - <http://www.icrw.org/files/images/Reducing-HIV-Stigma-and-Gender-Based-Violence-Toolkit-for-Health-Care-Providers-in-India-Annex-4.pdf>

The Criminal Law Amendment Act, 2013 includes several sexual offences in the Indian Penal Code that did not exist earlier, such as, sexual harassment, stalking, acid attacks, voyeurism; expanding the definition of rape to include among other things digital rape; increasing the punishment for rape offences to up to life imprisonment, etc. It is therefore considered a very important milestone in codifying gender equality. However, the scope of this law can be expanded to include marital rape, not to reduce age of consent and amending the Armed Forces (Special Powers) Act.

*c) Economic & Political Participation (73rd & 74th amendments, women's reservation in Parliament)*

As far back as 1974, the *Towards Equality* report had made several enquiries and recommendations related to representation of women in decision making bodies. It suggested establishment of Statutory Women's Panchayats at the village level to ensure greater participation of women in the political process, which would form an integral part of the Panchayati Raj structure with autonomy and resources of their own. It also recommended extension of reservation to women in municipalities across all the states and also for political parties to adopt a policy to sponsor a percentage of women candidates for elections to Parliament and State Assemblies.

The 73<sup>rd</sup> Constitution Amendment Act was passed in 1993 reserving not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat for women.<sup>11</sup> This is set to increase to 50% in the current session of Parliament. The aim of increasing representation of women at the local body levels was to enable independent decision making and to ensure that the gamut of issues faced by women are addressed at the grass roots level. Though the Women's Reservation Bill or 108<sup>th</sup> Constitution Amendment Bill, was first introduced in Parliament in 1996 it has met with stiff resistance which included physical scuffles. As it currently stands, the bill was tabled in the Rajya Sabha in 2008, so that the legislation does not lapse; it was cleared by the Union Cabinet in 2010, but is yet to pass in the Lok Sabha. Given the opposition from the male dominated Parliament and demands for caste reservations within this 33%, it is not clear, when the bill will see light of day.

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<sup>11</sup> THE CONSTITUTION (SEVENTY-THIRD AMENDMENT) ACT, 1992

*d) Education, including Sex Education, Gender Sensitisation, Family Planning, Abortion & Pre-natal Sex Selection*

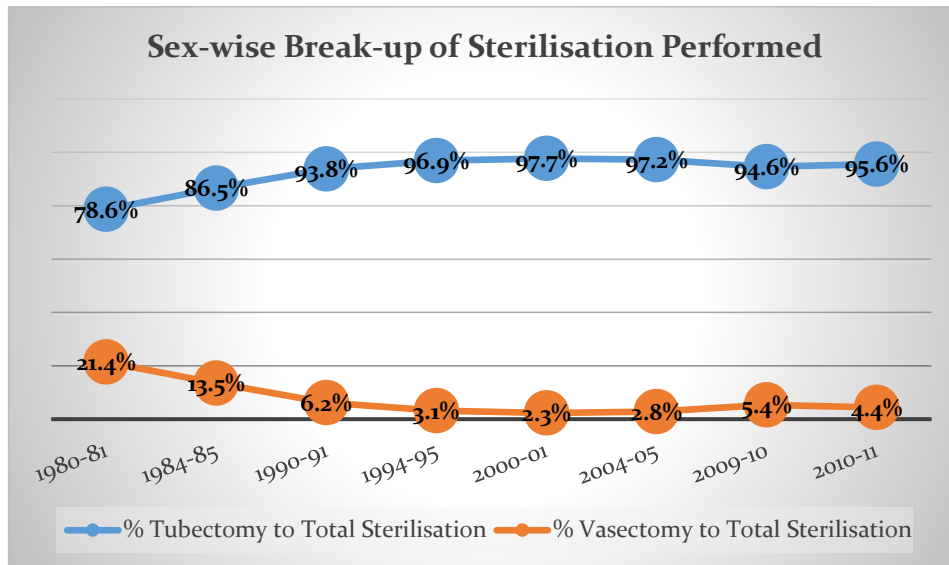
Centuries old beliefs that women are second class citizens to be confined to their homes, to take care of the family, meant to be protected, provided for and taken care of and be deferential to the men in the family, are ingrained in the mind and often even women do not feel the need to emerge from this rut or realise that they are being discriminated against. These attitudes cannot change by passing stringent laws alone. Moreover social practices like dowry have only worsened the lot of women, who are considered burdens on the family and in a sense assets with no return on investment. As a result families either do not do much towards the wellbeing of the girl child (i.e. they provide inadequate nutrition, healthcare, education), or snuff out life of the girl child even before birth.

It is towards this end that another landmark legislation was promulgated – The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 which aimed to stop female foeticide and correct the skewed sex ratio. From the early 1990s, new technologies emerged that were easily accessible made it easy to determine the gender of a child before it was born. This led to several people misusing this technology to determine the sex of the child before birth and aborted female fetuses. Abortion is legal in India only under specified circumstances, and the Medical Termination of Pregnancy Act, 1961, does not talk specifically of aborting female fetuses, which thus made abortion of female foetus also legal. Female foeticide therefore became rampant, particularly in states like Haryana, Rajasthan and Uttar Pradesh, further worsening the sex ratio and gender discrimination. This led to the government passing a legislative act to ban this practise of sex selective abortion and punish any doctor, practising nurse and laboratory that divulges the sex of a child before birth.

Visible violations to the 1994 law led to a public interest litigation by activists which in turn lead to court monitored implementation of the law and subsequent amendments in 2003, based on the gaps found in implementation. Despite this, use of pre-diagnostic sex determination techniques to abort female fetuses continues unabated.

Even on the matter of family planning, the onus lies on the woman. Although vasectomy is less invasive and less harmful, on the assumption that it affects their virility, men and the in-laws force women to go in for tubectomy which is a far more serious surgery. Data from the Ministry of Health and Family Welfare shows that of all sterilisations that happen in the country, the percentage of women undergoing it is much higher than the percentage of men – 95.6% in 2010-

11, 94.6 in 2009-10. This percentage has been steadily increasing since 1980-81 when it was 78.6%.<sup>12</sup>



The language and focus of the family planning programme also reflects the regressive social attitudes with the focus of advertising campaigns being on female contraceptives (e.g.: the pill) rather than male contraceptives (e.g.: condoms). To change the prevailing attitudes, while stringent laws are necessary, effective implementation is equally important and policy thrusts necessary in the areas of education, family planning, etc. A very important aspect of this is the language used in advertising strategies, which should not propagate gender and social stereotypes and encourages male participation in these programmes.

In education (not just for the girl child, also for the boy child), inclusion of gender sensitisation studies and sex education is essential in the school curricula – the idea being, that change takes time and sustained efforts. This is very important for changing attitudes towards the girl child and women – children need to be taught from a young age that girls are not playthings and objects to be treated badly and thought of as the property of men. Since change on this front is not likely happen at the home, the onus should be on covering these aspects in the school curricula. This is something that was also recommended by the *Towards Equality* report in 1974.

Educating children about their bodies and sexuality in an age-appropriate way can go a long way in helping them understand the difference between sexual and non-sexual touch. Such

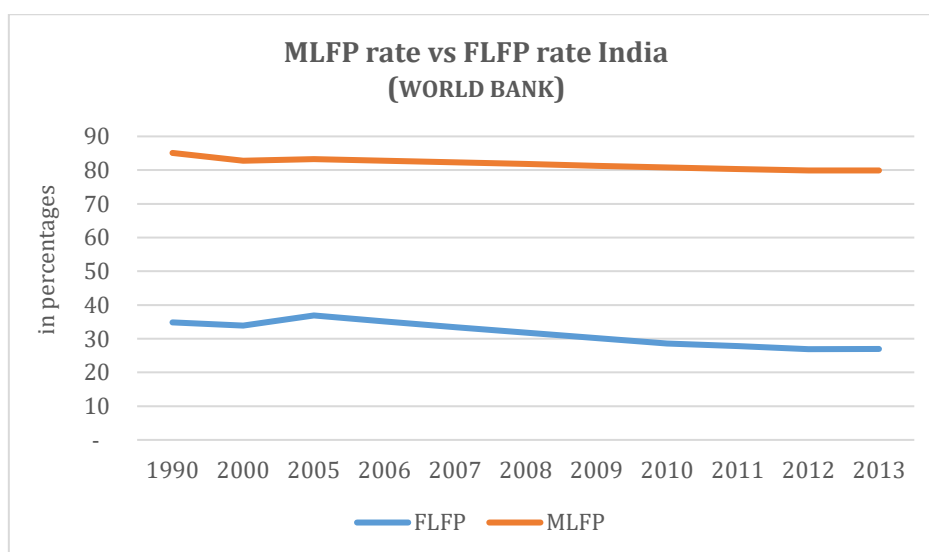
<sup>12</sup> FAMILY WELFARE STATISTICS IN INDIA 2011 (Statistics Division Ministry of Health and Family Welfare Government of India), Table B-6, page 168

education can help children escape the guilt and fear that often accompanies sexual abuse and empower them to report previous or ongoing abuse.

A report on India to the United Nations Human Rights Council says “it is submitted that India is obliged to provide comprehensive sexuality education in all public and private schools in India and that the denial of such education to children, adolescents and young people generally and the banning of the Adolescent Education Programme by state governments specifically is a violation of India’s commitments under international law. Arguments on culture, morality or federalism are invalid in this context.

*e) Labour Laws (maternity/paternity benefits, working hours, etc.)*

Article 39 of the Constitution enjoins the State to provide an adequate means of livelihood to men and women and that there is equal pay for equal work. Article 42 provides that the State shall make provisions for securing just and humane conditions of work and for maternity relief. Female labour force participation rate in India though, is very low. According to the World Bank in 2014 it stood at 27% falling from 34% in 1990. This can be attributed to lack of education, social attitudes to women working, poor work conditions, and inadequate institutional support for child and elder care, harassment and unequal pay.



Wage disparity is a global phenomenon. According to an OECD report titled “Education at a Glance 2013,” men earn more than women at all levels of education, but the largest gap is among individuals with tertiary education, where women earn 72% as much as men.<sup>13</sup> Gender wage disparity in India too is a reality despite laws promoting equal pay. The Global Gender Gap Index 2015 says that Economic Participation and Opportunity has declined due to a decrease in wage

<sup>13</sup> Education at a Glance 2013, Economic & Social Benefits of Education (OECD, Page 36)

equality for similar work and lower female labour force participation. Some of the many reasons for this differentiation is the belief that the cost of employing a woman is much higher, due to various provisions in the statutes like limited working hours/over-time hours, need for maternity leave, etc.

In line with the principles enshrined in the Constitution, India has a number of laws that protect the rights of women and promote their interests at the workplace. These include the Maternity Benefit Act, 1961, the Equal Remuneration Act, 1976, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Since we have discussed sexual harassment earlier, here we will focus on the other laws.

Certain other Acts, which are not specific to women or women's rights also have special provisions for related to women, such as The Factories Act, 1948, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Minimum Wages Act, 1948, and many others. However, while the intent behind the laws are sincere, in some cases either they are not followed or others have been counterproductive.

Laws limiting the work hours or prohibiting work at night have actually worked to the detriment of women, since it does not give them the opportunity to decide independently, whether they would like to work late/at night.

The Maternity Benefits Act entitled women to the payment of maternity benefits at the rate of the average daily wage. Recently the government extended maternity leave from 12 weeks to 26 weeks or six and a half months in the private sector. However even under this benefit, the presumption is, the primary responsibility of child rearing lies on the woman. While due to biological reasons, certain child rearing activities like breast-feeding can only be done by the mother, this law completely ignores the role and importance of a father in caring and nurturing the child. Paternity leave, is thus a very important benefit that needs to be extended – not just as a token gesture, but as a genuine means of contributing to gender equality. It would benefit not just women, but even men and the entire family in many ways.

Evidently, seeing the body of laws that protect women and their rights, the intent is there to offer equal work, pay and opportunity to women. But, as in most other spheres of life, the patriarchal and paternalistic nature of society nurtures discrimination against women wherever they are, even at the workplace. In most cases in India, women are not even aware of their rights. And, as long as men are considered the 'bread-winners' and women continue to be subjugated, the cycle is bound to continue.

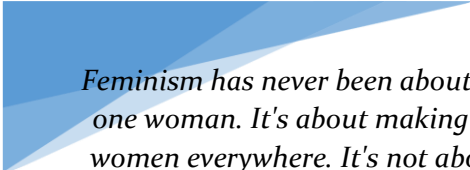


## Conclusion

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While equality irrespective of gender is enshrined in our Constitution and we have a (largely) robust set of laws aimed at protecting the rights of women, women are nowhere near achieving parity with men. One of the primary reasons for this is shoddy implementation, the patriarchal mind-set of our law makers who are mostly men, and the lack of will to change. Indoctrination from childhood of conventional gender roles is so strong that the repercussions continue into adulthood in the way men behave and the way women perform the roles expected of them by society. The women's movement has done a great deal to rectify this, along with judicial activism of from the courts. Eliminating large scale gender discrimination and reducing the gender gap in all spheres of life, would require a change in attitudes across the board from men to women across the religious and community spectrum, among our lawmakers and the police, across the rural and urban divide.

Because, as Kofi Annan said, when women thrive, all of society benefits, and succeeding generations are given a better start in life.<sup>14</sup>



*Feminism has never been about getting a job for one woman. It's about making life more fair for women everywhere. It's not about a piece of the existing pie; there are too many of us for that. It's about baking a new pie.*

*Gloria Steinam*

It needs to be understood that the demand here is not for special treatment but for **equitable** treatment of women, to bring about parity in healthcare, education, economic opportunity and political empowerment. Women need to be

considered as partners in growth and cogs in the wheel of development.

Government, judiciary and activists continue to do their job. Given below are some suggestions and areas in which there may be more focus:

- Enforcing education for all genders equally through sustained mass media campaigns explaining the importance and advantages of education;
- Compulsory inclusion of sex education and methods of birth control at appropriate ages in the school curricula;
- Mandatory gender sensitisation programmes in schools and colleges;

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<sup>14</sup> <http://www.un.org/events/women/iwd/2003/sgmessage.html>

- Mandatory annual gender sensitisation workshops in all workplaces including the Parliament and State Assemblies, the judiciary, police etc.;
- Birth control campaigns that are focussed on men as well, rather than the current manner in which mass sterilisation campaigns are conducted for women – men need to be educated about this;
- Closer monitoring of clinics and hospitals through random checks with decoy patients to check if sex determination tests are being conducted;
- Provision of paternity leave (not just a token 5-10 days off, but if possible as much time as the leave women get) and benefits to men – while it may not be considered financially viable, the benefits are actually immense (as already enumerated earlier);
- Closer monitoring of equal pay for women – while this is tough to detect, innovative ways of doing so may be devised through extensive discussion and research;
- Stricter implementation and monitoring of laws related to gender violence, sexual harassment and continued efforts to improve existing laws;
- Most importantly, removing the biases that exist in religious personal laws. Most often the suggestion on this front is for the creation of a Uniform Civil Code (UCC). Given how sensitive this subject is, it would do well, to bring all stakeholders on board, including from minority communities to allay their fears, to device a code that ensures equality and justice to all and does not impose a majoritarian view over the minority.

Education is the key, which would need to be supplemented with mass media campaigns that are gender sensitive and not sexist. The *Towards Equality* had said “the only institution that can counteract the effect of this process is the educational system. If education is to promote equality of women, it must make a deliberate, planned and sustainable effort so that the new value of equality of the sexes, can replace the traditional value system of inequality ....”

No one really wants to rock the boat because the status quo is advantageous to those who have held the oars in their hands for centuries, and those who have not, fear that the battle for change will drown them long before equality has been achieved.

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