Gender Empowerment in India: A Study of the Legal and Social Structure

Zahid Hussain*

Women in Indian society, as elsewhere, have been accorded a lower position in relation to the men. The patriarchal society leaves scant space for women to play a worthwhile role in the public as well as private sphere. Thus women’s marginalization or empowerment is the result of the structure of society. In India several Constitutional provisions have been incorporated like Article 14 which enjoins the state not deny to any person equality before law or the equal protection of laws within the territory of India and Article 15 that states that the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex, and place of birth or any of them. But, in spite of the legal provisions, there is a wide gap between theory and practice. The women in India have generally failed to achieve the position of parity with men owing to the inequities in the social structure. This paper has brought the condition of women in 21st century India and implementation of various governmental policies. This paper also argues that although there is the need of constitutional and legal provisions in any project of women’s empowerment, but any such project cannot achieve complete success unless the social structure undergoes a radical shift. The paper also highlights the status of women in the pre-modern and pre-medieval era, which, it appears, was better than the women in the modern period owing to the equitable or nearly-equitable social structure.

[Keywords: Gender empowerment, Legal structure, Social structure]

* Junior Research Fellow, Department of Political Science, Jamia Millia Islamia, Okhla, New Delhi - 110025 (India) E-mail: <zahid.jmi2@gmail.com>
I. Introduction

Inequality is a universal phenomenon. Inequality based on gender is also not spatially exclusive to some region or regions. It occurs everywhere with the difference of degrees. India also is not immune from this phenomenon. India is home to more than 586 million women striving for an equitable and worthwhile existence. While some of them succeed by rigorous determination, some get ahead by being born privileged, while many others remain underprivileged and marginalized. While, as already said, gender inequality is everywhere, in India the experiences are more severe and in relative terms the condition of women in India is harrowing. While the constitution of India guarantees securing all the citizens ‘justice, social, economic and political’ and ‘equality of status and opportunity’ (Basu, 1998 : 21), the condition of women in every sphere of life remains abysmal. The representation of women in public life that was insignificant at the time of independence has not made any significant dent since they have “not become a large minority” even after seven decades of independence. (Saxena, 1994 : 392). The representation of women in the state legislatures remains very low; the same is true about the national legislature. In other public spheres like bureaucracy also, the women continue to be under-represented.

There is no legal impediment in the way of women to achieve parity with men, and in fact there are many constitutional and legal provisions that expressly bar any discrimination. But the fact that women continue to be marginalized remains a constant question requiring an answer as to why India has not been able to achieve the ideals set out in the constitution. Gender inequality along with other inequalities continues to be a pronounced feature of Indian society. Thus the paper tries to answer certain questions like: a) Why, even after seven decades of independence, women continue to be marginalized? b) Is women’s marginalization the result of inadequate policies and positive provisions of the law? and c) Has women’s marginalization more to do with the social structure that is patriarchal in nature?

With these questions, the paper sets out some hypotheses: a) Women’s marginalization is not due to the lack of legal and policy provisions but due the society that is structured along the patriarchal lines; b) The women have always been marginalized spatially as well as temporally, but in the ancient period of India, the women were not ‘marginalized’ to the extent that they performed roles that best suited them. The mandate of this paper is thus to show that the marginalization of women has more to it than mere policy and legal perspectives. The title of the study must therefore not be confusing; the paper analyses the policies and programmes and evaluates their working, but the results that we find point to the fact that although the sloppiness in the implementation of the women-specific policies and programmes have been partially responsible for their perpetual marginalization, the base or the undercurrent of this phenomenon has
been structure of society that is structured in such a way that any programme and policy is doomed to be partially succeed.

This paper is structured in such a way as to give reader a complete picture of this phenomenon; the Introduction sets out to reader the questions that the paper is going to address and the hypotheses whose validity is going to be tested, in the next section Marginalization of Women, we conceptualize and try to understand what is gender inequality and why does it matter, the following section Women Specific Policies and Programmes in India looks into the legal provisions and government policies regarding women and inquires into their success or failure, the section next to it Women and the Structure of Indian Society, highlights the patriarchal structure of the Indian society which the paper argues is responsible for the abysmal condition of women in this modern era, and finally there is a conclusion that provides a holistic overview of the paper and the findings of the paper.

2. Marginalization of Women

Following the conventional way of doing theory, we’ll explicate the concept of ‘marginalization’ by proceeding from simple to complex. Marginalization, according to Oxford Dictionary means ‘Treatment of a person, group or concept as insignificant or peripheral.’ (Oxford Dictionary online edition). Marginalization is a social process by which an individual or group of individuals, in our context women, are ‘pushed to margins’ - they are forced to stay in the fringes and are not allowed to be a part of the mainstream. They are actively prevented from reaching the structures where from the power flows, and are thus reduced to powerless beings. Through the process of socialization, they are made to accept that they are less important than men, and that their lives are not as important as the lives of men. Thus they are precluded from the very beginning from participating in the social and political processes by which a person achieves a complete integration with the society.

It is pertinent to go about with the discussion of the meaning of ‘woman’. Seemingly a simple one, the word embodies a lot of complexity. The woman is not a biological formation; it is a social characterization for a certain sex. Simone de Beauvoir argues that the woman is a process of becoming rather than being, and as a way of analogy, she draws parallels between Hegel’s conception of master-slave relationship and the relationship between man and woman. (Beauvoir, 1956 : 15-28). Beauvoir sees woman as the ‘Other’ in relation to man. The ‘Other’ has thus, gained significance and needs to be examined. Therefore, on the basis of her analysis the entire category called ‘women’ or the ‘Other’ is marginalized because of structural and systemic discrimination prevalent in the society (Nigam, 2014). Similar arguments have been put forward by Mary Wollstonecraft who argues that women are not definable merely with reference to their feminine qualities and that such conceptualization will “deprive us of souls and insinuate that we are beings
only designed by sweet attractive grace, and docile blind obedience, to gratify the sense of man when he can no longer soar on the wing of contemplation” (Wollstonecraft, 2014/1792 : 46).

In the Indian context, Tarabhai Shinde argued that women everywhere are oppressed. She problematized the comparison between men and women. While comparing them, she pointed out that “faults commonly ascribed to women such as superstition, suspicion, treachery and insolence were found to ever more common in men” (Shinde, 1882). Thus it’s in the society that the marginalization of women takes place, it has nothing to do with the masculinity or femininity.

Usually, the society is structured on the gender lines, which ensures the exclusion of women. Right since the birth, womanhood of a person born with female characteristics is thrust upon her and she is thought of as having no existence apart from the person or persons to which she happens to be related to. She is socialized to follow the decisions of others as she is not considered to be fit for making decisions of her own. The woman in the patriarchal society is “[d]enied her own ontology/autonomy, being and becoming, she is at best a shadow, an image of domestic doulos, a prisoner of the comfortable concentration camp, in other words of the ‘house’” (Misra, 2006 : 868).

The foregoing paragraphs have clearly elucidated the position of women in the patriarchal society and have shown that women are subjected to severe but often intangible oppressions. Their existence is not apart from the relations they happen to be with. Women are excluded from the structures of power, and are thought of as not fit for making and taking of public decisions. Therefore they are relegated to the private sphere which is thought of as an arena where they can be at their best. Thus it is no surprise that women in India, a model patriarchal society, continue to be one of the worst represented lots. These arguments can be factually seen as well as corroborated in the manifold reports and documents, official as well as unofficial.

Thus the next section analyses the various policies and programmes regarding women in India. The impact of these policies and programmes on women in terms of making them better-off will also be assessed. The current position of women in India in social, political and economic terms will also be taken into consideration in order to derive certain well-meaning deductive conclusions.

3. Women Specific Policies and Programmes in India

After independence the constitution of India made a significant effort for establishing gender equality by incorporating Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties. The Constitution also provides direction to the state to take affirmative action or positive discrimination in favour of women. The constitution of India also puts emphasis on “the needs of women to enable them to exercise their rights on equal footing with men and participate in
national development” (Kitchlu, 1991: 16). Planned development was the most innovative initiative to address various significant problems which also had a considerable impact on the status of women. From the First to Fifth five-year plan, attention had been given for the welfare of women. But from the fifth five-year plan it took a shift from welfare approach to developmental approach and from the Eight five-year plan onwards government started to give importance to the empowerment of women, thus taking a shift from developmental approach to empowerment approach.

However, there was a continuous pressure on the government of India for the formulation of a national policy for women since late 1970s. Under international pressure government, for the first time the Committee on the Status of Women was formed “to examine the status of women in India in preparation for the International Women’s Conference in Mexico in 1975” (Haider, 1997: 38). Consequently in 1974, a report was submitted to Prof. Nur-ul-Hassan (the then Education Minister) titled Towards Equality that highlighted the appalling conditions of women in all spheres of life and the findings of the Report “remain grim reminders of the need to change the realities of women’s lives in India. . .” (Butalia, 2013).

The Government of India formulated the National Perspective Plan for Women 1988-2000 that contained a huge amount of recommendations and suggestions for the government of India. However, the recommendations have never been put to practice, and have “remained mostly pious hopes on paper” (Haider, 1997: 38).

In 1996 the National Policy for the Empowerment of Women was launched by the Government for “creating a conducive socio-cultural, economic and political environment to enable women enjoy de jure and de facto fundamental rights and realise their full potential.” Although the intent and purpose of the Plan was noble but the vagueness of the proposals lead the plan into unworkable document. The plan mistakenly painted the ‘women’s question’ as being concerned with women only and failed to understand, as Haider (1997) has demonstrated that any policy that isolates women from men is doomed to be a failure. Haider further interestingly argues that “[m]en are invisibilised in it from womanly affairs as women were invisibilised by men from their’s. It seems as if the goal is to replace patriarchy by matriarchy?” (Haider, 1997).

Similar was the case in 2001 when again a National Policy for Women was crafted followed by another one in 2016 (Re-scripting Women Empowerment). This is nothing but a replication of earlier 2001 National Policy for Women except two additional policies such as logistical, concerned with monitoring evaluation and audit systems and welfare-based, dealing with development and empowerment of women belonging to vulnerable and marginalized groups There is a big gap between developmental policies and ongoing situation of women. In
21st century, theoretically women have right to freedom, freedom of speech, freedom of religion, freedom from fear, freedom from enslavement but practically none of these rights are enjoyed by them as highlighted in various reports on the status of women.

4. Impact of the Policies and Programmes

Now speaking about the impact of these policies and programmes, India ranks 125 out of 187 countries on the Gender Inequality Index, according to the United Nations Human Development Report 2015. As per the report, only 35.3% of women get it to the secondary level of education compared to the 61.4% of men. In the US, 95.4% of women were educated to the secondary level as compared to 95.1% men. The report also revealed country’s labor force participation, which showed only 26.8% women are part of the labor force as compared to 79.1% men. Moreover, the share in the seats at Parliament stands at a mere 12.2%. The report further says that the high male sex ratio at birth reflects women’s status in society as our society is still based on patriarchal structure. (HDR, 2015).

There is no doubt that India is one of the rapidly growing economies in the world where educated and well-dressed women walking on the roads are a regular sight. But the survey of world’s 20 biggest economies by Trust Law, a legal news service run by Thomson Reuters ranked India as the worst country to be a woman last year. It is worst than Saudi Arabia. The survey polled 370 gender specialists and found Canada to be the best place amongst G 20 nations and Saudi Arabia second worst after India topping the list. The report says that “the threats in India are manifold - from female foeticide, child marriage, dowry, and honour killings to discrimination in health and education and crimes such as rape, domestic violence and human trafficking” (Bhalla, 2012). The report further says that there is a deep-rooted mind-set that women are inferior and must be kept inside and away from decision making. It also highlights the tendency of dangerous acceptance of discrimination and violence against women in the society.

The problem is not confined to the roads and streets of the nation, where women are mostly seen unsafe. But, actually it’s inside the patriarchal society or gender socialization process where the mind-set is born and shaped which makes women vulnerable in any situation and anywhere- at home, work, roads, buses, malls, fields, anywhere. Up to 50 Million girls are thought to be missing over the past century due to female infanticide and foeticide, according to UN Population fund. Fight for survival for a woman starts right from when she is in the womb. Parents preference for sons has left the country with 914 girls aged six and under per 1,000 boys according to 2011 census, down from 927 in 2001.

So if there are manifold programmes and policies in place for the betterment of women, why does it not translate into the reality? In other words, why in 21st century women in India are still lagging behind in every field of life? We explicate,
in the section following, some of the underlying causes of this failure. The basic evil is seen in the structure of the society itself which is modelled along patriarchal lines. With this we move to the other section.

5. **Women and the Structure of Indian Society**

To codify the structure of a society is no easy task, and in the case of the country like India with humongous vastness and diversity the task becomes nearly impossible. However, for the sake of getting some insights one can delineate the underlying structure of the society that is nearly universal with certain possible deviations. ‘Structure’ is defined in social sciences as a pattern of regular interactions between individuals. Thus, the structure of Indian society can be delineated for our purposes if we analyze the relationship between the two sexes spatially as well as temporally.

The society in India is patriarchal and patrilocal. Patriarchy according to Merriam Webster Dictionary means, “the social organization marked by the supremacy of the father in the clan or family, the legal dependence of wives and children, and the reckoning of descent and inheritance in the male line. . .” (Merriam Webster online edition). In India the status of women has seen several shifts over the period of time. On the authority of several scholars, we can assert that in the ancient Vedic period women enjoyed several rights and were treated with respect. Gorwaney has observed that “ideally women were accepted as a living force in society, the embodiment of ‘Shakti’ and a symbol of purity religiousness, spirituality and sacrifice” (Gorwaney, 1999 : 2). Similar arguments have been put forth by Cornack when she says that “[t]raditional India has always accorded women a high place and indeed equality” (Cornack, 1962 : 104).

In the period of the arrival of the Aryans, roughly 2000 to 700 BC, the women enjoyed fair equality with the men. Although the patriarchal family was there in that the men folk dominated, the women cannot be said to be marginalized. The Aryans were nomadic and the mode of production was hunting and gathering. The division of labour was also based upon the physical basis. Men were best suited to going outside for hunting and the women took charge of the domestic chores. There was enough autonomy for the women to have their way in the sphere that suited them best according to the physical standards. (Tharakan and Tharakan, 1975 : 117). In the early Vedic Age the position of women was not bad either. The performance of religious rites and rituals was not the privilege of men only. There was fair equality in the marriage and the marriage was seen as best where the couple married out of their own will. The marriage also conferred the joint ownership of household on the husband and wife. (Altekar, 1956 : 338). Of the authors of Rig Veda at least twenty have been women which points to a speculation that the educational achievements must have been free and equal, and the society must have been open enough for women to achieve any scholastic zenith (Altekar, 1956 : 10).
The status of women began to take a downward turn in the period when the settled practice of agriculture began to take shape around 1000 B.C. The causes of the decline and the reasons for this trend is beyond the scope of this paper and may be found in the numerous historical researches. During the period in which the Smritis were written, one can see the general degradation in the status and position of women. Tharakan (1975) writes that the “polygamic tendencies of the Aryan male who started bringing into the household dasyu female slaves, concubines or sometimes even as wives caused decline in the status of Aryan women even in the household where she once reigned supreme.” The women thus lost the freedom that characterized the period of the early Vedic Age.

In the medieval period the status of women further went into morass with the advent of feudalism and monarchy. The patriarchy got systematically embedded in the society and it became a normal phenomenon for women to be confined to homes and be regarded as a weaker sex. In the modern period the status of women spiralled further downwards with the advent of capitalism. The structures of power were monopolized by men taking advantage of the fact that they had taken a dominant position in the past.

The women in the hunting gathering period had taken charge of home due to the physical considerations, but now as the public power structures did not need any physical strength, the women were systematically kept out of the jobs that did not require any such special physical strength. Thus, in comparison to the hunting gathering Aryan and early Vedic period, the women now were marginalized. The society was thus fashioned and tailored that best fulfilled the interests of men. This is not to say that it happened at a particular day or period, any such conclusion will be ridiculous to say the least. The structure of society takes a long time to evolve, and the current structure in which men have not merely an upper-hand but an outright monopoly also has taken its shape from the ancient times. As seen in the preceding section, the condition of women in the modern India is at its lowest ebb. Thus, we now move to concluding section of this paper in which the gist of the findings of the paper would be briefly provided.

6. Conclusion

As established in the paper, the gender disparity and inequality is mainly because of the social structure and the stratification based upon gender roles and different values attached to these roles. Almost always, the roles assigned to women in the society carry inferior value than those assigned to men. Women in the 21st century India lag behind men in each and every sphere. The public sphere has generally been monopolized by men, and in the private sphere also the men rule the roost. In every indicator of empowerment like education, employment, exposure to media, decision-making, freedom of movement etc., women stand behind the men folk. With the independence of India from Britain, myriad policies and programmes were made and statutes and laws formulated for the betterment
of women. The Constitution of India since 1950 has made equality in all spheres a fundamental right. The government of India has taken steps under Article 45 to make education compulsory for all children between 6-14 years of age.

However, these government policies and the constitutional provisions have not been able to mend the increasing gender gap. For example, the literacy rate has substantially increased to 74.04% in 2011, but the disparity among the genders remains quite distinctive with male literacy at 82.14% and female literacy at 65.46%. Similarly, the infant mortality rate (IMR) for males is lower than the females. IMR for men stands at 57 while for females it is 64. To be sure the policies were not flawless, but the main reason of their failure was the structure of the society that provides a base for the legal and political superstructure. The social relations were patriarchal and thus in the male dominated public sphere there are bleak chances of any workable policies. Thus, although we have had many powerful women in the public sphere, the participation of women in the public sphere has been insignificant.

The paper has thus established that any policy and programme is doomed to be a partial success unless the structure of the society makes any positive dent in favour of women. But we also have come to the conclusion that the social structure would not make any positive dent unless the state takes some drastic steps to make this happen. State intervention apart, at the individual level, the citizenry has to realize that the nation cannot progress if we keep half of the population in the goal (read home). Thus, individual effort at personal level along with collective effort at the state level is surely going to herald a gender equal and progressive India.

References


Marginalization definition Oxford Dictionaries, available online at http://en.oxford dictionaries.com/definition/marginalization, Date accessed: 23.03.2017


Zahid Hussain

Article Received on July 11, 2018; Accepted on September 11, 2018