

Effects of legislation passed by the Indian Government on the empowerment and education of Women

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Abstract: The goal of this paper is to focus on the implementation and the effect of various legislation that has been passed by the Indian Government. Most of the Acts discussed were originally implanted in the mid-to- late 1900s but because of poor implementation, they did not make a difference. These acts have gone through scrutiny, and thus in recent years have had amendments added to this or new acts written all together so that real progress can be made. The acts that are discussed in this paper include the Equal Remuneration Act, the Dowry Prohibition Act, the Maternity Benefit Act, the Prohibition of Child Marriage Act, the Pre-Natal Diagnostic Techniques (PNDT) Act. All the acts have made significant progress in the progress of society, but the most significant was the Equal Remuneration Act. However, more progress still needs to be made. Along with acts, the government has also enacted major policies, one of special interest is the National Policy for Empowerment of Women which helped to create a social, economical, and political level ground for women and men. This paper analyzes the laws and the progress that has been made, along with new progress that is yet to come.

Keywords –Women Empowerment, Women Education, Gender Equality, Gender-based Legislation, Social Justice

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I. INTRODUCTION

Over the span of last four to five decades, there has been an enactment of a variety of laws in India to aid the empowerment and education of women. These laws are implemented to help with the biased values that are currently predominant in society, and to overturn the stigmas that fill the lives of Indians. However, these laws have not necessarily been implemented and enforced to the highest regard. The purpose of this paper is to analyze the wording of major legislation that has been passed and then go on to discuss the impacts that each law has made, whether be positive or negative. Often times, legislation has made little positive impact but still has a long way to go. The discussion of laws begins with the Equal Remuneration Act which aims to provide women with a fair ground in the workplace. Then the paper goes on to discuss the Dowry Prohibition Act, Child Marriage Act, Maternity Benefit Act, and then the Pre-Natal Diagnostic Techniques Act followed by the National Policy for Empowerment of Women. The very nature of this problem lies within the social stigmas that have been imbued in society since the beginning of civilization when women were told to stay home and be bound to their pre-destined role. Ever since then, women have been fighting to break out from this role but have not been aided by society and are having to do it on their own. The previous laws made in the early 1900s such as the Sharda Act limited the marriage age for women to 14. It was not impactful due to the poor enforcement and also because 14 years of age is still very young for marriage. The government has never truly supported the empowerment of women. But now that the legislation has started being passed, enforcement is lacking. It is important to analyze the true impacts so that advancements in the enactment of these laws can be made in order for them to impact the aspects of life that they were written for. This paper contributes to the writing of future legislation to make it more effective by pointing out the short-comings of current legislation. To make a real impact, women have to be able to use these laws so that they can reach equality in all aspects of life.

II. THE EQUAL REMUNERATION ACT

The Equal Remuneration Act of 1976 was put into place to help prevent discrimination on the basis of gender in the work force. The preamble states the aim of the act to be “to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.”¹ Not only is this act put into place to prevent hiring on the basis of gender but also promotions, training, and new job opportunities. The main goal of the act is to prevent discrimination.

To further see the effects of the act it is important to define discrimination which is the unjust or prejudicial treatment of different categories of people or things, especially on the grounds of race, age, or sex. The act works to prevent employers from making a preference based on the sex of a person. To protect employers from lowering rates of workers of the opposite sex, the first provision of the act states “no employer shall, for the purpose of complying with the provisions of this Act, reduce the rate of remuneration of any worker.” This serves to make it so that employers cannot lower the wages for all employees to comply with this law.

While the act is set to help the overall discrimination in the workforce, it could prove to harm employment rates. If employers have to continuously raise wages, they may not be able to hire as many workers due to costs. Fig.1 shows a very small decline in employment from 1976 to 1984, which could have served as the buffer period between the enactment of the law and to the time where it made the intended effect in the work force.² After that it was followed by a sharp 3% decline where it can be inferred that the law made the most difference, and then it was followed again with higher unemployment than even 1976 when the act was enacted.³

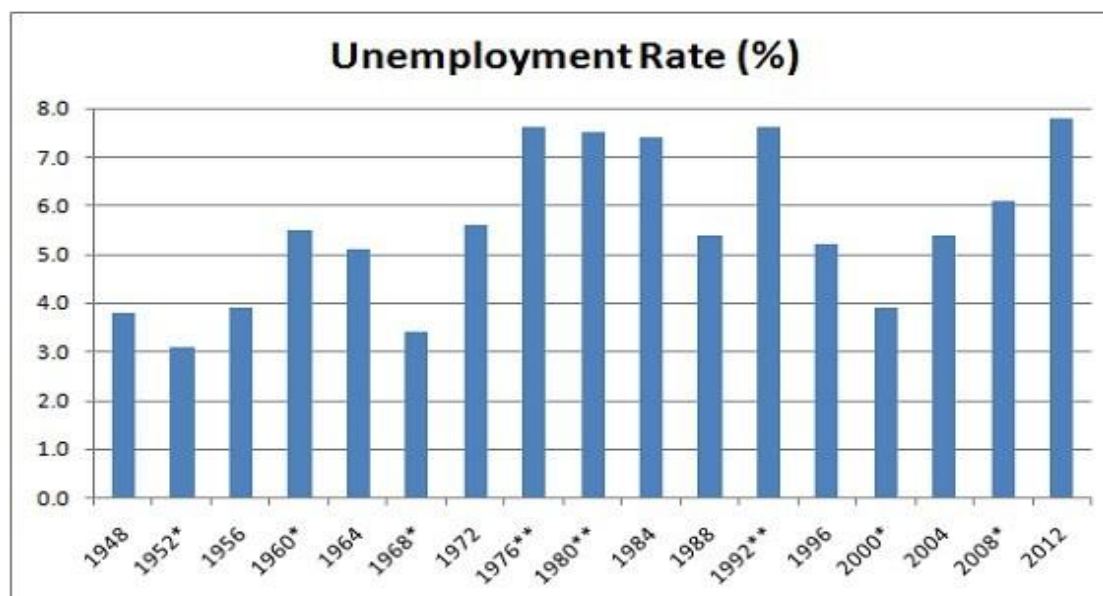


Figure 1 Unemployment Rates in India from 1948-2012.

Section 5 of the Equal Remuneration Act states that “no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women.” This provision serves to help

¹Equal Remuneration Act. (n.d.). Retrieved August 03, 2017, from http://www.archive.india.gov.in/business/legal_aspects/equal_remuneration.php

² Verick, Sher. “Women’s labour force participation in India: Why is it so low?” Wwww.ilo.org, International Labour Organization, www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_342357.pdf. Accessed 3 Aug. 2017.

³Das, S. (n.d.). Women Workers in India: Why So Few Among So Many? . Retrieved August 04, 2017, from <https://www.imf.org/external/pubs/ft/wp/2015/wp1555.pdf>

employers who may be taken to court based on charges of discrimination, but are instead falsely being accused. It enables employers to hire on terms of productivity and not gender, regardless of male or female. While this act is targeted towards women and to help them grow in the work place, the discrimination law is gender equal. For example, if an employer wants to suddenly start hiring women only because of the law and he wants to get his ratios up, he is unable to if a male who applied is more productive at the task. It also protects the employer who hires a man over a woman, and then the woman files a case for discrimination. If the employer can prove the higher productivity of the male worker, then he does not have a problem.

The provision of the act which states equal wages is “No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.” This established that there cannot be unequal pay on the basis of gender for the same job that is performed. It is important to realize that this puts employers in a difficult position. If they are forced to pay the same pay then as a result, their costs will go up but revenue will not necessarily increase, thus, causing the profits to decrease.

DISTRICT	Males reporting increase in wages	Females reporting increase in wages
KANPUR		
Organised	86.11	75.00
Unorganised	83.33	66.67
MORADABAD		
Organised	100.00	100.00
Unorganised	57.78	66.67
NAINITAL		
Organised	86.49	83.78
Unorganised	77.78	74.07

Figure 2 Comparison of Female vs. Male reported Increase in Wages

While this act is in law, the full impacts are still not there. Fig. 2 shows the reported increase in wages of males versus females and we see that overall the trend is that among unorganized labor, the trend is consistent that males still get more increase in wages than females do, and also in two of three districts as shown in the table above.⁴ It is important to enforce this law in a better manner so that employers do not feel forced to hire women just to abide by the law, but are instead hiring them based on productivity. It cannot be at the expense of the economy that India promotes women involvement in the work force. The Equal Remuneration Act has made substantial advancements in the work force, but there needs to be a stricter enforcement of policy and less use of “loop-holes” so that women are treated fairly and given the same opportunities as men.

III. THE DOWRY PROHIBITION ACT

To first discuss the Dowry Prohibition Act (DPA), we must understand the concept of Dowry. Dowry is defined as the gifts and money that a bride and her family give to the groom and his family as a “token” of marriage.⁵ Common examples of dowry include television sets, home theatre systems, and most commonly dowry is given in the form of large sums of money. The concept of dowry has been around since ancient times, and was first seen as a statement on the wealth of a woman. Slowly men started to rely on this dowry to start their new married life and the concept still remains common today. To put an end to this practice, and the materialization of women, the Dowry Prohibition Act was established in 1961. The act seeks to “prohibit the giving or taking of dowry” and outlines punishments for doing so.⁵

For the bride’s family, the dowry keeps on becoming an increasing burden. While the DPA exists, it is ignored in almost all rural areas and because brides are desperate to be married they have no option. The way a woman is treated in marriage is often directly proportional to the dowry that her family can give. Because of worsening economic conditions, many Indians report that the dowries have increased in frequency and in

⁴Kavarana, A. (2013, October 21). Equal Remuneration Act. Retrieved August 05, 2017, from <http://ccs.in/equal-remuneration-act>

⁵Hays, J. (2015, June). DOWRY, DIVORCE AND MARRIED LIFE IN INDIA. Retrieved August 06, 2017, from http://factsanddetails.com/india/People_and_Life/sub7_3d/entry-4173.html

quantity. Now, not only do the wealthy want dowries, but also the middle-class so that they can have a good start to their life. The DPA is in law, but it is not being enforced and instead is having the opposite effect of increasing the number of dowry-based marriages and thus leading to a large number of dowry-based deaths. Studies indicate that an average of 8000 dowry related deaths have taken place from 2007-2015, which is a 195% increase from the 1990s.⁶ This serves as an immediate red flag and points to the fact that India needs to have stricter enforcement of the DPA. The act was created to help stop the use of dowries, but instead it is not making the impact that was intended. This leads us to believe that there have to be new amendments made to the law so that the enforcement can be stricter.

Due to cultural values and social stigmas, the divorce rate in India is only 1% as compared to the 50% in the United States.⁶ India's major religion is Hinduism, under which marriage is seen more as a religious connection than a legal contract. The breaking of this "religious contract" is seen to bring about bad luck and is looked down upon in society. If a dowry given is not high enough to satisfy the groom, the groom may look to abuse the wife or not treat her fairly. But because of these religious customs, divorce is not really an option. In recent years, however, divorce rates have risen as the urban centers have become more globalized. A large factor in these low divorce rates is the fact that arranged marriage is still somewhat of a popular practice in India. Arranged marriages are based on wealth, age, status, astrological signs, and other factors. If one wants to marry "out of their league" it requires them to pay their way through the so called "custom" of dowry.

In recent years, the cases registered under the DPA have increased 209% through 2005, with most cases being in the rural areas of Bihar, Uttar Pradesh, and Jharkand.⁷ While there have been recent increases in enforcement, the dowry system is a cultural system that will take lots of government resources and support to be able to terminate. But this is important. The dowry system is a moral wrong-doing, and thus the enforcement clauses of the Dowry Prohibition Act of 1961 must be amended and enforcement factors must be added and put in place so that real advancements can take place. Section 4 of 8-B states, "appoint an advisory board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction" and while it puts guidelines for the advisory board and little enforcement of policy, the act needs to have more written in law so that states have to abide by it.⁸

IV. THE MATERNITY BENEFIT ACT

The amendments that were passed to the Maternity Benefit Act in 2017 significantly changed the Maternity Benefit Act from 1961 (MB Act). The amendments received presidential approval, and the only way to get around providing maternity benefits from employers is building a facility which allows mothers to take care of their babies at work.

These benefits apply to the organized sector in India, but unfortunately it does not affect the unorganized sector. The definition of sector in the law is very ambiguous and thus women who work from home or in small businesses may not be able to benefit from this maternity leave. The act states that it is only "applicable to all establishments employing 10 or more persons". This leaves a lot of companies out of this definition, and thus may leave women out. A problem does arise where enforcement of this law is difficult if a limit is not set on the number of employees that define an establishment, but a large minority of any country is composed of companies that are under 10 employees. To help remedy this problem, a larger definition of working women must be provided in the MB act so that more women are included in this and thus a better impact on maternity leaves and benefits of all women in the workforce. There is a large population of women in India who are just daily wage workers, and thus do not receive benefits of this act.⁹ Often times if these women take leave because of maternity, they lose their job or get no pay for their pregnancy period. This leaves them in a financially unsafe and unstable situation for their new family. The infant mortality rate of India is 40.5 deaths

⁶ Saini, D. (1983). Dowry Prohibition: Law, Social Change, and Challenges in India. Indian Journal of Social Work, 44(2), 16-31. doi:10.1177/002087287101400403

⁷ Crime in India- National Crime Records Bureau Ministry of Home Affairs. (n.d.). Retrieved from <http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>

⁸ Ministry Of Women & Child Development | GoI. (n.d.). Retrieved August 03, 2017, from <http://wcd.nic.in/act/dowry-prohibition-act-1961>

⁹ A. (n.d.). The Maternity Benefit Act. Retrieved from <http://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf>

per 1000 births, and with such high a number India cannot take away the right of women to give birth and take care of their children.¹⁰

According to a report by the United Nations, 50,000 women die during child birth per year, and with such a large number it is important for the government to do as much as it can to limit this.¹⁰ A report from the Women and Child Ministry show that 29.4% of children are underweight, and this number translates to the lack of nourishment and attention that children are getting from their mothers.¹¹ As a country, India needs to put benefits in place so that this percentage decreases and that the children start to become healthier. There is direct correlation between the health of a mother during birth to the growth and nourishment of her child. With women not being allowed maternity leave, it restricts them from breastfeeding which provides the infant with antibodies which are no longer being transferred.

The MB act involves a provision that allows state governments to add establishments to those already listed in the act. An example of this is that Kerala has added provisions which make all commercial establishments fall under this law. A commercial establishment is specifically defined as “a commercial or industrial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, café or any other refreshment house, a theatre or any other place of public amusement or entertainment...”. This covers a lot more than what the national act does, and perhaps it should be added to the actual act.

The act does include many benefits, a major one being that it states full pay for women who are on maternity leave. Most other countries do not offer full pay, but it is a good step taken in the right direction. There should not be any penalty for having children including loss of pay. While an issue being debated in other countries, one still worth considering is paternity leave. The bill shows no care for the father of a child, but the involvement of the father is still important in the development of children. Perhaps a smaller amount of time for paternity leave, but still allowing some so that the father and child can bond. The act does spark concern where it says that it will now “Increase Maternity Benefit from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two children.”⁹ The MB act lowers the amount of maternity leave when you have more than two children, but it fails to realize that when having a third child the mother needs more time to recover. It is also important to consider that every child is different and each child has their own growth and development model that needs care. Over time, the act is making a positive difference in lowering the infant mortality rate in India, as shown on Fig. 3.

Often times women refuse to join the work force because they want to have kids, and plan to wait till their kids have grown up and are going to school. While employers may be more hesitant to hire women due to the MB act, more women will also be willing to work and at a much younger age. They will not have to wait till their kids are old enough. Instead, this act allows them the opportunity to take maternity leave and still take care of their children. Other times, women quit their jobs when they get pregnant assuming they will not be able to manage both the roles of a an employee and a mother simultaneously. If a job for them is guaranteed when they get back, they will not quit but instead just opt to take maternity leave.

The amendments that have been put in place for the MB act are drastic and will be changing to the dynamic of the workforce in the future, but new policies need to be made as the discussion of the paternity leave continues. Attention of both parents is required to form a strong connection and bond with parents, and while full pay may not be given during the maternity leave, a job can be guaranteed. The maternity benefit act will cause more women to enter the workforce, and help them progress but some changes still need to be made so that more women can be included, and that they are not punished for having children.

10 Mortality rate, infant (per 1,000 live births). (n.d.). Retrieved September 03, 2017, from <https://data.worldbank.org/indicator/SP.DYN.IMRT.IN>

11 Rapid Survey on Children- Ministry of Women and Child. (n.d.). Retrieved August 12, 2017, from <http://wcd.nic.in/sites/default/files/State%20RSOC.pdf>

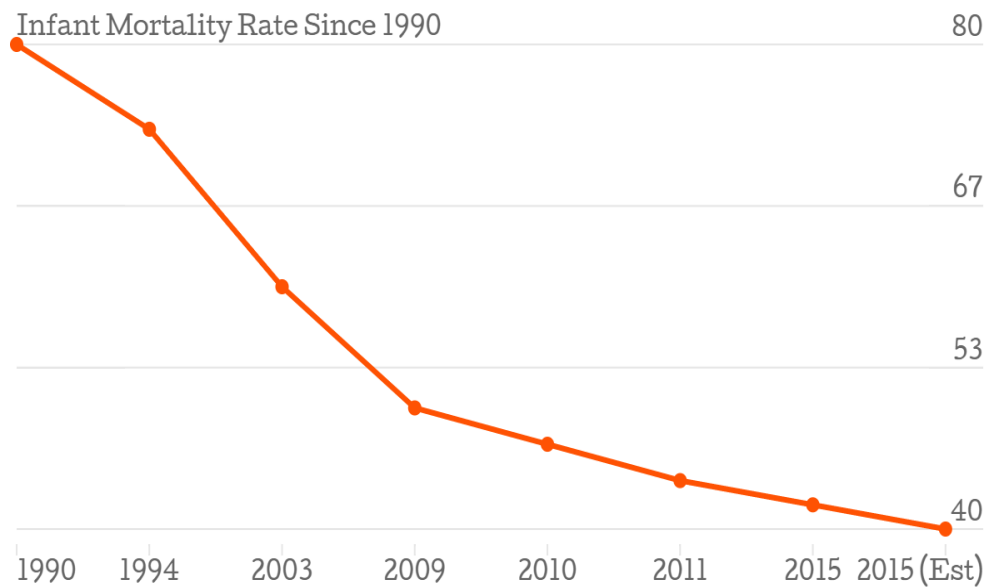


Figure 3 Infant Mortality rate since 1990 including projections

V. THE PROHIBITION OF CHILD MARRIAGE ACT

To first discuss the impact of the Child Marriage Act (CM act), we need to define what the act defines as child. The act says this is when “the girl is under 18 years of age or the boy is younger than 21 years.”¹² A child marriage is when either of the parties are underage. According to the law, it makes it so that a marriage that was made either before or after this act can be declared void by the person who was married as a child. There is a caveat which includes that the marriage can only be made null, up to two years after the consent age of marriage.¹² Not only does the act provide a way for child marriages to become void, but it also outlines punishments for those who facilitate it. Anyone except for a woman participating or performing in early marriage can be imprisoned as outlined by the act. “Those performing, participating or abetting child marriage can be prosecuted. A woman, however, cannot be imprisoned under this Act.”

Child marriage is not a problem in itself, but instead more of a gateway problem as it leads to dowry, malnutrition of babies, and also poor health of mothers. This act of 2006 is to lower the number of child marriages that take place in India so that young people are not forced into marriages. Section 12 of the CM act makes marriages void if the child is taken away from the custody by force, is compelled, deceived to be sold for the purposes of marriage. This provision in the act covers the trafficking of girls and says that any marriage to girls who are trafficked can be declared null.

It is important to note that the CM act was a change on the Sharda act, in which the legal age for girl marriage was 14 years old.¹³ It shows how far India has come, but also point out how far it still has to go. Fig. 4 shows the child marriage percentages in various regions of India in the 2000s. We see that while the act is making significant impact, there are still a large number of child marriages. Most of these marriages take place in rural areas where laws are ignored, and because the marriage of a daughter is a stressful time, parents try to get it done as soon as they can without really caring of how old the daughter is.

Child Marriage is a violation of human rights and the right to free and full consent to marriage is recognized in the Universal Declaration of Human Rights. Marriage at a young age takes advantage of the immaturity of parties involved and traps them into a marriage. Child marriages are so common in India that a law will not be enough to bring an end to them. Along with the law, there needs to be a change in the mindset of the social community. For this to happen, there must be a project to inform those in rural areas of their rights and the harm that can come from child marriage.

¹²THE PROHIBITION OF CHILD MARRIAGE ACT, 2006. (n.d.). Retrieved August 13, 2017, from <http://lawmin.nic.in/ld/P-ACT/2007/The%20Prohibition%20of%20Child%20Marriage%20Act,%202006.pdf>

¹³Ministry Of Women & Child Development | GoI. (n.d.). Retrieved August 15, 2017, from <http://wcd.nic.in/child-marriage-restraint-act-1929-19-1929>

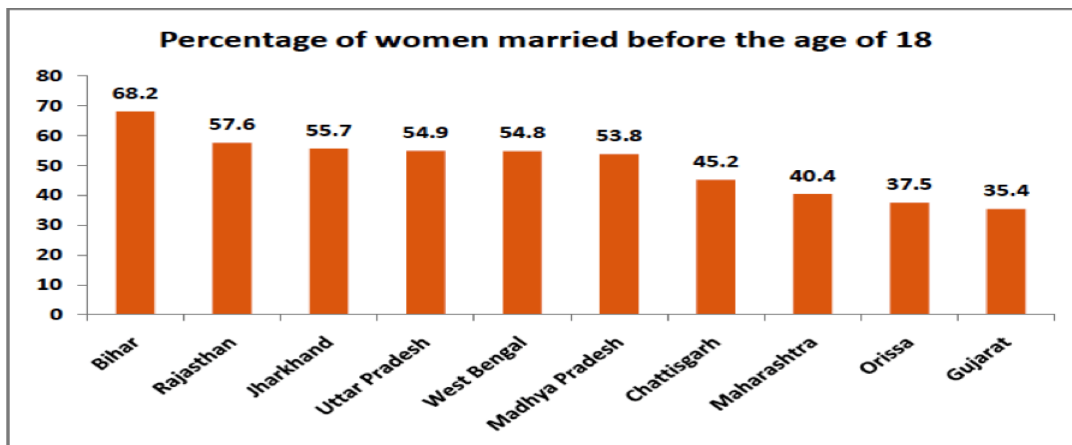


Figure 4 Percentage of Women married before 18 in various regions in India

VI. THE PRE-NATAL DIAGNOSTIC TECHNIQUES ACT

The Pre-Natal Diagnostic Techniques Act (PNDT Act) was first enacted in 1994, later amended in 2003, and then strictly started to be enforced in 2011 with new amendments. The direct purpose of the act is to prohibit “determination and disclosure of the sex of the foetus”, and thus there has been a large amount of action against gynecologists and radiologists to make sure that they obey the act.¹⁴

The act is now strictly being enforced because the female: male ratio has continuously been decreasing as shown by the graph below. Because life for women is often very hard in India, often times mothers choose to commit female foeticide which is the killing of the baby before it is even born. The gender discrimination that the Indian society faces is not only after birth, but often times before it through sex-selection practices including abortions. Because of new technologies, it is possible to determine the sex of the baby very early into the pregnancy. This combined with the preference of having a son leads to many pre-infantile deaths. For the past 40 years, there has been a steady decline in the child sex ratios as shown by Fig. 5. It is important that the strong legislation passed is followed so that remediation can begin and the country can slowly get back to a number that is in suitable range.¹⁴

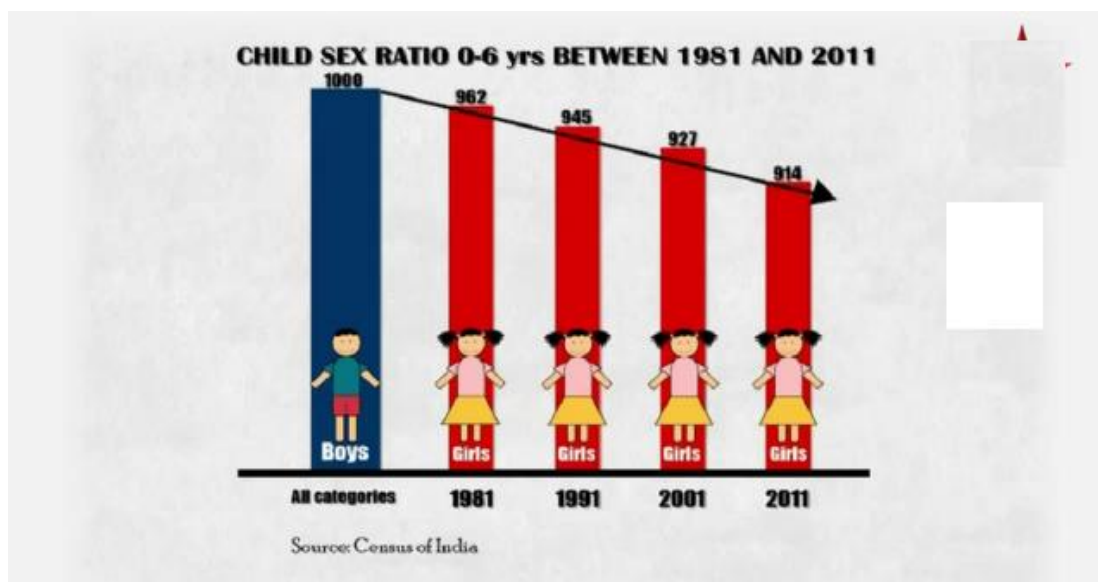


Figure 5 Child sex ratio projections as provided by UN

¹⁴Bhaktwani, A. (2012). The PC-PNDT act in a nutshell. Retrieved August 17, 2017, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3498638/>

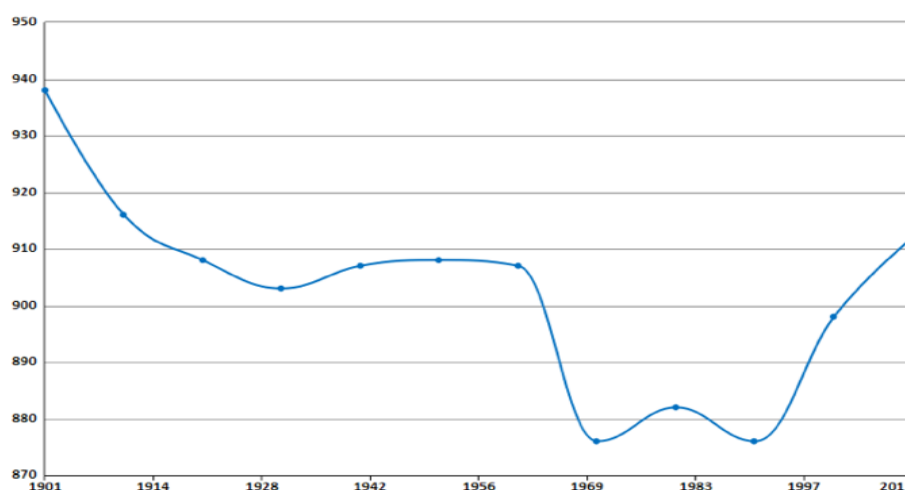


Figure 6 Child sex ratio projections as provided by UN

While there have been positive impacts in the girl: boy ratio in recent years since the implementation of the stricter amendments and act in 2011, there is still a long way before the number is where it needs to be, as shown in Fig. 6.¹⁵ There is still a severe imbalance in the number of females per 1000 males, and for this to change, the laws that have been made need continued implementation. To commit female foeticide is a crime which is of high moral wrong-doing but more importantly it is going to lead to disasters in the future. The practice of wanting only sons is an ancient tradition that is slowly being worn out, but it is not happening fast enough. While the urban population is understanding what the negative impacts of this lopsided ratio can be, the rural populations are what is really causing this disparity. Not only is having a girl considered a social disgrace, but also a harder economic burden on the family. As mentioned above, even though the Dowry Prohibition Act has been passed, its effects are not significant enough, especially in rural areas. For families who can already barely afford to live, having a girl puts them in a position of having to pay a large dowry which is not something that many of them can afford. This is a pressing concern that stems from the social concept that is created around having a girl. The need of the hour is to bring about change in the mindset as well as ensure more effective enforcement of the Act. The government, to make large impacts, has started financial schemes which provide incentives to families who have children to help this distorted ratio, and slowly bring it back to normality.¹⁶ These financial schemes seem to be taking their effect slowly. Thus, making a difference to the girl: boy ratio slowly as it is steadily starting to work its way back up.

VII. NATIONAL POLICY FOR WOMEN EMPOWERMENT

The advancements that women have made in their role in society has been through their own merit with little help from the government. To change this, the government introduced a program and policy which was not just a law but a plan of action. India created the National Policy for Women Empowerment in 2001.¹⁷ The basics of the policy include the creation of an environment that will provide equal human rights and the opportunity for women to be on the same footing as men in political, economic, and also social views. While acts have been made to help change the discrimination against women, the goal of this policy was to lead to actual change in societal ways and their way of thinking. Part of the policy does in fact focus on strengthening the laws so that they can be better implemented and that there aren't loopholes to get around the laws.

¹⁵ Mohanty, T. (n.d.). File:///Users/samarth/Downloads/Dialnet-LawLibertyAndLife-5402949.pdf. Retrieved August 17, 2017, from file:///Users/samarth/Downloads/Dialnet-LawLibertyAndLife-5402949.pdf

¹⁶ Sekher, T. (n.d.). SPECIAL FINANCIAL INCENTIVE SCHEMES FOR THE GIRL CHILD IN INDIA: A REVIEW OF SELECT SCHEMES. Retrieved August 18, 2017, from https://www.unfpa.org/sites/default/files/resource-pdf/UNFPA_Publication-39772.pdf

¹⁷ Global Database on Violence against Women. (n.d.). Retrieved August 21, 2017, from <http://evaw-global-database.unwomen.org/en/countries/asia/india/2001/national-policy-on-the-empowerment-of-women-2001>

The National Policy is sponsored by the Ministry of Women and Child Development which has done considerable projects to aid with the end of discrimination against women.¹⁷ Various women have also started involvement in politics to take advantage of this social education that is going on, and to really use this societal change to enter into the political sphere. While there has been some success, there is more to come as women continue to be better treated and slowly seen on the equal footing as men. Fig. 7 shows the growth that has come over time from the combination of the implementation of various acts and policies as well as societal changes. Elections are the best way to see societal changes as they are an example of the people voting.

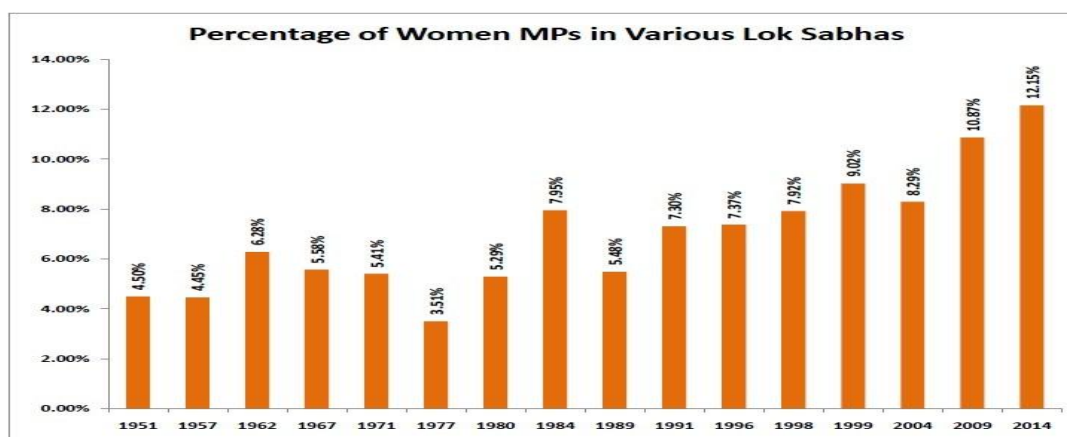


Figure 7 Percentage of women voted in to various regions

The Ministry of Women and Child Development has also implemented a variety of other schemes including Swashakti, STEP, and Swavalamban Yojana to provide economic individualism and support for women.¹⁶ These programs provide women with money to get started in life, whether to help them get an education or to build their own start-up. The Ministry has made big impacts in the empowerment of women and they continue to create and implement policies to help. Perhaps, the government can use the ministry as an enforcement force to make sure that the new acts that have been created are making the impact that they are supposed to. The ministry holds most of its focus to be in the economic standpoint, whereas in the future they can branch out to make a social and political impact as well. The National Policy for Women Empowerment is a strong initiative to help with the change of the social stigmas that lay with women and their supposed inferiority in society. It is not only a matter of enacting laws, but changing the mindset of society so that these laws do not have to exist in the first place.

VIII. CONCLUSION

The impact of the legislation passed by the Indian Government in the last four to five decades has been minimal as compared to the ideal impact of these laws. The act that has made the most impact is the Equal Remuneration Act, and that too is focused on the organized sector of the workforce and not the unorganized sector- where most women actually work in. More important than the laws that have been passed, it is important for the government to implement policies so that the societal mindset can be changed. Currently, there are still stigmas that highlight the inferiority of women in India and promote discrimination on the basis of sex. To move India across this threshold of gender based discrimination, just passing legislation is not enough. There must be a bigger focus on the enforcement and enactment of these laws. On the other hand, this is a step in the right direction and it is important to have achieved this governmental support and must continue to receive this support if any real change is to come.

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