

Chapter 1

Reading the ‘Relationship’ between Women’s Empowerment and The Structure of Patriarchy: An Introduction.

The main concern of my research is to explore the relationship between women’s empowerment and the continuing influence of patriarchy in India. The goal of equality and freedom are the cornerstones of Indian Constitution and have greatly influenced the Indian political system, to the extent that most of Indian politics can be described as the demand for achieving equality and freedom. This is particularly true when it comes to women and their demand for equality.

For women, discrimination and inequality are common experiences. They experience discrimination within both, the private and political sphere, which means that the family, community, workplace, and political systems all possess and perpetuate those specific conditions which discriminate against women. It is only due to the Indian Constitution’s commitment that women in India have a substantial claim to equality, much more than most democratic systems in the world. Because of the Constitution we have a political and legal system which constantly engages with women’s demands and lived experiences and seeks to empower them by eradicating the different forms of inequality. This is the reason why my research is deeply interested in analysing the relationship between equality and women’s empowerment.

The constant engagement of the State with women’s experiences of inequality have created a very rich discourse on women’s rights and has presented some good strategies through which equality can be achieved. My research assesses this discourse and also the extent to which the strategies for gender equality have been successful in India. In order to do so, I will be analysing the various inequalities faced by women which is caused by continuous patriarchal oppression. I will also attempt to understand the inequalities and discrimination faced by women within the political sphere, the workplace, and the domestic sphere.

I specifically choose these three spheres because there has been quite a lot of political and legal interventions to guarantee women equality within them. Yet, women continue to face discrimination in all these spheres. While political interest and legal guarantees have played an important role in giving women a claim to take a stand against discrimination, it has been unable to remove the same. It is almost as if, the means and methods of discrimination are

gradually adjusting with the structure of empowerment and equality. It seems to me that there is a possibility that the systems of empowerment are progressing hand in hand with the structure of domination and oppression that is patriarchy. Through this research I argue that women's empowerment is colluding with patriarchy instead of challenging it, which is why after so many decades of equality, the position of women is still subordinated to men. In order to do so, I will be critically analysing till what extent does patriarchy influence the inequalities which women continuously experience in the political sphere, the workplace, and the domestic realm. I will also be briefly assessing contemporary policies which are designed towards women's equality and empowerment. I will be critically analysing select bills, legislations and provisions which have played an important role in developing the notion of women's empowerment in India. As intervention through laws and policies has been a very important tool for the political, social, and economic transformation of India, through my research I will also inquire into the efficiency of laws which attempt to curb these inequalities.

There is no doubt that in India women are legally recognized as equal citizens and political participants who should not be unjustly differentiated from their male counterparts. Yet women in India continue to experience political, social, economic, and cultural marginalization in their day to day lives. The transformative political and legal systems stand starkly in contrast with the narrow minded and traditional socio-cultural systems. On one hand, the political and legal system seeks to undo the systems of oppression while on the other hand, the social and cultural systems struggle to maintain the status quo. Women are trapped between these two contrasting systems which are in a constant tug of war for superiority. So, despite the promise of equality, India is still a male dominated society where women's choices are limited due to the influence of patriarchal norms¹.

This influence is clearly visible in women's real and lived experiences of inequality. The discrimination which women face starts from much before their birth and continues throughout their lives. Gender biased sex selection, female feticide, female infanticide, child marriage, dowry, honour killing, witch hunting, sexual harassment and sexual assault are some forms of violence which women either directly experience or experience the threat off throughout their lives. Women are underrepresented and barely have access to positions of leadership in the political, economic, or social spheres. Extreme gender wage gap, lack of opportunities and gender-based stereotyping are also common experiences for women in the economic sphere. Sexism and misogyny are not only rampant in the social, political, economic, and cultural spheres in India, but also celebrated through misconstrued images of women in the media and

popular culture. Whether it is violence, discrimination, sexism or misogyny, women in India experience it all throughout their lives. Then how can we say that women are empowered? How can we claim that they are equal? Where are the challenges to the patriarchal system which not only justifies but also normalizes these oppressive experiences?

It seems, that the Constitutional promise of freedom, equality and justice remains somewhat unfulfilled despite many attempts made by the government to empower women. This is indicative of the continuing influence of patriarchal structures over the political and legal systems. After all, India has a complex socio-cultural landscape which is deeply rooted in patriarchal beliefs and practices.² Even though political and legal interventions, social reforms and a growing economic structure has posed a challenge to the discriminatory attitude toward women, there is a possibility that the patriarchal structure has modified with time too. This means that the overt forms of discrimination may have been replaced with more covert methods. My research attempts to understand the extent to which patriarchy affects position of women in the political sphere, the workplace, and domestic sphere despite having some provisions directed towards empowerment.

Indian social system is deeply rooted within the patriarchal system. So, despite having a political legal system which condemns discrimination, women in India continue to hold the subordinated position in the society. The natural assumption that recognizing women as equal citizens will liberate them from the scourge of patriarchy seems to be questionable. It seems that what was supposed to be the remarkable story of women's emancipation and empowerment continues remain the story of women's subordination and disempowerment.

This paradoxical situation of women in India has created a sense of anxiety especially in the sphere of politics. This can be seen through the continuous demand for women's empowerment made by non-governmental organizations, interest groups, legal groups, political parties, and citizen bodies since independence. All governments which have come to power agree that women are still struggling to achieve the standards of equality set by the Constitution. It seems that the position of women in India has changed mostly in a superficial manner and the core source of discrimination continues. The only thing that has changed is the ability of political and legal systems to do something about this.

Political and legal institutions are better equipped to defy patriarchal oppression due to the presence of a strong Constitution which focuses on delivering equality, freedom, and justice to all its citizens. The problem is that most political and legal institutions are either unable to

recognize the patriarchal practices or they are unwilling to do so. My research looks to investigate why political and legal institutions are unable to uncover patriarchal influence which is continuously affecting the lives of women in India. Is it because political and legal rights are not enough or is it because the notion of empowerment has colluded with patriarchy? By answering these questions my research attempts to contribute to the ongoing discourse on rights for women.

Recently the empowerment of women has been recognized as the central issue in deciding the status of women. Guaranteeing opportunities of empowerment is the state's responsibility that needs to be fulfilled through legal or policy mechanisms. The term empowerment refers to the ability through which a person has the choice and opportunity to shift their position from the marginalized to the empowered. Empowerment is the process which creates an environment through positive political, economic, and social policies for the development of women which enables them to realize their full potential.

For this, equal participation in decision making, equal access to health care, education, employment, and legal institutions are considered as imperative. Strengthening of legal systems, modification of societal attitudes, changing gender stereotypes, elimination of discrimination and violence are integral parts of women's empowerment. As Mohanty, highlights, empowerment is a complex process which not only grants basic civil and political rights, constructs an inclusive and responsive politico-legal sphere, but also that the process of achieving women's empowerment lays emphasis on formal institutional arrangements, especially political and legal systems. Laws and policies thus become important instruments for women's empowerment.³

According to Menon, laws are often used as a strategy of legitimacy, as laws have the capacity to pursue justice. One of the main goals of laws and legal mechanisms is to achieve justice. Justice is mostly defined by the moralities which govern the society at that time. Laws examine the moral values of the society and determine which values are essential for the sustenance of an egalitarian system. Simply explained, laws function as an agent for legitimizing various practices, norms, and beliefs in the society. In doing so it also delegitimizes those norms, beliefs and practices which help in sustaining the category of the marginalized or oppressed.⁴

This is particularly visible in the Constitution of India which summarizes its basic commitments to freedom, equality, fraternity, and justice in the Preamble itself. This is further

indicated in the Part III and Part IV of the Indian Constitution. The Fundamental Rights and Directive Principles of State Policy are legal frameworks way ahead of their time and meant to bring positive change in the society. The Constitution creates a political legal structure which makes a real attempt to generate empowerments for all those who are marginalized. Under the aegis of the Indian Constitution, laws become the instrument to challenge patriarchy and to establish empowerment.⁵

Through my research I am looking to analyse the extent to which laws and policies reduce the influence of patriarchy on political, economic, and family structures. Interestingly, the State has intervened through laws in all these three spaces with the intention of empowering women in India. These three spheres are equally relevant for achieving the goal of gender equality and empowerment. I acknowledge that there are many important themes and areas to explore while analysing gender equality in India, for example, education, health, development, and even disability yet my focus will be on the political sphere, economic sphere, and family.

1.1 Understanding the Relationship between Right to Equality and Women's Empowerment

Equality is the foundation of the Indian political system. Take away the right of equality from the Constitution, and we are left with a democratic system which promises nothing but the continuation of oppressive structures of domination. India unfortunately, has many such structures, like class, caste, religion, race, ethnicity, disability, and gender. When the Indian Constitution announced its commitment to equality it automatically rejected those systems and practices which perpetuated inequality. But what exactly constitutes as the experience of continuous inequality was left very ambiguously defined. This is where the challenges to women's right to equality and empowerment start from.

What exactly is the experience of gender inequality? Which practices and norms subordinate women and till what extent can the Constitutional provisions intervene? Does the promise of equality, automatically undo centuries of inequality and eradicate the patriarchal structure which oppresses women? These are important question which have been and still are being deliberated in the political institutions, courts, and civil society. Equality is a Constitutional right and so there is no need to deliberate over its necessity. But there is a need to deliberate over what type of equality is required, under which circumstances is it required and how can it be achieved in the most just manner. My research focuses on gender equality, specifically the relationship it has with the political and legal struggle for women's empowerment.

India is a country which is rooted in its social-cultural system. To the extent that much of our understandings of freedoms, equality, justice all emerges from there. Inequality also has social-cultural as well as political and economic reasons. To say that legal equality will eradicate all forms of inequality is an incorrect assumption. To tackle inequality, it is imperative to critically analyse the political, economic, social, and cultural factors which contribute to equality. Equality, hence, is interpreted not just as political but also social, economic, and cultural. This also means that when the concept of equality is being discussed in political and legal institutions, they have to consider all factors responsible for creating inequality. This is one of the reasons why the demand for equality keeps modifying itself to accommodate the various experiences of inequality which women face in their day-to-day life.

The demand for women's right to equality in India is not a new one but can be traced back to before independence. The first notable legislation for women's rights can be traced back to the passing of Bengal Sati Regulation Act, 1829 which banned the practice of *sati*.⁶ It is product of the social reforms movement which was spearheaded by social reformers like Raja Ram Mohan Roy and Ishwarchand Vidhya Sagar to combat the blatant oppression of women during that time. While they mostly depended on sensitization and reformation of the society, they also relied on the help of the English legal system to prevent practices like *sati* and child marriages.⁷ The social reformers made legal and political institutions instrumental in changing the status of women in India. Soon the political and legal system became the cornerstone over which women's demands were negotiated over and translated into rights.

As the social reforms movement gained popularity, the idea of a "new woman" whose interests lay outside her household and the private spaces emerged.⁸ The notion of "new woman" allowed women to move out of the silence of the private sphere into the vociferous public sphere. The identities of women evolved from being a daughter, mother and wife to being an educator, reformist and nationalist. Access to education enabled women to organize themselves into groups and associations which highlighted the grievances which women faced in their day-to-day life. Women were no longer invisible or isolated within the private realm but were prominent members of the society which was changing to accommodate women in it. For this change to take place, women's association relied heavily on the national movement and the demand of independence. They believed that their access to equality was closely associated with the independence of the country.

It must be observed that the position of women was one the main justifications of colonialization of India. As Liddle and Joshi state, 'The British claimed they were a liberalising force in the colonies, particularly for women, yet their espoused, policy was of non-interference in Indian culture and religion'.⁹ This contradictory approach formed the basis of the position of women in the Indian political and legal institutions. Most of the decisions regarding women's rights were stuck within this sphere of contradiction. This was especially visible when the demand for women's suffrage was made.

As women's organizations became more involved in the national movement, they seized the opportunity to demand for political and equal rights. This was mainly because women's organizations realized that to be educated without adequate economic opportunities and access to political power limited women's access to freedom and autonomy. The demands for representation and employment opportunities were explored by women's organizations like Women's India Association which was formed in 1917 and All India Women's Conference which emerged in 1927. Both organizations worked extensively for women's suffrage and other political rights. They believed that women's right to vote would play a very important role in changing their position in the society.¹⁰ Women organizations demanded equal opportunity to access political places and government positions through the demands of right to vote and right to representation. These organizations believed that once equal access to political places and positions was achieved, women will automatically experience equality in all spheres. The women demand for equality essentially was a demand for political and economic equality. It was also through the efforts of such women's organizations that the inequality which women faced in their day-to-day life became part of the political discourse.

Women's right to vote, access to economic opportunities, reform in personal laws like inheritance rights and divorces and conjugal laws, petitions against child marriages, education, and equality in the Constitution were major demands of women's organizations before independence. While some of these demands require simple amendments in already prevalent laws other demands required the creation of new laws. All the demands of the women's rights to equality had an adverse effect on the social cultural fabric of the society. The policy of non-interference that the British struggled with was ineffective when the main concern was women's rights. Political, social, and economic change was inevitable for women's equality, and this was clearly visible after independence.

Despite all this, I must acknowledge that there is a patriarchal connotation to the manner in which women's organizations presented their demands for equality. Women organizations were very careful not to challenge the social and familial structures in their demands of rights. More than once they promoted their demand for rights by stating it will only add to the dignity of society and not reduce it. This can be seen in the speech made by Sarojini Naidu during the special session of the Indian National Congress in 1918, where she states,

“We ask for vote, not that we might interfere with you in your official functions, your civil duties, your public place and power, but rather that we might lay the foundations of national character in the souls of the children that we hold upon our laps, and instil into them the ideals of national life’¹¹

Women's organizations were unable to separate women from their fixed social and cultural roles. While sometimes the position of women in the family or within marriage was challenged, like in the case of Rukhmabai¹², most of the women leaders skirted around or even openly declared that women's role in the private sphere will remain unaffected by political rights. They assumed that women have two different identities in the public and private which can move hand in hand. They did not consider that stereotyping women to the fixed roles of mother, daughter, sister, actually harms their demand for equality, after all stereotyping is a process through which inequality permeates in a structure. It may not be their intention to restrict women's demand for equality, as they were bound to the ideas of their time, they lived in. This does not take away from their immense contribution to women's suffrage and rights. This only indicates that patriarchy is so normalized that sometimes it is difficult to identify it. As a result, patriarchal practices, norms and beliefs became a part of the process which seeks challenge it.

The laws or policies which emerge from such assumptions end up limiting women's access to equality. I believe that how we deliberate the notion of women's equality plays a very important role in how we demand it, which in turn impacts the law or policy which aims to deliver equality. If we imagine women's equality without critically identifying the patriarchal influences, then we have limited the scope of our own demand. This has perhaps become a defining factor for the women's movement, legal system and political institutions which are struggling to deliberate, discuss and legislate equality for women. This is especially once the Constituent Assembly agreed that equality can only be achieved through social, political, and economic transformation.¹³

After independence, India adopted the notion of being a sovereign and democratic nation, thus also inculcating the ideas of liberty and equality in the Constitution of India. The Indian Constitution through Fundamental Rights declared all Indians as equal, and this became an important foundation for women's rights in India. As Flavia Agnes states,

“The Constitution enacted in 1950, became the touchstone against women's claim to gender equality was tested”¹⁴

The Constituent Assembly kept in mind the demand for women's rights made by women's organization during the national movement and added extensive provisions for equality. As Begum Aziaz Rasul, member of the Constituent Assembly said,

Sir, the women of India are happy to step into their rightful heritage of complete equality with men in all spheres of life and activity. ... This Constitution affirms that ideal and gives the solemn assurance that the rights of women in law will be wholly honoured in the Indian Republic.¹⁵

Despite having only fifteen women members, the Constituent Assembly was able to uphold the promise of legal equality which women's organizations spent struggling for. The members of the Constituent Assembly were convinced that the guarantee to equality will change the position of women in India.

The significant contribution to women's rights came from the principle of freedom, equality and justice which are enshrined in The Preamble¹⁶. Equality and liberty have been enshrined within Fundamental Rights, making women's demand for equality a reality. The Fundamental Rights are especially revolutionary in breaking down the structures of inequality. Article 14 guarantees equality before law and equal protection by laws, Article 15 prohibits discrimination in public spaces while at the same time clause (3) allows the state to make special laws for women and children, Article 16 grants equality of opportunity in public employment thereby rejecting most forms of discrimination faced by women¹⁷. These three articles enshrined in our constitution provide a strong legal basis for equality.

As a result of this, new laws were added to change the codes of marriage, divorce, adoption, and inheritance which aided in altering the dynamics within which the private sphere functioned. Universal suffrage and equal opportunity for representation benefited women's position in the political sphere. Equal protection of law, equal public access, and prohibition of discrimination in public employment allowed women to participate in the developing modern

economy. The prevalent government and major political parties pledged their support to women's issues and designed a bureaucratic structure which focused on addressing welfare and development issues. For decades, it was believed that women in India were equal to men and the demand of women's organization became silent.

In 1974, the illusion of equality was broken, when the Committee on the Status of Women in India presented a report to the Government of India titled '*Towards Equality*' indicated the failure of the state to improve the status of women in India, the Indian women's movement got the thrust which it needed. This report shed light on the fact that mere tokenism and promises had done little to question the patriarchal character of governance in India and concrete steps needed to be taken for achieving social and political justice. For decades we have been revolving around the same notion of political rights. This report also indicated that there is a need for economic empowerment of women who have for long been denied a space in organized labour and lucrative employment opportunities. The safety of women was also questioned in this report.¹⁸

Despite having a vast provision for formal equality for women within Indian Constitution, the concept of equality filled with contention. As the decades passed, women's experiences of inequality were critically reviewed by the State and the civil society. Women's organizations too started highlighting the discriminations and violence against women which was before normalized. For example, dowry deaths, domestic violence, sexual harassment, female infanticide, all are forms of discrimination which women have faced for centuries. It was only within the new democratic political sphere which promised equality and was ready to transform its social fabric in order to achieve it, that identifying these forms of discrimination was possible. On top of this, it was also realized that inequality does not exist just between men and women but also between women themselves. The concept of equality had to be reviewed again. As Radha Kumar states, 'The concept of equality has thus had to widen to cover a whole range of inequalities in such a way that the space for feminine assertion which any one structure contained, would be preserved, while inequalities would be removed.'¹⁹

This meant that there was a need to deliberate equality once again. Equality became a principle to transform people's lives, socially, politically, and economically. If anyone became a victim of inequality because of the sex they were born with or because of the community or group they belong too, then they were not able to access this transformation which was promised in the Constitution. This discrimination was a lived reality for women, and access to the

transformative potential of the Constitution was grossly limited. The '*Towards Equality*' report brought forward a new feminist consciousness which revived the demand for equality. The political space too recognized the limits of women's equality and started working towards achieving it. The greatest contribution on the idea of equality was found within the realm of the courts where the tussle for women's equality was actually witnessed.

The question which kept coming up in the political and legal sphere was 'What is equality?' and 'What constitutes as the experience of inequality?'. To understand we can simply say that equality is a levelling process where the gross discriminations are reduced, and recourses are redistributed. This simplistic understanding does not even begin to address the complexity of the inequality which women face on a day-to-day basis. Eradicating centuries of oppression and exclusion in the social, economic, and political spheres is a much more difficult task than just redistributing resources. Just assuming that since women have access to Fundamental Rights, they are equal is an attempt to throw a blanket over the terrible socio-cultural hierarchies which justify women's oppression. It is also a means to ignore that patriarchy is a system that adapts to peoples, changing conditions and hierarchies.

This is best seen in the various interpretations of the Fundamental Rights throughout the decades. Even though formal equality is achieved, women still face substantive discrimination and inequality. Formal equality can be interpreted in two ways; either as 'treating likes alike' or 'those who are similarly situated be treated similarly'²⁰. The Indian system mainly leans towards the latter. So, if two individuals are similarly situated there should be no discrimination between them. This is called the concept of equality of sameness which acts as the basic form of equality. It is assumed that equality of sameness will collapse the difference between men and women and treat them equally. At the same time, women are different from men in their experiences. In order to deliver equality, it is essential that women are treated as a differentiated category. Yet it is unknown what is the ideal position of equality? Is it 'sameness' which assumes men and women are same, or is it 'difference' which assumes men and women are different? Judith Squires states, 'Equality and difference, both rich, complex and contested terms in their own rights, have to represent distinct and competing perspectives...'²¹ This competition is also witnessed within the political and legal realms where the demand for equality is mainly deliberated. On one hand the Constitution delivers equality of sameness, therefore focusing on more gender-neutral laws. On the other hand, the same Constitution also delivers equality of difference, therefore encouraging laws which recognize women's experience.

Initially the demand for equality was simple, women were to be recognized the same as men in political sphere. Women demanded equal opportunity to access political places and government positions through the demands of right to vote and right to representation. It was assumed that in political space, access to rights and benefits should not be distributed based on gender. It was also assuming that the democratic system of India will transcend the sexist presumptions about gender differences which have caused the discrimination of women. Initial women's organization and feminists rejected the claim of difference stating that women have been excluded from public sphere as they were labelled as different from men.

As decades passed equality of sameness failed to deliver its promise. If equality of sameness is a condition in which men and women are measured in the same manner, then men and their male experiences become the unit of measurement. Under the concept of equality of sameness, women are negotiating on androcentric terms with the State. Women's experiences are not replacing male experiences. Rather women's experiences are not even co-existing with male experiences but rather they are completely subverted to them. The privileging of men and male experience indicates that the state and political space is male dominated. Equality of sameness it integrates women's issues and experiences with those of men. This position is extremely problematic because it creates an illusion of being equal in a political space which is motivated by patriarchal norms. Dependence on equality of sameness only leads to women's empowerment colluding with patriarchy rather than challenging it. The greatest issue of this idea is that it pretends that recognition of any difference is a threat to equality. Women belong to different communities and classes and this played an important role in the equality or inequality they experienced. It's not farfetched to say that the State can only be partially gender neutral at its best. This is perhaps why; equality of difference became the anthem of the post-independence women and feminist organization.

On the other hand, interacting with equality of difference is almost required when we consider the extremely complex social, cultural, political, and economic arrangements which govern women's lives in India. There is a need to recognize the difference and place it within laws and policies for women. Difference perspective for equality is mainly concerned with placing at centre those who are marginalized²² in this case women. Equality of difference celebrates gender differences. The differences between men and women, both biological difference and difference in social conditioning should be accepted with the political space. The notion of equality of difference differs from the notion of equality of sameness as it recognizes the ideas, structures and behaviours which frame the distinction between men and women and allow

discrimination to exist. Equality of difference attempts to reposition the women from the subordinated to the privileged. Equality of difference articulates the idea that equality should be distributed after due consideration is given to woman's view and experiences. Considering differences would disable the patriarchal structures to the extent that women would be able to participate in democratic activity as active citizens rather than passive beneficiaries. A genuinely inclusive political order ought to be enabling differencing rather than subverting them.

Due to Fundamental Rights in India the use of sameness and difference approach is encouraged as long as there is reasonable classification. The legal system is of the opinion that equality is a dynamic concept. It has many concepts and is multi-dimensional and needs to be interpreted as per the needs for the time.²³ There was no need to interpret equality rigidly as sameness. This is clearly seen in Article 15 (3) which states, 'Nothing in this article shall prevent the state from making any special provisions for women and children'²⁴ As long as the grounds are reasonable special provisions can be made for women to change their position in the society. These provisions can be seen in terms of reserved seats on buses or trains, it can be seen through reservations in jobs, it can also be seen through special policies adopted by governments to empower women, like educational scholarships, or loans for women or women's savings and life insurance policies. It was determined that through special provisions a certain correction can be made in the manner in which women are treated in public spheres. In Article 16 too, this point was reemphasized. Article 16 says that there will be no discrimination in public employment and equality of opportunity will be guaranteed²⁵. Initially the courts followed the notion of sameness saying that in order to maintain equality of opportunity special treatment could not be given. But it was realized that formal equality model would not be able to deliver equality of opportunity and a more substantive model was necessary. In the *Marri Chandra Shekar Rao v Dean Seth G.S.M* case the Supreme Court even said, 'those who are unequal cannot be treated in identical standards.'²⁶ Slowly the courts were warming up to the idea of making special provisions for women.

This acted as a major boost of the lawmakers who were deliberating some major legislations which would impact women's rights in India extensively. The Equal Remuneration Act, 1976, The Maternity Benefits Act, 1961, The Medical Termination of Pregnancy Act, 1971 among other delivered to India rights specially catered to women. It should be noted that even today many democracies have no legislation of equal pay for women or reproductive rights. We must acknowledge and celebrate that the courts created a space for important legislations on

women's rights to be passed by the legislature. This increased the role of the State in influencing the demands for women's rights. The State, through legislations or through legal interventions deliberated over women's rights, but there was no single method to do. The State and the courts kept modifying their approaches when dealing with women's demands. The more they shifted their approaches the more complex the notion of equality became.

Ratna Kapur and Brenda Cossman highlight that within the Indian legal system equality for women is interpreted through three approaches. They observe that most laws, policies, and judgements for granting women equality are either protectionist, sameness, or corrective. Protectionist approach assumes that women are weak and subordinated, and the state needs to protect them through laws. The sameness approach assumes that women are the same as men, so laws are constructed without acknowledging any difference between the two. In corrective approach women are given special treatment by the laws in order to overcome past discrimination. Despite having an extremely broad view of equality, women in India continue to experience discrimination and disempowerment. The reason is that formal equality rarely interrogates the conditions and structures which cause inequality.²⁷

Protectionist approach assumes women are subordinated and essentializes differences between men and women. Sameness approach supposes that women's experiences are the same as men and so, male experiences are privileged over women's experiences. The corrective approach recognizes differences but there is no clarity as to when and how this difference needs to be recognized²⁸. All these approaches, often used by political and legal institutions, have made equality for women a complicated concept. The discourse on equality for women appears to be trapped within these three notions of equality. The lawmakers and courts rely on either one or all these approaches to deliver equality for women.

Simply put, the current political discourse on equality for women assumes that women are defenceless and hence, dependent on only legal and political institutions. It also assumes most of the time that all women have the same experience of inequality irrespective of where they are located in the socio-economic hierarchy. The last and most problematic assumption is that, in order to be equal, women must have the same experiences and privilege as men. Almost to say that male experiences are the benchmark of empowerment which is also something that needs to be changed.

Today, women's empowerment is an important rallying call for political parties in India. There is no political party in India who do not talk about empowerment of women. Protection of

women, development of women, changing the status of women are all important political themes which are emphasized on during political rallies, legislative meetings, and even political debates. While everyone talks of empowering women, there is no agreement about what exactly constitutes as empowerment for women. Can giving women the same opportunity as men, without considering their gendered experiences of oppression be called as empowerment? Is making special provisions for women, in order to appear as the generous 'male' benefactor or protector empowerment? Can empowerment be obtained through speeches and policies without actually taking relevant action against patriarchal oppression? Are notions of empowerment and equality same or different?

The answer is that the notions of women's equality and women's empowerment are linked together. According to the report of the United Nations Fourth World Conference on Women, held in Beijing China, 1995, 'Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic, cultural and environmental security among all peoples.'²⁹ Empowerment is the process through which women can have access to better life and opportunities. In India, the term empowerment comes as a result of the discourse over development which was the politico-economic pursuit of justice and freedom. Manoranjan Mohanty writes, 'It is this process that the term 'empowerment', i.e., giving power to certain unprivileged sections of the society, came to be used.'³⁰ Mohanty further points out that in a broader sense, the term 'empowerment' is related to social justice, so irrespective of their circumstances, people are able to equally access social, political, or economic privileges and opportunities. Women's empowerment focused of giving women access to means of development. Therefore, the notion of empowerment started with women-oriented policies in order provide women with the opportunities to better her life. While women's empowerment became a very important goal in national and state level politics, it was not properly explored until the beginning of the new millennium.

The most systematic drafts on the empowerment of women were *The National Policy for the Empowerment of Women*, 2001, which was proposed by the Department of Women & Child Development, Ministry of Human Resource Development. It defines empowerment as, 'Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential'³¹. It further states, that equal participation in decision making, equal access to health care, education, employment, legal institutions are also important ideas of empowerment. The policy emphasizes that the strengthening of legal systems, modification of societal attitudes, changing gender stereotypes,

elimination of discrimination and violence are integral parts of empowerment.³² From granting of basic civil and political rights, to construction of an inclusive and responsive politico-legal sphere, this bill on women's empowerment laid emphasis on formal institutional arrangements. Even though the bill was not passed, it was the first time that a comprehensive understanding of empowerment was put forward and the government had a clear idea of what constituted as women's empowerment.

The Report on the Committee for Amendments to Criminal law, 2013 once again resonates a similar belief,

‘If true empowerment of women were to mean anything, it is necessary that law, as well as public policy, must be capable of engaging substantially with women's rights, opportunities, acquisition of skills, the ability to generate self-confidence and insist on total equality in relationships, both with society and the State.’

For years, empowerment of women has been recognized as the central issue in determining the status of women. Guaranteeing opportunities of empowerment is the responsibility of the State which needs to be fulfilled through legal or policy mechanisms. Thus, empowerment became the political legal process of guaranteeing equality in both the public and private spheres.

Empowerment is not a stagnant idea but an action-oriented process which takes into cognisance the experiential reality of exploitation, discrimination, and oppression which women experience on a day-to-day basis. It identifies those structures, norms, practices which cause women to experience disempowerment and inequality and strives to weaken or eradicate it completely. Empowerment is also an activity which is heavily reliant on legal and political procedures. It seems that women's equality and empowerment mainly depend on two main things, firstly, there should be a political and legal environment conducive for empowerment, and secondly, there should be a social transformation taking place. It is difficult to imagine the empowerment of women as an independent or isolated for society. I believe that the aim of laws and political interventions for women's empowerment is also focused of changing the society which supports discrimination. This is very challenging as political and legal spheres are not isolated form the social sphere but rather are very much a part of it. This means that most debates for equality and empowerment are also debates against the society which creates or supports inequality and disempowerment.

It is imperative to understand that despite having many positive frameworks for equality and empowerment, women face discrimination and oppression. Sometimes, these frameworks and institutions themselves either become part of this oppression or are heavily influenced by it. As patriarchy is the structure which oppresses women, then, empowerment cannot be understood in isolation from patriarchal experiences. I have to ask this question does the current notion of empowerment truly challenge the patriarchal oppression which women face in all spheres of their lives? What does patriarchy even mean, and does it influence empowerment?

1.2 The Imperative of Women's Empowerment and Patriarchy: A Relationship between Adversaries.

As I deliberate over women's equality and empowerment in India, I cannot help but notice the constant struggle both these concepts have with patriarchy. One cannot understand the true experience of inequality faced by women without conceptualizing and/or considering the experience in relation to patriarchal structure. In this section of the chapter, I attempt to understand what patriarchy is and how permeates within the political and legal process in India to form an intrinsic link to women's empowerment.

In simple terms, patriarchy is a gendered hierarchy whose foundations lay in social, economic, political institutions and cultural practices which have historical legitimacy. While patriarchy exists universally, there is no universal experience of patriarchy. This makes patriarchy a very complex concept to unravel. Patriarchy acts as a structure of male domination over women.

Patriarchy can be described as a system of power arrangement where the male is preferred over female. Patriarchy can also be a system of governance in which men rule due to their positions as the head of households. So, the position one holds in the household based on age and sex, automatically becomes the position one has in the political sphere. This is narrow assumption of what patriarchy entails. In the past few decades my scholars have thoroughly studied the term patriarchy and have presented many different perspectives to understand it and the impact it has on women's lives.

According to Kamala Bhasin patriarchy comes from the word 'patriarch' which is used to describe a large household which comprises of men, women, children, servants and slaves all of whom were subordinated to a dominant male'³³. Walby defines patriarchy as '...as a system of social structures, and practices in which men dominate, oppress and exploit women.'³⁴

Greda Lerner states that, 'patriarchy in its wider definition means the manifestation and institutionalization of male dominance over women and children in the family and the extension of male dominance over women in society in general.'³⁵ There is no clear manner of defining patriarchy, as there is no single experience of patriarchal domination. The only idea which is common is that patriarchy is a system which subordinate's women to men.

Carole Pateman gives the idea of patriarchal which is most relevant to my research. She theorizes that the existence of patriarchy is closely associated with the signing of the 'Sexual Contract'. She states that when the social contract was signed all forms of paternal domination were replaced by the State domination. It was wrongly assumed that the subjugation of women too ended with this. She states that the assumption that social contract is 'antipatriarchal' is incorrect. Social contract is mainly 'anti paternalism', which means it replaces, 'patriarch' or 'father's' rights with that of States authority³⁶. Patriarchy continues within the sphere of family and marriage which is not considered as part of the social contract but rather is part of the lesser-known sexual contract. She states that the sexual contract is where the patriarchy continues. She explicitly states that anti paternalism is often confused with anti-patriarchalism.

I take Carol Pateman's understanding of patriarchy while doing my research because she highlights that there is a confusion in how we understand patriarchy. Even though India did not traditionally experience the conditions of social contract, it is still assumed that the formation of a sovereign and democratic state eradicated the patriarchy. And here lies the challenge that women's demand for equality and empowerment faces. Patriarchy in India has to be imagined very differently from those in western countries. Again, I emphasize, that patriarchy is a universally present structure which subordinate's women, but it is not universally same in practice. This is why it is important to identify how it exists in India.

The idea of patriarchal structure in India can be found in Uma Chakravarti's work. She eloquently states that, '...the extent and form of subordination has been conditioned by the social and cultural environment in which women have been placed.'³⁷ To understand patriarchy outside of India's social cultural framework is to ignore half of the oppressive experiences which women face. In her work she highlights that patriarchy in India emerges as a form of sexual control over women's bodies to rigidly control caste and class structures, which she calls as 'Brahmanical patriarchy'. According to her, women in early India were controlled to retain the purity of caste and class. The entire social structure was framed to support gender relations to protect the caste and class. Women sometimes complied and at other times were

coerced into becoming a part of this system. Brahmanical patriarchy in India was challenged by social reform movements which used the European legal system and doctrines to change the position of women. Even today, women's oppression sources itself from this form of patriarchy among any others.

I must acknowledge that family and community give patriarchy cultural legitimacy, while social, political, and legal organizations grant it institutional legitimacy. So, there are multiple sites where women experience patriarchal oppression. There are also sub structures which are identified based on class, caste, region, race, ethnicity, and physical disability which create a more complex relationship of domination and subordination. These sub structures also make the structure of patriarchy reacts differently in various social, political, and legal arrangements. If we analyse these structures, we see that patriarchy functions in three broad areas in India: the political sphere, the economic sphere, and the domestic sphere.

The first sphere which is political can be witnessed through the rigid boundaries of public and private. The public sphere which is dominated by political institutions and activities recognizes only men and accommodates experiences which are masculine. Women and all the experiences considered as feminine are relegated to the private. This may be one of the many reasons why women are underrepresented in participatory politics and hold very few positions of decision making. The second sphere is the economic sphere where control over women's labour done in households, limits on ownership of property and segregation or exclusion of women from paid work are the techniques through which patriarchy is perpetuated in the economic sphere. These structures of patriarchy are the most common and recognizable as inequality which women experience can be measured in terms of ownership or wages. The third sphere is the domestic sphere, specifically the family, which intersects with the economic and political structures. The hierarchy in the family influences arrangements within the social, political, and economic spheres too. As long as family remains male dominated and oppressive for women the other two spheres would automatically reflect the same. Male violence in form of wife beating, incest, sexual assault, sexual harassment at work, eve teasing, or marital rape are few ways in which patriarchy in perpetuated within the family.

Patriarchy must be understood as is a gendered hierarchy whose foundations lay in social, economic, political institutions and cultural practices which adapt with time. There is no polity which is free from patriarchy currently. But there is a need to create one through proper political and legal instruments. I ask this question that if laws and policies are androcentric in nature, or

are interpreted without challenging patriarchal practices, then what sort of equality for women can they construct? Afterall, even if we assume that the State protects women from patriarchy therefore creating a space for equality, we have to admit that sometimes even the State and its institutions fall short of the help. Let me highlight some cases which elucidate States hesitance or ineffectiveness in controlling patriarchal oppression.

In 1979, the Supreme Court of India delivered a demeaning judgement on a rape case by acquitting two policemen who were accused of raping a young tribal girl within the premises of the police station.³⁸ In 1972, in Desaijanj, Maharashtra two policemen called Mathura, a girl of 14-15 years of age to the police station. There they proceeded to sexually assault her. Her family members who were waiting outside the police station were able to create enough ruckus for their complaint against the policemen to be registered. Soon this case went on trial to the sessions court where they found the defendants not guilty. The Bombay High Court where this case was appealed found the defendants guilty and sentenced them to five years of imprisonment. At the same time, the High Court even stated that coercion or force cannot be considered as consent. But the Supreme Court overturned this decision and acquitted the rapists. The acquittal was done on three grounds. Firstly, that the girl had never clearly expressed her non-consent. Secondly, there were no clear injuries or lacerations which indicated force and thirdly, since the girl was already used to sexual intercourse, her claim that she was raped was dubious.¹

This judgement brought together human rights activists and feminist groups who protested the patriarchal and narrowminded view of the apex court. Not only did the court turn a blind eye towards custodial rape, but they also went ahead and made judgments on the survivor's character as if it held any relevance on the crime. The amount of time that courts put on determining the survivor's character and sexual history raised questions regarding the relevance of it, highlighted the narrow minded and patriarchal nature of legal process related to women and children. This led to an extreme outrage in the civil society which ultimately forced the government to change the laws.³⁹

Because of the campaign, The Criminal Law (Amendment) Act, 1983 included changes in the provisions for custodial rapes and included more rigorous punishments for offenders. It also shifted the burden of proving innocence from the rape survivor to the rapist. The victim was not expected to prove that she did not give her consent but rather the court is expected to believe her when she says that she did not consent. It demanded that women cannot be called to police

station before sunrise and after sunset. It also initiated the rape trials taking place as closed proceedings.

The Supreme Court is the highest court in the country and this judgement came as a shock to all those who believed in the legal systems contribution to women's equality. Not only did the court treat the victim as a criminal, and judge her, they also conveniently forgot that she was a minor when assaulted. They also forgot the assault was committed within state institution and by policemen. This case is an example of how easy it is to deny justice to those who need it by holding on to narrow patriarchal beliefs. Unfortunately, this was not the only such case.

Ten years later, on September 4, 1987, more than 150 years after Raja Ram Mohan's crusade against sati, 18-year-old Roop Kanwar immolated herself by jumping in the funeral pyre of her husband. The practice of *sati* or widow burning has been a prevalent practice which is glorified in India. despite being banned, in 1987 a young girl committed *sati*, as a mass audience watched this taking place. Instead of stopping her, the spectators cheered her as they believed that she would attain a divine status. Some of these spectators also consisted of local politicians. Even today people use pray at the site where Roop Kanwar committed *sati*. In the same year, both house of parliament passed the Commission of Sati (Prevention) Bill making *sati* a punishable offence and bans the construction of temples to celebrate *sati*. Today the practice of *sati* is rare with almost on case registered in the past few years. But Roop Kanwar case is important one to remember.⁴⁰

The social transformation which the pre independence women's movement imagined was far from achieved. Unfortunately, women's organizations, the courts and legislatures found themselves in the same position where the movement for women's rights had started. This was a reality check to all those who believed that equal civil and political rights had changed the status of women in India. It completely brought down the political fiction that women were developing with the nation. The political and legal commitment to women's empowerment seemed futile in a society which was so steeped in patriarchal traditions that they celebrated a young woman being burned alive.

If this was the future awaiting women after nearly four decades of independence, then the political- legal system has misjudged the level at which patriarchy was imbibed in our social-cultural fabric. Laws and policies for women's empowerment clearly failed to consider how important controlling women lives in name religion or tradition was for the society, something that laws were unable to address. This case also recognized that political sphere was not the

only space where empowerment was needed and that the legal right to equality will not guarantee the removal of patriarchal mindset which threaten the lives of women.

Both Mathura and Roop Kanwar had one commonality. They both were young, dependent on their family and marginalized in the society. They were not only vulnerable because they were women, but they were also vulnerable due to the position they held in the society, and this added to the disempowering condition they experienced. But patriarchy is more pervasive and oppresses women irrespective of the position they hold in the society. Despite being in positions of empowerment, like political position, well paid jobs, women are still disempowered.

In 2011, India witnessed one of the most brutal rape cases to be publicly acknowledged. A young girl was gang raped in a moving bus and then thrown out on the streets of Delhi. The horrifying gang rape served as a grim reminder that the safety of women in India was far from achieved. The case highlighted the many shortcomings of the legal institutions for ensuring women's safety. This case combined with the continuous increase in crimes against women pointed out the system's apathy. The brutal rape led to mass protests against the governments inefficiency in ensuring a safe public space for women.⁴¹

After decades the civil society once again demanded questioned the political institution's ability to ensure equality for women. The case became more controversial when the rapists were to be judged for their crimes. The laws were outdated and inefficient in actually guaranteeing justice for the victim who passed away in a hospital due to her extensive injuries. This led to another round of massive protests which pressured the political and legal system to carefully reassess the laws for women. The 2011 gang rape case, also called as Nirbhaya Case placed the responsibility of women's safety on the government. the claim of the civil society was simple, if women were unsafe and laws were unjust, then women were unequal. The civil society questioned the government's hypocrisy in dealing with the continuous oppression which women experienced.

The Nirbhaya case also revived the debate that violence against women and inequality which women experience are normalized at an institutional level. While parliamentarians claim they stand for women's equality, they themselves many times condone inequality between men and women. This can be clearly seen in the manner in which members of parliament and other politicians talk of their female counterparts. Priyanka Gandhi Vadra a politician from the Indian National Congress party has often faced sexist remarks for being too pretty to be in politics.

Many times, opposition leaders insinuate that she is trying to influence votes through her beautiful face. The same was said for actress Urmila Matondkar when she was contesting for a Lok Sabha seat⁴². This highlights how women politicians are supposed to fit into a specific image of being ‘old’ and ‘ugly’ in order to be capable. This sexism indicates how exactly women are treated in political spaces. Even within the Lok Sabha elected representatives are not free from misogyny and sexism. In May 2022, MP Supriya Sule was asked to ‘Go home and cook’ by Maharashtra BJP chief Chandrakant Patil.⁴³ Even though he later apologized, the fact still remains that patriarchal thinking is rampant that even members of parliament are impacted by it. Undoing patriarchy in political spaces is not easy, and this is evident from the behaviour and language used by politicians who are responsible for making laws for women’s empowerment.

It is assumed that having the right equality is enough to overcome centuries of discrimination. But can equality exist if the very source of inequality is not eradicated? For women to be equal to men, laws will need to weaken patriarchal domination which exists in the political, economic, and social spheres. This is easier said than done. As seen above, patriarchy is a pervasive structure of domination which depends on the subordination of women. Before independence, the absence of right to equality allowed patriarchal norms to flourish in all spheres of life. Even though the subordination of women was challenged rigorously, the laws could only function in a limited manner.

After independence, the scope of equality increased phenomenally due to its recognition as a right. This recognition meant that many patriarchal norms and practices which were normalized in social, political, and economic spheres were delegitimize. The political space opened to discussions on women’s rights and many oppressive practices against women were criminalized, for example dowry. Yet, women in India stand politically underrepresented, economically backward and socially subordinated. Rights did not bring the revolutionary change in the status of women as imagined. They barely weakened the blight of patriarchal oppression which women experience.

Actually, many times, political and legal institutions have come out in support of patriarchal practices too. It appears that patriarchy has adapted to the changing nature of the political and legal system. The overt and pervasive nature of patriarchal norms has been replaced with a more hidden and insidious type of patriarchy. Patriarchy uses the complex notions of equality and empowerment to survive and is slowly leeching away from the goal of gender equality.

Patriarchy and empowerment are not the adversaries they were imagined to be but rather they share a unique friendship. This is an uneasy relation as the process of empowerment has the potential to undo patriarchy. Yet at the same time, patriarchy too can be destructive to the process of empowerment. Even though both notions are a threat to each other they somehow survive together. Modern forms of patriarchy have no choice but to leech out of the laws and policies for empowerment, but the reason why the idea of women's empowerment accommodates patriarchy is unclear. Through my research I attempt to highlight the parasitic relationship between patriarchy and women's empowerment and make a modest effort to provide suggestions to subvert the same?

1.3 Review of Select Literature:

“It is important to realize from the outset that the analysis and criticism of the thoughts of political theorists of the past is not an arcane academic pursuit, but an important means of comprehending and laying bare the assumptions behind deeply rooted modes of thought that continue to affect people's lives in major ways.”⁴⁴

Across the world inequalities between men and women are a tragic yet common occurrence. Despite this, there is very little work available to understand the level at which this inequality exists. Like Okin says, in order to understand why something exists, one must study the past and all its available theories. This section will focus on the major literature available in this area of research. The key findings of the following literature will be highlighted along with its limitations which has contributed to the research.

The first theme that this research interacts with is the position of women in politics. It seeks to investigate how women are theorized within the political sphere and political activity. While women have always been subjects of social and cultural life, it is only recently that women have become participants in political sphere, that too mainly in democratic systems.

Susan Moller Okin, scrutinizes the politics of marginalization of women in her book *Women in Western Political Thought* which was published in 1979. Her book questions the presence of the 'long-standing, deep-rooted, and continuing subordination of women in contemporary societies.'⁴⁵ Since the nineteenth century, women have been included in the public sphere as citizens they are treated as second class citizens, who have very little say in decision making process. The presence of women in political participation is limited, their contribution to economy is restricted while their position in the family remains unchanged. Okin examines the

canonical works of four theorists, Plato, Aristotle, Jaques Rousseau and J.S Mill, and attempts to explore the position of women in their respective works. Though she criticizes the absence of women in theories of political philosophy written by men, for men, she also examines if political philosophy is responsible for the treatment of women as second-class citizens.

Okin starts her thesis by examining the misogyny which is found within traditional Greek philosophy. She examines Plato's work especially *Republic* where he proposes to abolish the family and private property so that completely loyalty to the state can be maintained. He is the only thinker who considers family as an impediment in the establishment of a just society. But when he writes the *Laws*, the roles which women play in the public become limited and they become "private wives" who perform more traditional roles within the family. Okin observes that Aristotle, Jaques Rousseau and J. S Mill also, restrict women to the private sphere where they only play traditional roles. According to Aristotle, reproduction and child rearing are natural functions of a women which is why men pursue laws. He defends a society which hierarchal, patriarchal, and functional as natural, and thus, the inferior position which women attain is natural. Rousseau carries forward this tradition by stating that women's role in the society is sexual and reproductive by nature due to which her actual and potential abilities are not as limitless as men. Rousseau is one of the few philosophers in the cannon of political philosophy who examines the source of inequality among men. Unfortunately, this investigation is only for men, and the inequality between sexes for him was irrelevant.⁴⁶ Mill on the other hand, writes one of the seminal feminist works, being one of the only scholars who applies the principles of liberalism on women, treating them as equal citizens. His inclusion of women is dependent on her feminine qualities of selflessness and moral restraint which could be utilized in politics. Also, while he supports women rights, he doubts if they can be separated from their traditional roles in the family and become participants in political life.

According to Okin, women are marginalized because the philosophical landscape does not create space for women's rights. Women's rights and inclusion in politics is mere embellishment as the political philosophy does not support it. She proposes that since most theories either ignore or justify the subordination of women, it is important to demolish them in order to attain equality. She proposes that the women's subordination starts with the family and hence, the notion of the family is fixed within the private sphere needs to be altered or demolished. She resonates the feminist call of 'personal is political' and emphasizes on the necessity to erase the public-private difference. She establishes her claim by studying the above-mentioned philosophers and argues, that women's position of subordination is fixed by

the 'cycle of vulnerability' which exists in both public and private realms. She writes that the family is essentially gendered, and all roles played within the family influence women's capacity in the public. If the family is unequal and marginalizes women, then it is only natural that the public sphere will reflect the same.

Okin examines the manner in which canonical philosophers have subordinated women within a public-private system which privileges men and subordinate's women. She accentuates how the public-private spheres are rigidly patriarchal structures and contribute to the subjugation of women's rights. While she writes about patriarchy as a source of subordination, she does not examine it in her book. Her examination of western political thinkers has limited contribution in examining how the subordination of women came into being in India which has very different theoretical foundations than the western countries.

The theoretical foundations of women's position of subordination can be found in some historical readings of the position of women in the Indian society. Liddle and Joshi analyse the women's movement during the colonial period and attempt to interact with the theorization of 'women' and 'political subordination' in their work 'Gender and Imperialism in British India' published in 1989. They argue that the struggle against inequality started with the British colonization of India. They are the ones who raised the 'woman question' and highlighted the unequal position of women in India. It was through the interactions with the Britishers that the Indian political position on women became clear, that is women were subordinated and oppressed. They argue that women in India before independence had to struggle against two structures of domination. Firstly, the domination of men over women and secondly, the domination of colonizers over women. The inequality generated from domination of men over women and colonization over women was different.

“...in India male domination alone did not account for women's subordination.

The colonists both improved women's position and worsened it in particular ways, but their actions were dictated, not out of concern for women, but out of the desire to maintain their financial interests and political power in the foreign country.”⁴⁷

This paper scrutinizes the relationship between British Imperialism and unequal status of women in India. The British adopted a contradictory role towards the position of women in India. Firstly, they legitimized their rule over India due to the dismissal of women and secondly, they chose the policy of non-involvement in issues regarding cultural and religion in

India. Inequality between men and women is one of the foundations of British imperialism in India which they perpetuate through their legislation. In order to justify their colonization in India, the British used legal initiatives to abolish certain practices which oppressed women in India. Liddle and Joshi, highlight the abolishment of *sati* (1829), widow remarriage (1856), increase in the age of consent till 12 years (1891), prohibition of female feticide (1870) among the various other legal initiatives made to improve the position of women in the society. As opposed to this, when it comes to restitution of conjugal rights, prostitution and female suffrage, the colonizers adopted a more conservative approach. The British government was highly selective in choosing when to be progressive about changing women's status. This selection was done more to support and legitimize their own rule over India than to support women rights. According to the authors, this selective approach was adopted by the government after independence too where most of women's demands for equal rights were subverted to accommodate the greater demand for development and progress. The paper indicates that many times laws for women are not made to change the position of women in the society but mainly focus on improving the position of the political ruler.

This paper played a very important role in bringing out the contradictions of legislating laws for women. Despite, its contribution to setting the basis of this research, this paper is limited in its political reading of women. While the paper studies the position of women and women's demands for equality in India, it does not analyse women as political agents. The question regarding the construction of women's political identity goes unexplained here.

To further understand, the position of women in India, the researcher examined the works of Radha Kumar, titled as *The History of Doing: An Illustrated Account of Women's Rights and Feminism in India 1800-1990*. This work is a comprehensive documentation of women's movements in India. It studies both, pre and post independent women's movements in India. It emphasizes that the women's movement in India started as a social reforms movement which was mainly concerned with removing the social evils which afflicted the society. It did not interact with the subjugation of women or with the unequal position of women in the society. It continues to explore, women's movement in the twentieth century, where women started organizing themselves and provided an argument for women's rights as different from social reforms. They asserted the need for women to be recognized as political actors with rights of representation. The demand for political rights correlated with the demand for equality between men and women.

After independence, women's freedom became an important demand. The concept of women's equality is dependent on the lack of control over women's social and economic choices and became the rallying cry for women's movement. Social evils like dowry were renounced and legislations were influenced by the women's movement to protect women from dowry deaths. At the same time, women contributed greatly to the demand of economic rights, highlighting the inequality of economic opportunity between men and women in India. The demands for martial leave, equal pay, more female centric jobs became the central theme of women's movement. By the nineteen eighties, the body became the site of contestation. The rise of movements against rape, anti-sexual harassment, domestic violence became the foundations of the new Indian women's movement. This combined with environmental issues broadened the horizons of women's demands for equality in India.⁴⁸

Kumar does not just highlight the development of women's movement and the complexity of women's demands, but also highlights the challenge these demands made to the patriarchal structures were ignored so far. She analyses the shift in women's demand for equality which started with the realm of patriarchal structures till it started destabilizing the structure itself. Yet, Kumar's exemplary work on women's movement still is unable to theorize the very structure that Indian women's movement challenges, that is, patriarchy.

To understand and conceptualize the research better, it was imperative to refer to Sylvia Walby's article on "Theorizing Patriarchy". Walby, is one of the first theorists who ideate patriarchal structure as different from capitalism.⁴⁹ Most scholars assumed that patriarchy was a structure in which men dominated over women. This domination according to most scholars is derived from the skewed relations seen within the capitalist structure as they are closely related structures. Walby differs from them stating that patriarchy, both, predates and postdates capitalism and cannot be studied only in relation to capitalism. Secondly, she identifies that race and ethnicity too impact the domination which women face in patriarchal structures. It is not to say that women are less or more subjugated due to race or ethnicity. It is emphasized that race and ethnic relations may be unacknowledged sites of patriarchal oppression.

She moves on to criticize the emphasis which scholars have placed on having a single foundation for patriarchy. The assume that patriarchy is rooted either in economic relations, reproduction, or compulsory heterosexuality. Walby argues that patriarchy has many foundations and identifies six of them which were discussed in the beginning of the chapter. She states that patriarchal structures are of six types which come together to form a unified

system. Walby identifies patriarchal modes of production, patriarchal relations within waged labour, patriarchal state, male violence, patriarchal relations in sexuality and patriarchal culture as important structures which form the patriarchal system.⁵⁰ Firstly, women labour is appropriated by men with the household through marriage, creating a division of work for which women are neither acknowledged nor paid. Secondly, she argues that women do not have the same access to paid work like men do and end up working for low paying, temporary jobs which keeps them dependent on the better paid male of the family. Occupational segregation acts as a major foundation of patriarchy. She moves on to argue that occupations segregation and social skewed division of labour are perpetuated due to the presence of the patriarchal state. The state is patriarchal in nature, which is proven by the exclusion of women or limited involvement of women from political activity. This also influenced the nature of laws and legislations for women like divorce, contraception, abortion, wage discrimination among others. She goes on to state that men use violence against women as a form of domination. Acts of violence like rape, sexual harassment, domestic violence all is form of patriarchal domination which men perpetuate over women. This domination also extends to the sphere of sexuality, where patriarchal beliefs force heterosexuality on social relations. Finally, she asserts that the patriarchal system is founded on patriarchal culture, 'a structure which is composed of a relatively diverse set of patriarchal practices.'⁵¹

Certain ideas like femininity and masculinity are discussed and normalized through social relations. These practices and ideas familiarize patriarchy to our day-to-day life till the extent that we cease to question it. The theorizing of these structures of patriarchy have influenced the understanding of gender inequality. It is this theory that has impacted the conceptualization of this research. The logic of the patriarchal state and male violence have laid foundations to the structure of patriarchy this research investigates. Despite her conceptualizing of patriarchy, Walby's article is unable to arrange itself in the current practice of patriarchal relations which have become extremely dependent on laws to perpetuate themselves. Theoretically it is easy to imagine but difficult to identify with modern political systems.

This led me to refer to one of the most influential works in modern times is Carole Pateman's *The Sexual Contract*. Through her work, Carole Pateman unravels the story of The Original Contract. She identifies that the original contract is made up of the Social Contract which distributes civil and political liberties and the Sexual Contract which distributes patriarchal rights through which men subordinate women. As she states, 'The social contract is a story of freedom; the sexual contract is a story of subjection'⁵² she moves on to state that the original

contract is a sexual contract in terms of patriarchal rights. It does two things, firstly it establishes men's political rights over women and secondly it establishes an order through which men can access women's bodies. She emphasizes that the original contract does not undo the contract but rather, continues modern patriarchy⁵³

She continues to establish her point by critically explaining the shortcomings of the social contract theory. She establishes how paternal rights were confused with patriarchal rights and when social contract came into existence, it replaced paternal rights with state authority. The patriarchal rights remained intact and got even more rigid in their control over women through the sexual contract. She illustrates her idea through the book by theorizing patriarchy and understanding the relationship between contract, the individual and the slave. She also examines the political liberty as given to men which is different from those of women. She critically understands the structures of domination which influence the position of wives and slaves, which according to her are very similar positions. She continues to examine the idea of sexual contract by critically reading the marriage contract. She very carefully examines the position of the prostitute in the State and society and highlights how sexual control over a prostitute creates a male sex right which the original contract constructs to help men dominate over women.

She states that the greatest achievement of the sexual contract is not the elimination of patriarchy but rather its consolidation in modern form.⁵⁴ She highlights how the patriarchy has transformed itself to suit the political and economic conditions after social contract. Most of the times men exercise their masculine capacity within the political space and gain power through which they are able to control women. Since the social contract creates a masculine political space automatically men and their experiences are privileged giving them an unfair advantage over women. Feminists would attempt to undo this privilege by presenting an alternative which collapses the male sex right or privilege. They would suggest that by adopting a gender-neutral framework, sexual differences would become politically irrelevant. For them this is the defeat of patriarchy.

While this method works under certain circumstances, sometimes it can yield problematic results. For example, rights which are delivered exclusively for women, like pregnancy or abortion, will not be entertained as the individual is gender neutral. The specificity of women's experiences is invisible in such a system as the individual is disembodied. Women are not disembodied individuals but rather within the contract they are embodied through marriage contract, prostitution contract and even surrogacy contract which grants men rights over women's bodies. The subordination of the women's body cannot be separated from civil

subordination. Yet the social contract will create a tale which states that a women's freedom in the political space will translate as freedom in the private too. In the end, women's subjugation is guaranteed through the sexual contract which is not being acknowledged.

Pateman's work is thought provoking and insightful as highlights the need to re-look at the social contract as it has constructed a fictional world where the lines of civil rights and patriarchal rights are blurred. Her work has deeply contributed to the conceptualising of my research. Pateman's work is theoretically relevant in understanding the relationship between State and the position of women. Yet, I must highlight that the condition in India is different from the western system where this text is placed. India does not experience the social contract like Europe or America did which means that many of her observations can be placed in Indian context in only a restrained manner. Also, she does not trace how patriarchy has colluded with political and legal systems in the non-western democracies which is a concern of my research. To address this lacuna, I shift to read Indian authors on have written specifically on women in India

Rajeswari Sundar Rajan gives an eloquent understanding of how 'women' are intellectualized in India and what is the relationship between State and women in her book *The Scandal of the State: Women, Law, and Citizenship in Postcolonial India*. In this book, Sundar Rajan, deals with two main themes: firstly, the importance of state in understanding women's identities and secondly, the impact of women's issues on State's functions. Through her book, she understands the role the State plays in recognizing women as citizens, who, at times are free individuals, sometimes are sexualized subjects, at other times they are members of communities, most of the times they are a vulnerable category which the State needs to protect, and in some rare moments, they are deviant or immoral people e.g., prostitutes. As the State deliberates over the identities of women, it also decides the functions it will do protect women in India. She examines this within context of laws, citizenship and the real social- cultural realities which influence women's identities and issues. Through case studies, Sundar Rajan maps out the manner in which the Indian state falls short of its promise of women's rights. She analyses many different issues, like a custody battle over Muslim child bride, forced sterilization of mentally ill female patients in state institution, the problem of female infanticide in Tamil Nadu, recognizing prostitution as a labour instead of crime and the surrender of Phoolan Devi, who was a famous outlaw. She highlights the different stand points of the state in addressing the complex reality of women's issues and demands.

According to Rajan, the identity of women in India are conceptualized in two ways. Firstly, women as different from men and secondly, women are different among themselves based on religion, caste, occupation, class, and other categories. She states that the Indian State has two types of legislation for women, one which treats them as a 'unitary' category and another which treats them as 'differentiated' category. She analyses the complications the Indian state must deal with when addressing women's issues. The continuous confusion that the State experiences to recognize women as either a 'subject' or a 'citizen' has led it to take some decisions which have comprised women's rights instead of giving them. She also reflects on how the State uses laws to shape the identity of women and the dependency of women issues on these laws⁵⁵. Through her continuous questioning of the State's policies towards women, she has managed to paint a very complicated picture of the women's rights and equality in India. She proves that while all women may be citizens in India, all women are definitely not equal citizens when compared to men. The terms of engagement between State and women itself has patriarchal connotations. While her work is relevant in understanding the manner in which State interacts with women's rights, her work does not focus much on how laws influence women's rights to equality.

To observe the relationship between laws and women's rights, my research analyses the work of a prominent author on women's legal rights. Flavia Agnes in her book, *'Law and Gender Inequality: The Politics of Women's Rights in India'* which was published in 1999. Flavia Agnes, addresses the relationship between women's rights and politics through the realms of family laws. She attempts to map out gender and law reforms within the context of political and legal strategies. She offers a view on the origin and development of family laws in India and the various state intervention in context to gender equality. Her study is divided into two main parts; firstly, pre-colonial, and colonial legal systems; secondly, post-colonial legal systems in context to women's rights. She studies the impact of ancient texts and scriptures on the formations of women's rights in India. Then the book explores the influence of British legal systems on the politicization of personal laws in India.

The book then moves to examine the legal system after independence which has committed itself to achieve equality. She claims that the Constitution became the benchmark against which women's rights for equality were measured in India⁵⁶. She observed the law reforms in Hindu, Muslim, Christian and Parsi civil codes in context to the demand for gender equality in India. She examines the need for a uniform civil code to establish gender equality in the religious and community spheres. She concludes that women's rights to equality are challenging to achieve

in India. They are constrained with a set of patriarchal norms and are also shaped and moulded by several social, economic, and political currents.

She suggests two strategies for the women to gain equal rights within the personal laws. Firstly, she states that one needs to dissociate concerns of gender from the context of identity politics. Identity politics is the sphere in which the demand of Uniform Civil Code is located. According to her, if the Uniform Civil Code is gender neutral then there are greater chances of achieve equality. Another suggestion which she gives is that economic rights need to be at the centre of matrimonial relations. She states that the institution of marriages which is the major domain of personal laws is closely linked to the institution of property linking economic rights of women from marriage rights make equality easier to achieve. She concludes by saying that patriarchal practices are continued through both economic and political practices. The laws need to recognize this.⁵⁷

Flavia Agnes examines the personal laws in relation women's rights for equality with great clarity and sensitivity. While there is a need to reflect on the suggestion she gives, they are not addressing the concern this research has, that is, can laws be effective instruments in bringing women's rights to equality? Flavia Agnes also avoids the debates on body as a site of patriarchal control and ignores the politics of violence which weaken legal frameworks for women's equality in India.

To address this question, I review Nivedita Menon's work, *Recovering Subversion: Feminist Politics Beyond the Law*. Menon, analysis whether recourse to law is an effective strategy. According to her observations, laws was initially sought as a potential source for emancipation of women but since the nineteen eighties, the women's movement gradually shifted away from laws. Laws are inherently discriminatory to women and often acts as an instrument of patriarchal practices. She states that the law assumes equality among men and women who are located differently in cultural, social, and economic formations. The law, according to Menon, is a flawed instrument, yet the only one which has emancipatory potential.⁵⁸

She moves on to investigate the notion of rights within the sameness vs difference debate in feminist legal theory. She addresses this notion by analysing the debate over abortion, sexual violence, and reservations. Through her reading of related legislations and analysis of major theories, she concludes that laws are not emancipatory in their nature but rather adhere to the power systems by producing and regulating identities. She states that the law is producing a single identity of 'woman' and constructing laws to regulate this identity. Through this the law

subtly imposes patriarchal structures under the guise of delivering rights. Women feel like they have free will and equality as the law assumes it, but in actuality they have very little of both⁵⁹. They compromise with basic entitlements within the patriarchal structures. So instead of being emancipated, women are marginally subjugated. The law ends up being a subversive site instead of an emancipatory site. She argues law can only be viable in distributing equality if it follows the strategy of litigation, that is, using existing laws defensively or aggressively to advance claims of women⁶⁰.

Menon is severely critical of the political and legal spaces in addressing women's issues, to the extent that her core argument shifts feminist deliberations beyond the scope of law. But since the publication of this book there have been many judgements and policies which have exposed the patriarchal structures and weakened them greatly. Routinizing patriarchal practices is severely challenged and discouraged in the political space. State and non-state actors are showing a greater level of commitment in bringing women's rights than before. While there are still many challenges to the women's demand for equality, the legal situation is not as dismissal as indicated in the book. This means that there is scope for new strategies to develop to challenge patriarchal oppression through laws itself.

All these texts have contributed to constructing very clear picture of the relationship between women, State, and the laws. The suggestion and strategies given by these scholars have helped in understanding the need for feminist legal intervention to create gender equality. Despite their contribution, these works have not directly deliberated the relationship between women's empowerment and continuous patriarchy which is the core theme of my research. None of these texts investigate the influence of patriarchy over intersecting themes of political representation of women, oppression of women in workplace or the violence on women in the domestic which is another concern of my research. My research will also focus on introducing some strategies to subvert the relationship between women's empowerment and patriarchy. These texts have contributed greatly on the discourse of women and rights. I can only make a humble effort in contributing to the discourse on women's empowerment.

1.4 Concerns and Organisation of the Study

My research seeks to investigate the relationship between women's empowerment and patriarchy in India. While women are regarded as equal in India, they are not treated equally. Despite many efforts made by political and legal institutions, patriarchal oppression is a lived reality of women all across the country. So, what more can be done to empower women and

give them the equality that they have been struggle for? The answer is to eradicate the influence of patriarchy which oppresses women. This is easier said than done, as patriarchy is a complex hierarchy which is deeply seated in the social fabric of India. To eradicate the influence of patriarchy is a formidable task but not an impossible one. The guarantee of right to equality as enshrined in the Indian Constitution is a powerful tool to weaken the structure of patriarchy. Yet, I wonder, is it enough?

In Indian political-legal structure women are recognized as equal due to the presence rights. Yet, the position of women in social, political, and economic structures are far from equal. Women have equal civil and political rights in India. It means that women can vote and contest for representation without any discrimination. They will also attain all civil and political privileges equally. This means that as democracy progressed and strengthened in India, the political position of women in India will also improve. But this did not translate into a political reality and women in India continued to retain the position of subordination. This is a confusing scenario as India has strong legal framework to support equality of women, and a political disposition for women's empowerment, so the lack of equality and empowerment should not appear to be so deliberate. It is this confusion that becomes the foundations of my research. Through my research I attempt to answer the following concerns:

1. To what extent does the guarantee of rights in the Constitution of India promote gender equality?
2. Do the experiences of inequality indicate the existence of a continuous strand of patriarchy?
3. Have the guarantees of equality successfully undone patriarchal influence?
4. If patriarchy remains unquestioned, then to what extent is the claim for women's empowerment in India effective; alternatively does this lack render all strategies and policies to achieve empowerment as useless?
5. Does questioning patriarchy provide an effective and transformative platform for guaranteeing women's empowerment?

The Constitutional guarantee of equality was the first step in changing the position of women in India as it posed some challenge to patriarchal assumption that women are subordinated to men. In India this was an especially powerful claim, as the socio-cultural system in India subordinates and oppress women on a daily basis. The guarantee of equality did more than recognize women as equal to men. It has women the ability to challenge those practices and

arrangements which encouraged and continued their subordination. The right to equality was not interpreted in a limited manner but rather was constantly deliberated. This deliberation has led to many parallel ideas of what constitutes of women's equality to exist. It has also created a complicated framework of approaches towards laws and policies which are meant for women's empowerment. This multiplicity of ideas and complications have created a wonderful discourse on equality and women's empowerment in India. But this has also led in limiting the challenge equality and empowerment pose to patriarchy.

Patriarchy is a multifaceted hierarchy which continues in more than one sphere. It is a social, cultural, economic, and political hierarchy and so the subordination of women cannot be undone without challenging patriarchy in all spheres. And herein lies, the challenge of women's equality and empowerment. I attempt to understand how the right to equality is impacted by continuing patriarchy and how in turn this influences policies and laws made for women's empowerment. I attempt to understand the efficiency of laws which aim for women's empowerment but are failing to challenge patriarchy. In order to do so, I analyse the position of women in three main spheres: the political, the workplace and the domestic.

The reason I choose these three spheres to analyse the empowerment of women is at serious political and legal efforts have been made to address the inequality which women experience. This is not to say that in other spheres, the efforts have been in vain, but rather the political sphere, the workplace and the domestic have been modified through legal interventions to accommodate women's demands for equality. These legal interventions in forms of laws or policies have taken place after many deliberations not only within the court but also within the society. The involvement of state and non-state actors in making laws to create equality should have ensured that the discrimination which women face was replaced with empowerment. But this is not achieved as of now. This why understanding the relationship between women's empowerment and patriarchy within the context on these spheres is imperative.

The first sphere which I study is the sphere of politics and women's representation in the political process. Women have been a part of political process since before independence as they were active participants in the freedom movement. Women's groups organized themselves to raise the demand for women's rights while at the same time they also demanded for Indian Independence. This is perhaps a very interesting notion of the emergence of women's rights in India. That the demand for women's rights and the demands for independence went hand in hand, almost as if could not be one could not be achieved without the other. And as promised,

the Independence of India brought with it the right to equality and freedom. Women were equal political participants and could not be discriminated in public spheres. They had the right to vote and be represented like any man. They were recognized as important political actors. Or at least that was imagined.

Today after nearly seventy decades after independence women have barely made it into representative institutions. According to the report published by the election commission, in the 2019 Union election 67.18% of total women electorate cast their vote, making them active participants in the democratic process.⁶¹ Yet, out of 8052 candidates, only 726 were women out of which only 78 women won seats in the Lok Sabha. For better or for worse, 78 is the highest number of women to be elected in the Lok Sabha ever.⁶² In state assemblies also the number stays less than desired. Like the CSWI report states, only in local self-governments do we see some presence of women due to reservation as it is assumed that rural women's issues and experiences remain undervalued and invisible in the political process.⁶³

The reason why women are so underrepresented in Indian politics is because they are either not elected or they do not get a chance to contest elections as political parties prefer to give tickets to male candidates. Political parties were and still are hesitant to give tickets to women, especially if she is to contest against male candidates. Overall women's representation in political institutions in the past many decades has been less than desirable. To solve this issue, women reservation was considered as a solution. The idea of women's reservation is not a new one and had come up during the Constituent Assembly debates. It was rejected by the female representatives as unnecessary as they trusted that the Indian democracy would ultimately give adequate representation to all sections of the society.⁶⁴ Many reports of the government suggested that women are almost absent in political institutions despite their political presence as an electoral. The most notable contribution was that of Committee on the Status of Women's report which highlighted that women's issues were not highlighted even by the women who were elected representatives. Women were not a huge number in political institutions, nor were they politically mobilized to contribute in political debates.⁶⁵ This meant that increasing the number of women either through reservation or through mobilization was a priority if the promise of equality is to be fulfilled.

This caused a renewed interest in the demand for women's reservation as many assumed that reservation for women will lead to better representation women's issues and demands. As Mazumdar highlights, "It is time for India to try out some new experiments in achieving real

democracy”.⁶⁶ Reservations is promoted as experiment to encourage democracy at all levels for all citizens. While some support it, others identify flaws within the concept of women’s reservation. The proponents of women’s reservation assumed that reservation for women in parliament and state legislatures, would weaken the patriarchal character of the political parties which preferred male candidates over female ones. Moreover, the more the number of women in parliament, the more women’s issues would be represented⁶⁷. Reservation for women, hence, became the convenient formula to undo the absence of women in political institutions. The demand for reservations was so resounding that in 1993 for the first-time women’s reservation was granted to local self-government. The local self-governments of rural and urban areas had thirty-three per cent reservation for women and the position of chairperson was also reserved. This was for two main reasons; firstly, to accommodate the demands of the almost invisible rural women and secondly, for grassroot level transformation. It is assumed that the only way women could be encouraged to enter into politics and assume the position of an elected representative was through the states guarantee for reservation. I wonder if this assumption is true or just made up to support the patriarchal characteristic of the state which needs to ‘protect’ the vulnerable sections of the society which in this situation are women.⁶⁸

I do not doubt the intention of the reservation for women in local self-government. It is very clear that through reservation the State is attempting to deliver some measure of equality. Like Mazumdar highlights, there is also a need for political experiments to strengthen Indian democracy. But I have to ask, if the increased numerical presence of women can undo the inequality which women face in their daily lives? If elected male representatives are unable to represent women’s demands and issues, then it indicates a pervasive patriarchal nature of the politics. In such a situation can women’s reservations make any useful change.

Also are ‘women’ a single identity, devoid of any class, caste, or religious links, that they can be represented as an entire category of their own? And is the line of lived experiences so different, that it becomes impossible for men to represent women’s issues? A significant part of politics assumes that women are a ‘single category’.⁶⁹ Laws and policies for women’s equality and empowerment just assume that all women experience the same kind of discrimination and experience. It assumes that women belong to a single gender-based category and ignores their membership in social, economic and community structures. Caste, class, religions, race, ethnicity, all influence the manner in which women are discriminated against. All women experience patriarchy differently which influences their demands significantly. They may have similar demands, or they may have different demands. Assuming that only

women representative, can represent all women seems like a limited approach towards the issues of the representation. In chapter two I will also be analysing if women can be recognized as a single category for the sake of representation, and if yes, then till what extent they can do so.

These questions were raised when the proposal for reservation was presented in 1996 with The Constitution (Eighty-First Amendment) Bill which guaranteed thirty-three per cent reservation for women in the parliament. Due to strong opposition this bill was not passed. The clearest argument against the bill was that women were not a homogenous category. Women demands were a part of the group and communities they belonged to and so assuming that all women's experiences were same was defeating the purpose of reservation. In 2008 again, an attempt was made for women's reservation under The Constitution (One Hundred and Eighth Amendment) Bill which asked for one third reservation in both Lok Sabha and state assemblies. This bill was also not passed as it processed similar flaws like the one before it. And as we can argue now, the representation of women in government bodies continues to remain less than preferred.

It is not wrong to assume that despite having equal political rights and a very prominent presence in Indian democracy, women's representation in decision making institutions is disappointing. For a group to have such a large presence in democracy and yet being under-represented for decades indicates that the political space has not modified itself to accommodate the demands of the said group, in this case women. The issue of under-representation of women in political institutions has been acknowledged. Many government reports have often highlighted that woman are not allowed the same opportunity as men to be equal participants in political representation. Women are important political participants, especially for mobilization and socialization purposes, but when it comes to holding positions of power, women are side-lined.

Through my research I investigate to what extent is the influence of patriarchy on equal political representation of women in India? I want to identify the barriers in women's political representation. Through my research I seek to understand if reservations for women is the only solution to improving representation of women? If so, then what are its flaws? I also attempt to understand if women's reservation challenge patriarchal influence in politics or does it negotiate with it? Can women's reservation become a site for patriarchy to continue its

influence on politics? If this is the case, then how can we break down the patriarchal influence on women's representation and replace it with a more equal system?

While deliberating over women's political presence/ absence, I have to also acknowledge that the discrimination they face in the political is not independent of the discrimination they face in other spheres of life. Once again, I emphasize that women are not an isolated category but are members of various communities and groups in the social, political, and economic realms. This membership in these communities modifies their experiences of oppression and subordination, therefore also changing the accessibility they have towards equality and empowerment. On the basis of the position, they hold within the social and economic sphere their experience of empowerment and equality will change. This is the reason, why the discourse on women's empowerment and equality cannot be limited within the spheres of politics only. Through my research, I also try to understand the position of women and their struggle for equality and empowerment within the economic sphere.

The socio-economic disparity between men and women has grossly limited the access which women have towards empowerment. As done with political rights, it was assumed that the process of development would remove the economic inequalities which marginalized certain sections of the society. As the decades passed, this dream of development-oriented equality started unravelling. The economic sphere, like the political sphere continued to discriminate against women. Unlike the political sphere, the economic sphere is too deeply affected by socio-cultural norms in India. After all, much of Indian economic system is affected by traditional caste based or religion-based arrangements. Despite many decades of planning for development, the influence of the socio-cultural norms has to been reduced. Even patriarchal norms and practices continue to influence the economic sphere. This is every evident by the acute difference in the contribution of men and women in the economy.

The influence of patriarchy becomes even more visible in the workplace, where the entire hierarchy is arranged to privilege men. Despite many interventions, like, The Equal Remuneration Act, 1976, Maternity Benefits Act, 1961, Maternity Benefits (Amendment) Act, 2017 and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, women are neither equal nor safe in the workplace. At the workplace, women do not experience discrimination in terms of opportunities or wages but also face the onslaught of violence, physical and mental in form of sexual harassment. This inequality combined with violence makes women's position in the workplace very vulnerable. The

continuation of these practices despite the existence of laws which prevent or abolition discrimination against women, highlights that the workplace can be a site of continuing patriarchy. Afterall, patriarchy is the structure which exploits women by maintaining their position of oppression, which is done very effectively by limiting the access to economic empowerment.

The economic sphere, especially the workplace has proven particularly challenging for achieving the goal of women's equality. Under Article 16, Women in India have equal access to employment opportunities, and under special conditions the government can also give special privileges to women.⁷⁰ Also, under special laws like, the discrimination against women is severely criticized. Legally, a real attempt has been made to challenge patriarchal domination within the workplace. But has it changed the status of women in the workplace?

According to the Preamble of the Indian Constitution, 'equality of status and opportunity' has to be granted to all its citizens. A workplace free from discrimination is the right for all citizens. Yet, the discrimination of women at workplace continues as even today most women have access to only jobs which are identified as 'appropriate for' women or 'pink collared' jobs. The problem of 'double day' work, which is paid full time work at the workplace, and unpaid full-time work at home, is still a major cause of concern. According to the Periodic Labour Force Survey, 2019 average wage of women in India was Rs. 8,034 per month, which is 33% lower than the average wage earned by men which is Rs. 12,048. Women tend to be employed in lower income jobs, with only 13% earning more than Rs. 12,500 per month⁷¹. This shows that the workplace is still extremely discriminating to women. To make matters worse the stereotyping of women continues and opens new avenues of exploitation. Women also constantly experience sexual harassment at workplace. The unsafe work environment severely limits the access women have to economic empowerment. India has many laws which create the condition necessary for empowerment in the workplace, yet the result is far from desirable. Can such laws profoundly change the bias which is entrenched in the society or are laws covertly, fuelling this bias? Do these laws related to workplace even challenge the patriarchy?

Through my research, I attempt to analyse the journey of laws against discrimination and violence on women at the workplace. For this purpose, I critically analyse The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This law challenges the humiliation, bullying and blatant violence women have been experiencing

at the workplace. It not only delegitimizing but also condemns sexual harassment at workplace, a sphere which is broadly defined. As the Criminal Law Amendment Report says,

‘The right to be protected from sexual harassment and sexual assault is, therefore, guaranteed by the Constitution, and is one of the pillars on which the very construct of gender justice stands.’⁷²

Afterall sexual harassment is a gross violation of right to equality. This law attempts to ensure a safe working space for women and build a workplace which upholds women’s right to equality and opportunity.

Despite this, this law gets stuck within the patriarchal interpretation of who is the victim and who is the aggressor. This law continues with the victim-aggressor prototypes because of which women are seen as the perpetual victim and the man as perpetual aggressor. These fixing of roles encourages gender stereotypes and adds layers to discrimination, instead of challenging it. It also creates a space for patriarchy to adapt itself to a new system. Laws against sexual harassment at workplace are important in any country. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a unique law that comprehensively describes sexual harassment and the responsibility of the workplace in preventing it. It also broadens the logic of the workplace extending the security of laws into areas which were otherwise ill defined. For example, the work done by maids at homes also comes under the preview of sexual harassment.

My research focuses on understanding the type of oppression which women experience within the workplace. It also attempts to analyse the extent to which the public-private divide aids in the continuation of patriarchal oppression of women. Through this research I seek to ask, is it possible for laws to challenge and destabilize patriarchal structures or can laws only make cosmetic changes and retain the exploitative frameworks? Through the study of select laws and cases, my research analyses if it is possible to frame laws which truly create a fair and equal workplace?

Another major concern of my research shifts the focus from the public sphere to the private sphere. It deals with the debate on themes on ‘public-private dichotomy’ and ‘dominance’ which is also central to the discourse on women’s empowerment. The public is the space where all political and economic activities take place. The reach and legitimacy of the Constitution and legal structures are mostly limited within the public realm. Due to this the oppressive patriarchal practices within the domestic are ignored. Barely any recognition is given to those

power structures which emerge from the domestic and influence or limit women's rights. As Kymlicka will say, "...public-private distinction has reinforced the tendency to exempt family relations from the test of public justice."⁷³ This neglect of the personal and the domestic sphere brings the entire public-private dichotomy under the critical lens of feminist scholarship. To understand and/or challenge the influence of the power relations which emerge from the family is essential as it will help the State distribute the right to equality. One of the major concerns of this thesis will be understanding the mindset of the Indian State in relation to the position of women within the family.

Now the State is undergoing a deep sense of anxiety in its move to recognize the position of women in the family. Through legal intervention like Dowry Prohibition Act, 1961 and Protection of Women from Domestic Violence Act 2005, legal institutions are recognizing the violence which women experience within in the family. Yet the very same legal institutions are silent on framing laws against marital rape.

This indicates that there are only some practices within the domestic sphere which the laws question, while other practices are dismissed off. It seems that violent patriarchal practices can be challenged by the laws but only if it does not displace the power structures too much. This also shows that political and legal institutions choose which type of equality and empowerment women deserve and till what extent. To ignore the systematic oppression within the domestic means to ignore its commitment to the ideals of liberty, equality, and justice. To understand and resolve this anxiety which the State experiences, it is important for my research to study the position of women within the domestic.

For this purpose, I am critically reading the provisions against violence on women within the domestic sphere. I will analyse Dowry Prohibition Act, 1961 and Protection of Women from Domestic Violence Act 2005, and the absence of marital rape under Section 375 of the Indian Penal Code among others. Dowry Prohibition Act, 1961 and Protection of Women from Domestic Violence Act 2005 actively disparage the violence against women in the family, but both are rarely used efficiently. While both laws aid in challenging violence within the domestic, the access women have to these laws and its application must be critically analysed. If these laws are existing in a cosmetic manner, they will end up reinforcing patriarchy within the domestic. Same goes for the absence of laws against sexual assault in the family. While the laws on sexual assault have changed greatly since 2013, yet they have been unable to address the very prominent problem of marital rape. The laws unfortunately assume that within a

marriage there is perpetual consent. The silence on laws against marital rape highlight the hesitance laws makers must challenge patriarchy within the family. My research attempts to answer the question whether laws are the recourse to transformation of the position of women in the society. Is it possible for laws, to recognize marital rape as a crime and thus, highlight the presence of patriarchal domination within the most intimate relations?

Through my research I will investigate to which extent the guarantee of rights within the Constitution of India promoted gender equality. There are many patriarchal practices which exist within the political sphere, workplace, and domestic structures due to which the oppression of women is sustained. Is it possible that the experiences of inequality indicate the existence of a continuous strand of patriarchy? If that is the case, then have the guarantees of equality successfully undone patriarchal influence? Are rights even equipped to undo patriarchy in absence of social change?

The changing nature of patriarchy has impacted the terms with which the State engages with the notion of empowerment. Both women's empowerment and patriarchy seem to complement each other while at the same time, they also conflict with each other. In my research I also seek to understand this type of patriarchy which engages so closely with the State. The State has not completely rejected patriarchy even though it is a structure which contributes significantly to women's subordination in all spheres. The State also does not completely condone patriarchy in India. In my research I seek to understand, what is the State's position towards patriarchy. Is it possible that the State uses patriarchy to achieve its own goals and objectives? Is it possible that after decades of interactions with patriarchy, the State has formulated its own version of patriarchy which aligns with its own agenda? Is it possible that this unique version of patriarchy impacts the effectiveness of provisions for women's empowerment?

It is by answering to these concerns that my research attempts to make a humble contribution to the ongoing discourse on women's empowerment

Research Methodology

My research uses critical theory and feminist theory to explore the relationship between women's empowerment and patriarchy. Both critical theory and feminist theory are similar as they focus on socio-economic inequalities. Both these theories also attempt to propose a change in the current system. Critical theory is extremely essential to my research as it helps in identifying structures and practices which lead to oppression and inequality. Feminist theory

helps in specifically theorizing the key themes of my research that is, women's empowerment and patriarchy. By using critical theory and feminist theory, my research can observe the inequality faced in political economic and family structures more vividly. The combination of these methods helps in identifying the causes of inequality in various spaces, rather than just one. It supports a clearer understanding of gender-based inequality which exists in more than one sphere. It helps in providing a very clear and critical perspective of the patriarchal structure which can be considered as the hegemon in my research. Both these theories aid in observing the way the state orchestrates consent so that it is dominated by a hegemonic power. This is also the main concern of my research which seeks to understand whether the state uses laws to create consent to patriarchy instead of challenging it?

I do admit that it is possible to conduct the study in the form of a quantitative method by collecting data in order to understand different levels of empowerment and disempowerment which women face and its relation to patriarchy. I choose to adopt a qualitative approach as it will include the primary and secondary sources of theorists who have provided exceptional insights and have contributed to the ongoing discourse on the question of women's empowerment in India.

Organization of the Study

The emergence of rights in India contributed greatly in political, economic, and social transformation. It acted as an instrument for emancipation from political oppression, economic differences, and social discrimination. The Fundamental Rights as enshrined within the Part Three of the Constitution of India, delivered citizens the access to equality, freedom, and justice. Interestingly, women in India got the same access to rights and its benefits as their male counterparts. Despite this, as decades progressed many feminist scholars noticed that while women were formally equal to men, they were experiencing inequality and disempowerment. My research explores the causes of the various inequalities within the political, economic, and domestic spheres.

In Chapter one, I will focus on introducing the political legal context of women in India. The issues and challenges which women face in political, economic, and family spaces will be highlighted. In the first section I will deliberate over the concept of women's equality and women empowerment and their dependence over each other. I attempt to highlight the feminist interpretations to right to equality and how they are necessary to frame the concept of women's empowerment in India. The manner in which the Indian Constitutions constructs equality to

accommodate women's issues and experiences in key to the process of empowerment. The relation between women's equality and empowerment is mutual, one cannot exist without the other. Through this section I attempt to map out the characteristics and challenges of women's equality in India. In the second section of this chapter, I attempt to investigate if women's empowerment and patriarchy are linked together or not. Women's empowerment and patriarchy are supposed to be mutually agnostic in nature as they have different goals. Empowerment seeks freedom and equality, while patriarchy seeks domination and oppression of women. Yet, many a times I have observed that women's empowerment is restricted so that patriarchal norms and structures are not disturbed too much. Laws and policies which are supposed to challenge patriarchy may end up negotiating with it. Is it possible that women's empowerment and patriarchy are not on opposing ends but rather closely related? In this section, the relationship between empowerment and patriarchy is critically analysed.

In the second chapter I will be understanding the relationship between women's empowerment and patriarchy in the sphere of politics. The sphere of politics depends on the presence of women, not only because they make a sizable percentage of voter share but because they contribute greatly to the political and economic spheres. In the first section of this chapter, I will highlight the close link between political presence and empowerment of women. I will highlight the way women are disempowered in the political sphere, especially for representation in political institutions. In the second section of this chapter, I attempt to draw out the necessity to increase and encourage women's representation in political sphere to challenge the patriarchal oppression. I ask the question, whether the absence of women in political spaces is linked with the continuous influence of patriarchy? In the third section, I will critically analyse the impact of reservation for women in political institutions by critically comparing recommendations and suggestions given under The Constitution (Eighty-First Amendment) Bill, 1996 and The Constitution (One Hundred and Eighth Amendment) Bill, 2008. I seek to question the validity of reservation as a tool to break down patriarchal structure. I will observe whether reservation for women lessens the influence of patriarchy, or does it reinforce it? In the last section, I will focus on the discussing the relationship between women's political presence and the subversion of patriarchy.

The third chapter extends the discourse of empowerment from the sphere of politics to the sphere of work which links both the public and private spheres. One of the most persistent forms of inequality which women face is the discrimination at workplace. The first section attempts to understand the continuation of the public and private and its impact on the positions

of women in the workplace. Economic freedom is one of the foundations of empowerment, yet the space where this freedom is realized is not defined adequately. The workplace is perhaps the most patriarchal of all spheres, as it follows the rigid public private divide. It rigidly defines, which work women must do, where women must work and till what extent they should contribute to the economic realm. The workplace positions women as subordinated to men. This section introduces the manner in which the workplace becomes a sphere of oppression for women and how it enforces the public private divide instead of challenging it.

In the second section, I focus on the inequality which women experience in the workplace and the influence of patriarchy on it. From skewed gender wages to stereotyping at workplaces, there are many issues which women face in India in economic sphere, despite having many laws which attempt to create an equal workplace for women and men. I seek to answer the question why discrimination exists when there are laws which create an equal space of women? In the third section, my research will be focusing mainly on the legal provisions that have been put into place to ensure empowerment of women. I will focus mainly on the critically analysis of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Through this section I attempt to analyse the whether laws alone can weaken the patriarchal structure or are more interventions needed? Overall, this chapter will be an assessment of the influence of laws in bringing in women's economic empowerment. I conclude this chapter by analysing the continuous influence of patriarchy on women's economic condition.

The disempowering experience of violence against women within the domestic sphere will be the main focus in chapter four. Violence in forms of abuse and assault; physical, psychological, and sexual are dominant means of asserting patriarchal domination over women. In the first section of this chapter, I will understand the reasons behind the silence of laws on women in the private and family sphere. I will map out why despite shaping the domestic sphere, it is difficult for laws to challenge the violence and discrimination which women experience. I highlight how the laws play a significant role in constructing the domestic sphere and yet are hesitant in entering it to undo the patriarchal discrimination. In the second section, I seek to establish that violence is an important instrument of patriarchal oppression through which women are subordinated. In order to do so, I will focus will be on the violence against women which is experienced in the public and within the family which laws are hesitant to address.

I also seek to critically analyse selection legislations on the gender-based violence and the impact they have on weakening patriarchy. In the third section, I will analyse whether the domestic sphere, challenges patriarchy or continues it. Is it possible that the domestic sphere safeguards patriarchy by limiting the access of laws? In this chapter is address question like, can women be empowered or equal in India if violence against them is tolerated just because it happens within the domestic sphere? Can the political and legal system afford to be silent over the violence against women? Can current laws even weaken the patriarchal domination over women within the domestic? Or does the notion of women's empowerment ignore the violence which women face within the family? I conclude this chapter by presenting some remarks on these issues.

The fifth chapter tries to bring together all my findings and discuss the need to subvert the close relationship between women's empowerment and patriarchy. This chapter will focus on making recommendations to subvert the influence of patriarchy on women's empowerment. I try to provide for strategizes and techniques to combat the continuing influence of patriarchy on the political sphere, the workplace, and the domestic realm.

In the following chapters I will address the concerns of my research critically studying position of women in the political sphere, the workplace, and the domestic sphere. By doing so I aim to uncover those patriarchal practices and norms which are either ignored or left unobserved. It is imperative to focus on weakening patriarchy in order to empower women. My research attempts to address in, a modest way, the loopholes existing within the political and legal system which limit women's equality and empowerment and the continuity of patriarchy. In doing so, I hope to suggest some effective means of empowering women to achieve the goals of equality, freedom and justice as enshrined within the Constitution of India.

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