



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Constitutional And Human Rights Of The Women In India: Efficacy And Enforceability

Dr.Mandeep Kaur¹

Dr.Sudesh Kumari²

¹ Gold Medalist, Assistant Professor of Lovely Professional University (School of Law)

¹ Assistant Professor of KCL Institute of Laws, Jalandhar

“Just as a bird cannot fly with one wing only, a Nation cannot march forward if the women are left behind”.....

Swami Vivekanand”

1. Abstract

In India, people used to refer to their country as Bharat Mata, but they never understood what that actually meant. The term "Bharat Mata" refers to the mother of every Indian, whom we must revere and protect. 50% of all women live in the world. Women such as Mata Laxmi, Mata Saraswati, and Maa Durga are venerated for wealth, wisdom, and power, respectively, according to the Vedas and Puranas of Indian culture.

Under the Indian Constitution's Preamble, Fundamental Rights, Fundamental Responsibilities, and Directive Principles, the principle of gender equality is spelt out. The Indian Constitution not only guarantees women's equality, but it also gives the government the authority to implement laws that positively discriminate against women. Our laws, development strategies, plans, and programmes have all been designed to advance women in various fields within the framework of a democratic democracy. The state has passed numerous legislative measures meant to guarantee equal rights and safeguard women in order to uphold the constitutional obligation.

Also, with the aid of this article, the researcher hopes to discuss the legal standing of women, diagrams of instances in which their rights have been violated, and how constitutional rules ensure, among other things, that everyone is treated equally and with equal assurance under the law.

¹ Gold Medalist, Assistant Professor of Lovely Professional University (School of Law), mandeep.27314@lpu.co.in

² Assistant Professor of KCL Institute of Laws, Jalandhar, sudesh.birdi@gmail.com.

Keywords: Women empowerment, rights of women, feminism, gender discrimination, equality in rights.

2. Introduction

Women and men are two wheels that make up a beautiful whole, much like a car. Their unity produces strength, whilst their separation produces weakness. Each has what the other lacks. Every one completes the other. The word "woman" has the etymological meaning of "half of man." As the soul and body, man and woman are tightly related to one another. The women should therefore be respected. In the family, the woman simultaneously plays the roles of wife, partner, organiser, administrator, director, re-creator, disburser, economist, mother, teacher, health officer, artist, and queen. In addition to that, women are crucial to the socioeconomic advancement of society.

People in India used to refer to their country as Bharat Mata, but they never understood what that actually meant. Bharat Mata refers to the mother of every Indian, whom we must revere and protect. 50% of women are present on the global scale. Women such as Mata Laxmi, Mata Saraswati, and Maa Durga are venerated for wealth, wisdom, and power, respectively, according to the Vedas and Puranas of India. Yet, the reality is quite different; due to discriminatory laws and practises, women and girls continue to face serious disadvantages everywhere. No nation in the world has achieved equality, and promises to get rid of discriminatory laws have not been kept.

The realisation of everyone's human rights depends on gender equality. But there are still laws that discriminate against women, and more are constantly being passed. All legal traditions continue to institutionalise second class status for women and girls in a number of areas, including citizenship, nationality, health, education, parental rights, inheritance, and property rights. Women's empowerment is incompatible with several types of prejudice against women.³

Men and women are guaranteed equal access to their civil, cultural, economic, political, and social rights under international human rights legislation, which forbids discrimination based on sex. While the human rights machinery reaffirms the principles of non-discrimination and equality, Article 15 of the convention on the elimination of all forms of discrimination against women expressly states that States who have ratified the convention shall accord to women equality with men, and Article 2 of the convention commits States who have ratified the convention "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practises that are discriminatory against women."⁴

On December 10, 1948, the United Nations enacted the Universal Declaration of Human Rights, which affirms that everyone has the right to dignity and that everyone is born free. Similar to the Indian Constitution, it provides all of its residents, regardless of gender, with a number of rights, including the right to equality in Article 14 and the right to life and personal liberty in Article 21. Gender equality refers to a society in which men

³ <http://www.ohchr.org> (visited on march.02,2022)

⁴ <http://www.ohchr.org> ,(visited on march.02,2022)

and women have the same opportunities, rights, and responsibilities in various facets of life. Equitable access to education, economic and social freedom, and the ability to engage in the occupation of one's choosing. We must focus on empowering women and the issues that are most important to her well-being in order to advance gender equality. Economic, social, and political empowerment of women is essential for any country's development as well as for safeguarding and promoting human rights.⁵

In the Indian Constitution's Preamble, Fundamental Rights, Fundamental Responsibilities, and Directive Principles, the principle of gender equality is outlined. The Indian Constitution not only guarantees women's equality but also gives the state the authority to implement measures that positively discriminate in favour of women. Our laws, development strategies, plans, and programmes have all been designed to advance women in various fields within the framework of a democratic democracy. The state has passed numerous legislative measures meant to guarantee equal rights and safeguard women in order to uphold the constitutional obligation.

3. Indian women and the Constitution

"Ideas and aspirations of the people of India" are contained in the Preamble. The phrase "equality of position and opportunity" is one of the supreme goals. The inclusion of the equality clause in the Indian constitution has largely contributed to the achievement of this goal. The equality provision ensures equality before the law and equal protection of the laws irrespective of race, religion, caste, sex, etc. It expressly forbids discrimination on the basis of race, religion, caste, sex, and place of birth. As a result, the Indian Constitution guarantees equality for all, including between men and women as well as between men and women.⁶

In addition to guaranteeing women's equality, the Indian Constitution also grants the State the authority to utilize measures of positive discrimination in their favour in order to offset the accumulated socio-economic, educational, and political disadvantages that women experience. Among other things, fundamental rights guarantee everyone's equality before the law and equal protection under the law, forbid discrimination against any resident based on their religion, race, caste, sex, or place of birth, and guarantee all citizens equal opportunity in matters pertaining to employment. The Constitution's Articles 14, 15, 15(3), 16, 39(a), 39(b), and 39(c) are particularly significant in this regard.⁷

⁵ [https://www.womenlawsindia.com/legal-awareness/women-rights-in-india/\(visited](https://www.womenlawsindia.com/legal-awareness/women-rights-in-india/(visited) on March.2, 2022).

⁶ Art 14 to 16 of the constitution of India.

⁷ <https://www.nrilegalservices.com/constitutional-women-rights-india/>

The women's rights in India and safeguards well-preserved in the constitution are listed below:

- According to Article 15(1), the state is not allowed to discriminate against any Indian national on the basis of sex.
- The state has the right to include any gender-specific provisions. To put it another way, this clause enables the state to practice positive discrimination in favour of women. [Paragraph 15(3)].
- No citizen shall be segregated against or be unsuitable for any office or employment under the state on the base of sex [Article 16(2)].
- Traffic in human beings and enforced labour are banned [Article 23(1)].
- The state to secure for male and female equally the right to a sufficient means of livelihood [Article 39(a)].
- The state to ensure equal pay for equal work for both Indian male and female [Article 39(d)].
- The state is needed to ensure that the strength and health of women workers are not abused and that they are not obliged by economic necessity to enter avocations unsuited to their strength [Article 39(e)].
- The state shall make procurement for securing just and humane conditions of work and maternity welfare [Article 42].
- It shall be the duty of every native of India to renounce practices derogatory to the dignity of women [Article 51-A (e)].
- One-third of the entire number of seats to be filled by direct election in every Panchayat shall be reserved for females [Article 243-D (3)].
- One-third of the entire number of offices of Chairpersons in the Panchayat at each level shall be reserved for females [Article 243-D (4)].
- One-third of the whole number of seats to be filled by direct election in all Municipalities shall be reserved for females [Article 243-T (3)].
- The offices of Chairpersons in the Municipalities shall be reserved for females in such manner as the State Legislature may provide [Article 243-T (4)].

While explaining the object of Article 15(3) the Supreme Court in Government of **Andhra Pradesh v. P. V. Vijay Kumar**,⁸ held that Article 15(3) is a recognition of the fact that women of this country for centuries have been socially and economically handicapped and have been unable to participate in social and economic activities of the nation on an equal footing with men. R.N. Sahai and Sujata V. Manohar, J.J., observed, —It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of the women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15 (3), job opportunities for women cannot be created

⁸ (1995) 4 SCC 520-521.

would be to out (sic) at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16.

Equality of opportunity has been demonstrated and emphasized by Supreme Court of India in *C.B Muthamma vs. Union of India*⁹ In this case, the Indian Foreign Service (conduct and discipline) Rules of 1961 stated that women in the service should obtain permission before getting married and may also be asked to quit if the government determines that their dedication to their family and home interferes with their work. This rule was declared by the Court as in defiance of Article 16 of the Constitution of India. Hon'ble Justice Krishna Iyer observed:

“We don't mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of peculiar employment, the sensitivity, but save where the difference is demonstrable, the rule of equality must govern.”¹⁰

As a result, discrimination based on gender is prohibited in State employment, excepting exceptional circumstances or the need and requirements of a particular service. The principle of equality in matters of employment has further been illustrated in the famous case *Air India vs. Nergesh Meerza*¹¹. In that case, the Supreme Court ruled that the Air India Workers Service Regulation, which required air hosts to retire in the event of marriage or their first pregnancy, was unconstitutional. Also, the regulations gave the managing Director the authority to raise the age limit for Air Hostesses' employment from 35 to 45 years. It was determined that this, too, violated the equality principle because the managing Director had complete discretion to exercise it in one person's favour while refusing to do so in another. Discrimination that is prohibited by the constitution's Articles 15(1) and 16(2) shall not be based only on a person's sex. These constitutional articles do not forbid the State from discriminating on the basis of sex in combination with other factors. Hence, the terms of the retirement of Air Hostesses were in violation of Article 16 because they only considered sex as a factor.¹²

Another manifest declaration of the constitution to achieve equality of status is a directive under Art 39. It provides: (a) that the citizens, men and women, equally have the right to an adequate means of livelihood. The State shall, in particular direct its policy towards securing (b) that there is equal pay for equal work for both men and women (c) That the health and strength of workers, men and women are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age and strength . The Principle underlying this provision is “equal wages for equal work” irrespective of “sex”.

⁹ AIR 1979 SC 1868.

¹⁰ Kant Anjani, *Women and The Law*, Published by A.P.H. Publishing Corporation NewDelhi,169

¹¹ AIR 1981 SC 1829

¹² Kant Anjani, *Women and The Law*, Published by A.P.H. Publishing Corporation NewDelhi,169

A number of labour laws have been passed over the years, including the Equal Remuneration Act of 1976, the Bonded Labour System (Abolition) Act of 1976, the Factories Act of 1948, the Mines Act of 1952, the Workman's Compensation Act of 1923, the Plantation Labour (Amendment) Act of 1981, and many others. Several International Labor Organizations have been considered in this regard. For instance, India recognised Equal Pay for Work of Equal Value-regardless of "Sex" in 1958, and as a result, the Compensation Act was passed in 1976.

In **Randhir Singh vs. Union of India**¹³ applying this principle, it was explained that it is true that the principle of “equal pay for equal work” is not expressly declared by our Constitution to be fundamental right, but it certainly is a constitutional goal. Article 39 (d) of the constitution of India proclaims “equal pay for equal work for both men and women” as Directive principle of State policy----means equal pay for equal work for everyone and as between the sexes.

The above principle of “equal pay for equal work” has also been reiterated by the Supreme court in **Bhagwan Das vs. State of Haryana**¹⁴ and **R.D. Gupta vs. Lt. Governor, Delhi Administration**.¹⁵ It has also been made clear by the Supreme Court that this principle has to be read in the light of Art 14 and Art 16 of the constitution.

4. Women Empowerment Scheme¹⁶

- Beti Bachao Beti Padhao Scheme
- One stop centre Scheme
- Woman Helpline Scheme
- UJJAWALA: A comprehensive scheme for prevention of trafficking and rescue, Rehabilitation and Re-integration of victims of trafficking and commercial sexual Exploitation
- Working Women Hostel
- Ministry approves new projects under Ujjawala Scheme and continues existing projects
- SWADHAR Grey (A Scheme for women in difficult circumstances).
- NARI SHAKTI PURUSKAR
- Support to training and employment programme for women (STEP).
- Awardees of stree Shakti Puruskar, 2014 and Awardees of Nari Shakti
- Awardees of Rajya Mahila Samman and Zila Mahila Samman
- Mahila Police Volunteers
- Mahila E- Haat
- Mahila Shakti Kendras(MSK)

¹³ AIR 1982 SC 877,881

¹⁴ AIR 1987 SC 2049

¹⁵ AIR1987 SC 2986

¹⁶ Women empowerment scheme, available at <http://wed.nic.in/Scheme-listing/2405>.

- NIRBHAYA

5. Analysis

Thus the Constitution of India guarantees numerous rights to women without distinction on the basis of sex. These rights have been given a wide interpretation by the judiciary over the years resulting in the reading of large number of provisions guaranteed by the International Conventions into the provisions of the Constitution of India, thereby ensuring even those rights not specifically declared by the Constitution of India.

Although women's rights are now acknowledged as human rights, this does not ensure their actualization. Much effort is needed for better outcomes and the full realisation of everyone's human rights. To ensure that the new progressive legislative provisions have a beneficial influence on the protection of women's rights, the prevailing cultural and social perspective of the public must change. Without a question, the law views it as a potent tool for any type of social change, but it still has some restrictions. A new civilization cannot be established as legislation. Since the reform event is mostly unrelated to the statute. We need to find the source of the problem and expand its traditional practices that have stripped society of its colours must be seen and understood as found to be detrimental to the existence of an ordinary woman.¹⁷

Women are perceived as the weakest group in our society, and as a result, they are frequently accused of crimes. Even though many people think the woman has been discharged, her condition has not changed. Nonetheless, much work needs to be done before true liberty may be attained. It is regrettable that the most horrific and brutal crimes against women have been done by persons who are not close to them and are not the people they can trust. Up until now, the elimination of violence against women outside the home has been seen as a crime by strangers. But, not everyone who commits a crime is a close friend. Although it is stated that marriages take place in heaven, some women experience terrible situations as a result of their marriages. Regarding violence against women, numerous laws, including those pertaining to dowry, domestic violence, cruelty, etc., have been passed.¹⁸

One of the most pressing issues of the twenty-first century, both nationally and internationally, is the empowerment of women. Women's empowerment advances the cause of inclusive participation and makes society and the globe a better place to live. Increased happiness for the family and businesses where women make a difference is what it means. To accomplish this goal, government measures alone are insufficient. Women must have full opportunity to make their own decisions and participate in the social, political, and economic life of the nation with a sense of equality. Society must take action to establish this environment.

¹⁷ <https://www.lawaudience.com/legal-rights-and-status-of-women-in-the-indian-constitution/#:~:text=III%20Article%2016%20of%20the,V.>

¹⁸ *Ibid*

Women's empowerment won't be true and successful until they are given access to property and money, allowing them to stand on their own two feet and establish their identities in society. Let's swear an oath that we desire a gender-neutral society where both men and women have an equal opportunity to express themselves and advance both their own well-being and that of the community at large. It is urgently necessary to eradicate male superiority and the patriarchal attitude if we are to achieve true women's empowerment. Also, without any form of discrimination, women must be provided equal opportunity in both education and employment.

References:

1. <http://www.ohchr.org>
2. <https://www.womenlawsindia.com/legal-awareness/women-rights-in-india/visited>
3. <https://www.nrilegalservices.com/constitutional-women-rights-india/>
4. Kant Anjani , *Women and The Law*, Published by A.P.H. Publishing Corporation NewDelhi,169
5. Women empowerment scheme, available at <http://wed.nic.in/Scheme-listing/2405>
6. <https://www.lawaudience.com/legal-rights-and-status-of-women-in-the-indian-constitution/#:~:text=III%20Article%2016%20of%20the,V>.
7. <https://www.amnesty.org/en/what-we-do/discrimination/womens-rights/>
8. <https://www.openglobalrights.org/the-forgotten-origins-of-womens-rights-are-human-rights/>
9. D.D. Basu, *Human rights in Constitutional Law* (1994).
10. UpendraBaxi, “*In human wrongs and human rights, un conventional essays*” 1994 Har Ananda Publication, New Delhi, 110017.