

# A Study on the Role of Indian Constitution on Ensuring Gender Equality and Women Empowerment

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**Abstract:** *Man and woman are both equal and both plays a vital role in the creation and development of their families in a particular and the society in general. Indeed, the struggle for legal equality has been one of the major concerns of the women's movement all over the world. In India, since long back, women were considered as an oppressed section of the society and they were neglected for centuries. The constitution declares that the equality before the law and the equal protection of laws shall be available for all. Similarly, there shall be no discrimination against any citizen on the ground of sex. This article tries to evaluate the status of woman under the Constitution of India and how the Constitution as the supreme document play an important role in bringing gender equality in India and whether the goal has been at all achieved. After the analysis of various provisions of the Constitution it seems evident that the Rights guaranteed to women are at par with the Rights of men. Along with that, in some cases women enjoy the benefit of certain special provisions as well. This paper will also be briefing about the role of Judiciary in case of women empowerment and also movements initiated for empowerment of women in India.*

**Keywords:** Women empowerment, gender equality, Indian Constitution, judiciary, Article 14

## 1. Introduction

Although its forms differ significantly across societies and cultures, the phenomenon of women's subordination is found worldwide. Throughout the world women are economically, socially, politically, legally and culturally disadvantaged compared to their so called better halves. These disadvantages operate on various levels, international, regional, national, local, communal and familial.

Women in many countries are discriminated against by the national legal rights, including ownership and management of, access to and enjoyment of matrimonial and commercial property, inheritance, marriage, divorce and custody of children, enjoyment of fundamental civil and political rights, lack of participation in and access to law and policy-making, courts and legal remedies and access to certain types of employment and government benefits. Women in India are subject to discrimination not just on the basis of gender but on numerous other factors such as caste, community, religion etc. Women cannot enjoy the full range of rights while being repressed through violence and while sections of the administration and the criminal justice system reflect and perpetuate discriminatory practices prevalent in society<sup>1</sup>.

As a vast democracy with many regional variations and a "developing" economy, India has an enormous amount to achieve and an enormous amount of commitments to fulfil to all its citizens, including women. Recognizing its international commitments towards the rights of women and urged on by adynamic women's movement, successive governments have unveiled policies of empowerment for

women which have sought to address the full range of women's human rights. As a result, there are many positive aspects of women's empowerment which have taken place in recent years in India.

Women constitute half of the country's population and it is abundantly clear that there can't be any development unless their needs and interests are fully taken into account to protect and safeguard the rights of women to give the much needed impetus to the holistic development of women and children.

Along with men Woman is equal partners in national development thus women empowerments in economically, politically, culturally, physically, mentally and socially is essential. Therefore, the Government of India declared 2001 as the Year of Women's Empowerment. Access to resources and service, is the first level of empowerment, since women improve their own status, related to men by their own work and organization arising from increased access to resource and services. Mobilization is the action level of empowerment. Control is also one of the levels of empowerment.

Thus when women are get access to resources, when they get appropriate employment, they organise, are mobilized and ultimately get control of the work they are doing is called empowerment.

## 2. Empowerment: Meaning and Importance

The male-female ratio, if examined from one state to the other in India, will shed interesting light on different aspects of gender relations. Even within different communities notwithstanding adequate public policy, ratio of female to male child mortality varies from state to state and community to community.

<sup>1</sup>Violence against women does not only have a physical impact but also an impact on their ability to enjoy the full range of rights including social, economic and political: the right of women to enjoy the full range of rights is indivisible.

- 1) Lack of economic independence for a woman has been the main reason for her continuous subjugation.
- 2) Number of women and the large majority who are illiterate, ignorant and poor. But the common problems faced by all are:
  - Inequality of power sharing with men and in particular in the decision making at all levels.
  - Lack of awareness of and commitment to internationally and nationally recognized women's rights, even amongst the elite.
- 3) Insufficient machinery at all levels to promote advancement of women.
- 4) Poverty, discrimination and marginalization of women from cradle to grave.
- 5) Inequality in women's access to and participation in the definitions of economic structures and policies and the productive process itself; unequal access to education, health, employment, credit facilities and other means of maximizing awareness of women's rights and the use of their capacities.
- 6) Violence against women. (It is ever on the rise)
- 7) Effects on women of continuing local, national, international armed or other kinds of conflict. (Indian women are the worst sufferers of the cross-border
- 8) Terrorism)
- 9) Marginalization in the decision making process, with women generally remaining invisible at most levels in public structures. For example, India, considering its vastness, has less than minimum female representation both in Parliament and in legislatures.

### 3. Movement of Empowerment of women in India

During the British Raj, many reformers such as Ram Mohan Roy, IshwarChandra Vidyasagar, Jyotiba Phule and his wife Savitribai Phule, and many other struggled for the upliftment of women. Raja Rammohan Roy's efforts led to the abolition of the Sati practice under Governor-General William Cavendish-Bentinck in 1829. Ishwar Chandra Vidyasagar's crusade for the improvement in condition of widows led to the Widow Remarriage Act of 1856. Many women reformers such as Pandita Ramabai also helped the cause of women upliftment.

#### 3.1 How far have the constitution succeeded in ensuring gender justice?

The Preamble of the Constitution clearly states that equality should be given to all citizens in terms of status and opportunity. It must be understood that guarantying Rights to people of a community becomes useless unless and until those Rights are equally enjoyed by all members of the community. The framers of the constitution aimed at ensuring equality of status and opportunity through the Preamble. Equality is the touchstone of Indian Constitution. The Preamble of the Constitution inter alia talks about social, political and economic justice for all citizens of the country. The Preamble talks about social justice which should be understood in the light of ensuring abolition of all sorts of inequalities which may result from inequality in wealth, status, class, caste, sex, race, title etc. Economic justice ensures that every person should get his just dues for

the labour given by him/her irrespective of caste, creed, sex, status etc. Political justice ensures that unnecessary distinction among men and women in political matters should not be allowed. The provision contains in itself the essence of universal adult suffrage. The Preamble talks about dignity of an individual and that dignity should be ensured by guaranteeing equal fundamental rights to all individuals. Dignified lives contain in itself the essence of equality and freedom. All the fundamental rights contained in part-III of the constitution are applicable to all citizens of India irrespective of sex. Art-14 specifically states that within the territory of India, the state shall not deny to any person equality of law or equal protection of law. Then, Article- 15(1) states that the state shall not discriminate against any citizens 'only' on the ground of religion, race, caste, sex, place of birth or any one of them.<sup>2</sup> The provision further states that religion, caste, sex, place of birth, race or any one of them cannot be the only ground<sup>3</sup>The provision further whereby any person is subjected to any disability, liability, restriction or condition and hence the throwing open of public places. Thus,<sup>3</sup>Article-15 prohibits gender discrimination. However, certain fundamental rights contain specific provisions to protect the rights of women. It is worthwhile to mention here that the principle of Equality does not connote that the same law should be applied to everyone; rather it talks about equality of treatment under equal circumstances. Thus, Art-15(3) positively discriminates in favour of women and permits the state to make special provisions for them. Art-15(3) should be understood in the light of "equal treatment under equal circumstances" or "equality among equals". The framers of the constitution very well understood that women in the then Indian society did not have equal political, economic and social status as that of men. They felt an urge to uplift women and bring them under the same sun. Thus, Art-15(3) validates positive discrimination and it is in no way contradictory to Art-15(1).<sup>4</sup>Art-16 talks about equality of opportunity in case of public employment. Equal employment opportunity means equal access to jobs and conditions of work. It also contains in itself the essence of equal evaluation of performance. It must be noted here that Art-16 talks about employment or appointment to any office under State only. Matters relating to employment mean all matters prior or subsequent to the employments which are connected with the employment.<sup>5</sup>Art-23 specifically prohibits traffic in human beings. On the basis of this Article, legislature passed the Suppression of Immoral Traffic Act, 1956 (now renamed as Immoral Traffic Prevention Act, 1956) which aims at abolishing prostitution and other forms of trafficking. Along with this, the Andhra Pradesh legislature has enacted the Devdasis (Prohibition of Dedication) Act, 1988 to prohibit the practices of dedicating women to deities and temples. The Directive Principles of State policy contained in Part-IV of the Constitution incorporate many directives to the state to improve the status of women and for their protection.<sup>6</sup>Art-39 directs the State to secure its policy so that the citizens (both men and

<sup>2</sup> P.M. Bakshi, The Constitution Of India, Pg-31, (Universal Law Publication, New Delhi, India, 11th Edition, 2011).

<sup>3</sup>INDIA CONST. art. 15, cl.1.

<sup>4</sup>INDIA CONST. art .16, cl 1.

<sup>5</sup>INDIA CONST. art. 23, cl.1.

<sup>6</sup>INDIA CONST. art.39(a)

women) have equal rights to adequate means of livelihood. <sup>7</sup>Art-39 directs the State to secure equal pay for equal work for both men and women. The State gave effect to this provision by enacting the Equal Remuneration Act, 1976. <sup>8</sup>Art-39 also directs the State not to abuse the health and strength of workers (both men and women). <sup>9</sup>Art-42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. For this purpose the Maternity Benefit Act has been enacted. Article-44 directs the State to secure the citizens of India with a uniform civil code throughout the territory of India. Dr Ambedkar was in favour of reformation of personal laws and establishment of Uniform Civil Code. The first woman chief justice Leila Seth said that a common civil code would ensure that the harmful customary practices which are degrading to the dignity of woman can be broken down with a uniform civil code. There was an existing controversy that a uniform civil code shall take away the religious rights of individuals. To this, Justice Leila Seth correctly replied that uniform civil code will not take away the religious rights of people.<sup>10</sup>It will only ensure that a woman has her equal property rights, her right to adopt, her right against arbitrary divorce, her right to inheritance and her right against the practice of polygamy by her husband even if her father or husband gets converted to another religion. Through the 73rd and 74th amendment of Indian Constitution, reservations of seats were provided to women in elections to the Panchayat and municipalities. <sup>11</sup>Art-243D of the Constitution provides that in the direct election in every panchayat not less than 1/3rd of total number of seats are to be reserved for women. Article-243T (3) provides for reservation of seats for woman in direct elections to every municipality. Art-51A (e) inter alia states that it is the duty of every citizen of India to renounce from practices which are derogatory to the dignity of women.

#### 4. Constitutional Provisions for upliftment of women

India's Constitution sets out fundamental rights made available to all its citizens whom it explicitly states are to be realised without discrimination. The Constitution upholds the right to equality before the law (Article 14) and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Various laws reinforce safeguards against discrimination and provide for positive discrimination for certain groups identified as vulnerable within society. These include scheduled castes and scheduled tribes and women. There have been several government initiatives to empower women economically and politically. Political representation of women has increased at the local level. The 73rd Constitutional Amendment Act, 1992 (Panchayati Raj), included a provision for statutory minimum reservation of

33% seats for women in Panchayati Raj Institutions<sup>12</sup>. This has allowed a number of women to participate in community decision-making processes, including those from marginalised communities given that there are also reservations for scheduled caste, scheduled tribe and backward caste categories<sup>13</sup>. The National Commission for Women was established in January 1992 under the 1990 National Commission for Women Act. The National Human Rights Commission was established in 1993 under the Protection of Human Rights Act, 1993

#### 4.1 Various Schemes for empowerment of women

Implementation of the standard of the CEDAW Convention at the domestic/private sphere is still a challenge to be addressed. The Government is strengthening the existing legislation and developing institutional machinery. The Government has initiated the Sarva Shiksha Abhiyan (SSA), a national programme for universal primary education. There are several schemes of the government such as 'Swayamsidha'<sup>14</sup>, the Support to Training and Empowerment Programme (STEP)<sup>15</sup>. The Rashtriya Mahila Kosh (RMK)<sup>16</sup>, the Swarnajayanti Gram Swarozgar Yojana (SGSY)<sup>17</sup> The Sampurna Grameen Rozgar Yojana (SGRY)<sup>18</sup> Under the Urban Self-employment Programme (USEP) of Swarna Jayanti Shahari Rozgar Yojana (SJSRY) assistance is provided to the urban poor, especially women, living below the urban poverty line. Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGA) etc.

<sup>12</sup>This Amendment came into force on 24 April 1993.

<sup>13</sup>Political reservation for women at the central level has however proved more problematic and successive parliamentary sessions have failed to reach a consensus on the Constitutional (85th Amendment) Bill 1999 which would provide 33% reservation for women in the national parliament and state legislatures.

<sup>14</sup>launched in the year 2001, is an integrated program for the empowerment of women through the net work of self help groups of women by ensuring their direct access to and control over resources

<sup>15</sup>This programme provides updated skills and knowledge to poor and asset-less women in traditional sector, such as dairying, animal husbandry, sericulture, handlooms, social forestry, etc.

<sup>16</sup>since its registration in 1993, has established its credentials as the premier micro-credit agency with its focus on women and their economic empowerment through the provisions of credit to poor and asset-less women in the informal sector

<sup>17</sup>Aims at bringing beneficiary families above the poverty line by providing them with income-generating assets through a mix of bank credit and Government subsidy.

<sup>18</sup>Endeavour to create 30 per cent of the employment opportunities for women. The National Maternity Benefit Scheme aims at assisting the expectant mother by providing Rs. 500 each for the first two live births. This has recently been revamped as the **Janani Suraksha Yojana**. The Rural Sanitation Programme ensures construction of village sanitary complexes exclusively for women, where individual latrines are not feasible.

<sup>7</sup>INDIA CONST. art.39(d)

<sup>8</sup>INDIA CONST. art. 39(e)

<sup>9</sup>INDIA CONST. art. 42,

<sup>10</sup>RamachandraGuha, *Towards A Gender Sensitive Civil Code*, HINDUSTAN TIMES

(Aug.21, 2018, 3:45 p.m.),

<http://ramachandraguha.in/archives/towards-a-gender-sensitive-civil-code-2.html>.

<sup>11</sup>INDIA Const. art. 243, cl. 3.

## 5. Initiatives by the Judiciary

The judiciary through its proactive role has applied the principles of the treaty in many judgments. The judiciary in a number of decisions has struck down the discriminatory provisions of law and rules, such as, in *C.B.Muthamma v. Union of India*<sup>19</sup> wherein the service rules requiring a female employee to obtain permission of the Government in writing before her marriage and denying her right to be appointed on the ground that the candidate is a married woman was held to be discriminatory against women. In *Air India v. Nargeesh Meerza*<sup>20</sup> the service condition that terminated the services of an Airhostess on becoming pregnant was struck down as being discriminatory. In *Vasantha v. Union of India*<sup>21</sup> Section 66 of the Factories Act which prohibited night shift work for women was held to be discriminatory.

In *Madhu Kishwar v. Union of India*<sup>22</sup> and in *C.Masilamani Mudliar and others v. The idol of Swaminathaswami Thirukoil and others*<sup>23</sup> property rights for women were upheld. In *M/s Mackinnon Mackenzie and Co Ltd v. Audrey D'Cost*<sup>24</sup> provided for equal wages. *Delhi Domestic Working Women's Forum v. Union of India*<sup>25</sup> and *BodhiSattwa Gautam v. Subhra Chakroborthy*<sup>26</sup> and *Chairman Railway Board v. Chandrima Das*<sup>27</sup> provided for compensation in rape cases. *Municipal Corporation of Delhi v. female workers (Muster Roll case)*<sup>28</sup> ensured maternity benefit for contract workers. And in *Gita Hariharan*<sup>29</sup> case regarding guardianship rights interpreted the provisions in favour of women dealing with the rights of woman to be a guardian for the minor child, the principles of the Convention have been applied to hold the provisions of the Hindu Guardianship and Minority Act, 1956, as being discriminatory. The *Daniel Latiff's*<sup>30</sup> case enabled Muslim woman to seek maintenance from divorced husband.

## 6. Conclusion

It is evident from the above discussion that the Constitution of India contains various provisions relating to equality between men and women and there are certain cases where

<sup>19</sup>C.B.Muthamma v. Union of India, A.I.R. 1979 S.C. 1868.

<sup>20</sup>Air India v. Nargeesh Meerza A.I.R. 1981 S.C. 1829.

<sup>21</sup>Vasantha v. Union of India (2001 ) (ii) L.L.J. 843.

<sup>22</sup>Madhu Kishwar v. Union of India A.I.R. 1996 5 S.C.125.

<sup>23</sup>C.Masilamani Mudliar and others v. The idol of Swaminathaswami Thirukoil and others A.I.R. 1996 S.C. 1697.

<sup>24</sup>M/s Mackinnon Mackenzie and Co Ltd v. Audrey D'Cost A.I.R. 1987 S.C. 1281.

<sup>25</sup>Delhi Domestic Working Women's Forum v. Union of India (1995) 1 S.C.C. 14.

<sup>26</sup>BodhiSattwa Gautam v. Subhra Chakroborthy A.I.R. 1996 S.C. 922.

<sup>27</sup>Chairman Railway Board v. Chandrima Das A.I.R. 2000 S.C. 988.

<sup>28</sup>Municipal Corporation of Delhi v. female workers A.I.R. 2000 S.C. 1274

<sup>29</sup>Ms Githa Hariharan and another v. Reserve Bank of India and another A.I.R. 1999, 2 S.C.C. 228

<sup>30</sup>Danial Latifi & Anr v Union of India (2001) 7SCC 740

women have been given special importance. Along with that certain legal provisions for women have been enacted viz: the Factories Act, Maternity Benefit Act, Dowry Prohibition Act, Equal Remuneration Act, Child Marriage Restrain act, Medical Termination of Pregnancy Act, National Commission for Women Act, Protection of woman from domestic violence Act, Protection of women against sexual harassment at workplace etc.

The empowerment of women occurs in reality when women achieve increased control and participation in decision making that leads to their better access to resources and improve socio-economic status. Today, Indian women have made their presence felt virtually in every field. Empowerment refers to increasing the spiritual, political, social or economic strength of individuals and communities. It often involves the empowered developing confidence in their own capacities.

Indian women have not to struggle for Constitutional and legal rights which stands given to them. Since the days of Independence struggle, the achievements in the area of women's rights are many. Education has become a Fundamental right of every child. Health infrastructure and gender budgeting and allocations for better family health have improved. There is no discrimination in competitive examinations, recruitment and employment. There is no taboo for women to contest and occupy the highest echelons of power. The Judicial decisions have improved women's lot here and there. Changes in the laws to prosecute and punish with stringent punishments are available. There is now a wide base developing where women are getting a hold in the Indian political arena.

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- 9) The Hindu Succession Act, 1956
- 10) The Pre-Natal Diagnostic Techniques (Regulation and
- 11) Prevention of misuse) Act 1994