



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-

Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

A STUDY OF CONSTITUTIONAL SAFEGUARD WOMAN 'S RIGHTS AND VIOLENCE IN INDIA

ABSTRACT:

Women: Shaping Society, Facing Challenges, and Striving for Equality

Throughout history, women have played a crucial role in shaping society, contributing significantly to the moral fabric within homes and communities. They represent half of a nation's human capital and their progress serves as a critical indicator of national development. The 21st century has witnessed remarkable strides by women in various spheres, including politics, the workforce, and even within their own families.

Previously, women were silenced in political arenas, unable to vote or hold office. Today, the presence of multiple women running for president stands as a testament to the evolution of societal views. The traditional breadwinner role solely assigned to men is gradually dissolving, with both spouses equally participating in financial responsibilities and household chores.

Women are often recognized as embodiments of Shakti, the powerful force of creation and transformation. Their role in shaping the future of nations cannot be overstated. They are not just companions to men, but partners and essential figures in their success. However, it is disheartening to see them remain one of the most neglected and disadvantaged groups in many societies.

The persistent practice of viewing daughters as liabilities and conditioning them to feel inferior to men perpetuates gender inequality. In contrast, sons are often celebrated and idolized, as exemplified by the common Hindu wedding blessing, “May you be the mother of a hundred sons.” Empowering women through equal rights, opportunities, and participation in decision-making processes is widely recognized as the key to eliminating gender discrimination. Investing in their education, providing access to resources, and dismantling harmful social norms are crucial steps toward a more equitable and just society.

KEYWORDS: Rights, Empowerment, Violation, Constitutional Safeguards, and Protection
Women: Facing Contradictions Across Societal Roles

Women hold a unique but often contradictory position in societies worldwide. Throughout their lives, they wear many hats – daughter, wife, mother, sister – and contribute significantly to their families and communities. Yet, despite their crucial roles, they often face disadvantage and discrimination compared to men.

History reveals countless examples of women being subjected to various forms of oppression, often at the hands of men who hold power. Sadly, the situation in India is no different. While revered as symbols of tolerance and virtue, women simultaneously endure immense suffering and injustices inflicted by a male-dominated society.

This paradoxical reality highlights the need for change. To truly honor women’s contributions and unlock their full potential, societies must dismantle discriminatory practices and empower them to thrive in all aspects of life.

RIGHT OF WOMEN – CONSTITUTIONAL PROVISIONS

The status of women in India has undergone a remarkable transformation over centuries. Today, they actively participate in various spheres like education, politics, media, and science, contributing significantly to society’s growth. Our Constitution serves as a cornerstone, guaranteeing equal rights and opportunities for both genders.

The founding principles of liberty, equality, and justice guide the Constitution, offering numerous provisions that empower women. The fundamental right to equality and non-discrimination shields

THE INDIAN JOURNAL FOR RESEARCH IN LAW AND MANAGEMENT, VOL. 1, ISSUE 4, JANUARY- 2024
them from unfair treatment. Moreover, the document clarifies that affirmative action programs aimed at women don't violate the principle of non-discrimination based on sex.

The Indian government prioritizes protecting and promoting women's human rights. National plans and policies reflect a vision of progress that extends beyond financial gain, emphasizing human rights, freedoms, and well-being for all.

The Constitution's framers, cognizant of historical discrimination against women, incorporated provisions for their upliftment. They explicitly granted equal status and opportunities in certain areas, implicitly extending them elsewhere, making women equal citizens of India.

However, concerns remain regarding the adequacy of gender justice within the original Constitution. While it prohibits discrimination based on sex, it doesn't explicitly address genderbased bias. Granting women specific rights as compensation for their reproductive function isn't charity but an obligation. Additionally, Article 15(3) authorizing special provisions for women is seen as a protective measure rather than a true equalization strategy.

Despite these challenges, the Constitution, through its preamble, fundamental rights section, and directive principles, strives towards securing gender justice, paving the way for a future where women stand shoulder-to-shoulder with men.

PREAMBLE

The Indian Constitution's Preamble enshrines the fundamental principle that all citizens, regardless of gender, deserve social, economic, and political justice. This translates to equal access to the fruits of justice for both men and women.

Social justice, in this context, recognizes the well-being of the larger community without infringing on individual legal rights. This empowers the state to enact measures that protect vulnerable groups, including women, ensuring the constitutionality of such actions.

Furthermore, the concept of "social and economic justice" aims to eliminate economic disparities and rectify past injustices faced by disadvantaged sections of society, upholding distributive justice.

The Preamble also emphasizes the crucial goal of “equality of status and opportunity” for all citizens. This principle forms the foundation for legislation like the Modern Hindu Laws, which strive to grant equal rights and status to women in various spheres.

In essence, the Constitution of India lays the groundwork for a society where everyone, regardless of gender, has the opportunity to thrive and contribute to the nation’s progress.

FUNDAMENTAL RIGHT

Article 14 guarantees equal protection under the law for women, while Article 15 prohibits discrimination on the basis of sex. However, Article 15(3) empowers the state to create special provisions for women due to their unique social and economic circumstances. This allows the state to enact laws addressing women’s specific needs and uplift their socio-economic status, ultimately achieving true equality between men and women.

The author emphasizes that such special treatment is justified due to the historical and ongoing social and educational disadvantages faced by women. This approach aims to empower women and bridge the gap between genders, fulfilling the framers’ intention of the Constitution.

Article 16(1) guarantees equal opportunity in public employment, but historical practices like requiring female employees to seek permission for marriage were deemed discriminatory (C.B. Muthamma case). Justice Krishna Iyer stressed the indivisibility of freedom and equality enshrined in Articles 14 and 16, calling the exclusion of women “a sad reflection” on the gap between constitutional ideals and reality.

While acknowledging potential differences in occupations based on sex or societal needs, the essay emphasizes equality as the rule. It cites Justice Jeevan Reddy’s statement about empowering deprived communities through reservations under Article 16(4).

The argument hinges on considering women as a “deprived backward community” due to their historical and ongoing social, economic, and educational disadvantages. This aligns with the goal of achieving true equality between men and women. Therefore, the essay concludes that including women under Article 16(4) is justified to address their unique challenges and fulfill the Constitution’s promise of equality.

Article 19: Guarantees freedom of speech and expression, allowing women to form their own opinions.

Article 21: Protects life and personal liberty, ensuring dignified living conditions beyond mere survival.

Article 23: Prohibits trafficking in humans, including practices like the Devadasi system and forced prostitution. Specific legislation like the Immoral Traffic (Prevention) Act and the Devadasis (Prohibition of Dedication) Act address these issues.

Article 25: Grants freedom of conscience and religious practice, regardless of gender or caste.

Menaka Gandhi case: Expanding the definition of “personal liberty” under Article 21.

Peoples Union for Democratic Rights vs Union of India: Defining unfair labor practices as forced labor under Article 23.

DPSP’S

Article 39: Ensures equal right to livelihood and equal pay for equal work.

Article 39: Protects health and prohibits exploiting workers, including **women** and children.

Article 42: Provides for just working conditions and maternity benefits.

Article 44: Aims for a uniform civil code, promoting gender justice in areas like marriage and inheritance.

Article 46: Emphasizes education and economic upliftment for disadvantaged groups, including **women**.

FUNDAMENTAL DUTIES

The Indian Constitution outlines not just rights, but also responsibilities for its citizens. Article 51(a): specifically mentions a duty related to women. It states that every citizen has an obligation to: Promote harmony and unity: This means fostering a sense of togetherness and mutual respect among all Indians, regardless of their religion, language, region, or any other differences.

Renounce practices harmful to women: This includes condemning and actively opposing any customs or traditions that disrespect or belittle women, ensuring their dignity and equal treatment in society.

WOMEN REPRESENTATION IN LOCAL BODIES

Article 40: Promotes village panchayats (local councils) as units of self-government.

73rd & 74th Amendments: Reserve seats for women in panchayats and municipalities.

Pending Bill: Aims for reserving seats for women in Parliament and state legislatures.

Despite these initiatives, the author acknowledges that discrimination against women persists due to:

Deep-rooted societal traditions: Discriminatory practices are ingrained in society.

Lack of awareness: Many women remain unaware of their rights and legal protections.

INTERNATIONAL BODIES – PROTECTION FOR WOMEN

In the world of international law, protecting women's rights is a growing and important area. Indigenous women have various tools, called "normative instruments," to fight for their rights. Some instruments apply to everyone, regardless of background. Others specifically protect women or certain groups

INTENTIONAL EFFORTS FOR WOMEN PROTECTION, UN FOR WOMEN

The United Nations and its specialized agencies play a crucial role in protecting women's rights through various instruments and initiatives. Key examples include:

Universal Declaration of Human Rights: Guarantees equal rights for men and women.

THE INDIAN JOURNAL FOR RESEARCH IN LAW AND MANAGEMENT, VOL. 1, ISSUE 4, JANUARY- 2024
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): The most comprehensive global agreement on women's rights, addressing political, social, economic, and cultural aspects.

International Conferences on Women: Held periodically to address various issues and create a global forum for women's rights advocacy.

National Human Rights Commissions: Established in some countries to monitor and promote human rights, including women's rights.

HAGUE CONFERENCE

The Hague Conference on International Law organized several pivotal conventions specifically dedicated to advancing women's rights.

- The Convention on the Law Applicable to Maintenance Obligations (1973), which sets guidelines for determining which legal system applies in matters of financial support between family members.
- The Convention on the Law Applicable to Matrimonial Property Regimes (1978), which addresses which legal system governs the ownership and division of property within a marriage.
- The Convention on Celebration and Recognition of the Validity of Marriages (1978), which establishes rules for ensuring the validity of marriages across different countries.
- The Convention on the Recognition of Divorces and Legal Separations (1970), which facilitates the recognition of divorce and legal separation decrees issued in different countries.

INTERNATIONAL LABOUR ORGANIZATION

The International Labour Organization (ILO) actively sets standards and advocates for women's rights in work and self-employment through various instruments and recommendations. Some key examples include:

Conventions: These establish legally binding obligations for member states, such as the Equal Remuneration Convention (1951) guaranteeing equal pay for equal work and the Discrimination (Employment and Occupation) Convention (1958) prohibiting discrimination based on gender.

Recommendations: While not legally binding, these provide guidelines and best practices for countries to improve working conditions for women, covering areas like night work, maternity protection, and balancing work with family responsibilities.

Specific protections: The ILO addresses unique challenges faced by women through targeted provisions, such as the Lead Poisoning (Women and Children) Recommendation (1919) outlining measures to safeguard their health.

These efforts highlight the ILO's commitment to achieving gender justice in the workplace and ensuring equal opportunities for women in self-employment.

VIOLATION OF RIGHTS

- Historically, women faced limitations in marriage, property, and social participation.
- The Indian Constitution and various laws aim to improve women's status.
- Despite these measures, human rights violations against women persist in various forms, including domestic violence, dowry deaths, and female genital mutilation.
- Statistics highlight the prevalence of domestic violence, especially in rural areas and among less educated women.
- Many women suffer in silence due to social stigma and lack of awareness about their rights.

Domestic violence, with high prevalence and low reporting rates due to social stigma and lack of awareness. Trafficking, particularly affecting women from poor families with limited education.

Dowry-related violence and deaths, despite laws prohibiting the practice.

Limited access to justice for victims, with low conviction rates and overcrowded prisons.

Inadequate support systems for women in jails, facing neglect and poor health conditions.

