

---

# WOMEN'S RIGHTS AND VIOLENCE IN INDIA: A STUDY OF CONSTITUTIONAL SAFEGUARDS

---

M Masum Billah, Research Scholar, Sharda University, New Delhi.

## ABSTRACT

By acting as the moral centre of the family, women have been fundamental in forming society. One measure of national development is the position of women, who make up half of the nation's human capital. In terms of politics, the workforce, and even personal power, women have made significant progress. There was a point in history when women were unable to participate in politics since they could not vote or run for office. Today, there are multiple women running for president. Now that both men and women can earn a living, stereotypes about women's roles are steadily eroding, and both spouse parents are sharing the duties associated with taking care of the home and family. They represent Shakti, the force that both creates and exterminates the human species. It is important to acknowledge that women shape and develop the future of their country. Every successful man has a lady by his side because women are his companion and soul. However, it is regrettable that they are the most forgotten and underprivileged group in society. A daughter is typically seen as a liability and raised to feel that she is beneath men and their authority. Sons are revered and honored. A typical Hindu wedding blessing is "May you be the mother of a hundred sons." Women's empowerment is frequently seen as a remedy to gender inequality. Nowadays, it is generally accepted that empowering women by giving them equal rights, opportunities, and responsibilities in the decision-making process will significantly help to stop the practice of gender discrimination.

**Keywords:** Protection, Rights, Empowerment, Violation, and Constitutional Safeguards.

## Introduction

**"A woman's area of influence is a special one that males cannot imitate. Women have a significant role to play in building the earthly kingdom of God because of their impact."**

**Russell Ballard, M.**

In any community, developed or impoverished, women hold a special status. This is especially true given the diverse roles they perform as daughters, wives, mothers, sisters, and other family members throughout different periods of their lives. Despite her contributions to and role in the lives of all people, she nonetheless belongs to a social class or group that is disadvantaged due to a number of obstacles and hindrances. She has been the object of tyranny by the dominant males in society. <sup>1</sup>Comparing Indian women to their counterparts around the world, their situation isn't any better. On the one hand, she is revered by all, held in the highest regard, and seen as the epitome of virtue and tolerance. On the other side, woman has endured tremendous suffering, hardships, and atrocities as a result of the male-dominated society's actions and inaction. However, constitutional protections were established in independent India, stating that everyone is treated equally before the law and that discrimination based on factors such as sex, caste, or ethnicity is against the law. The Constitution has special provisions for women that take into account their place in society. The general clause addressing equality as such was included in Articles 14, 15, 16, and Article 23, which deal with human trafficking.<sup>2</sup> The Directive Principles (Articles 39 and 42) that deal with women receiving maternity benefits and equal pay for equal labor with men came next. Additionally, there are summaries of the fundamental obligations towards women and an election rule that forbids discrimination based on factors like sex, gender, etc. Other such protections from discrimination and gender bias exist for women. The theoretical commitment to gender equality has, regrettably, not been translated into actual reality.

## Constitutional Protection for Women's Rights

Over the past few millennia, there have been numerous changes to the position of women in India. Today, women in India take part in all spheres of life, including politics, the media, the arts and culture, the service industry, science and technology, etc. Men and women have equal

---

<sup>1</sup> Batar, S. (2021). Review of capital punishment. *Asian Journal of Multidimensional Research*, 10(12), 422-427.

<sup>2</sup> Dr. Naresh Rout, Dr. Jayashree Bez Women's Rights and Violence in India: A Study of Constitutional Safeguards, Odisha Review.

rights under our constitution. The fundamental tenets of justice, equality, liberty, and fraternity form the foundation of the Constitution. There are several provisions for the empowerment of women in it. Equal rights and freedom from discrimination for women are regarded as justifiable fundamental rights. Affirmative action programmers for women are clearly stated by the Constitution to be compatible with the concept of no discrimination based on sex. The protection and advancement of women's human rights have always been highly valued by the Indian government, and this goal is one that it is dedicated to attaining. National plans and programmers have continuously reflected a view of progress that places a priority on the realization of human rights, freedoms, and wellbeing for all rather than a narrow vision of progress limited to raising earnings. The prejudice and unfair treatment that have always been meted out to the more attractive sex were something that the Constitution's framers were well aware of.<sup>3</sup> They contained both general and specialized regulations aimed at advancing women's standing. In some locations, they specifically guaranteed equality of status and opportunities for women and men who were Indian nationals, while doing so implicitly in all other locations. It is true that India's original Constitution did not sufficiently address issues of gender equity as one may have expected. It prohibits discrimination based on sex (Articles 15 and 16), but it makes no mention of discrimination based on gender. It is not a favor to grant women certain rights as payment for their reproductive function; rather, it is a duty.<sup>4</sup> Although the state may establish special arrangements for women, according to Article-15, clause 3, of the Indian Constitution, this is a protectionist tactic rather than an equalization policy. In order to help women overcome the disadvantage they experienced under the patriarchal system, the state should offer affirmative action programmes. Since all essential rights are centered on men, women have no chance of achieving equality.

## Preamble

The Preamble of the Indian Constitution states that all of its people shall benefit from social, economic, and political justice, which means that neither males nor women should be denied the benefits of equity. According to one definition, social justice entails acknowledging the greater good for a wider group without denying someone their legal rights.<sup>5</sup> As a result, it is

---

<sup>3</sup> Tyagi, N., Jha, R. S., Chaudhary, A., & Batar, S. (2021). WOMEN IN DUAL ROLE; A SOCIOLOGICAL PERSPECTIVE. *Ilkogretim Online*, 20(1).

<sup>4</sup> Batar, S. (2021). Acquaintance rape: A review. *ACADEMICIA: An International Multidisciplinary Research Journal*, 11(11), 1059-1066.

<sup>5</sup> Batar, S. (2021). A socio-legal study of police atrocities. *Asian Journal of Multidimensional Research*, 10(12), 624-630.

expected that the state will take proactive steps to safeguard the weaker members of society, including women, in order to uphold the constitutionality of such actions. The phrase "social and economic justice" asserts the idea of distributive justice by aiming to eliminate economic inequities and correct injustices done to the underprivileged in society. The Preamble of the Indian Constitution, once more, lists a number of objectives, among them "the equality of position and opportunity" for all Indians.<sup>6</sup> Giving men and women equal rights in terms of status and opportunity is the specific purpose that has been implemented. Many pieces of legislation, such as the Modern Hindu Laws, which seek to grant women equal status and rights, have been based on it.<sup>7</sup>

### **Fundamental Rights**

All of the fundamental rights listed in Part III Articles 12-35 apply to all citizens, regardless of sex, although some of those rights have clauses that specifically and positively guarantee the rights of women. No one in the state will be denied equality before the law and equal protection under the law, according to Article 14. Since the Constitution guarantees equal protection and treatment for men and women, this is the case in Indian society. Clause 1 of Article 15 states that "the state shall not discriminate against any citizen on grounds only of religion, caste, race, sex, place of birth, or any of them," which outlaws all forms of discrimination against women.<sup>8</sup> Nothing in this Article shall prohibit the State from providing a Special Provision for Women and Children, according to Article 15(3). This clearly implies that the state will not hesitate to address any requirements that develop owing to the distinctive characteristics that women possess by passing laws specifically for them. This was the objective of the Constitution's writers, and this specific clause has been added to help women's conditions by providing special protection. Honorable Justice S. Manohar defended it by saying: "The introduction of paragraph (3) of the Article-15 in reference to women is acknowledgement of the fact that women in this country have been socially and economically disadvantaged for generations. As a result, they are unable to equally engage in the nation's socio-economic activities. Article-15(3) is included in Article-15 in order to eliminate the socioeconomic illiteracy of women and empower them in a way that would result in real equality between men and women. Its goal is to advance and promote women's position. In *Government of Andhra Pradesh v. P. B. Vijay Kumar*, AIR1995 SC 1648. When the need for special treatment for women emerges, it is

---

<sup>6</sup> Agarwal, R.S., *Prevention of Crime*, Radiant Publication, New Delhi, 1977.

<sup>7</sup> Asthana, Pratima, *Women Movements in India*, Vikas Publication, New Delhi, 1944.

<sup>8</sup> Batar, S. (2021). Review of tandoor murder case. *Asian Journal of Multidimensional Research*, 10(12), 78-83.

further argued that they should be recognised as socially and educationally backward as provided for in Article 15(4) of the Constitution.<sup>9</sup> Since Article 16(1) states that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any position under the state," Article 16 provides equal opportunity in matters of public employment. Referring to the case of *C.B. Muthamma v. Union of India*, AIR 1979 SC 1868, where the rules requiring female employees to obtain permission before getting married and denying married women the right to employment were deemed discriminatory and in violation of Article-16 of the Constitution, is appropriate in this situation.<sup>10</sup> After stating that this regulation violates Article 16 of the Constitution, Justice V. R. Krishna Iyer added, "If a married man has right to a married lady other things being equal, stands on no poorer footing. This subordinate attitude is a holdover from the macho tradition of intimidating the weaker sex, which makes us forget that our fight for national freedom also involved the fight against the enslavement of women. That our foundational principles, which are contained in Articles 14 and 16, should have been cruelly disregarded in relation to the female half of India's population, is a sobering illustration of the gap between the Constitution as written and the law as it is applied."<sup>11</sup> The author continued, "We do not mean to universalize or dogmatize that men and women are equal in all occupations and situations, and we do not exclude the need to be pragmatic where the requirements of particular employment, the sensitivities of sex, the peculiarities of societal sectors, or the handicaps of either sex may compel selectivity. But the norm of equity must be followed unless in cases where differentiation may be clearly seen. Justice Jeevan Reddy put it best when he said: "In short, the object behind 16(4) is empowerment of the deprived backward communities to give them a share in the administrative apparatus and in the governance of the community." Article 16(4) of the Constitution provides for the reservation of appointments or posts in favour of any backward class of citizens. Now the issue of whether women belong in the "starved backward group" is raised.<sup>12</sup> They almost entirely fit the bill for a depressed, backward group when you examine the status and position they have as well as how they are disregarded. They are viewed as being behind males in all social, economic, and educational areas since they belong to a different class. Because of this, it was believed that women shouldn't be treated unfairly and that every effort should be made

---

<sup>9</sup> Batar, S. (2021). An overview on cyber crime. *Asian Journal of Multidimensional Research*, 10(12), 167-172.

<sup>10</sup> Flathman, Richard E, *The Practice of Rights*, Cambridge University Press (First Edn, London, New York, Melbourne).

<sup>11</sup> Nora Shimhan, Sakuntala, *Empowering Women, An Alternative Strategy From Rural India*, Sage Publication, New Delhi, 1999

<sup>12</sup> Batar, S., Jha, R. S., Tyagi, N., Jain, V., & Chaudhary, A. *Protection of Software-Patent or Copyright?*

to fulfill the Constitution's mandate to equalize the status of men and women. All citizens, male and female, are guaranteed "the right to freedom of speech and expression" by Article 19. Therefore, it is everyone's fundamental right to have a personal viewpoint on any matter of public interest. According to Article 21 of the Constitution, "No person shall be deprived of his life or personal liberty except in accordance with the method established by law," everyone's life and personal liberty are protected, regardless of gender. The right to life is one of the most important fundamental rights guaranteed to people. The term "Life" provided by this Article does not refer to just existing as an animal or to continuing to toil through life. Its scope is much broader. In *Menaka Gandhi's* case, the Supreme Court has also given the broadest interpretation possible to the phrase "personal liberty," which exists in the same Article. The case had a significant influence since it drew the boundaries of Article-21 around a number of rights by adding the idea of reasonableness into the legal process. The Constitution expressly forbids the trade in humans in Article 23. In this sense, "Devadasi System" refers to human trafficking. (*Air 1990 SC 1412, Vishal Jeet v. Union of India*). In India, prostitution and the sale and purchase of human beings for a price comparable to vegetables are common forms of human trafficking. The Suppression of Immoral Traffic Act, 1956 (now known as The Immoral Traffic (Prevention) Act), which attempts to outlaw prostitution and other types of trafficking, was passed by the legislature on the basis of Article-23(1) of the Constitution. This law was passed in accordance with the international agreement to stop immoral traffic that was signed in New York on May 9, 1950. The Devadasis (Prohibition of Dedication) Act, 1988 was recently passed by the Andhra Pradesh legislature to outlaw the practise of devoting women as Devadasis to Hindu Deities, idols, temples, etc., which inevitably leads to evils like prostitution.

### **Directive Principles of State Policy**

In addition to the Fundamental Rights, the Part-IV of the Constitution's Directive Principles of State Policy instructs the state to take specific corrective actions for the welfare of women. According to Article-37, it is the responsibility of the state to use these directive principles while enacting legislation. Therefore, even if specific laws must be passed, these principles will be obeyed. Women are specifically addressed in Article-39, which commands the state to maintain social order and advance the welfare of the populace. "That the citizens, men and women alike, have the right to a sufficient means of subsistence," states Article-39(a). According to Article-39(d), "equal pay for equal work is guaranteed to both men and women."

It was decided that female professors are entitled to the same salary as male teachers at the same institution in the case of Uttarakhand Mahila Kalyan Parishad vs. state of UP. The Equal Remuneration Act of 1976 was once more passed by the state to put these Directive principles into practise. (State Of UP vs. Uttarakhand Mahila Kalyan Parishad) Article 39 (e) expressly instructs the state not to take advantage of the workers' physical and mental well-being, both men and women. Because of this, the Constitution requires the state to take measures to prevent abuse of the strength and health of workers, men and women, and young children, as well as to prevent citizens from being compelled by economic necessity to pursue a career that is inappropriate for their age or strength. Construction work is dangerous job, and minors under the age of 14 cannot be employed in this kind of work, the Supreme Court ruled in the case of the Solal Hydro Project labourers v. State of Jammu and Kashmir. A crucial clause protecting women's rights is included in Article 42 of the Constitution. It instructs the state to create arrangements for maternity leave and reasonable and humane working conditions. The Maternity Benefit Act, 1961 was enacted by the state in an effort to carry out this mandate.