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# CONSTITUTIONAL SAFEGUARDS FOR ERADICATING GENDER PREJUDICE IN INDIA

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**Abstract**: The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive or protective discrimination in favour of women. Equal rights and opportunities or feminism whatever may the word Savitribai Phule (1831–1897) is the first one of the earliest Indian feminists. She started the first school for girls in the subcontinent. This paper explores the various rights safeguarded for women under the constitution of India such as equality before law and equal protection of laws including fundamental freedoms, rights against exploitation, voting rights onpar with men and the status of women in India under fundamental duties.

**Keywords: Preamble, Fundamental Rights, Fundamental Duties, Directive Principles**

Further the constitution has provided under Article 42 that the State has to make provision for securing just and humane conditions of work and for maternity relief. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustices and all forms of exploitation according to Article 46 and Article 47 provides that the State has to take measures to raise the level of nutrition and the standard of living of its people.

## 1. Introduction

Constitutions are the most authoritative expressions of States' systems of governance and accountability. The constitution of India enshrined and safeguarded equality before law and equal opportunities under fundamental rights chapter. Therefore pose potential opportunities for both men and women irrespective of their religion, race, caste and region to the advancement of gender equality. The constitution prohibits discrimination based on gender. The mandatory principle, furthermore the goals set-out in the modern constitutions of equality of opportunities finds that there has been a significant growth in gender-responsive institutionalised systems since the 1980s.

However, while this is an important achievement, the persistence of gender-discriminatory provisions in some constitutions as well as the lack of a clear pathway between constitution-making and policy, legislative change tends to diminish the contribution of constitutions to gender equality efforts.This brief examines strategies that have been used by different players for achieving gender-responsive constitutional changes and pinpoints examples of situations in which reforms have been harnessed for positive advances in jurisprudence, policy and legislation [1].

Women have always played an important role in the progress of a nation.If the mothers are educated, the whole society will progress. More education among the women means the more progress of the society. Educated women can do much to reform the society. Women play a very vital role in human progress and have a significant place in the society. Napoleon said: "Give me good mothers and I will give you a good nation." The progress of nation depends upon the way the mothers bring up their children. They are not at all inferior to men. Society without women cannot be imagined. The major responsibility of a woman is undertaking is to preserve and continue the human race**[2].**

## 2. Historical Background

The gender rights wave for formally began at the Seneca Falls Convention in 1848 when three hundred men and women rallied to the cause of equality for women. Elizabeth Cady Stanton (d.1902) drafted the Seneca Falls Declaration outlining the new movement's ideology and political strategies [10]. Some thinkers have sought to locate the roots of feminism in ancient Greece with Sappho (d. c. 570 BCE), or the medieval world with Hildegard of Bingen (d. 1179) or Christine de Pisan (d. 1434). Certainly Olympes de Gouge (d. 1791), Mary Wollstonecraft (d. 1797) and Jane Austen (d. 1817) are foremothers of the modern women's movement. All of these people advocated for the dignity, intelligence, and basic human potential of the female sex [**3**].

The idea of an Equal Rights Amendment, however, gained momentum among politicians and the broader public. World War II opened many doors for women, who filled gaps in the labour force while

men were off fighting. During this time, women were welcomed into politics, onto juries, openly wooed by educational institutions and encouraged to take up male-dominated majors such as math, science and technology **[4].**

The idea that constitutions are gendered is not new, but its recognition is the product of a revolution in thinking that began in the last decades of the twentieth century. In the 1780s, the United States Constitution was ordained and established by men. As a rule, women did not participate in the conventions that framed and ratified the Constitution. Women did not vote for convention delegates **[5].**And women-as women did not publicly participate in constitutional debates in the press, in pamphlets and so on. Only one woman played a prominent role: the Anti-Federalist Mercy Otis Warren, sister of colonial lawyer James Otis (who argued the famous 1761 writs of assistance case) and wife of James Warren, speaker of the Massachusetts House of Representatives. Early Nineteenth Century America carved life into separate gendered spheres of public and private. Men dominated public fora-especially government-and women occupied key roles in "private" domains, such as the family.

### 2.1 Indian scenario

Equal rights and opportunities or feminism whatever may the word Savitribai Phule (1831–1897) is the first one of the earliest Indian feminists. She started the first school for girls in the subcontinent. The movement for women's suffrage began in the early 1900s in response to a national movement for suffrage, even though vast majority of neither men nor women had a right to vote the British colonial rule before 1947.

In 1925 theIndian succession Act: Social reform movements raised the issue of amelioration of women's position in society. As a result, in 1925, the Indian succession act was passed. This is another secular and pro-women law passed during the British era which gave womenequal property rights**.** This changed in 1950 when universal suffrage was granted to all adult Indian citizens. In 1950, universal suffrage granted voting rights to all women. This is enshrined under Article 326 of the Indian constitution. India is a parliamentary system with two houses viz., Lok Sabha (lower house) and Rajya Sabha (upper house).The gap between men and women voters has narrowed over a period of time.

### 3. UN Conventions and Declarations on gender equality

Here is a list of the key conventions and declarations that guide gender equality. Convention on the Political Rights of Women (1954), this convention's purpose is to codify a basic international standard for women's political rights. Convention to the Consent of Marriage, Minimum Age of Marriage, and Registration of Marriages (1964).This convention requires the establishment of a minimum age for marriage by law ensures the registration of marriage and reaffirms mutual consent for marriage by both parties.

This convention states that women and children are often the victims of wars, civil unrest, and other emergency situations that cause them to suffer. Furthermore, it enshrines women and children's rights, such as access to food, shelter, and medical care in emergency situations. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979). This convention is thought of as an international women's bill of rights. It is a defining document in gender equality work. Declaration of the Elimination of Violence against Women (1993) This convention international recognizes the right of a woman to live a life without violence **[6].**

Beijing Declaration and Platform for Action (PFA) (1995), adopted by governments at the 1995 Fourth World Conference on Women, this document sets forth governments' commitments to enhance women's rights. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, known as the Maputo Protocol, guarantees comprehensive rights to women including the right to take part in the political process, to social and political equality, control of women's reproductive health, and ending female genital mutilation. Convention on preventing and combating violence against women and domestic violence, (Istanbul Convention) (2014) creates a legal framework and approach to combat violence against women and focuses on preventing domestic violence, protecting victims and prosecuting accused offenders.

The Paris Agreement (under the United Nations Framework Convention on Climate Change) The Paris Agreement constitutes a breakthrough; for the first time, a Climate Treaty in its Preamble commits Parties, to promote and consider their respective obligations on human rights, as well as on

gender equality, and the empowerment of women. The Agreement also mandates gender-responsive adaptation actions and capacity-building activities.

**4. Gender Justice in India: Constitutional Provisions for Women in India [9]**

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive or protective discrimination in favour of women. Within the framework of a democratic polity, our laws, policies devised for development, Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

**4.1. *The Preamble***

The Preamble declares that one of the most fundamental provisions of the Constitution is to secure social, economic and political justice for all its citizens. In this chapter I examine the provisions of gender justice in the Constitution and the role of law in securing justice to women. The Constitution of India grants equality to women and empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them.

4.2 ***Fundamental Rights [7]***

Part III of the Constitution under the chapter of Fundamental Rights in Article 14 ensure equality before the law and equal protection of law. Article 15 Prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and Article 16 guarantees equality of opportunity to all citizens in matters relating to employment.

Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

The State can make any special provision in favour of women and children (Article 15 (3)) for their protection. Article 23 and 24 prohibits exploitation and guarantees right to protection against exploitation and human trafficking since, both sections are vulnerable and victims to trafficking & exploitation.

**4.3 Directive *Principles of State Policy***

Under chapter IV , ***Directive Principles of State Policy*** of the Indian constitution provides that the State has to direct its policy towards securing for men and women equally the right to an adequate means of livelihood under Article 39(a), equal pay for equal work for both men and women under Article 39(d) and Article 39 - A provides that to promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities .

Further the constitution has provided under Article 42 that the State has to make provision for securing just and humane conditions of work and for maternity relief. The State has to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustices and all forms of exploitation according to Article 46 and Article 47 provides that the State has to take measures to raise the level of nutrition and the standard of living of its people. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women under Article 51(A) (e).

**4.4 Reservation of seats for women in Panchayat Raj [8]**

**73rd& 74th Amendments of the Constitution** ensure that no less than one-third of the total number of seats shall be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat Raj (Article 243 D(3) and one- third of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality Article 243 T (3) includes category wise.

**5. Major Legal Provisions for Women in India [9]**

To uphold and implement the Constitutional mandate, the government of India at central level and states has enacted various legislations intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Women are vulnerable to crime victims such as sexual assaults, robbery may be because of their less physical strengths or traditional views or impressions since ages about their status in the society. The crimes, which are directed specifically against women, are characterized as 'Crimes against Women are classified under two categories. (1) The Crimes Identified Under the Indian Penal Code (IPC), Rape Sec. 376 IPC, Kidnapping & Abduction for different purposes (Sec. 363-373), Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC), Torture, both mental and physical (Secs. 498-A IPC), Molestation (Sec. 354 IPC), Sexual Harassment (Sec. 509 IPC), Importation of girls (up to 21 years of age).

5.1 ***The Crimes identified under the Special Laws (SLL)***

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to tackle with the emerging requirements. Some Acts which have special provisions to fulfil constitutional obligations and safeguard women & their interests are:

(i) The Employees State Insurance Act, 1948 ; (ii) The Plantation Labour Act, 1951 ; (iii) The Family Courts Act, 1954; (iv) The Special Marriage Act, 1954; (v) The Hindu Marriage Act, 1955; (vi) The Hindu Succession Act, 1956 with amendment in 2005; (vii) Immoral Traffic (Prevention) Act, 1956; (viii) The Maternity Benefit Act, 1961 (Amended in 1995); (ix) Dowry Prohibition Act, 1961 ; (x) The Medical Termination of Pregnancy Act, 1971; (xi) The Contract Labour (Regulation and Abolition) Act, 1976 (xii) The Equal Remuneration Act, 1976 (xiii) The Prohibition of Child Marriage Act, 2006 (xiv) The Criminal Law (Amendment) Act, 1983 (xv) The Factories (Amendment) Act, 1986 (xvi) Indecent Representation of Women (Prohibition) Act, 1986 (xvii) Commission of Sati (Prevention) Act, 1987 (xviii) The Protection of Women from Domestic Violence Act, 2005

5.2 ***Special Initiatives for Women***

Apart from the above mentioned Legislations there are certain initiatives taken by the appropriate governments they are (i) National Commission for Women:NCW, the statutory body was set up in January 1992, with an objective to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review the existing legislations and to suggest amendments if necessary

***The National Plan of Action for the Girl Child (1991-200***0): The plan of Action is to ensure survival, protection and development of the girl child with awed objective of building up a better future for the girl child. Further in 2001 National Policy for the Empowerment of Women with a goal to bring about the advancement, development and empowerment of women.

**6. Judicial Approach**

Although there are very few *women* in higher levels of Indian *judiciary* and only three *women* judges in the apex court there are judges with humanistic values who stood for the cause support of women issues at the initial stage are viz., Justice J.S. Verma, VR Krishna Iyer, Justice P.N.bhagwati and so on . Gender equality in India is a topic of great concern as it deals with the rights of women and men which has been continuously infringing by the people of society because of their mentality towards the other citizens and so has been the matter of several landmark decisions**.[10],**
*Indian judiciary has promptly followed the international standards in justice delivery systems to render fair justice to women such that Muller v. Oregon*, 208 U.S. 412 (1908), a landmark decision by the United States Supreme Court. The facts of the case are that Women were provided by state mandate lesser work-hours than allotted to men. The posed question was whether women's liberty to negotiate a contract with an employer should be equal to a man's. In Justice David Josiah Brewer's unanimous opinion, the Court upheld the Oregon regulation and distinguished it on the basis of the difference between the sexes. The child-bearing physiology and social role of women provided a strong state interest in reducing their working hours.

There are land mark judgements such as CB Muthamma vs union of India, AIR 1979 SC, C. Ms. Muthamma had to take the Ministry of External Affairs to court when she was denied promotion to Grade I on the gender basis, she recourse the apex court and won, and another landmark judgment is

Air India Etc. Etc vs NergeshMeerza&Ors. Etc. Etc on 28 August, 1981; 1981 AIR 1829, 1982 SCR (1) 438.

*Likewise, the case of Mary Roy v. State of Kerala [32], &Ors , 24 February, 1986;1986 AIR 1011, 1986 SCR (1) 371 ,* where the Supreme Court took twenty years to make a decision over the facts given but at the end the judgement was in favour of the plaintiff. Due to the societal behaviour, women put the step forward for their rights because of the great importance given to the precedent of the Indian legal system. In this case the woman fights for the opposition in the matter of the inheritance law where the daughter had been denied to give the property of his father as it is the injustice of gender.

*In the case of* ***State of Madras v. ChampakamDorairajan, AIR, 1951SC,*** In this landmark case of Madras the caste based discrimination on reservations were struck down by the court, which is against the Article 16(2) of the constitution. This case was resulted under the First Amendment of the constitution of India.

***Charu Khurana vs. Union of India (UOI) 2015 1 SCC 192: 2014; in the instant case*** Petitioner 1 was the Hollywood make-up artist and hairdresser. She submitted an application to R-5 association to issue her a membership card to work there as a make-up artist and hairdresser. The association refused the application submitted by the petitioner 1 and told her to remove the word make-up artist from her application. If she still performs as the make-up artist then she will be fined of Rs 26,500. After being denied from the work, she filed a complaint with R-6, Federation of Western India Cine Employees. On the receipt of reply, it was mentioned by R-6 that they were allowed to work as make-up artist and hair stylist. Thereafter, R-5 intimidated the federation that the decision taken by them do not bind as it is against the association rules to provide female worker the work of make-up artist.

Therefore, the court held that there can be no discrimination solely on the basis of gender. Equality cannot be achieved in any field if the women will not be given equal opportunities. It was also stated that registrar of the Trade Union should not allow or see that no other trade union should make any such provision which is inconsistent to the Act. The writ petition filed by the respondent under Article 32 of the Constitution of India reveals with highlighting the prevalence of gender equality in the film industry.

**CONCLUSION**

The principle of equality has been embodied under various provisions in our constitution as a symbol to denote that the laws are made for the protection of each and every citizen of this democratic India. In an incredibly diverse society like India, where for every wrong there is a legislation which describes the values like social justice, equality, liberty and fraternity cultivated by the Constitution which has the binding force. The Indian legal system has been working on these matters and keeps on maintaining and guiding the people.

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