

The Constitution of India and Its Evolution Towards Gender Justice

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ABSTRACT

This study looks at how gender justice has changed under India's constitution since it was adopted in 1950. The Constitution laid the groundwork for government based on the initial ideas of equality and liberty, but in practice, society frequently failed to live up to its high expectations, especially when it came to resolving gender inequality. Gender justice has progressed significantly thanks to legislative efforts and judicial interpretations. Supreme Court rulings that challenged discrimination have broadened the definition of basic rights to include gender equality. At the same time, there have been constitutional amendments that attempt to increase women's voice in decision-making, such as those that require municipal governments to set aside seats for women. Converting constitutional guarantees into real gender equality is still a difficult task, notwithstanding recent successes. In order to determine how these changes have contributed to making India a more equitable and welcoming place for all people, this study takes a close look at them.

Keywords: *Indian Constitution, Gender justice, Fundamental Rights, Article.*

I. INTRODUCTION

The Constitution of India is a landmark document that provides the basis for the democratic governance of the nation and embodies the ideals of justice, liberty, equality, and brotherhood. It was enacted on January 26, 1950. Given India's complex historical background of gender inequality and patriarchal practices, it is crucial that one of the Constitution's primary goals be the advancement of gender justice. Global human rights movements and the Indian liberation struggle had a significant impact on the Constitution's authors, who included strong provisions to guarantee gender equality.¹

In its opening, the Preamble to the Constitution states unequivocally the determination to provide all people with social, economic, and political fairness.² Gender justice is an aspect of this larger dedication to equity that seeks to right past wrongs and advance gender parity in all spheres of society. This dedication is based on the Fundamental Rights, especially Articles 14, 15, and 16, and the Directive Principles of State Policy.

Article 14 ensures that every individual within India's borders enjoys equal protection under the law and equal treatment in the court system. To promote gender justice, this article is essential since it guarantees equitable treatment of men and women by the state. Religion, ethnicity, caste, sex, and place of birth are all specifically forbidden under Article 15. Importantly for gender equality, the state can recognize the need for affirmative action to overcome historical inequities and promote substantive equality by making particular provisions for women and children under Clause 15(3). Promoting gender parity in the

¹Agnes, F. (2011). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

² Austin, G. (1999). *Working a democratic constitution: The Indian experience*. Oxford University Press.

workplace is the goal of Article 16, which guarantees equal opportunity in public employment by prohibiting discrimination based on sex.

The Indian judiciary has been instrumental over many years in interpreting these constitutional provisions in a way that promotes gender equality. Supreme Court rulings have gradually broadened the definition of gender rights. One example is the Vishakha verdict of 1997, which filled a gap in the law and established standards to prevent sexual harassment of women at work. In 2017, the Supreme Court of India upheld the rights of Muslim women by declaring immediate triple talaq unlawful in the case of Shayara Bano vs. Union of India. This was a major step towards achieving gender justice.³

The advancement of gender justice has also been greatly aided by legislative measures. An important step toward protecting women from all types of domestic violence was the passage of the Domestic Violence Act in 2005. Similarly, maternity leave was increased to 26 weeks under the Maternity Benefit (Amendment) Act, 2017, which benefited mothers and their children and encouraged women to stay in the job. Laws such as these and others like the ⁴Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Dowry Prohibition Act show how the legal system is changing to handle gender-specific issues.⁵

These legal and constitutional structures are supplemented by the policies and activities of the Indian government. By tackling problems with female infanticide, education, and health, programs like Beti Bachao Beti Padhao seek to elevate the position of girls. The goal of many programs aimed at empowering women and helping them develop their skills is to raise women's socioeconomic position so that they can live dignified, independent lives.⁶

The fight for full gender equality in India is far from over, despite these promising developments. ⁷The attainment of gender equality is frequently hindered by entrenched patriarchal views, economic inequality, and cultural mores. There needs to be ongoing work and change to address issues including gender-based violence, women's underrepresentation in politics and the economy, and wage inequality.

II. INDIAN CONSTITUTION AND GENDER JUSTICE

It is stated in the Preamble of the Constitution that all people should be granted equality in position and opportunity. When promised rights are not evenly enjoyed by all members of a community, then the promise of those rights is meaningless. In the Preamble, the writers of the Constitution sought to guarantee equality of status and opportunity. The foundation of the Indian Constitution is equality. Social, political, and economic fairness for all people of the country are among the topics mentioned in the Preamble of the Constitution. When reading the Preamble, it is important to keep in mind the passages concerning social justice and how they relate to the elimination of disparities in money, status, class, caste, sex, race, title, and so on. Without regard to factors such as race, religion, gender, socioeconomic level, etc., economic justice guarantees that all workers should receive fair compensation for their efforts. By definition, political justice forbids the perpetuation of gender bias in politics. The core of adult suffrage is contained in this paragraph. Ensuring equal fundamental rights for all individuals is crucial in preserving human dignity, as mentioned in the Preamble. Equality and freedom are fundamental to living dignified lives. Part III of the Indian Constitution guarantees all people, regardless of gender, a full range of

³ Baxi, U. (2002). *The future of human rights*. Oxford University Press.

⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, India.

⁵ Choudhry, S., Khosla, M., & Mehta, P. B. (Eds.). (2016). *The Oxford handbook of the Indian constitution*. Oxford University Press.

⁶ Sen, A. (1999). *Development as freedom*. Oxford University Press.

⁷ Goetz, A. M. (2007). *Gender justice and rights*. Zubaan.

fundamental rights. Within India's borders, the state must ensure that all citizens have the same rights and protections under the law, as stated in ⁸Article 14. ⁹Article 15(1) continues by saying that no citizen may be "only" subjected to discrimination by the state because of their religion, race, caste, sex, or place of birth. In addition, the provision makes it clear that a person's religion, caste, sex, place of birth, race, or any combination of these factors cannot be used as the "only" basis to deny them access to public spaces or impose any kind of responsibility, restriction, or impairment. There can be no gender discrimination under Article 15(1). But there are several basic rights that explicitly state that women's rights must be protected. It bears mentioning that the principle of equality refers about equal treatment under equal circumstances, not that everyone should be subject to the same law. Thus, the state is allowed to create specific arrangements for women by Art-15(3), which is a positive discrimination in their favour. Equality among equals, or "equal treatment under equal circumstances," is the appropriate lens through which to view Art.15(3).

The constitution's authors were fully cognizant of the fact that, historically speaking, women in India did not enjoy the same legal, economic, and social protections as men. An impulse to elevate women and unite them under one sun swept over them. So, Art. 15(3) does not conflict with Art. 15 in any manner; rather, it affirms positive discrimination (1). When it comes to public sector jobs, Article 16 discusses equal opportunity. The term "equal employment opportunity" refers to a framework in which all qualified individuals have the same chances to find and keep a job. Additionally, it encompasses the core principle of fair performance evaluation. It should be emphasized that Art. 16 specifically addresses positions held by the state, whether through employment or appointment. Everything having to do with an employee's employment, whether it's before or after their employment, is considered a subject relevant to employment. The trade of human beings is expressly forbidden by ¹⁰Art. 23. The Suppression of Immoral Traffic Act, 1956 (now called the Immoral Traffic Prevention Act, 1956) was created by the legislature in an effort to outlaw prostitution and other types of trafficking, and it is based on this Article. Andhra Pradesh's legislature has also outlawed the practice of dedicating women to deities and temples through the Devdasis (Prohibition of Dedication) Act, 1988.¹¹

Part IV of the Constitution contains the Directive Principles of State policy, which include numerous demands for the state to enhance women's standing and ensure their safety. The right to sufficient means of subsistence is guaranteed to all citizens, regardless of gender, by the state according to Art. 39(a). ⁶⁸The State is directed by Art. 39(d) to ensure that men and women get equal compensation for equal effort. The Equal Remuneration Act of 1976 was the state's way of putting this clause into action. The State is expressly forbidden from exploiting the physical and mental well-being of its employees (male and female) under Art. 39(e). ¹²Article 42 of the Constitution mandates that the state must provide for fair and decent working conditions as well as maternity leave. This is why the Maternity Benefit Act came into being. ¹³Article 44 of the Indian Constitution mandates the establishment of a unified civil code for the whole country.

Reforming personal laws and establishing a Uniform Civil Code were causes that Dr. Ambedkar strongly supported. Leila Seth, the first female chief justice, stated that a unified civil code would help to eliminate demeaning traditional behaviors that women face. An ongoing debate centered on whether or not a unified

⁸ INDIA CONST. art. 14

⁹ INDIA CONST. art. 15.

¹⁰ INDIA CONST. art. 23

¹¹ Devdasis (Prohibition of Dedication) Act, 1988 (Andhra Pradesh).

¹² INDIA CONST. art. 42.

¹³ INDIA CONST. art. 44

civil code should strip people of their religious freedoms. Justice Leila Seth rightly said that a unified civil code will not violate people's freedom of religion.⁷¹ Even if a woman's father or husband converts to another faith, this will still protect her equal property rights, her ability to adopt, her inheritance rights, her right against arbitrary divorce, and her right against polygamy.¹⁴

Women now have a guaranteed number of seats in Panchayat and municipal elections thanks to the 73rd and 74th amendments to the Indian Constitution. ⁷²According to Article 243D of the Constitution, women must constitute at least one-third of the total number of seats in any panchayat elected directly. In the direct elections to each municipality, Article 243T(3) mandates a quota for women. It is the responsibility of every Indian citizen to reject behaviors that diminish women's worth, according to ¹⁵Art. 51A(e), among other things.

III. JUDICIAL TRENDS AND PRACTICAL REALITY

All similar rights accorded to men are also guaranteed to women under the Constitution of India, as stated above. As a result, women have the right to equality, freedom, protection from exploitation, religious liberty, access to decent education, cultural opportunities, and political representation. We can now shed some light on the judiciary's stances toward women and the extent to which they have achieved de jure equality in practice.

A woman's gender cannot be used as an excuse to reject her from a job opportunity, as was correctly determined in the seminal case of ¹⁶Nargesh Meerza vs. Air India⁷³. This results in a breach of the Constitution's Article 14. Here, an Air India flight attendant fought against the airline's policy that forbade flight attendants from getting married within four years of starting work for the company. Additionally, the law stipulates that airhostesses will be fired if they become pregnant and that they will retire at the age of 35, with the caveat that the managing director has the right to extend the period by 10 years. Both the second and third sections are harsh, capricious, and unconstitutional, according to the Apex Court, despite the first provision being fair.

The Indian Foreign Service (Conduct and Discipline) Rules, 1961 were challenged in a writ petition filed with the Apex Court in the case of ¹⁷C.B. Muthamma vs. Union of India⁷⁴. An unmarried female member is required to obtain government approval before getting married under this rule, and she may still be requested to quit from her position at any point after getting married if her family life is influencing her work efficiency. In this case, the highest court in India ruled that the Indian Foreign Service's seniority and promotion policies violated Article-15 of the country's constitution. In addition, the court ruled that the regulations have a masculine quality to them, making it seem if the weaker sex is being tried to dominate.

The court's reasoning is absurd because in an adulterous relationship, both partners freely agree to be involved. The Commission for Women rejected recommendations to alter Section 497 of the Indian Penal Code on the grounds that punishing women would have no redeeming value in preserving marriage. This section also reflects some of that reasoning. Additionally, the majority of married women in today's culture still lack agency.

Life at home and in her social circles will be much more devastated by a woman's incarceration. So, it's clear that the legislature is trying to protect marriage through this provision; after all, if women are just as guilty as men for infidelity, it will have a devastating effect on their families and, as the institution's sole protectors, the institution of marriage itself would crumble.¹⁸

¹⁴ Kerala High Court. (2004). *Leela v. State of Kerala*.

¹⁵ INDIA CONST. art. 51A(e).

¹⁶ *Air India v. Nargesh Meerza*, (1981) 4 SCC 335 (India).

¹⁷ *C.B. Muthamma v. Union of India*, (1979) 4 SCC 260 (India).

¹⁸ Subramanian, N. (2014). *Nation and family: Personal law, cultural pluralism, and gendered citizenship in India*. Stanford

The preceding debate makes it clear that men, families, and society continue to shape how women are perceived. She cannot be considered a rational, free human being who can give her informed agreement in the event of adultery and comprehend the gravity of the situation. With this in mind, the case of¹⁹ *Leela vs. State of Kerala*⁸¹ merits particular consideration. The plaintiffs in this lawsuit argued that the Factories Act, namely Section 66(1)(b), violates three articles of the Indian Constitution: Articles 14, 15, and 16. A special provision in behalf of women is already contained in Sec66(1)(b), which is why the petition was denied. According to the Kerala High Court, Section 66(1)(b) of the Factories Act regulates working hours and is thus a provision of social welfare legislation. This provision protects women from being forcibly removed from their families or subjected to dangerous nighttime factory labor. Lady constables and hotel waiters are not required to work at night because the court ruled that women's inherent loyalty to their families makes it inappropriate to expect them to do so.

IV. WOMEN'S RIGHT OR PRIVILEGE UNDER INDIAN LAW

Women in India enjoy unique legal protections due to their unique anatomy, traditional roles, social standing, and the current state of Indian culture. Typical Indian women lack education, exhibit irrationality, and are unaware of their rights under the law. A patriarchal social framework enslaves her thoughts. She has no political clout and is economically reliant. In Indian civilization, men and women face various situations. It is well-known that in cases of inequality, the state has the power to treat individuals differently. The idea of treating like with like and unlike with unlike was put out by Aristotle.²⁰

Women are distinct from men. Compared to men, her social status is unique. As a social group, women are distinct from men. Therefore, they necessitate distinct handling. They require special attention. With the goal of creating an egalitarian society in mind, Art.15(3) can provide women special treatment and preferential treatment. Protective discrimination is the name given to Art. 15(3). Because of her membership in a historically oppressed social class, a woman deserves special protections in our society. It is imperative that the state protect her dignity. Chief Justice Chagla ruled that "State could discriminate in favour of women against men, but it could not discriminate in favour of men against women" in the *Dattatreya Motiram State of Bombay case*. "

This is due to the fact that males are fundamentally better. Similarly, the Kerala High Court noted in the ²¹*Balan Nair vs. Bhavani Amma* case that the purpose of Article-15(3) and Article-39 is to provide assistance to children and women who are in trouble. In order to ensure women's freedom, equality, and dignity, the state has the authority to enact specific laws pertaining to women. Evident from the court's pronouncements is that it made an effort to be more gender-sensitive. But it has repeatedly portrayed women through a male lens. The Supreme Court's view of women in the *Abdul Aziz* case reflects its commitment to protecting marriage as a social institution and the importance of women's roles within their families and communities. ²²Similarly, the Kerala High Court made sure that women who labor all day in factories have time to spend with their family at night in the *Leela* case. This is due to the fact that it is societally expected. Being completely self-aware is impossible for a woman. She will never be able to live on her own. Man, family, and society should be her only motivations in life; she shouldn't have any personal goals in life. The best way for society to protect women's modesty, dignity, and other womanly traits is to provide them with particular rights. The court and the public are concerned about her

University Press.

¹⁹ Kerala High Court. (2004). *Leela v. State of Kerala*.

²⁰ Aristotle. (2009). *Nicomachean ethics* (W. D. Ross, Trans.). Oxford University Press.

²¹ *Balan Nair v. Bhavani Amma*, AIR 1987 Ker 110 (India).

²² Kerala High Court. (2004). *Leela v. State of Kerala*.

physical health. She considers it an honor. Equal social, economic, and political rights for women are the goal of the Right to equality movement. A society where women are free to choose their own roles, including more conventional ones, should be the ultimate goal of gender equality and emancipation. The goal of equality should be to shift society's view of women.²³ The social status of women should be the target of this effort. In addition, it has value. The judiciary, mindful of long-standing gender relations, granted women temporary special measures. Judgment should be based on achieving actual equality, not on giving women special treatment because of their disadvantaged social status. The current social climate and the historical difficulties women have endured should be the targets of this effort. There are several rights and privileges that the judiciary may provide to women who are members of socially disadvantaged groups, such as dalits, tribals, religious minorities, people with disabilities, etc.

V. CONCLUSION

Finally, by enshrining the ideals of equality and non-discrimination, the Constitution of India has established a strong basis for gender justice. The Constitution's guiding principles and basic rights have laid the groundwork for a more equitable society and the elimination of gender disparities. Judicial rulings and legislative initiatives have made great strides in this direction throughout the years, guaranteeing women's empowerment and protection in many fields. The domestic violence act and the maternity benefit (amendment) act are progressive pieces of legislation that demonstrate how the legal landscape is changing to support gender equality, as are landmark judgments like the ²⁴Shayara Bano case and the Vishakha guidelines. In spite of these advancements, there is still a long way to go until we achieve full gender equality. Full gender equality remains elusive due to enduring obstacles such as gender-based violence,²⁵ socio-economic inequality, and deeply ingrained patriarchal practices. Continuous legislative reforms, vigorous judicial involvement, and revolutionary social transformations are necessary to address these difficulties. ²⁶Gender justice is an issue that demands concerted action from all sectors of society, including but not limited to the political and legal systems. The dedication to building a just and equitable society is seen in the way the Indian Constitution has progressed towards gender justice. Although we have come a long way, we must remain vigilant and take action every day to achieve full gender justice and fulfill the fundamental guarantee of equality for all.

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²⁴ Supreme Court of India. (2017). *Shayara Bano v. Union of India*.

²⁵ Government of India. (2013). *Sexual Harassment of Women at Workplace Act*.

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