

4. Empowerment of Women: Constitutional Rights and Global Standards

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4.1 Introduction:

"...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields"¹

Women constitutes nearly half of the population of the world. She is called as better half of man. However, history reveals the fact that she has faced and is facing a significant challenges and inequalities. She has often been subjected to physical abuse, sexual exploitation, and social discrimination. Since a long time, women are viewed primarily as dependents such as wives, mothers, or unpaid workers within their households. In old age, they were often neglected, and widows faced severe societal stigma and mistreatment.

For centuries, women are given lower status than men and denied dignity and respect. This issue of gender discrimination is worldwide. Women have been labelled the "weaker sex," and their vulnerability has often been exploited. It is rightly said, "A nation that fails to uplift its women cannot hope to have a bright future." Patriarchal societies and the gender roles of male and female which is fixed in mindset of the society contributes to this discrimination.

Things are slowly changing as education has made women aware of their rights and given them the confidence to challenge outdated traditions and illogical orthodox beliefs that undermine their status. Women today are balancing both their family responsibilities and careers. Thus, contributing their efforts not only for family but also for the development of the nation.

This progress shows how capable and independent women are! Supporting and empowering women isn't just helpful it's necessary for building a fair and equal world. In modern India, a growing concern is the rise in violence and crimes against women. From harassment and abuse to gender discrimination, these issues demand urgent action. To genuinely empower women, we need to focus on education, enforce stronger legal protections, and build support systems that uphold their dignity and well-being. Equally important is the need to change societal attitudes. It's not only women but men should actively challenge deep-rooted biases

¹ United Nations Convention on the Elimination of All Forms of Discrimination Against Women, adopted in New York on December 18, 1979 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

and work together to foster fairness and mutual respect. True empowerment isn't just about granting rights; it's about fostering an environment where women feel secure, valued, and respected.

The important issue of today is the growing crime rate against women. This requires immediate action by enacting strict laws and its rigorous implementation. Crimes against women include female infanticide, female feticide, child labour, prostitution, sexual harassment, domestic violence, dowry deaths, dowry suicide, acid attacks, rape, assault, cruelty against women, surrogacy, cybercrimes, etc. Gender discrimination at the workplace extends far beyond the issue of unequal pay; it pervades every level of employment, from large industries and office environments to agricultural fields and construction sites. Women are often denied equal opportunities for promotions, leadership roles, and professional development, despite having the same qualifications and capabilities as their male counterparts. They may also face harassment, unequal access to resources, and biased performance evaluations, further hindering their career advancement. In some sectors like hospitals women staff are expected to work longer hours without additional compensation or recognition, and their contributions are often undervalued. These inequalities are in violation of constitutional principles which mandates fairness and equality.

National and International legal framework together support women's empowerment by offering dual protection and promoting gender equality. The Indian Constitution guarantees equality, non-discrimination, freedoms and personal liberty under part III, providing a solid legal foundation for gender justice. These rights are further strengthened by global agreements such as CEDAW and the ICCPR, which establish international standards for eliminating discrimination against women. By aligning domestic laws with these global conventions, countries ensure that women's empowerment is both a constitutional right and a commitment to international human rights, creating a comprehensive framework for gender equality and social justice.

(A) International Conventions for Empowerment of Women

1) United Nation Charter 1945:

"The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."²

2) Universal Declaration of Human Rights, 1948:

- a) Every person is born with inherent liberty, equality, and dignity, and these basic human rights are guaranteed to all. Everyone has the right to be treated equally before the law and to receive its protection, free from discrimination. Any actions that promote such discrimination are against this principle, and individuals are entitled to protection from such actions. Everyone is entitled to privacy, including the protection of their family,

² Art..8 UN Charter 19454.

home, and personal reputation. Interference with one's private life, family, residence, or correspondence, as well as any harm to their honor or reputation, is prohibited and must be safeguarded by law.

- b) All individuals have the right to enter in to a wedlock and form a family. Husband and wife both possess same rights in the wedlock, including the right to decide on its duration and dissolution. Marriage must only occur with the consent of both of the parties i.e. husband and wife, and the family being a part of the society should get protection and support.
- c) Everyone is entitled to pursue work in their desired field, with fair working conditions and protections against unemployment. The principle of equal pay for equal work applies to ensure no discrimination. Workers are entitled to compensation that enables them to live with dignity, supported by social protection when necessary. Moreover, All individuals possesses the right to establish or become a member of trade unions to safeguard their interests.
- d) Every person has the right to an adequate standard of living, which includes access to basic and essential services. People are entitled to protection during critical situations like unemployment, sickness, etc and any circumstance that may threaten their livelihood. Special care should be provided to mothers and children, ensuring that all children, regardless of their birth circumstances, receive the same protection and opportunities.

3) Convention on the Political Rights of Women, 1954:

- a) This convention gives women the right to vote in all the election without any gender discrimination.³
- b) Women are entitled to contest in any Government election.⁴
- c) Women have the right to hold positions in Government Institutions and execute all its function without gender discrimination.⁵

4) International Covenant on Civil and Political Rights 1966 (ICCPR):

- a) **Right to Marriage and Family:** The family is recognized as an important unit of the society which deserves protection from the community and the government. All individuals of prescribed age have the right to enter in to a wedlock and form a family. Marriage should occur only with the free and informed consent of both parties. In the event of a separation, proper legal steps must be taken to ensure the rights and welfare of any children involved are fully protected.⁶
- b) **Citizen Rights:** Every citizen, irrespective of gender or other distinctions, is entitled to the following rights and opportunities without unreasonable restrictions:
 - (i) To engage actively in public matters, either personally or by electing representatives of one's choice.

³ Art. I Covenant on Political Rights of Women.

⁴ Art. II of Covenant on the Political Rights of Women.

⁵ Art. II Covenant on the Political Rights of Women.

⁶ Article 23 of the International Covenant on Civil and Political Rights (ICCPR)

- (ii) To participate in the General elections conducted through universal and equal suffrage, ensuring secrecy of the ballot and free expression of voters' will.
 - (iii) To access public services in their country on a basis of equality.⁷
- c) Equality Before the Law: All people have the right to like treatment under the law and should receive equal protection without any form of discrimination. The law must clearly forbid all types of discrimination and guarantee that everyone is provided with fair and equal protection, irrespective of factors like religion, race, sex, language, political views, origin, wealth, birth, or any other distinguishing characteristic.⁸

5) International Covenant on Economic Social and Cultural Rights, 1966 (ICESCR):

Equal rights: The Member States are under obligation to guarantee for all without gender discrimination to have access to rights outlined in this Convention.⁹

6) The Declaration of Mexico on the Equality of Women, 1975:

The International Conference was organized in Mexico in 1975. This Conference adopted the Declaration of Mexico on the Equality of Women, which highlighted the importance of gender equality and the women's role in fostering international harmony and development. This declaration affirmed the equality principle as far as rights and responsibilities are concerned within families and society.

It emphasized the need for Equal opportunity in education and employment. Additionally, it recognized the right of individuals and couples to make decisions about the number of their children and upheld women's right to decide freely whether to marry or not? Women's active involvement in development of the country and their participation in all spheres were identified as necessary.

The declaration also highlighted women's involvement in aiding international cooperation, peace and in promoting human rights universally. It further called for the elimination of all forms of human rights violations against women and girls, reinforcing the commitment to gender equality and justice.¹⁰

7) The Convention on the Elimination of All Forms of Discrimination Against Women, 1981 (CEDAW):

⁷ Art.25, UDHR

⁸ Art. 26 ICCPR

⁹ Art.3 ICESCR

¹⁰ United Nations,

https://digitallibrary.un.org/search?ln=en&p=The+Declaration+of+Mexico+on+the+Equality+of+Women%2C+1975%3A+f=&action_search=Search&rm=&sf=&so=d&rg=50&c=United+Nation+s+Digital+Library+System&of=hb&fti=0&fti=0 “

(a) Article 2 of the Convention states that the Member States are under obligation in taking concrete steps to combat all kinds of discrimination against females. They are obligated to take comprehensive measures to put an end to gender discrimination and promote equality amongst all.

They must embed the principle of equality between men and women within their national constitutions or other appropriate legal frameworks and ensure its effective enforcement through legislation and practical initiatives. National Courts and other public institutions should be at place to protect the rights of Women by providing them appropriate remedies. States are also required to refrain from any form of discrimination themselves and to see that public authorities adhere to this commitment.

Efforts must extend to addressing discrimination perpetuated by individuals, organizations, or enterprises, taking necessary steps to eliminate such practices. Furthermore, states must enact or amend laws to abolish discriminatory customs, regulations, and practices, including repealing penal provisions that unfairly target women, thereby fostering a legal and social environment free from gender-based discrimination.

(b) The state's duty to guarantee the complete development of women:

As stated in Article 3, Member States are under obligation to take comprehensive actions across all spheres especially in Economic, social, political and Cultural. These actions should include legislative and other required steps for the complete growth and the upliftment of women.

(c) State's Role in Protecting Women and Ensuring Equality:

Under Article 6, States are required to take necessary steps, including laws, to stop trafficking and the exploitation of women through prostitution. Women must be given equal rights under the law, fair access to government jobs, opportunities to participate in politics, and recognition of their nationality. Discrimination based on gender is unacceptable in any area. The State should also focus on creating programs and policies that promote the welfare and empowerment of women.

(B) The Empowerment of Women through Constitutional Provisions:

(1) Right to equality: "The State shall ensure that no individual is denied equality before the law or the equal protection of the law within India's territory. Discrimination based on religion, race, caste, sex, or place of birth is prohibited"¹¹

The Constitution firmly forbids the State from discriminating against any citizen based on religion, race, caste, sex, place of birth, or any other comparable factors. This provision does not limit the State for taking special measures in empowerment of women and other vulnerable groups. Recognizing the distinct challenges women face, the State is empowered

¹¹ Art. 14 Constitution of India

to introduce provisions such as reserving seats for women in educational institutions, public offices and institutions for their upliftment.¹²

All citizens shall have equal opportunities in matters of employment or appointment to any office under the State. No citizen shall be deemed ineligible for, or be subjected to discrimination in, any employment or office based solely on religion, race, caste, sex, descent, place of birth, residence, or any other similar factor.¹³

The Air India policy was ruled unconstitutional by the Supreme Court due to its discriminatory treatment of women. It mandated that female flight attendants could not marry until they had completed at least four years of their service in Air India. If she married before this period, she was required to resign.¹⁴

For Empowerment of Women in Political sphere, the Government of India enacted 73rd and 74th Constitutional Amendment Acts, which reserved 33% of seats for women in various local bodies like village panchayats, Municipalities and Municipal Corporation.

(2) Right to life and personal liberty: Indian Constitution under Article 21 ensures the fundamental right to life and personal liberty. The Fundamental right of 'Right to life and Personal Liberty' is interpreted expansively, covering various rights such as the right to live with dignity, right to speedy trial, right to livelihood, the right to privacy, right to free legal aid, reproductive rights and protection against the virginity test. This article is considered a cornerstone of the Constitution which protects the women's rights.

(3) The Constitution provides protection against trafficking and forced labour, safeguarding individuals from exploitation and any form of involuntary work. It ensures the dignity and freedom of all, prohibiting practices that violate human rights and offering legal safeguards against such exploitation.¹⁵

(4) The State shall ensure that both men and women have equal rights to livelihood. Specifically, it shall design policies aimed at guaranteeing that all citizens, regardless of gender, have access to adequate means of livelihood.¹⁶

(5) The State shall guarantee that its policies are aimed at securing equal pay for equal work, guaranteeing that both men and women receive the same remuneration for performing the same work.¹⁷

(6) The State shall focus its policies on ensuring that the health and well-being of both men and women, as well as the welfare of children, are protected. It shall ensure that no one is

¹² Art. 15 Constitution of India

¹³ Art. 16 Constitution of India

¹⁴ Air India vs Nergesh Meerza, AIR 1981 SC 1829 & and Mrs. Neera Mathur vs Life Insurance Corporation of India AIR 1992 SC 392.

¹⁵ Article 23 of the Constitution of India

¹⁶ Article 39 (a) of the Constitution of India

¹⁷ Article 39 (d) of the Constitution of India

compelled by economic need to take up work that is unsuitable for their age or physical capacity.¹⁸

(7) Equal Justice and free legal aid: The State is responsible for ensuring that the legal system delivers justice fairly and equitably to all. To make this a reality, it must provide free legal aid through appropriate laws and policies, ensuring that no citizen is denied justice because of financial reason or any other disadvantage.¹⁹

(8) Just and humane conditions of work and maternity relief: "The State shall make provision for securing just and humane condition of work and for maternity relief."²⁰

The Supreme Court, in a landmark judgment, directed the Central Government to extend the provisions of the Maternity Benefit Act, 1961, to women employees engaged on daily wages, provided their names are listed on the muster roll

(9) UCC: Article 44 of the Indian Constitution advocates for the establishment of a uniform civil code, stating, "The State shall endeavour to secure a uniform civil code for the citizens throughout the territory of India." Despite several decades of independence, India has not yet implemented a uniform civil code. Personal laws related to marriage, dowry, divorce, inheritance, guardianship, and similar issues continue to differ across various religious communities, including Hindus, Muslims, Christians, Parsis, and Jews.

In *Sarala Mudgal* case ²¹, the Supreme Court stressed the importance of having a Uniform Civil Code (UCC) in India. The Court highlighted that a UCC could protect vulnerable groups, especially women, from being unfairly treated under personal laws. It pointed out that having one common set of laws for all citizens, regardless of their religion, would promote equality and fairness.

(10) Fundamental Duties: "Constitution imposes fundamental duty on every citizen of India, to renounce practices derogatory to the dignity of women."²²

The Government of India enacted the National Commission of Women Act, 1990. This legislation made provision for the constitution of the National Commission for Women, tasked with safeguarding and promoting women's rights.

Supreme Court being the protector and guardian of Fundamental rights has played a significant role in Women Empowerment and protecting the rights of the women. It is evident from the decisions given in various cases by Hon'ble Supreme Court.

¹⁸ Article 39 (e) of the Constitution of India

¹⁹ Article. 39 A of th Constitution of India

²⁰ Article 42 of the Constitution of India

²¹ *Sarala Mudgal v. Union of India* (1995) 3 SCC 635.

²² Art. 51 A (e) Constitution of India

4.2 Vishaka Vs State of Rajasthan²³

The Vishaka v. State of Rajasthan case emerged as a landmark moment in the fight against sexual harassment in India. The case was rooted in the horrific gang rape of Bhanwari Devi, a social worker from Rajasthan, who faced this atrocity while campaigning against the social evil of child marriage. Despite her courage in seeking justice, the trial court shockingly acquitted all five accused, showcasing the grim state of judicial sensitivity towards crimes against women. In response to the injustice, Vishaka, a women's rights group dedicated to education and empowerment, collaborated with four other women's organizations and brought the matter before the Supreme Court. They filed a PIL, seeking the establishment of legal mechanisms to address the pervasive issue of sexual harassment at workplaces.

On August 13, 1997, the Hon'ble Supreme Court gave a transformative decision by framing the Vishaka Guidelines. These guidelines not only defined sexual harassment comprehensively but also placed the responsibility on employers to maintain a safe working environment for women.

4.3 Geetha Hariharan v. Reserve Bank of India²⁴

The case in question revolved around the petitioner, a married woman with a minor son, who applied to the Reserve Bank of India for bonds in her son's name. She signed the application as his guardian. However, the Reserve Bank of India returned the application, asking to either submit an application signed by her husband (the child's father) or provide a guardianship certificate from a competent authority. This act of RBI was based on the Hindu Minority and Guardianship Act, 1956 (HMGA). S. 6(a) of the act states that the father is the natural guardian of a Hindu minor child and only after the death of the father the mother will be the natural guardian.

The petitioner challenged Section 6(a) of the HMGA to be constitutionally invalid on the ground that it violated the fundamental rights to equality and non-discrimination enshrined under Articles 14 and 15 of the Indian Constitution. The petitioner contended that the provision was inherently discriminatory as it undermined the role of the mother as a natural guardian solely based on gender.

The Apex Court in this case adopted a liberal interpretation of S. 6(a) of the HMGA. The Court ruled that the term "after" should not be interpreted to imply that the mother could be the natural guardian only after the death of the father. Such an interpretation, the Court reasoned, would perpetuate gender discrimination and violate the fundamental rights of equality and non-discrimination. The Court declared that depending on who is best suited

²³ AIR 1997 SC 3011

²⁴ AIR 1999 SC 1149

to take care of the child's welfare will be considered as the natural guardian. This legislative intention behind the act is to take into consideration the welfare of the child.²⁵

4.4 Secretary Ministry of Defence vs Babita Puniya²⁶

This recent case was a major step toward gender equality in the Armed Forces in India. The Apex Court ruled that women officers should be granted the right to a permanent commission, ensuring they have the same career opportunities as men. Before this, women were mostly restricted to short service commissions, which limited their career growth and excluded them from leadership roles. The Court emphasized that women are equally capable of serving in the military and rejected outdated arguments about their physical or logistical limitations.

The judgment upheld the principles of equality under the Constitution, stating that gender should not be a barrier to opportunity. It recognized the valuable contributions of women folks in the army and highlighted the urgent need for a fair system where merit, not gender, determines career advancement. This decision not only opened the door for women to hold long-term roles and leadership positions in the military but also challenged societal stereotypes about women in male-dominated fields.²⁷

4.5 Conclusion:

Various International Conventions and National Laws are there for Women's empowerment. Although these frameworks exist, they often remain theoretical and fail to bring significant changes in practice. True empowerment demands the effective implementation of these laws at the grassroots level. It is necessary to spread public awareness to educate people relating to gender equality and the importance of women in family and the society and to encourage women participation in every sphere.

Women should get quality education, proper healthcare, and economic opportunities. Strong legal framework is needed to stop violence, Sexual and mental harassment at workplace, and discrimination. Women should be encouraged to participate in policymaking and governance. Achieving this goal requires collective efforts of the family, Society and the governments to build an environment where women feel safe, respected, and valued. Empowerment of women is not just about enacting laws; it is about fostering a cultural change that challenges deeply ingrained patriarchal norms and promotes gender-sensitive attitudes. With consistent legal reforms, proper enforcement, and societal

²⁵ https://www.law.cornell.edu/women-and-justice/resource/githa_hariharan_v_reserve_bank_of_india.

²⁶ AIR 2020 SC1000

²⁷ Nikita Sharma, Case Comment on The Secretary, Ministry of Defence V. Babita Puniya & Ors. (2020) 7 SCC 469, Symbiosis Law School Nagpur Journal of Women, Law & Policy, Vol. II, 104-108, (2022)

https://www.slsnagpur.edu.in/assetsnew/pdf/jwlpjournals/2022/10.NIKITA_SHARMA.pdf

awareness, women can fully utilize their rights and contribute to creating a fair and complete society.

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