
AN ANALYSIS OF GENDER RIGHTS UNDER THE CONSTITUTION OF INDIA

Legal Upanishad Journal (LUJournal.com)

Vol 1 Issue 3 | January 2024 | pp- 332-344

Zaid Sheikh, Law Student, Indore Institute of Law, Madhya Pradesh

Satvik Shrivastava, Law Student, Indore Institute of Law, Madhya Pradesh

ABSTRACT

The research paper emphasises the legislation created for gender equality and its current status in order to highlight the place of gender equality in the Indian Constitution. In India, the presence of an authoritarian culture has always accelerated the emergence of a gender-biased position for men and women in society. The term "gender justice" refers to the elimination of gender discrimination, often known as gender equality. The idea of social, political, and economic fairness for all of the nation's citizens is cherished in the Preamble of our Indian Constitution. Equal rights are granted to men and women by the Constitution. The Fundamental Rights outlined in Part III of the Indian Constitution, which apply to all Indian citizens regardless of sex, reflect the idea of gender justice. Although the word "gender" is not used in the Constitution, the Court has nonetheless implicitly or explicitly interpreted it as such because, unlike "sex," which is a biological representation of human beings, "gender" is determined by society and hence defines a person's identity.

The globe has made progress towards gender equality and women's empowerment, yet girls and women continue to see injustice and cruelty everywhere they go. India has among the highest incidences of sex-based birth discrimination. According to the Census (2011), there were shockingly 918 girls for every 1,000 boys, which led the Central Government to launch the "Beti Bachao, Beti Padhao" effort to provide the girl child with protection, health, and education. Women experience gender inequity at every stage of life. As a result, the Indian Constitution includes clauses that address gender inequality. Since equality is acknowledged

as a fundamental right in the Indian Constitution, it follows that all of the nation's citizens are now covered. Since the Constitution was first made into law, society and ideals have developed, but the system still has shortcomings. Many individuals still believe that having a daughter makes the family more difficult. Numerous preventative efforts to lessen discrimination have been devised by the government, the Supreme Court, and other authorities; nonetheless, this has not altered the simplistic worldview of individuals who even consider committing female foeticide. Given all of these factors, achieving complete gender equality in a nation like India still poses a difficult and dangerous challenge.

Keywords: *Constitution, Economic Fairness, Equal Rights, Gender Justice, Gender Equality.*

LEGAL UPANISHAD JOURNAL

1. INTRODUCTION

"Human rights are women's rights and women's rights are human rights, once and for all."

– **Hillary Clinton**

Swami Vivekananda, India's patriotic saint, quoted that "there is no chance for the welfare of the world unless the condition of women is improved, and it is not possible for a bird to fly on only one wing." Therefore, in order for India to become a developed nation, it must turn its enormous female labour population into a valuable human resource, which can only be done by raising awareness of women's rights.

India, the country of goddesses, is a place where women are held in the highest regard, yet they suffer harassment, abuse, and other crimes against them. A thorough examination of Indian history demonstrates that throughout the country's documented history, women's status has undergone numerous transformations. Women experienced subjugation in the Indo-Aryan period of ancient India. Customs and taboos such as child marriage, female infanticide, dowry systems, and the prohibition against widow remarriage had a long history in India, which made it challenging to eradicate them from northern Indian Hindu society.

British laws aimed at eliminating societal taboos, such as the Age of Consent Act of 1891, the Bengal Sati Regulation of 1829, the Hindu Widows' Remarriage Act of 1856, and the Female Infanticide Prevention Act of 1870, brought about a remarkable transformation throughout their reign.

The Indian Constitution guarantees women's rights, which include freedom from discrimination, equality, and dignity. In addition, there are several laws in India that regulate women's rights¹.

In the recent past, there have been more significant and profound changes in the status of women in India. Previously, women held high-ranking positions in the government, such as the president, the prime minister, the chief minister of a state, the speaker of the Lok Sabha, and other highly esteemed positions. In spite of this, many Indian women continue to

¹ Dr. Shridevi S. Suvarnakhandi, *Rights of Women in India: Constitutional and Legal Scenario*, 3(4) INT'L J. L. MGMT. & HUMAN. (2020)

confront significant challenges. Women's rights have always been seriously threatened by violence against them, particularly sexual abuse. Therefore, there is a need for awareness of the rights that aim to protect women.

2. LITERATURE REVIEW

Numerous academics, researchers, media outlets, and research organisations have carried out a variety of studies. A few of them are: human rights of women in the Constitution of India (2022), women's rights in India (2021), A study of women's rights in India (2020), Gender discourses and the making of the Indian Constitution (2021), the Indian Constitution and women's legal rights (2021), Towards gender justice: understanding equality in the Constitution of India, Women's Empowerment and Gender Equality (2021), Women's Human Rights and the Indian Constitution (2016), Indian Constitution and Women's Rights: Special Reference to Violence (2020), An Analysis of the Rights of Women Subjected to the Indian Constitution (2022), did a detailed study on human rights.

3. RESEARCH QUESTION

Analysing the Indian Constitution's provisions pertaining to gender rights was the study's main research question.

4. RESEARCH METHODOLOGY

The research follows the doctrinal method and is based on research from various sources, such as books, research papers, articles, journals, and websites.

5. RIGHTS OF WOMEN

Every Indian citizen has certain rights and opportunities provided by the country's constitution. India's constitution recognises the equality of women, and women are also citizens of the country². Even the preamble of the constitution began, "We, the people of India." This phrase refers to all of India's citizens, not just males or women. Therefore, the Indian Constitution grants every individual citizen rights and chances. Positive and protective discrimination only for the empowerment of women is also included in the constitution.

² Suvarnakhadi, *Supra* note 1

Particular emphasis is placed in this respect in Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), and 42.

5.1 The Fundamental Rights of Women

The six basic rights of Indian citizens include the following: the right to equality, the freedom of religion, the right to cultural and educational opportunities, the right to freedom, the right to constitutional remedies, and the right to be free from exploitation.³

5.2 Constitutional Provision Related to Women

Article 14: Equality before law: On Indian territory, the state may not deny someone equality before the law or equal protection under the law⁴.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth: (1) The state is prohibited from treating any person unfairly based merely on their place of birth, race, caste, religion, or any combination of these⁵.

(2) Any citizen may not be subject to any disability, liability, restriction, or condition regarding any of the following:

(a) access to stores, public restaurants, hotels, and entertainment venues; or

(b) use of wells, tanks, bathing ghats, roads, and public resort areas that are either entirely or partially funded by state funds and intended for public use. This includes discrimination based only on religion, race, caste, sex, or any combination of these factors.

(3) Nothing in this article prohibits the state from establishing any kind of special accommodations for women and children.

Article 16: Equality of opportunity in matters of public employment: (1) In matters pertaining to employment or appointment to any position under the State, all people shall have equal opportunities⁶.

³ : Dr. Abhimanyu Vashistha, *Indian Constitution and Women Rights: Special Reference to Violence*, 1(4) UNIVERSE INT'L J. OF INTERDISCIPLINARY RSCH. (2020)

⁴ INDIA CONST. art. 14

⁵ INDIA CONST. art. 15

(2) Any citizen may not be denied employment or a position under the state nor be subjected to discrimination on the basis of their religion, race, caste, sex, descent, place of birth, or any combination of these.

Article 21: Protection of life and personal liberty: Nobody may be deprived of their life or personal freedom unless it is done in accordance with a legally prescribed process⁷.

[Article 21(A): **Right to education:** All children between the ages of six and fourteen must receive free and compulsory education from the state, in accordance with any legal requirements that may be established.]

Article 23: Prohibition of traffic in human beings and forced labour: (1) Human trafficking, the sale of beg, and other such types of forced labour are forbidden, and violating this rule will result in legal repercussions⁸.

(2) Nothing in this article restricts the state from enforcing mandatory service for public objectives, and the state may not discriminate on the basis of religion, race, caste, class, or any combination of these when enforcing such service.

Article 39: Certain principles of policy to be followed by the State—The State shall, in particular, direct its policy towards securing⁹

(a) that everyone has an equal right to a sufficient means of subsistence, including men and women;

(b) that the community's material resources are owned and controlled in a way that best serves the interests of everyone;

(c) that the way the economy functions prevents the concentration of wealth and productive resources to the detriment of everyone;

(d) that both men and women receive equal compensation for equal labour;

⁶ INDIA CONST. art. 16

⁷ INDIA CONST. art. 21

⁸ INDIA CONST. art. 23

⁹ INDIA CONST. art. 39

(e) that individuals are not coerced by economic necessity to pursue occupations that are inappropriate for their age or strength, and that the health and strength of workers—men and women—as well as the young age of children—are not misused.

Article 42: Provision for just and humane conditions of work and maternity relief: The state is required to provide maternity assistance and fair and decent working conditions¹⁰.

6. CHALLENGES TO WOMEN RIGHTS IN INDIA

The problems pertaining to women's rights in India are multifaceted. These problems would directly affect Indian women's empowerment.

- **Education:** Since gaining its independence, the nation has advanced rapidly in the field of education. There is a big difference between men and women. In India, just 65.46% of adult women are known to be literate, compared to 82.14% of adult males. Higher education is rife with gender prejudice, and receiving specialised professional training can be dangerous.
- **Poverty:** The elimination of poverty should be a national priority on par with the elimination of illiteracy, as it is seen as the biggest danger to global peace. As a result, women are taken advantage of as household workers.
- **Sexual assault and harassment:** The majority of "eve-teasing," which is a code word for molestation or sexual harassment in public places, goes undetected. This form of assault violation is not prosecuted vigorously by the government, and numerous experts attribute this to a complicit culture. A number of crimes against women are listed in the Indian Penal Code, such as rape, kidnapping and abduction, molestation, sexual harassment, torture, killings connected to dowries, and the importation of women. However, experts claim that the situation of female victims has worsened due to India's sluggish, overworked, and underfunded criminal justice system. The majority of rapes remain undetected, partly due to societal stigmas associated with these crimes that may embarrass victims and their families.

¹⁰ INDIA CONST. art. 42

- **Health and Safety:** An important factor in determining a country's overall well-being is the level of empowerment enjoyed by women, and this is largely influenced by their concerns for their health and safety. There are, nevertheless, serious concerns regarding maternal healthcare.
- **Professional Inequality:** This type of inequality manifests itself in hiring and promotion practices. In the male-dominated and personalised environments of government offices and private businesses, women confront several obstacles.
- **Household Inequality:** In India, for example, the division of labour is used to share the workload of menial tasks, childcare, and housekeeping, demonstrating gender bias in household interactions. Work is a barrier to the equal enjoyment of rights since it is more closely associated with women than with men.¹¹

7. OUTLOOK OF COURTS

7.1 Vishaka & Ors. v. State of Rajasthan¹²- Sexual Harassment Landmark Case

Vishaka & Ors. v. State of Rajasthan is a case that addresses the terrible act of sexually harassing a lady at her place of employment. The Supreme Court's decision in this historic case about sexual harassment is significant. Uninvited or unwanted sexual favours or sexual gestures directed towards the other gender by one gender are considered sexual harassment. The person who is done feels embarrassed, outraged, and humiliated. It has been discovered that gay labourers frequently harass coworkers who are of the same sex as them.

In India, the phrase "even teasing" is also used to refer to sexual harassment. It is characterised by actions such as making comments or jokes that are typical or indicative of sex, touching someone without permission, requesting sex, sending explicit images, texts, or emails, or disparaging someone based only on their sexual orientation. Thus, sexual harassment violates the fundamental rights to gender equality given by Article 21 of the Indian Constitution as well as the basic rights to life and to live a decent life as granted by Article 14 of the same instrument, notwithstanding the Indian Constitution's lack of laws regulating sexual harassment at work.

¹¹ Vashistha, *Supra* note 3

¹² Vishaka & Ors. v. State of Rajasthan, AIR 1997 SC 3011

Judge Arjit Pasayat beheld from his exquisite observation that "a rapist defiles the soul of a helpless female, while a murderer destroys the physical frame of the victim."

One of the social evils that the weaker groups in society have to contend with is sexual harassment. Now, people in positions of authority or those who harass women sexually ought to educate themselves on the basic needs and rights of women. If not, when this peaceful volcano of wrath erupts, it will resemble an inert volcano that has erupted, putting people at terrible risk and causing havoc with equally dire repercussions¹³.

7.2 Laxmi v. Union of India¹⁴

The Supreme Court's decision to hear a Public Interest Litigation (PIL) in the historic case of Laxmi v. Union of India and ors greatly improved the circumstances for acid attack victims who had been in excruciating physical and mental agony. This example defies the long-standing social norm that sees women as things and demolishes the notion that women are the weaker gender. The statement maintains that justitia nemini neganda est and that everyone is treated equally under state laws¹⁵.

Laxmi, the child who was attacked with acid when she was sixteen years old, endured physical and psychological pain. She filed a PIL in 2006. Acid was thrown in her face due to her denial that she married Naeem Khan, who hurt her badly by perpetrating this crime in New Delhi with two other co-accused people. She suffered severe injuries to her upper body, making it impossible for her to return to her previous position.

She brought a criminal case against all of the defendants, who had been placed under house arrest by the Delhi High Court and then freed on bond by the Supreme Court of Appeal. She charged them with attempting murder. The victim, who is upset over the improper ruling made by the Delhi High Court, loses all of their attempts to make them a target of prosecution in the current case.

In reply to the challenged order from the Delhi High Court, the victim was compelled to file the current PIL, or "public interest litigation," before the Indian Supreme Court. The order aimed to forbid acid from being readily available on the market, modify current laws

¹³ Dr.Mandeep Kaur & Dr.Sudesh Kumari, *Constitutional And Human Rights Of The Women In India: Efficacy And Enforceability*, 11(9) INT'L J. OF CREATIVE RSCH. THOUGHTS (2023)

¹⁴ Laxmi v. Union of India, (2015) 2014 SCC 2 427

¹⁵ Kaur & Kumari, *Supra* note 13

concerning acid attacks that may result in fatalities, incorporate provisions for victim compensation, supply appropriate medical facilities immediately (free medical services), and offer victims rehabilitation.

8. WOMEN RESERVATION BILL, 2023

“Empowerment of women leads to development. And development leads to empowerment of women.”

-Smt. Nirmala Sitharaman, Finance Minister of India

After 27 years of creation, the Women's Reservation Bill, or Nari Shakti Vandan Adhiniyam, was finally enacted by the parliament on September 21, 2023. It is widely seen as a turning point in Indian politics that takes a daring step towards attaining gender parity in the political sphere.

Proponents of the law contend that it is a powerful tool for empowering women and accelerating India's economic progress, rather than only being about political participation.

Distinguished political figures have endorsed the Women's Reservation Bill, highlighting its importance in advancing women's empowerment and gender equality¹⁶.

"It is not just a question of women's empowerment; it is a matter of ensuring social justice and inclusive development," said Atal Bihari Vajpayee, the former prime minister of India.

However, there are also some who disagree with and criticise the proposal. Opponents of the legislation argue that it would promote tokenism and the selection of women only based on family relationships. The legislation's supporters counter that this is a significant step towards achieving gender parity and that these actions may be taken to address these problems.

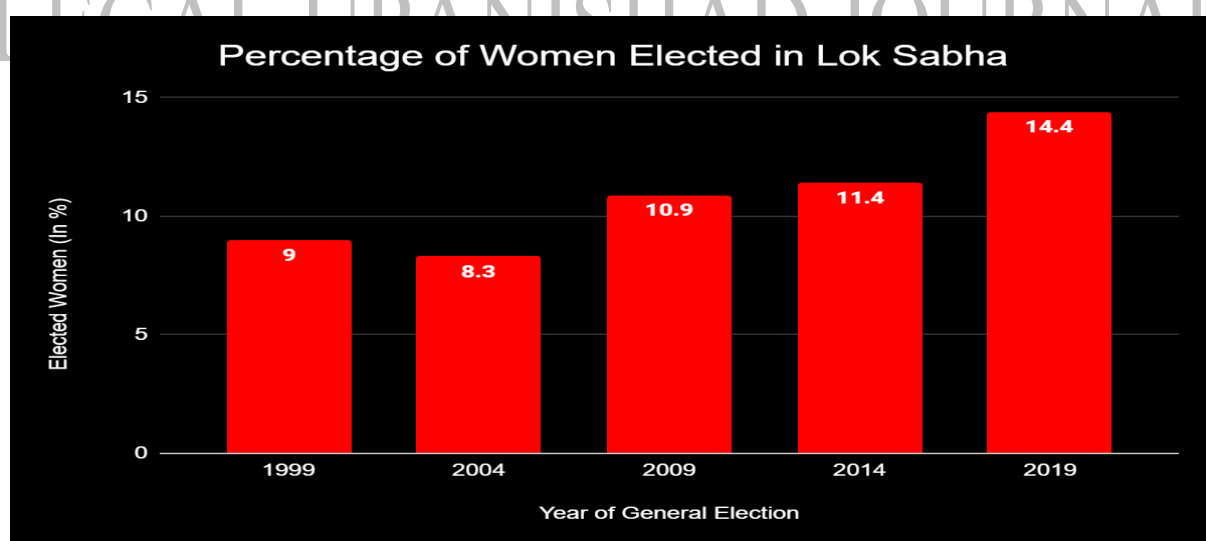
Because it is a powerful tool for empowering women to engage in politics and shape the future of the nation, the Women's Reservation Bill is still a contentious issue in India.

¹⁶ Mahimaa Jain, *A Study on Women's Reservation in the Legislature and Its Impact: International and Municipal Sphere*, 3 NYAAYSHASTRA L. REV. (2022)

The legislation also comes at a time when women are casting more ballots than they have in the past in India, where there are 950 million registered voters. Women make up about half of this number, and this proportion has risen with each election over the previous 20 years.

8.1 A Glimpse into Women's Participation in the Lok Sabha

Historically, women's representation in the Lok Sabha, the lower house of the Indian Parliament, has not kept pace with their numbers. Over time, there has been a gradual increase in the number of female MPs in India; however, the trip has been marked by women who have broken through the glass ceiling in spite of enormous obstacles. Even though this number for parliamentary representation is lower than the global average, it represents an improvement over earlier decades. The impacts of this increased representation on the economy are diverse. Women's rights, healthcare, education, and rural development are just a few of the significant topics that female MPs have actively advocated for with their unique policy viewpoints that impact economic growth¹⁷.



Source: Press Information Bureau and Ministry of Law and Justice, Government of India

¹⁷ *Id.*

From advocating for women's rights and youth empowerment to working on legislation, drafting policies, and maintaining diplomatic ties, female leaders in the Lok Sabha have made a major impact on Indian politics.

The first woman to serve as India's prime minister, Indira Gandhi, held the position several times. Significant advancements in the nation's nuclear programme, the nationalisation of banks, and agriculture occurred under her administration.

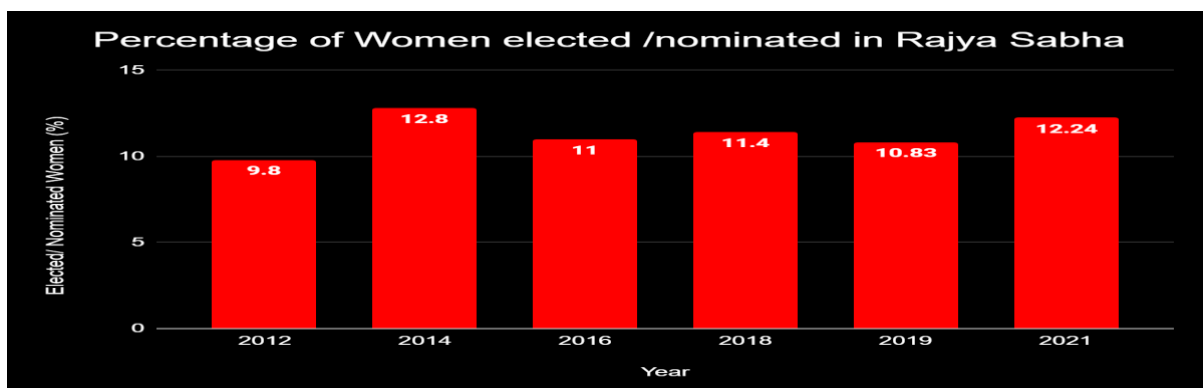
From 2009 to 2014, Meira Kumar, the first female speaker of the Lok Sabha, held the position. She chaired the Lok Sabha during a pivotal era in which the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 was approved. In her capacity as Speaker, she exemplified the necessity of female diversity in legislative leadership.

In addition to being a champion of gender equality and women's rights, Lalitha Kumaramangalam chaired the National Commission for Women. She was a key figure in addressing the problem of violence against women and fighting for their rights.

8.2 The Rajya Sabha: A Chamber of Wisdom with Increasing Female Voices

In the Rajya Sabha, female lawmakers have taken an active part in discussions on topics like social justice, economic growth, and gender equality. They have demonstrated their skill in enacting laws and have significantly contributed to the creation of influential policies.

Compared to the Lok Sabha, women's participation in the Rajya Sabha, India's upper



legislature, has been somewhat more equitable.

Source: Press Information Bureau and Ministry of Law and Justice, Government of India

9. CONCLUSION

The Indian Constitution fully guarantees the rights to equality, liberty, justice, and freedom of speech, as well as the ability to pursue constitutional remedies. However, prejudice and inequality based on gender and sexual orientation are so ingrained in our culture that they are hard to eradicate. Compared to fundamental groups like family, kinship, and neighbourhood, women have greater rights in formal organisations like schools, colleges, universities, and offices. Women are discouraged from pursuing liberty, equality, freedom of expression, and speech by their families and the social environment. Compared to the main institutions of society, secondary organisations and institutions are more welcoming to women.

Women, particularly female university students, are well aware of their human rights, which include freedom of expression, liberty, and equality. However, they are not concerned with the right to work, the right to a living wage, the right to equal justice and free legal representation, the right to a fair and humane workplace, maternity leave, or the right to constitutional remedies. The most crucial point is that females in our culture still do not often have equality and personal autonomy; this is a big problem.