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A Study of Constitutional Provisions Strengthening Gender Equality

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INTRODUCTION

In India, the constitutional discussion has prioritized women's empowerment, demonstrating the nation's dedication to equality, dignity, and justice. In order to protect the rights of women, the framers of the Constitution included particular measures since they were aware of the historical injustices they had faced. These safeguards are not only symbolic; by tackling discrimination, assuring access to possibilities, and shielding women from exploitation, they provide the foundation for substantive equality. The advancement of gender justice has been made possible by legislative action and judicial interpretations, which have further broadened the reach of these safeguards.

Definitions: According to Aristotle, "Aristotle made an important distinction between two types of equality. He talked about "numerical equality" (giving everyone exactly the same thing) and "proportional equality" (giving people what they deserve based on their merits

or needs). Aristotle believed that true justice required treating equals equally and unequals unequally, but in proportion to their relevant differences.”¹

According to Amartya Sen, “equality should be measured not just by what people have, but by what they're able to do and become. Sen emphasized that true equality means ensuring everyone has the capability to live a fulfilling life.”²

HISTORY OF WOMEN RIGHTS

Many social, cultural, and political movements, ideas, and moral philosophies pertaining to gender are included under the umbrella of feminism equal rights and equality for women. The proposition that the core of feminism is the concern for women's subordinate status can serve as a basic definition of feminism or feminisms status in society and the prejudice women face because of their gender. Additionally, feminists advocate for reforms in the social, economic, political, or cultural structure in order to lessen and ultimately eliminate this discrimination against women and establish an a just society where gender equality is attained. Movements and the creation of institutions have made this possible globally. Both have occurred in India.

Feminism is made up of a variety of social, cultural, and political movements, ideas, and ethical philosophies that address gender disparities and women's equal rights. It seems that the word was initially used in a French medical book in 1871 to refer to the halt in the

¹ *Equality: Meaning, Types, Importance, and Challenges*, LAW ZONE – The Indian Legal Education Portal (Feb. 2025), available at: <https://www.lawzone.in/2025/02/equality.html>

² *ibid*

development of sexual organs and traits in male patients who were thought to be experiencing "feminization" of their bodies. The term was subsequently used by Alexander Dumas, a French author, republican, and anti-Feminist, to characterize women who acted in a supposedly manly manner. With the Seneca Falls Convention of 1848, when the Women's Rights movement originated in the United States of America, the phrase became widely used in the mid-19th century. The works of Elizabeth Cady Stanton and Mary Wollstonecraft, who challenged many of the conventions of their day, came after this unfair treatment of women. As a result, the term Feminism only appeared much later, when women began to challenge their subordinate status and seek a change in their social standing.

The initial wave occurred during the mid-nineteenth and early twentieth centuries. The main focus of the twentieth century was on securing equal rights for women, notably the right to vote. The Suffragettes fought for women's suffrage in the United Kingdom. The Representation of the People Act 1918, which gave the right to vote to women over the age of 30 who owned property, was enacted in 1918. This was expanded to include all women over eighteen in 1928. The second wave took place during the 1960s and 1970s, when demonstrations focused on gender inequality in the domains of family, sexuality, and employment, as well as in the realm of women's political rights. Since then,

second-wave Feminism has persisted and continues to coexist alongside third-wave Feminism, as it is known.³ Indian feminism has its roots in the colonial era, which saw significant changes in society, politics, and culture. Indian society was exposed to new ideologies and values during British rule, many of which started to question established social norms, especially those that affected women. Some segments of Indian society responded positively to Western liberal views about individual rights and freedoms, which resulted in the rise of social change groups that started to challenge established norms. Ishwar Chandra Vidyasagar and Raja Ram Mohan Roy, among other social reformers, rose to prominence during this time in the fight for women's rights. Ram Mohan Roy, who is sometimes referred to as the "Father of the Indian Renaissance," actively opposed the custom of sati, in which widows were burned alive on the funeral pyres of their husbands. This behaviour was, in his opinion, an obvious violation of women's rights and a sign of patriarchal tyranny. One of the first legislative wins for women in India was the abolition of sati under British law in 1829 thanks to his efforts.

In a similar manner, Ishwar Chandra Vidyasagar was instrumental in promoting widow remarriage, a custom that was severely frowned upon in traditional Indian culture. He advocated for the Widow Remarriage Act of 1856, which aimed to establish the right of widows to remarry. Similar to Roy, Vidyasagar advocated for

³ Pande, Rekha. (2018). The History of Feminism and Doing Gender in India. *Revista Estudos Feministas*. 26. 10.1590/1806-9584-2018v26n358567.

women's education, thinking that it would empower women and improve society. The urban, upper-caste parts of society were mostly represented by these reform movements, which were generally progressive but often excluded marginalized groups women, especially those from indigenous and Dalit communities, who experienced further layers of prejudice.

The Age of Consent Act was passed in 1891 as a result of the efforts of colonial reformers to increase the age of consent and outlaw child marriage. Early feminist consciousness was brought to light by these initiatives, which were frequently restricted in scope since they were led by patriarchal perspectives and were mostly carried out by male reformers. In these debates, the voices of women themselves were seldom heard, and marginalized groups were often ignored. In addition, the connection between feminist objectives and colonial motives was made more complicated by the fact that social reform was frequently employed by colonial officials as a tool to establish moral dominance.

In India, the feminist movement faced fresh opportunities and difficulties in the time after independence. Following independence in 1947, India ratified a constitution that granted all citizens basic rights and liberties, regardless of gender. The Indian Constitution's Article 14 mandates equality before the law, while Article 15 forbids discrimination based on gender. These constitutional safeguards were a big step in the fight for gender equality, giving future feminist movements a legal basis. However, the reality on the ground was very different from what the Constitution pledged. well-established

Discriminatory practices remained common in a variety of forms, and societal views were still influenced by patriarchal ideals. Women were frequently bound by traditional family roles and subject to restrictions on their freedom of movement, employment options, and educational prospects. Additionally, women lacked sufficient legal recourse to address gender-based discrimination because the courts were slow to protect constitutional rights.⁴

Immediately after gaining independence, India made a concerted effort to turn constitutional guarantees of equality into concrete legal changes that would advance the situation of women. The legacy of the freedom struggle, where women had actively participated alongside men and demanded a rightful place, had a significant impact on the early women's movements of this era located in the new country. The passing of the Hindu Code Bills, a set of laws, was one of the defining moments of this time changes made to legislation during 1955 and 1956. These measures, spearheaded by reformists like Dr. B. R. Ambedkar and backed by progressive legislators and women's groups, brought about change. Hindu personal laws pertaining to marriage, divorce, adoption, and inheritance. For the first time, Hindu women were granted equal rights with men to divorce and inherit ancestral property family members. These shifts were revolutionary in questioning the deeply ingrained patriarchal power structures that exist in families.

⁴ Dr. Shaily Bhashanjaly, "Theoretical construct of feminism in India: Historical context and contemporary dynamics", International Journal of Applied Research 2024; 10(2): 213-218

The All-India Women's Conference (AIWC) and other women's groups were essential during this period. They organized rallies, sent letters to lawmakers, and swayed public opinion meetings to push for changes in the law. The AIWC and other organizations with similar goals also promoted women's education and participation in politics, holding the view that formal rights should be strengthened by it inclusion in decision-making bodies and access to education.

These were the little victories that women achieved. However, these were not enough to bring women into the mainstream. There were grey areas which needed to be corrected such as fighting against patriarchy, social norms and many more social evils. For this a radical approach had to be adopted to fulfil the liberalism for women all across the country. This has been done in early 1970s. The period has seen women pioneer in women led movements such as movement campaign against dowry murders, which had grown alarmingly common at the time, also gained steam. The sad tales of young brides being harassed, tortured, and occasionally murdered because dowry requests elicited widespread media coverage and public outrage. This period was characterized by street protests, sit-ins, and potent phrases like "Dowry is Death." Relentless campaigning led to changes to the Dowry Prohibition Act and the inclusion of new clauses in the Indian Penal Code to address dowry-related violence. Independent women's organizations frequently opposed hierarchical structures and supported shared decision-making. They questioned mainstream political parties that they believed disregarded women's issues as well as State institutions.

Their work laid the groundwork for a greater public understanding of domestic abuse, sexual harassment, and custodial violence—topics that will continue to influence feminist discussion into the 21st century. The revolutionary potential of grassroots, independent activism in tackling social injustices that laws alone could not address was on display during this time.⁵

Therefore, it is not about equality, but rather about employing a different term to remedy systemic prejudice and past injustices against women. It advocates for the creation of a legal and social system that gives women the ability to tackle problems pertaining to patriarchy, gender-based violence, and the equitable distribution of resources, possibilities, and rights. Worldwide Movements Influencing Women's Rights in India The women's rights movement in India was significantly impacted by the several worldwide waves of feminism. The impetus behind Indian laws came from the CEDAW, or Convention on the Elimination of All Forms of Discrimination Against Women, which was ratified in 1979, and the UN Declaration on the Elimination of Discrimination Against Women, which was approved in 1967. Through the expanding international community, this has resulted in numerous reforms, including the Prevention of Sexual Harassment Act, 2013; the Maternity Benefit Amendment Act, 2017; and the

⁵ Prabhanjan Mandal, Dr. Havendra Kumar Sharma, “Women’s Movements and the Evolving Status of Women in Post-Independence India”, International Journal of Advanced Multidisciplinary Scientific Research (IJAMSR) ISSN:2581-4281, Vol 5, Issue 5, 2022

improvement of women's representation in all aspects of politics and the workplace.⁶

CONSTITUTIONAL FRAMEWORK FOR WOMEN RIGHTS

Indian constitution has provided various rights to women of the India. These rights are fundamental for the survival of the women in India. Further these rights provide various securities for the women in the society. These rights are discussed below.

Article 14 of the Indian Constitution

Article 14 states that, **“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”**⁷

The article elaborates that there shall be no discrimination on the basis gender, caste, creed, place of birth etc. The article comprises of two phrases “equality before the law and equal protection of laws”. **Equality before the law** means “nobody is above law”, this phrase has taken from British law, **Rule of Law**. There should be no one above law, whether rich or poor, male or female, child or old, everybody is subject of law. In addition to this it also emphasises upon not having any kind of privilege and position above law. In simpler terms, the law applies upon everyone without any exception.

Equal protection of laws implies that the law would be protecting everyone in the same manner. Further, the protection of law also means to create a discrimination

⁶ Yash Raj Sinha, “THE EVOLUTION OF WOMEN'S RIGHTS IN INDIAN LAW”, journal of Legal Research and Juridical Sciences, VOL. 4 ISSUE 1

⁷ Article 14 of the Indian Constitution

free society. The concept of equal protection of laws has been taken from American Constitution in which it ensures that under similar circumstances the law applies equally to everyone but with reasonable differentia.

Article 14 under Indian constitution plays pivotal role in the empowerment of women. It draws from marginalisation to the mainstream of the society. Further, there are exception to this rule of equality. The discrimination should be based on two parameters are discussed below:

1. There must be rational nexus
2. There must be intelligible differentia.

The rational nexus means that the discrimination should be proved to have some connection between classification and main objective of the law. Also, this discrimination should be for the benefit of a strata of the society, for example, women, children, elderly etc. In addition to this, while exercising reasonable discrimination, there must be intelligible differentia. In other words, the difference between the groups must be based on some intelligible choice along with reason and logic assigned to it.

There are various supreme court ruling that proves to be boon for equality of women, these are below discussed:

Air India vs. Nargesh Meerza⁸

In this case, the petitioners challenged Regulations 46 and 47 of the Air India Employees Service Rules, which established discriminatory terms for the employment of air hostesses. These rules required air hostesses to retire

⁸ AIR 1981 SC 1829

at age 35, marry within four years of service, or become pregnant. These clauses were determined to be unconstitutional by the Supreme Court, which ruled that they contravene Articles 14, 15, 16, and 21 of the Constitution. It claimed that the termination rules infringed on personal freedom and the right to equality in addition to being prejudiced. In addition, the Court noted that the managing director of Air India had been given excessive discretion, which might result in arbitrary and biased decisions. It was believed that delegating too much power was not proper.

The Court directed Air India to change the discriminatory restrictions after overthrowing them. This ruling emphasized the necessity of ensuring that working circumstances are free of gender-based discrimination and protecting women's rights in the workplace. Safeguarding women's fundamental rights and promoting workplace equality were both significantly advanced by it.

Indian Young Lawyers Association and Ors. vs. State of Kerala and Ors.⁹

In this case, the prohibition of women between the ages of 10 and 50 years from entering the Sabarimala temple in Kerala was at the core of the issue. The restriction, which was based on the idea of "menstrual impurity," was contested as a violation of fundamental rights. Declaring it unlawful and unconstitutional, the Supreme Court abolished the practice. The Court found that such limitations went against Articles 14, 15, and 17, which ensure equality, forbid discrimination, and outlaw

⁹ (2019)11 SCC 1

untouchability. In addition, it was considered an insult to the independence and honour of women. According to the Court, religious customs and practices protected under Article 26 cannot violate the equality principle found in Article 14. Under Article 25(1), it was determined that women have the right to equality and freedom to practice religion. The prohibition of women from the temple was considered unconstitutional and discriminatory. This decision was a landmark because it promoted gender equality and upheld the idea that religious practices cannot take precedence over constitutional rights.

Shayra Bano vs. Union of India¹⁰

The constitutionality of the practice of triple talaq among Muslims was questioned in this case. In a plea, Muslim woman Shayara Bano contended that the practice infringed upon her basic rights. Triple Talaq was declared unconstitutional by the Supreme Court, which found that it infringed Articles 14, 15, 21, and 25. The Court noted that since it enabled Muslim males to end marriages immediately without giving women any defense or recourse, the custom was capricious. The decision stated unequivocally that constitutional norms cannot be overridden by personal legislation. The Court ruled that the triple talaq was discriminatory and infringed upon women's right to equality, dignity, and religious freedom. The legislature was ordered to pass laws guaranteeing gender equality in divorce matters. This landmark decision, which eliminated a practice that

¹⁰ (2017)9 SCC 1

upheld gender disparity in personal rules, represented a major win for women's rights and equality.

Navtej Singh Johar vs. Union of India¹¹

In this case, the constitutionality of Section 377 of the Indian Penal Code (IPC), which made consensual homosexual acts illegal, was contested. The LGBTQ+ community claimed that the clause infringed upon their basic rights.

The Supreme Court determined that Section 377 violated Articles 14, 15, 19, and 21 and decriminalised consensual gay acts. The Court determined that criminalising same-sex partnerships upheld prejudice and violated people's entitlements to equality, solitude, and respect. The judgment recognized that sexual orientation is a person's intrinsic characteristic and that the government has no authority to intervene in consenting adult relationships. The Court stated that LGBTQ+ people were stigmatised, excluded, violated their basic rights, and suffered psychological harm due to Section 377. This landmark ruling ushered in a progressive move toward inclusivity and equality, promoting a more accepting society for the LGBTQ+ population.

Article 15 of the Indian Constitution

Article 15 states that,

“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

¹¹ AIR 2018 SCR 1821

No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.¹²

The Article 15 for Indian constitution forbids any citizen from being discriminated against based on their religion, race, caste, sex, or place of birth. Additionally, the article grants the state the power to implement special measures for children, women, and the advancement of Scheduled Tribes, Scheduled Castes, and socially and educationally disadvantaged groups. It also declares that the State will not discriminate against any citizen based on these grounds.

According to the article, discrimination in issues pertaining to access to public places like stores, restaurants, hotels, and entertainment venues is forbidden. Additionally, it forbids discrimination in matters of employment, education, and access to public services like bathing ghats, tanks, and wells.

Article 16 of the Indian Constitution

¹² Article 15 of Indian Constitution

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office¹[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

2[(4A) Nothing in this article shall prevent the State from making any provision for reservation³[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State.]

4[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent, reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.¹³

Article 16 aims to guarantee that public service in India is open to all citizens, regardless of their social, economic, or cultural backgrounds, and is based on merit. The purpose of the Article is to prohibit discrimination based solely on grounds such as caste, religion, or place of birth, Article 16 guarantees that public employment is not a weapon for exclusion. This prohibition serves as the foundation of a meritocratic system where employment choices are made based on ability and suitability. Article 16 calls for reservation, knowing that formal equality is not enough to end ingrained social injustices. Rather than as an undue

¹³ Article 16 of the Indian Constitution

benefit for specific groups, the reservation policy is meant to ensure that everyone has equal chances and a representative share in society. Rather, it is a corrective action meant to promote significant equality. This is especially important for groups like SCs, STs, and Other Backward Classes (OBCs), who have historically lacked chances. The State's dedication to social justice is shown by the Article. Article 16 highlights the concept that equal opportunity is not just a natural right but also a positive duty of the state by allowing the Parliament and the State to pass legislation that calls for affirmative measures. In doing so, it advances the larger constitutional goal of building a just and inclusive society. Additionally, Article 16 seeks to uphold a representative and effective public service via the provision of carry-forward unfilled vacancies and reservations in promotions. It is designed to ensure that public administration represents the diversity of Indian society, making it more responsive to the demands of its citizens.¹⁴

Article 39 A and Article 39 d

The right to an appropriate means of living for men and women equally is required by Article 39(a). In order to reduce wage differences between men and women, Article 39(d) aims to ensure that they are paid equally for comparable employment.

¹⁴ Aqueel Ahmad Khan, *Special Legal Protection of Woman under the Constitution of India with Reference to Protect Their Human Rights*, JETIR, Vol. 11, Issue 4 (2024), pp. 1–7, available at: <https://www.jetir.org/papers/JETIR2404F21.pdf>

Article 39A stresses the need to advance justice based on equal opportunity, making sure that no citizen is denied access to justice because of their economic situation or other limitations. These pieces collectively strive to promote equal opportunities and economic justice for women.¹⁵

Article 42

In accordance with Article 42, the Maternity Benefits Act of 1961 emphasizes the State's dedication to guaranteeing fair and humane working conditions and maternity support for women. This article attests to the Constitution's concern for women's health and well-being in the workplace.

Article 243 D and Article 243 T

Every Panchayat and Municipality must reserve one-third of the total number of seats that are to be filled by direct election for women, according to these articles. In addition, one-third of the total number of chairperson offices in the Municipalities and Panchayats at every level must be set aside for women. These provisions ensure that women are represented in local governance, giving them the ability to participate in decision-making and solve problems that affect their communities.

¹⁵ Saraswati Kumari, *Constitutional Safeguards for Women's Empowerment in India: An Analytical Study*, Assistant Professor, Department of Home Science, S. K. Mahila College, Begusarai (Lalit Narayan Mithila University, Darbhanga, Bihar), MGM Publications (2024), available at: <https://www.mgmpublications.com/uploads/book/1772805171.pdf>

Conclusion

The constitutional vision of equality, justice, and dignity is intricately connected with the empowerment of women in India. The Constitution promotes structural protection that ensures women's participation in governance and shields them from discrimination, in addition to guaranteeing fundamental rights, via provisions such as Articles 14, 15, 16, 21, 243D, and 243T. In addition, these guarantees have been strengthened by landmark judicial pronouncements—ranging from *Shayara Bano v. Union of India* to *Navtej Singh Johar v. Union of India* and *Air India v. Nargesh Meerza*—which have abolished regressive practices and broadened the purview of gender justice.

These constitutional safeguards and judicial interventions have combined to establish a strong framework for women's empowerment, allowing them to overcome historical obstacles and actively participate in the development of social, political, and economic life. Despite the fact that these rights have not yet been fully implemented, the constitutional promise of equality remains a potent weapon for promoting inclusive growth and women's agency.