

Citation: St. Soldier Journal of Law and Social Science, Vol.1:1, Jan 2025 pp. 93-102

BARRICADED MARCH OF THE WOMEN CONSTITUTIONAL AND LEGAL ROAD MAP

Dr. Bimal Deep Singh

Associate Professor Department of Laws,
Guru Nanak Dev University, Amritsar.

Ms. Jasgundeep Kaur

Researcher, Department of English,
Guru Nanak Dev University, Amritsar.

1. INTRODUCTION

Modernisation, it has been firmly supposed, will lead to development of all.¹ Enhancement of Know-how ought to have a manner suitable to the status of women. The feminist movements, post modernisation, further liberalisation, globalisation and privatisation, 73rd & 74th Constitutional amendments, Shayara Bano and such like decisions have improved their status, it is asserted. The status is measured by participation in beauty contests, increased visibility of women as bus conductors, air hostesses and ground staff on the airports, students and teachers in Law schools, convents/public/ eminent schools/IELTS centres and of course as contestants in Panchayati Raj elections and local bodies. The greater burial has been quiet, unwept and the successive Governments are feasting on the lifeless actions and reactions of this larger segment of the society. The burial is full by the corporate actions. Article 14, 15 (3), 21 and other fundamental rights/duties and directive principles of State policy enshrined in the Indian Constitution and developments in law

¹ Maya Angelou, the famous American poet, had said, "Each time a woman stands for herself, she stands for all women." <https://yourstory.com/2018/01/8-landmark-judgements-that-changed-the-course-for-women-in-india> retrieved and last visited on 24.11.24.

have been fragile. International covenants and conventions like CEDAW and Universal Declaration of Human Rights to which India is a signatory have also been given a cold handshake, to the so-called rights of the women.

1.1 Prejudices are Perennial:

Prejudices are often attributed to the religion, the thrust on Uniform Civil Code always draw its strength from this interpretation or explanation. It is patriarchy which adds insult to the injury. The fact has been recognized in the above mentioned Constitutional, Legal and International provisions. The most recent reminder of Patriarchy comes from the Charu Khurana, Armed forces Permanent commission, ME too cases, ouster of Bangladesh PM, English premier, Presidential election of U.S.A., Hush money decision and the gender insensitive comments of political and religious leaders in India. It reminds us:

“No empowerment without rights, no rights without politics...progress towards gender equality and women’s empowerment in the development agenda requires a human rights-based approach, and requires support for the women’s movement to activate and energize the agenda.”²

The Law Commission in its 259th report on “Early Childhood Development and legal Entitlements” given in August, 2015 in para 5.2.2 has dealt with one of the pertinent aspects related to our focus, “Health, especially the reproductive health of the mother and the health of the infant child are closely related.”

The barriers to women's education and employment are multifaceted and often deeply rooted in societal, economic, and cultural factors. Here are some key barriers:

1.2 Education:

1. **Cultural Norms and Expectations:** In many societies, traditional gender roles and cultural beliefs prioritise domestic responsibilities for women and girls, discouraging them from pursuing education. Socio-

² U.N. Millennium Development Goals (MDGs).

cultural norms in India are deeply influenced by patriarchal values, which have shaped gender roles and expectations for centuries.³ Societal attitudes and norms continue to reinforce traditional gender roles, making it challenging for women to break free from patriarchal constraints.⁴

2. **Financial Constraints:** Families with limited resources may prioritise the education of boys over girls, believing that boys will provide more economic return.
3. **Lack of Safe and Accessible Schools:** The absence of nearby schools, safe transportation, and adequate sanitation facilities can prevent girls from attending school.
4. **Discrimination and Violence:** Girls may face harassment, discrimination, and violence in and around school environments, making it unsafe for them to continue their education.

1.3 Employment:

1. **Gender Stereotypes and Bias:** Women often encounter gender bias in hiring and promotions, with certain jobs being stereotypically considered "male."
2. **Workplace Harassment:** Sexual harassment and gender based violence in the workplace can create hostile environments for women.
3. **Balancing Work and Family:** Women frequently bear the primary responsibility for childcare and household duties, making it challenging to balance work and family life.
4. **Lack of Supportive Policies:** The absence of family-friendly policies such as maternity leave, flexible working hours, and childcare support can deter women from pursuing careers.
5. **Education and Skill Gaps:** In some regions, women have

³ Available at: <https://teachers.institute/gender-school-society/indian-patriarchy-theories-impacts/> Retrieved and last visited on 11.1.25.

⁴ Available at: https://link.springer.com/chapter/10.1007/978-3-031-74406-8_3 retrieved and last visited on 9.1.25.

less access to higher education and skills training, limiting their job opportunities.

Efforts to address these barriers include advocating for gender equality, implementing policies to support women's education and employment, and challenging cultural norms and stereotypes. Ensuring safe, inclusive, and supportive environments for women in both education and the workplace is crucial for achieving gender equality.

2. GENDER ISSUES AND STRUCTURAL ADJUSTMENT PROGRAMME

Gender issues in labour market have occupied an important dimension with the initiation of the structural adjustment programme. Policy relating to special target groups such as women and child labour (where also the highest percentage of sufferer is the girl child) is one of the thrust areas identified by the Ministry of Labour. Sex based discrimination; marginalisation and segmentation are on the increase with women getting excluded socially, economically and politically. Of course, things are changing; at home and overseas. Women, especially the younger lot, are getting more aggressive, and even moving courts on issues like disparity in wages.

Section 4 of the National Food Security Act, 2013 has made provisions entitling pregnant and lactating women to meal free of charge.

2.1 Women are still impoverished not empowered group:

Despite progress, many women still face significant challenges that hinder their empowerment. Here are some factors contributing to the disempowerment of women:

2.1.1 Legal and Policy Barriers

- **Inequitable Laws:** In many places, laws do not adequately protect women's rights, and enforcement is often weak.
- **Lack of Supportive Policies:** Absence of policies like maternity leave, childcare support, and equal pay can deter women from pursuing careers.

2.1.2 Health and Well-being

1. **Limited Healthcare Access:** Women often face barriers

to accessing quality healthcare, including reproductive health services.

2. **Mental Health:** Socio-cultural pressures and violence can adversely affect women's mental health.

2.1.3 Advocacy and Support: Empowering women requires a multi-faceted approach, including:

1. **Education Initiatives:** Ensuring access to quality education for all girls and women.
2. **Economic Opportunities:** Promoting women's participation in the workforce and providing financial support.
3. **Legal Reforms:** Strengthening laws and policies to protect women's rights and ensure equality.
4. **Cultural Change:** Challenging and changing harmful socio-cultural norms through advocacy and education.
5. **Support Services:** Providing support services for victims of violence and harassment.

2.2 Positive Discrimination misses the Mark in Policy Making Forums and Reverberate: The Constitution of India specifically speaks of positive discrimination in the favor of women. 33 percent of seats in all local bodies (panchayats and municipalities) are reserved for women according to the 73rd and 74th Constitutional Amendments.⁵ This includes seats reserved as per schedules. Certain parties have a percentile of seats for women but the significant change which the suggested is, presence of women in policy making.

“Achieving the goal of equal participation of women and men in decision making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning... Without the active participation of women and the incorporation of

⁵ The proposal is to raise it to 50% of the seats. The political parties have earmarked up to 50% of the seats. In Punjab there are 50% seats in Education Sector for women (but practically that allows Low in Merit boys to enter the teaching Profession and has been struck down by the court)

women's perspectives at all levels of decision-making, the goals of equality, development and peace cannot be achieved.”⁶

Democracy itself by definition means pluralism, dynamism and a progression.⁷ Long ago Winston Churchill had forecast in the House of Commons that ‘the hungry millions’ of India were... “...it will take a thousand years for them to enter the periphery of philosophy or politics.” He further told, “Today we hand over the reins of power to men of straw of whom no trace will be found after a few years.”⁸

In order to “strengthen democracy”, it has allowed the weaker sections of the society, women, scheduled castes, scheduled tribes, minorities and other vulnerable sections to enter into this temple of democracy, the Parliament. This has a bigger impact on mainstream politics. In my opinion it is the best way to ensure social justice to all the community. This is an indication that roots of Indian democracy are strengthening and constitutional provisions for social justice are creating great opportunities to the people of all deprived classes and communities. To that extent, I would say our Indian Parliament has achieved a lot. But I would say that there needs to be done a lot of work to ensure the complete welfare of our country.⁹

⁶ Fourth World Conference on Women, Beijing, 1995: Article 181.

⁷ Sh. Bhartruhari Mahtab (Cuttack), "Sixty Years Journey of the Indian Parliament". on 13 May, 2012. <https://indiankanoon.org/doc/106754912/> retrieved and last visited on 30/12/2024; many speakers participated in the discussion and on the occasion recorded their points all of them are acknowledged even if citation has not been possible.

⁸ Cited by Sh. Tapas Paul (Krishnanagar) during discussion on "Sixty Years Journey of the Indian Parliament". 13 May, 2012. <https://indiankanoon.org/doc/106754912/> retrieved and last visited on 30/12/2024.

⁹ Sh. Shivarama Gouda (Koppal), during discussion on "Sixty Years Journey of the Indian Parliament". 13 May, 2012. <https://indiankanoon.org/doc/106754912/> retrieved and last visited on 30/12/2024.

The promises of positive discrimination in policy making forums however missed the mark, despite loud promises by the political parties since 1996. It is only reverberating and the workers who have done good work, even in a constituency are expected to move to women reserved seats. They have no ground there. They are seen as strangers. In the process the parties also loss both the seats. The easiest approach is to cling to one family. The husband-wife, Father-daughter, Mother Son and Brother-sister combinations are kept handy. It is giving rise to dynasty politics and the democratic Institutions are getting weaker. People in the largest democracy have limited choice. The limit for remaining away from the center stage can be 1 day or 5 year (It can be more also, the movement can be from Councilor to MP or vice-versa).

3 EMPOWERING WOMEN OPEN HAND APPROACH ADOPTED BY JUDICIARY

The ongoing struggle for women's rights and empowerment in India, has seen many landmark cases that have significantly advanced women's rights in the country. The courts in India especially the higher courts have been the forerunners in empowering women. The discriminatory provisions contained in the Constitution have been soundly adapted in various situations and upheld.

Sex has been held as a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provision in the case of women and children.¹⁰

¹⁰ *Yusuf Aziz vs. State of Bombay* 1954 S.C.R. 930. See *Rukmabai v laxmidas* 1885 (Sudhir Chandra, Rukmabai: The life and times of a child Bride turned Rebel-Doctor also dealt in legal details by Agnes Flavia, Law and Gender Inequality, OUO, 2001, also see *Sharron A. Fronterio & or. Vs. Elliot* 411 U.S. 677. *Joseph shine v Union of India* AIR 2018 SC 4898. Discrimination can be Indirect, Systematic- the former has been recognized with cases like *Sabarimala (Indian Young lawyers Association* 2018, *Nitisha vs. Union of India* 2021-citing late justice Ruth Bader Ginsburg, Associate Justice, SC of the U.S.A., *Secretary Ministry of Defense vs. Babita Puniya* [2020] 3 S.C.R. 833- The judgment paved the way for Permanent Commission of women in

The reason for such differential treatment is,

“Women’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigor of the race.”¹¹

Air India v. Nargesh Mirza and others (1981) 4 SCC 335, wherein it was held that fixing of a lower retirement age for the air hostess, in comparison with their male counterparts is violative of the principle of equality of employment enshrined in Article 16(1) of the Indian Constitution. *Mary Roy v. State of Kerala* (1986)-Mary Roy challenged the Syrian Christian community's patriarchal traditions that prevented women from inheriting property.¹²

Makinnon Machenzie and Co. Ltd. vs. Audrey D'Costa, AIR 1987 SC 1281, wherein the Court adopted the principles incorporated in the Equal Remuneration Convention, 1951 to which India is a party, to hold that the act of paying lower emoluments to the lady stenographers than their male counterparts was violative of the Equal Remuneration act, 1976.

In *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) & Anr.*, (2000) 3 SCC 224, wherein the Hon'ble Supreme Court observed as under:

"Not long ago, the place of a woman in rural areas has been traditionally her home, but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship. They also take up jobs which involve hard physical labour."?

In *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125, the Supreme Court has held that the women have the right to equality

armed forces. *Afshana Anjum vs. 2 J&K 2023. Aparna Bhat vs. M.P.* A quest for equality of opportunity will thus continue.

¹¹ *Muller v. Oregon*, 208 U.S. 412 (1908).

¹² Available at: <https://yourstory.com/2018/01/8-landmark-judgements-that-changed-the-course-for-women-in-india>

and elimination of discrimination based on gender. *Vishaka vs. State of Rajasthan* (1997) This case led to the founding of the Vishaka Guidelines, which defined sexual harassment at the workplace and mandated employers to provide a safe working environment for women, these guidelines have been legislatively expounded in 2013. Making special Provisions for women in respect of employment or posts under the State is an integral part of Article 15(3).¹³ The "Special Provision" which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation.¹⁴

In *Suresh v. State of Kerala*, W.A. No. 1714 of 2003, wherein the Kerala High Court upheld the provisions of the Kerala Panchayat Raj Act on the ground that the impugned provisions were in furtherance of the Constitutional objective of ameliorating the plight of women and ensuring their equal representation in elected bodies.

Access to education and employment are only the enabling factors to their political empowerment. Perhaps, political empowerment would contribute to their overall empowerment. To do so would require us legislate over the issue that has been kept in abeyance for so long, lest half of our society would retaliate and teach us a lesson!¹⁵

4. CONCLUSION:

There has been a complex interplay between gender inequality, religious freedom, traditional practices and modernity in India. Patriarchy is institutionalised and legitimised oppression. The mental, physical health of women is at the impoverished and not empowered pinnacle, despite claims by all the political parties.

¹³ *Muller v. Oregon*, 208 U.S. 412 (1908).

¹⁴ *Ibid* paras 7, 8; Article 15(3) and (4) are interpreted as exceptions to the general equality rule. In *Anjali Roy v. State of W.B.* 1952 cal. 825 at 830-31. The Calcutta

¹⁵ K.Vidyasagar Reddy, Women Empowerment In India: A Case of Political Reservations, Available at: <http://www.countercurrents.org/reddy290711.htm> last visited 06/01/2025.

Education and Employment are cosmetic. Barricades are real. The recurrent subjugation result in an apparent subservience. The protests, assertions and debates underscore the need for a nuanced and sensitive approach in resolving such complex issues. The empowerment of women is not valued by patriarchal forces. Women are misplaced on the outline of enablement. The feminism has focused on peripheries. The courts HC has held Art. 15 (3) as an 'exceptional approach' to clause (1) and (2). This view has been supported by Seervai, Jain and Basu have engaged in reformation and a positive role in being the shields and benefactors of intrinsic rights of women, previously denied to them. India is sheathed behind despite commitments at the international level. Foeticide, malnutrition, poor education standards, sexual harassment of women, absence of social and economic credit, inequality in parental and marital property rights and lack of a social structure support system in India and to top it all violence in all forms is desolating not just them but the nation as a whole.