
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

CONSTITUTIONAL SHIELD: ENSURING WOMEN RIGHTS- Aayushi Sharma¹**Abstract**

Women play a pivotal role in shaping a nation's character and their contributions are crucial for the growth of a thriving economy. Ensuring women's effective engagement, wellbeing, development, and protection across all spheres of society is essential for achieving inclusive growth. In the 21st century, women's empowerment has become a pressing issue of paramount importance. The Constitution of India upholds key principles such as liberty, fraternity, equality, and justice, entitling all citizens, regardless of gender, to fundamental rights enshrined in Part III and DPSP under Part IV. Remarkably, the Constitution includes specific and supportive provisions to safeguard women's rights. This paper explores the constitutional provisions aimed at protecting women's rights, analyzing their effectiveness and the challenges they face. It also discusses contemporary issues related to women's rights and suggests possible policy and legal reforms for promoting women's empowerment.

Keywords: *Women's Empowerment, Constitutional Provisions, Fundamental Rights, DPSP, Women's Rights*

Introduction

India is a nation where women are highly valued. The nation's actual citizens are women. Women hold a special place in creating the national character. Following independence, the Parliament and State legislatures implemented many legislations to enhance the status of women. The Indian Constitution has granted women equal rights. In terms of the selection criteria, there is no discrimination between men and women, regardless of the occupation. Daughter and Son are each awarded an equal part of the property under the Hindu Code Bill.

¹ Research Scholar, Centre for Human Rights and Duties, Panjab University, Chandigarh

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in
<https://www.ijalr.in/>

According to the Marriage Act, women are considered to be a man's property. Women are underrepresented in decision- and policy-making processes.

The most crucial thing is that women exercise their rights, which means that legal understanding of women's rights is equally required. The Indian Penal Code has various crimes against women for which there are associated sanctions. The Sexual Harassment of Women at Workplace Act of 2013 and the Protection of Children Against Sexual Offences Act of 2013 are just a few of the laws that the Government of India has passed in an effort to support women. The IPC and the Code of Criminal Procedure have also been modified. The administration is eager to pass rules against honour killings and crimes linked to doweries. Women are receiving a lot of encouragement and are now prepared to stand up for themselves. In India, constitutional protections against discrimination based on sex, caste, colour, and other factors were offered.

Review of Literature

Dillip Kumar Behera, Constitutional Safeguards to Women's Right in India

This paper states that women are the legal citizens of the country. Women enjoy a unique position in building the national character. Women are significant contributors to the growing economy. Inclusive growth should ensure their effective participation, well-being, development, empowerment protection of all spheres of their lives in the society. The constitution is mainly based on the ground of liberty, fraternity, equality and justice. The fundamental rights contained in part-III, Article 12 to 35 are applicable to all citizens irrespective of sex, certain fundamental rights contain specific and positive provision for the rights of women.

Ritu Mehla, (August 2017) - The paper reveals the concept of empowerment as well as the status of Indian women. Important constitutional, legal and other provisions are also described in a systematic way. The paper covers the status of women during different historical periods such as at earlier time as on today specific gender was getting equal status. But they had faced some difficulties during post-Vedic and epic ages. Many a time they were treated as Goddesses and at other times merely as a slave. From early 20th century (national movement), their status has been changed slowly and gradually. After the independence of India, the constitutional makers and national leaders strongly fought for equal status of women with men. As a result, the women occupied the respectable positions in all walks of

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in
<https://www.ijalr.in/>

the fields. Yet, they have not absolutely freed some discrimination and harassment of the society. Absolute numbers of women have not been able to establish their potentialities.

Research Objective

- To comprehensively examine the constitutional provisions in India that safeguard women's rights and assess their efficacy in promoting gender equality and women's empowerment.
- To analyse the fundamental rights enshrined in Part III and DPSP under Part IV of the Indian Constitution that are relevant to women's rights.

Research Methodology

The research will primarily utilize the doctrinal method to analyse and interpret the constitutional provisions safeguarding women's rights in India. The doctrinal research method involves the examination and analysis of legal texts, including constitutional provisions, statutes, case laws, and relevant legal literature. This method is particularly suitable for studying legal issues and the interpretation of laws and legal principles.

The doctrinal research method will provide a comprehensive understanding of the constitutional provisions safeguarding women's rights in India. Through a systematic analysis of legal texts and case laws, this research aims to shed light on the strengths and weaknesses of the existing constitutional framework concerning women's rights and identify potential areas for improvement and reform. By relying on legal principles and precedents, this research seeks to contribute to the discourse on women's empowerment and promote gender equality within the Indian legal system.

Constitutional Provisions

The creators of the constitution guarantee women's equality. The country's future is significantly influenced by the preamble. The preamble provides a quick overview to the constitution's authors so they may make preparations and draft the document. The idea of equality indicates that every single person of the nation is on an equal footing, and the state will seek to implement the idea of equality before the law. Everyone should be afforded the same opportunities for employment and status, with no exceptions based on factors such as

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in
<https://www.ijalr.in/>

gender, caste, colour, or religion. Equal treatment of citizens is crucial for a nation's growth and for bringing out the best in each individual.

All individuals, including citizens, businesses, and foreigners, are guaranteed equality under *Article 14*. In a number of decisions, the Supreme Court has debated its provisions. The case of *Ram Krishna Dalmia v. Justice S. R. Tendolkar*² reaffirmed its interpretation and breadth as follows. Classification is allowed under Article 14 as long as it is 'reasonable' but class legislation is not allowed. A classification of groups of people is deemed reasonable if it is founded on comprehensible differences that separate the grouped individuals or objects from those who are not included in the group and the differential has a rational connection to the act's intended outcome.

Furthermore, the categorization must be objective. In the *E. P. Royappa* case, the Supreme Court gave guidelines on whether a conduct was arbitrarily:³

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. Article 15(1) and (2) prohibits the state from discriminating against any citizen only on the basis of any one or more of the aspects such as religion, race, caste, sex, place of birth or any of them."⁴

All citizens are guaranteed equal opportunity under *Article 16* while applying for jobs or being appointed to government positions.⁵

According to *Article 39A*, the State is required to advance justice on the basis of equality of opportunity and to advance free legal aid by appropriate laws or schemes or in any other manner to guarantee that no person is denied the chance to pursue justice due to a financial or other disability.⁶ According to *Article 39D*, the State must focus its policies on guaranteeing that everyone, men and women, has the right to an acceptable standard of living and equal remuneration for equally hard labour.⁷

The State is required under *Article 42* to provide for maternity leave, reasonable working conditions, and justice.⁸

Legislative Efforts towards Women⁹

² *Ram Krishna Dalmia v. Justice S. R. Tendolkar*, AIR 1958 SC 538.

³ *E.P. Royappa v. State of Tamil Naidu*, AIR 1974 (4) SCC 3.

⁴ Indian Constitution, art. 15.

⁵ Indian Constitution, art. 16.

⁶ Indian Constitution, art. 39A.

⁷ Indian Constitution, art. 39D.

⁸ Indian Constitution, art. 42.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

A limited right of maintenance for women was guaranteed by the *Woman's Right to Property Act of 1937*. However, The Hindu Succession Act 1956, which replaced the Woman's Right to Property Act 1937 after India gained independence, gave Hindu women complete ownership rights under section 14. The daughters now have the position of a coparcener in the Hindu Coparcenary/Joint Family property thanks to a recent adjustment made under the Hindu Succession Act 1956.

The *Commission of Sati (Prevention) Act, 1987* prohibits the glorifying of this conduct by the holding of any ceremony and aims to more effectively prevent the crime or practice of sati, including the voluntary or forced burning or burial alive of widows.

The purpose of the *Dowry Prohibition Act of 1961* was to outlaw the giving and receiving of dowries. This Act makes the demand for dowry a criminal offense.

Protection against unlawful pregnancy termination, such as female infanticide, which is deemed punitive and penal in character, is provided by the *Medical Termination of Pregnancy Act of 1971*.

It was decided to pass the *Protection of Women from Domestic Violence Act of 2005*. It is a comprehensive piece of legislation to safeguard the rights of women against any form of abuse in intimate relationships. The statute guarantees protection against all forms of violence, including economic violence, emotional violence, physical assault, etc., because domestic violence against women has become a widespread occurrence. Additionally, a provision for the appointment of a protection officer is created in order to properly provide women with the protection provided by this act.

Women are protected against sexual harassment at all workplaces, in the public and private sectors, under the *Sexual Harassment of Women at Workplace (Prevention and Protection) Act of 2013*. The Act becomes effective on December 9, 2013. The Vishakha Guidelines for prevention of sexual harassment (POSH), put forward by the Indian Supreme Court, were replaced by this legislation.

General Rights relating to Women

- *Right to Privacy* – A woman who has been sexually assaulted has the right to make an official statement in private before the magistrate without being overheard by anyone else,

⁹ Rai, S.K. (2021, November). Constitutional Safeguards Towards women in India. *International Journal of Creative Research Thoughts (IJCRT)*, 9(11), 293–298. <https://ijcrt.org/papers/IJCRT2111036.pdf>.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in
<https://www.ijalr.in/>

as well as in person with a lady constable or a police officer. The police must respect the victim's privacy and refrain from pressuring her in front of large crowds.¹⁰

The Indian Penal Code's section 228A makes it illegal to reveal the identity of a rape victim. The identify of a rape victim may never be made public. The victim's name cannot be released to the public by either the police or the media. The Criminal Law Amendment Act, 2013, an Indian law passed by the Lok Sabha on March 19 and the Rajya Sabha on March 21, 2013, was passed in response to the Nirbhaya Gang Rape Case, which occurred on the evening of December 16, 2012, that shocked the entire country and forced the government to give the criminal code a new shape. With regard to legislation pertaining to sexual offenses, this Act provides for amendments to the Indian Penal Code, Indian Evidence Act, and the Code of Criminal Procedure, 1973.

The Indian legislature has taken great effort to guarantee the protection and security of women. However, it is imperative that women today are aware of their legal rights and the laws that are in place to safeguard them. It takes a bit more prompt and efficient action to implement through the legal system and police forces. In any civilization, women perform a critical role. With the adoption of the Constitution and particularly since Babasaheb's campaign for women's rights through the presentation of the Hindu Code bill, her place in Indian society has continued to change and evolve. Violence against women has increased recently, including physical assault, domestic violence, sexual harassment, and female infanticide. Our nation has passed, accepted, and put into effect several laws that provide specific protection for women in an effort to reduce violence and abuse against them. We all need to be aware of Indian women's rights. The Constitutional Rights and Legal Rights must both be taken into account while discussing the rights of women.

- *Right to Free Legal Aid* -Any woman who attends a police station or court without a lawyer present should be aware that she has the right to legal representation and should utilize that right. Regardless of her salary or financial situation, women have the right to free legal representation. Women are qualified to apply for free legal assistance.¹¹
- *Protection against Arresting* -It is illegal to detain a woman between the hours of sunset and sunrise. The police must get a written justification from the court for the arrest, unless

¹⁰ Code of Criminal Procedure, 1973, § 164.

¹¹ Legal Services Authorities Act, 1987, § 12(c).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

the lady has committed a significant crime, in which case they must obtain it from the prosecutor.¹²

Judicial Response towards Women's Rights

The court's impact on public opinion is no longer limited to its role as the last arbitrator of disputes, but also as a staunch defender of constitutional principles. The Supreme Court has frequently reacted to the mobilization of rights organizations and members of civil society in general, but in many instances, it has also assumed responsibility for intervening and redressing serious injustices that transcend caste, class, and gender. Through the judiciary, the constitution and general law have protected women from abuse and provided assistance in a variety of other ways to elevate women's position in all spheres of their lives. A genuine guardian of justice has always been the impartial, independent judiciary.

Since independence, the judiciary has frequently expanded and pro-actively construed the scope of legislative provisions in favour of the underprivileged half of society, i.e., the women of our nation. In *The Secretary, Ministry of Defence v. Babita Puniya & Ors.*,¹³ it was decided that women in the army should receive permanent commissions regardless of how long they have served, in all ten streams where the Union Government has already decided to give women short service commissions.

In *Joseph Shine v. Union of India*,¹⁴ a five-judge panel unanimously declared that Section 497 of the Indian Penal Code was unconstitutional because it was based on the presumption that a woman is the husband's property and is not permitted to have relationships outside of marriage. By discriminating against married women and fostering gender stereotypes, the aforementioned part infringed on both women's rights to privacy and liberty.

According to the ruling in *Shamima Farooqui v. Shahid Khan*,¹⁵ divorced Muslim women are protected by Section 125 of the Criminal Procedure Code, and the right to maintenance is unalienable until it is prohibited. The court further decided that the amount of maintenance that the ex-husband must pay must be such that it enables the divorced woman and her children, if any, to live honourably.

¹² Code of Criminal Procedure, 1973, § 46(4).

¹³ *The Secretary, Ministry of Defence v. Babita Puniya & Ors.*, (2020) 7 SCC 469.

¹⁴ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

¹⁵ *Shamima Farooqui v. Shahid Khan*, AIR 2015 SC 2025.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

In *D. Velusamy v. D. Patchaiammal*,¹⁶ a bench made up of Justice Markandey Katju and Justice TS Thakur decided that live-in partnerships will be covered under the Domestic Violence Act 2005. Furthermore, not every live-in relationship will qualify as a marriage-like relationship for the purposes of the DV Act of 2005. The requirements outlined by the bench must be met in order to get these benefits, and they must be supported by proof. It would not be a relationship in the form of marriage if a guy has a woman whom he supports financially and employs mostly for sexual purposes and/or as a servant.

Conclusion

The process of judicial interpretation gives all clauses in the Indian Constitution and all laws passed by the legislature their true intent and significance. The courts have heard arguments about the constitutional mandate and the different statutes that protect women from discrimination in various spheres of their social, economic, and political lives. The superior courts in India have developed a gender jurisprudence through a variety of mechanisms, including judicial review, judicial activism, social action litigation, and the duty of upholding fundamental rights, which has given substance and life to the constitutional scheme of protective discrimination in favour of women. There are numerous laws passed by legislatures, administrative regulations, and court rulings, as well as ongoing protection and empowerment initiatives by individual and collective women's organizations. However, due to societal ignorance and a lack of interest on the part of both women and men, these women receive insufficient justice. The world urgently needs more informed, capable women. A strong woman defends not just herself but also those around her. Women should so struggle for their position in this society that is predominately male. Women would only really benefit from the law until the attitude and patriarchal beliefs that have permeated Indian society for centuries are changed.

References

- Dillip Kumar Behera, *Constitutional Safeguards to Women's Right in India*, Academia.
- Dr. S.K. Rai, *Constitutional Safeguards Towards women in India*, Vol. 9, Issue 11, International Journal of Creative Research Thoughts (IJCRT), November, 2021.

¹⁶ *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in
<https://www.ijalr.in/>

- Ritu Mehla, *Empowerment of Indian Women: Important Constitutional and Legal Provisions*, Volume 07, Issue 08, Page 33-37, International Journal of Research in Engineering, IT and Social Sciences (ISSN: 2250-0588), August 2017.
- *Women Empowerment Through Constitutional Provisions, Laws, Development Policies and Programmes in India: A Progressive View*, IAEME Publication (2020).



For general queries or to submit your research for publication, kindly email us at editorial@jalr.in
<https://www.jalr.in/>