

## WELFARE OF WOMEN UNDER THE CONSTITUTION OF INDIA AND THE ROLE OF JUDICIARY

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### Abstract

*Every consortium must deal with societal change because social conditions are never static. Social change, whether it occurs through law or judicial exposition, demonstrates a shift in the socially acceptable standards of living or even the possibility of a better existence. A society's rules and way of life are affected by its evolving structure because they must keep up with the society's shifting socioeconomic trends and political movements while also preserving a specific balance between citizens' rights and obligations. Therefore, law and equality offer a potential power for the realisation of an advance social change. In the Middle Ages, Indian women's hitherto exalted status encountered complications. Political, social, and economic elements are involved in participate in their repression. During the educated and civilised regal rule, social barriers and discriminatory acts against them persisted. However, the power of the individualistic movement was used to offer women equal position and a place of honour and dignity in society. As a result, the fundamental legislation of the constitution, which was created by the constituent assembly, treated men and women equally and also established protective discrimination for women in light of their unique place in human society.*

### Keywords

*Constitution of India, Article 14, Judiciary, Gender balance*

### Introduction

Women's safety has decreased in India over the past few years as a result of a number of horrific atrocities against women that have occurred repeatedly. From the ancient through the mediaeval eras, there was a fall in the position of women, which has continued in this highly developed era. Due to their nearly 50% population share and participation in the

growth and development of the nation, women in India enjoy the same rights as men in this country. While it is true that more women are holding important positions in contemporary India—President, Speaker of the Lok Sabha, Union Ministers, Leader of the Opposition, Chief Minister, Governor, etc.—they are also being exploited behind closed doors. The Indian Constitution states that they enjoy equal rights to

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respect, equality, and freedom from discrimination based on gender. Indian women continue to experience a variety of issues, including forced prostitution, dowry murders, acid attacks, sexual harassment, and other violent crimes.<sup>2</sup>

### **Amenities given to the Indian Women**

The Indian Constitution's Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles all uphold the principle of gender equality. The Constitution not only recognises women's equality but also sanctions the State to carry out measures of positive discrimination in favour of women. Our laws, development strategies, plans, and programmes have been created within the framework of a democratic polity with the goal of advancing women in a variety of fields. As part of its commitment to ensuring women's equal rights, India has ratified a number of international agreements and human rights instruments. The ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993 is a significant one of them.

### **Provisions of the Constitution**

#### **1. EQUALITY BEFORE LAW: -**

The general principles of equality before the law and equal protection of the laws are embodied in Article 14. prohibition of discrimination based on a person's birthplace, race, caste, religion, or sexual orientation. The state is forbidden by Article 15(1) and (2) from discriminating against any citizen solely on the basis of any one or more characteristics, including religion, race, caste, sex, place of birth, or any combination of these. The state may enact unique provisions to safeguard the interests of women and children under Article 15(3). The State is empowered by Article 15(4) to make special provisions for advancing the interests and welfare of socially and educationally underprivileged sections in society.

#### **2. EQUALITY OF OPPORTUNITY: -**

All citizens are guaranteed equal opportunity

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<sup>2</sup> R.Gattaiah, *Women Empowerment in India and Judicial Activism*, 5 IJCR 2340,(2017)  
Tanya Shrotriya, *Constitutional Rights and Welfare of Women*, LEGAL SERVICE INDIA,

(Aug.24, 2022, 21:22 pm),  
<https://www.legalserviceindia.com/legal/article-3004-constitutional-rights-and-welfare-of-women.html>

under Article 16 while applying for jobs or being appointed to government positions. According to Article 39(a) and (d), the State shall direct its policies toward providing for men and women equally the right to an adequate means of subsistence and equal compensation for equal effort. According to Article 39A, the State is required to advance justice on the basis of equality of opportunity and to advance free legal aid through appropriate legislation or schemes or in any other manner to ensure that no citizen is denied the opportunity to pursue justice due to a financial or other disability.

3. RESERVATION FOR WOMEN AND VOTING RIGHTS: - According to Articles 243 D (3) and 243 T (3), women must be given at least one-third of the seats in Panchayats and Municipalities, with those seats being distributed by rotation to various Constituencies. According to Article 243 D(4) T(4), women

must make up at least one-third of the officers in charge of the Panchayat and Municipalities at each level. Women must have access to at least one-third of the available seats. In a Panchayat, these seats may be distributed by rotation to several constituencies. The position of Panchayat chairperson at the village level or any other level must be reserved for SCs, STs, and women in accordance with any legal provisions made by the state legislature. There is a seat reservation for women in municipal government. In order to uphold the Constitution's mandate, the state has passed a number of laws that aim to guarantee equal rights, combat social discrimination, different types of violence, and atrocities, and offer support services, particularly to working women. Women may be victims of any crime, including murder, robbery, cheating, etc., but these crimes are geared against men.<sup>3</sup>

<sup>3</sup> *Women and the Indian Constitution*, Vikaspedia ( Aug 25,2022,17:38 PM), <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/legal-awareness-for->

[women/women-and-the-indian-constitution#:~:text=Article%2039%20requires%20the%20State,%5BArticle%2039\(d\)%5D.](https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/legal-awareness-for-women/women-and-the-indian-constitution#:~:text=Article%2039%20requires%20the%20State,%5BArticle%2039(d)%5D.)  
Saswata Tewari, *Role of judiciary in maintaining a gender-just world*, blogpleaders (

## **Role of Indian Judiciary to Promote Equality**

A minimum of one-third of the available seats must be accessible to women. These seats in a Panchayat could be allocated to several constituencies by rotation. In accordance with any legal provisions imposed by the state legislature, the position of Panchayat chairperson at the village level or any other level shall be reserved for SCs, STs, and women. Women have a designated seat in local government. The state has passed a variety of laws that seek to guarantee equal rights, combat social discrimination, various forms of violence, and atrocities, as well as provide support services, notably to working women, in order to uphold the Constitution's mission. Any crime, including murder, robbery, cheating, etc., may target women as a victim, but these crimes are intended to target males. Women in India are protected against injustice by the judiciary thanks to the Indian Constitution. The rights of women have constantly been enhanced by the Indian Constitution. The constitution includes safeguards for women's rights and permits the enactment of special laws for them, such as the Dowry Prohibition

Act of 1961, the Medical Termination of Pregnancy Act of 1971, the Immoral Traffic (Prevention) Act of 1956, the Maternity Benefit Act of 1961, and the Indecent Representation of Women (Prohibition) Act of 1986. Under sections 24 and 25 of the Hindu Marriage Act of 1955 and section 18 of the Hindu Adoptions and Maintenance Act of 1956, as well as the Parsi Marriage and Divorce Act of 1936, specific provisions have been incorporated in the personal law to provide maintenance to women.

## **Landmark Judgements**

Indian airlines had established various restrictions that were deemed to be in violation of Article 14 of the Indian Constitution in the case of “Air India Etc. vs. Nergesh Meerza”. The clause specified that air hostesses would be prohibited from getting married for the first four years of their employment, would be fired if they got pregnant, and would retire at the age of 35, unless the managing director decided to prolong it. According to the Supreme Court, because this clause places unrestricted power in the hands of one person, the termination of employment based on the first pregnancy and the

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Aug 25,2022,17:38 PM),  
<https://blog.ipleaders.in/role-of-judiciary-in-maintaining-a-gender-just->

[world/#Role\\_of\\_Indian\\_judiciary\\_in\\_neutralising\\_gender\\_equality](#)

extension of the managing director's position both contradict the principle of equality established by Article 14.

In the “Vishakha v. State of Rajasthan” case, the Supreme Court ruled that the fundamental rights guaranteed by Articles 14, 19, and 21 of the Indian Constitution can be used to establish gender equality. Sexual harassment at work is a blatant violation of these rights, which in turn violates the principle of gender equality. In the absence of domestic legislation to address the problem of sexual harassment, assistance can be obtained from international law. In order to provide employees, particularly women, with a fair, secure, and comfortable working environment, rules were established that companies were required to abide with.<sup>4</sup>

### **Conclusion**

Women's rights are protections and freedoms that are accorded to women and girls of all ages under a variety of societal structures. These rights may be disregarded or suppressed in some locations, when the law, local custom, and conduct have standardized or upheld

them. In bygone India, women were thrilled to share status and rights with men in all spheres of life. The Indian woman's standing in society deteriorated during the Middle Ages. Numerous reformers fought for the social and economic advancement of women during the British rule. Women in India are currently in a very vulnerable position, regardless of the improvement metric at hand—be it health, education, death rate, or any other. Gender-based discrimination is a social ill that ought to be eradicated at all costs. A nation's judiciary must take the initiative and interpret the laws in a way that upholds the equality principle. In order to improve the status of women in our society and alter all the laws that prevent them from making decisions and taking advantage of all the opportunities that life has to offer, constitutional measures must be made. Governments must implement welfare policies, plans, funding, and programs that emphasize the social, economic, and educational empowerment of women. To change the way that society thinks, actions must be taken.

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<sup>4</sup> Air India Etc. Etc vs Nergesh Meerza & Ors. Etc. Etc (1981) A.I.R 1829 (India); Vishaka & Ors. V/S State of Rajasthan A.I.R 1997 S.C. 3011(India).