



# Equality Before the Law: Women's Human Rights and The Indian Constitution

<sup>1</sup>Preeti Gupta, <sup>2</sup>Dr. Arsheed Ahmad Ganie

<sup>1</sup>Ph.D Research Scholar (Pol.Sc) Department of Humanities and Social Sciences, IEC University, Baddi - HP

<sup>2</sup>Assistant Professor (Pol.Sc) Department of Humanities and Social Sciences, IEC University, Baddi – HP

Email: <sup>1</sup>preeti94444@gmail.com, <sup>2</sup>scholar9009@gmail.com

**Abstract:** *This article delves into the intricate relationship between women's human rights and the Indian Constitution, particularly focusing on the principle of equality before the law. Rooted in a cultural tradition of reverence for women yet challenged by deep-seated patriarchal norms, India's journey towards gender equality has been marked by both progress and persistent obstacles. The Indian Constitution, through its provisions and amendments, has laid the groundwork for legal equality, promising equal rights and opportunities for women. Key constitutional articles such as Article 14, Article 15, and Article 16 serve as pillars in this pursuit, ensuring non-discrimination and affirmative action for women's empowerment. Additionally, various legislative measures and international commitments, such as the ratification of CEDAW, underscore India's commitment to eliminating gender-based discrimination. It also examines the legal provisions and special initiatives aimed at safeguarding women's rights, including those addressing crimes against women, reservation in local self-government, and women empowerment schemes. Furthermore, it explores the role of civil society activism in advocating for gender justice and challenging legal barriers to equality.*

**Key Words:** *Women's Rights, Indian Constitution, Equality before the Law, Gender Equality, Legal Provisions.*

## 1. INTRODUCTION :

India has a long-standing cultural tradition of revering women, encapsulated in the principle of "Mathru Devobhava," which emphasizes the importance of maternal figures. Historically, women in India have grappled with systemic discrimination and marginalization, entrenched in societal norms and cultural practices. From ancient scriptures to colonial rule, women's rights were often subordinated to patriarchal interests, limiting their access to justice and legal protections. However, with the dawn of independence and the drafting of the Indian Constitution, a new era of legal equality began to emerge, promising equal rights and opportunities for all citizens, regardless of gender. In a society striving for equality and justice, the principle of equality before the law stands as a cornerstone of democratic governance. It ensures that every individual, regardless of gender, race, religion, or social status, is subject to the same laws and entitled to the same legal protections. For women in India, the notion of equality before the law has been a beacon of hope and a catalyst for change, especially in a historically patriarchal society where gender discrimination has been pervasive.

The Indian Constitution enshrines the principle of equality before the law as a fundamental right, ensuring that every individual is treated equally by the state and its institutions. Article 14 of the Constitution declares 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." This provision serves as the bedrock of legal equality, prohibiting discrimination and ensuring that women are afforded the same rights and protections as men under the law.



## 2. HISTORICAL CONTEXT

Women's rights encompass a rich tapestry of multicultural and diasporic struggles. These battles vary significantly across different geographies and are influenced by a multitude of factors: familial ties, societal norms, racial dynamics, marital status, economic conditions, religious beliefs, cultural contexts, and individual awareness.

In both ancient times and modern-day India, patriarchy and misogyny have deeply entrenched roots. Indian women navigate survival within an intricate web of oppressive societal structures. These structures include age-related expectations, ordinal status, their relationship to men through family lineage, marriage, procreation, and adherence to patriarchal norms. Examples of these norms encompass dowry practices, the desire for male heirs, kinship ties, caste distinctions, colour biases, community affiliations, village dynamics, market influences, and the overarching state framework.

Despite these formidable challenges, India boasts a rich tradition of women who defied conformity even under severe societal pressures. Their resilience and rebellion have left an indelible mark on history.

The historical trajectory of women's rights in India can be divided into three distinct phases:

1. **Mid-19th Century Reformists:** During this initial phase, reformists championed women's rights by advocating for educational reforms and challenging customs that restricted women's agency.
2. **Pre-Independence Era (1915 to Indian Independence):** Mahatma Gandhi's leadership played a pivotal role during this period. Women's movements were integrated into the Quit India movement, and independent women's organizations began to emerge.
3. **Post-Independence Focus:** In the aftermath of India's independence, efforts shifted toward ensuring fair treatment for women within their homes after marriage, in the workforce, and in their pursuit of political parity.

## 3. CONSTITUTIONAL PROVISIONS

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

The Constitution of India empowers the State to adopt measures of positive discrimination in favor of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment.

1. **Article 14:** Ensures **equality before the law** for both men and women.
2. **Article 15 (1):** Prohibits discrimination against any citizen based on grounds such as religion, race, caste, or sex.
3. **Article 15 (3):** Allows the State to make **affirmative discriminations** in favor of women.
4. **Article 16:** Guarantees **equal opportunities** in matters related to public appointments for all citizens.



5. **Article 23:** Prohibits **trafficking in human beings** and forced labour.
6. **Article 39 (a):** Directs the State to work towards securing an **adequate means of livelihood** for both men and women.
7. **Article 39 (d):** Advocates for **equal pay for equal work** for men and women.
8. **Article 42:** Mandates provisions for **just and humane working conditions** and **maternity relief**.
9. **Article 51 (A) (e):** Encourages the renunciation of practices that are **detrimental to women's dignity**.
10. **73rd and 74th Amendment Act (1992):** Reserves **one-third of seats** in local bodies (panchayats and municipalities) for women. This amendment also declared the day it became operational (April 24th) as **Women's Empowerment Day**.
11. **Article 243 D (3):** Requires that not less than one-third of seats in panchayats be reserved for women.
12. **Article 243 D (4):** Reserves not less than one-third of the total number of offices of chairpersons in panchayats for women.
13. **Article 243 T (3):** Similar to panchayats, not less than one-third of seats in municipalities are reserved for women.
14. **Article 243 T (4):** Provides for the reservation of offices of chairpersons in municipalities for Scheduled Castes, Scheduled Tribes, and women.

#### **4. LEGAL PROVISIONS**

##### **1. The Crimes Identified Under the Indian Penal Code (IPC)**

- Rape (Sec. 376 IPC)
- Kidnapping & Abduction for different purposes (Sec. 363-373)
- Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- Torture, both mental and physical (Sec. 498-A IPC)
- Molestation (Sec. 354 IPC)
- Sexual Harassment (Sec. 509 IPC)
- Importation of girls (up to 21 years of age)

##### **2. The Crimes identified under the Special Laws (SLL)**

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- i. The Employees State Insurance Act, 1948
- ii. The Plantation Labour Act, 1951
- iii. The Family Courts Act, 1954
- iv. The Special Marriage Act, 1954
- v. The Hindu Marriage Act, 1955
- vi. The Hindu Succession Act, 1956 with amendment in 2005
- vii. Immoral Traffic (Prevention) Act, 1956
- viii. The Maternity Benefit Act, 1961 (Amended in 1995)
- ix. Dowry Prohibition Act, 1961
- x. The Medical Termination of Pregnancy Act, 1971
- xi. The Contract Labour (Regulation and Abolition) Act, 1976
- xii. The Equal Remuneration Act, 1976



- xiii. The Prohibition of Child Marriage Act, 2006
- xiv. The Criminal Law (Amendment) Act, 1983
- xv. The Factories (Amendment) Act, 1986
- xvi. Indecent Representation of Women (Prohibition) Act, 1986
- xvii. Commission of Sati (Prevention) Act, 1987
- xviii. The Protection of Women from Domestic Violence Act, 2005

## 5. WOMEN EMPOWERMENT SCHEME

Women Empowerment Schemes play a crucial role in promoting gender equality and providing opportunities for women's advancement. These schemes aim to enhance women's education, skills, and economic independence. They provide financial assistance, training, and support for entrepreneurship, employment, and leadership development. Some of the notable women empowerment schemes:

- **Beti Bachao Beti Padhao Scheme (2015):**
  - Aims to prevent gender-biased sex-selective elimination.
  - Ensures the survival and protection of the girl child.
  - Promotes education and participation of the girl child.
- **One-Stop Centre Scheme (2015):**
  - Provides support and assistance to women affected by violence, both in private and public spaces.
  - Facilitates filing First Information Reports (FIR/NCR).
  - Offers psycho-social support and counseling to women and girls.
- **Women Helpline Scheme (2016):**
  - Provides a toll-free 24-hour telecom service to women affected by violence.
  - Facilitates crisis and non-crisis intervention through referrals to appropriate agencies.
  - Informs women about available support services, government schemes, and programs.
- **Ujjawala (2016):**
  - Aims to prevent trafficking of women and children for commercial sexual exploitation.
  - Rescues victims and provides rehabilitation services, including shelter, food, medical treatment, counselling, legal aid, and vocational training.
- **Working Women Hostel (1972-73):**
  - Promotes safe and conveniently located accommodation for working women.
  - Provides accommodation for children of working women (up to age 18 for girls and up to age 5 for boys).
- **SWADHAR Greh (2018):**
  - Addresses the primary needs of shelter, food, clothing, medical treatment, and care for distressed women
- **Sukanya Samriddhi Yojana (SSY):**
  - A long-term savings scheme for the girl child.
  - Requires a minimum investment of Rs 1,000 and a maximum of Rs 2 lakh.

## 6. INTERNATIONAL OBLIGATIONS

These are some of the major international human rights treaties and conventions that India has committed to respect and implement in relation to women's human rights and equality before the law. However, there are also some gaps and challenges in the domestic legal framework and the actual enforcement of these rights in India. Efforts are ongoing to bridge these gaps and ensure the full realization of women's human rights in India.



- **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):** This is the most comprehensive and widely accepted international treaty on women's rights and equality. It defines discrimination against women and sets out the obligations of States to eliminate it in all spheres of life. India ratified CEDAW in 1993 with a reservation to Article 29, paragraph 1, relating to dispute resolution between States by arbitration.
- **The International Covenant on Civil and Political Rights (ICCPR):** This is a key human rights treaty that guarantees civil and political rights, such as the right to life, liberty, fair trial, freedom of expression, and freedom of religion. It also prohibits torture, slavery, and arbitrary detention. India ratified ICCPR in 1979 with some declarations and reservations.
- **The International Covenant on Economic, Social and Cultural Rights (ICESCR):** This is another key human rights treaty that guarantees economic, social and cultural rights, such as the right to work, education, health, social security, and cultural participation. It also obliges States to take steps to progressively realize these rights. India ratified ICESCR in 1979 with some declarations and reservations.
- **The Convention on the Rights of the Child (CRC):** This is the most widely ratified human rights treaty that recognizes the rights of children as human beings with specific needs and vulnerabilities. It covers civil, political, economic, social and cultural rights of children, and also addresses issues such as child labor, child marriage, child trafficking, and child abuse. India ratified CRC in 1992 with a declaration on Article 32, paragraph 1, relating to the minimum age of employment.

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## 7. SPECIAL INITIATIVES FOR WOMEN

### 7.1 National Commission for Women

The National Commission for Women (NCW) is a statutory body established by the Government of India under the 1990 National Commission for Women Act. Its primary role is to advise the government on policy matters affecting women. Since its inception in 1992, the NCW has been committed to protecting and promoting women's rights. It addresses complaints, legal issues, and works toward the prevention of sexual harassment, as well as women's education and health. The NCW plays a crucial role in advocating for gender equality and ensuring the well-being of women across various spheres of life in India.

### 7.2 Reservation for Women in Local Self-Government

The reservation of seats for women in the institution of local self-government has been a significant step toward promoting gender equality and empowering women in India. According to the 73rd Amendment Act, not less than one-third of the total seats filled by direct election in every Panchayat must be reserved for women, with these seats allotted by rotation across different constituencies. This policy aims to enhance women's political participation, provide them with a voice, and increase their bargaining power. While it has led to active women leadership at the grassroots level, challenges remain, including instances where women exercise limited power, and decision-making is still dominated by men, hindering the complete transformation of the patriarchal character of Indian politics.

### 7.3 The National Plan of Action for the Girl Child

The National Plan of Action for the Girl Child was established in 1992 with the goal of ensuring the survival, protection, and development of girl children in India. This policy recognizes the rights of girl children to healthy and





nutritious food, equal opportunities, and freedom from hunger, illiteracy, and exploitation. It emphasizes the importance of safeguarding vulnerable girl children and promoting their well-being through various schemes and policies, including initiatives like Beti Bachao Beti Padhao, Mission Indradhanush, and the Newborn Action Plan.

#### **7.4 National Policy for the Empowerment of Women, 2001**

The National Policy for the Empowerment of Women (2001) aims to promote gender equality and empower women in India. It recognizes constitutional provisions and international commitments related to women's rights. Despite challenges, grassroots movements and sectoral policies contribute to advancing women's economic, social, and educational empowerment.

### **8. CIVIL SOCIETY ACTIVISM**

Civil society activism is a vital component of the struggle for women's rights and equality in India. Civil society organizations (CSOs) and grassroots movements (GRMs) are diverse and dynamic actors that work at various levels and use various strategies to advance the cause of gender justice. Some of the roles that they play are:

**Awareness and Education:** CSOs and GRMs raise awareness and educate the public, the media, the government, and other stakeholders about the issues and challenges faced by women and girls in India. They also disseminate information and knowledge about women's rights and the legal framework that protects them. For example, the Centre for Social Research<sup>1</sup> conducts training and workshops on gender sensitization, legal literacy, and women's empowerment for various groups, such as police officers, lawyers, judges, journalists, and students.

**Advocacy and Lobbying:** CSOs and GRMs advocate and lobby for the formulation, implementation, and reform of laws and policies that affect women's rights and equality. They also monitor and evaluate the impact and effectiveness of these laws and policies and hold the government accountable for its obligations. For example, the Lawyers Collective Women's Rights Initiative has been instrumental in drafting and campaigning for several landmark legislations, such as the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

**Service and Support:** CSOs and GRMs provide various services and support to women and girls who are victims or survivors of violence, discrimination, or exploitation. They also empower them to access their rights and entitlements and to participate in decision-making processes. For example, the Mahila Samakhya Programme is a government initiative that works with NGOs and GRMs to mobilize and organize rural women into collectives and enable them to access education, health, livelihood, and legal services.

**Resistance and Protest:** CSOs and GRMs resist and protest against the violations and injustices faced by women and girls in India. They also challenge the patriarchal and discriminatory norms and structures that perpetuate these violations and injustices. They use various forms of non-violent action, such as rallies, marches, sit-ins, strikes, petitions, campaigns, etc. For example, the Nirbhaya Movement was a massive public outcry and protest that erupted after the brutal gang rape and murder of a young woman in Delhi in 2012. The movement demanded justice for the victim and stronger laws and actions against sexual violence.

These are some of the roles that civil society organizations and grassroots movements play in advocating for women's rights and challenging legal barriers to equality in India. However, they also face various challenges and constraints, such as lack of resources, funding, coordination, recognition, and security.

### **9. CONCLUSION**

In conclusion, the journey towards achieving equality before the law for women in India has been both arduous and transformative. Rooted in centuries of cultural tradition and challenged by entrenched patriarchal norms, the struggle for women's human rights has seen significant milestones alongside persistent obstacles. The Indian Constitution, with



its foundational principles of equality and justice, has provided a framework for progress, enshrining the rights of women and empowering the state to take affirmative action to address historical injustices. Through constitutional provisions, legislative reforms, and international commitments, India has taken steps to dismantle discriminatory practices and ensure equal rights and opportunities for women. From legal safeguards against gender-based violence to reservations in local governance, from initiatives for the girl child's welfare to civil society activism, various measures have been put in place to advance the cause of gender equality. However, despite these efforts, challenges persist. The gap between legal provisions and their effective implementation, cultural resistance to change, and systemic barriers continue to hinder the full realization of women's human rights. Civil society activism remains a crucial force in advocating for change, raising awareness, and holding authorities accountable. As we navigate the complexities of gender equality within the legal landscape of the Indian Constitution, it is imperative to remain steadfast in our commitment to upholding the principles of justice, dignity, and equality for all. By continuing to challenge discriminatory norms, promote women's empowerment, and ensure access to justice, we can strive towards a more inclusive and just society where every individual, regardless of gender, can thrive and fulfil their potential.

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