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Constitutional Provisions For Women Empowerment In India

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Abstract: *Women empowerment is a crucial facet of social development and equity, and many nations, including India, have enshrined provisions within their constitutions to promote gender equality and safeguard women's rights. Constitutional frameworks play a pivotal role in ensuring women's access to opportunities, resources, and legal recourse. This abstract explores the various constitutional provisions that aim to empower women, with a focus on the fundamental rights, affirmative actions, and legal safeguards that have been embedded to counteract historical discrimination and gender-based inequalities. Key provisions include the right to equality (Article 14), prohibition of discrimination (Article 15), equality of opportunity (Article 16) and provisions for equal pay for equal work (Article 39(d)). Additionally, special measures like reservation of seats in political bodies (73rd and 74th Amendments) and laws addressing violence against women reinforce the state's commitment to gender parity. These constitutional safeguards are essential for advancing women's participation in the socio-economic and political spheres, thereby contributing to a more inclusive and equitable society.*

Key Words: Women empowerment, gender based inequalities, constitutional frameworks.

"Women's empowerment and gender equality" are two interrelated aspects that significantly complement one another. India has a population of 1.39 billion people. India's female population is 662.90 million. The female population constitutes 48.04%, while the male population comprises 51.96%. Gender equality and women's empowerment are two principles included in the Constitution of India. The Constitution ensures equality for women in all aspects. It also enables the state to implement measures aimed at eradicating prejudice, inequity, or cruelty against women. Women's empowerment is described as a process aimed at enhancing the position of women within society and establishing regulations and legislation to promote this objective. Women empowerment in the current context serves as a mechanism to effectively mitigate biological or gender discrimination against women, therefore enabling women in any community or nation to enhance their own development and that of the country.

"There is an urgent need to tackle the ills of the society against women through active participation of all-men, women, society, and governments. It is imperative to make women empowerment a people's movement."

- Smt Sushma Swaraj

Historical perspective- Women were subjected to social discrimination in the medieval and pre-medieval periods. In ancient times, only women were given the responsibility of facilitating male sperm transfer. During that time, women were viewed as mere cogs in the hands of powerful men and were exploited by society. When women took on the powerful men in society, they were frequently accused of "witchcraft," subjected to cruel labeling as witches, and faced false accusations. The sati system, female infanticide, child marriage, the dowry, and other societal injustices affected women. In a society that was dominated by men, women were regarded as objects and considered to be inferior to men. Women were financially dependent on men.

Status of women changes during the colonial era: The following changes has been made for women empowerment

- * "Education of women
- * Prevention of child marriage
- * Removal of polygamy



- * Act of sati (abolish), 1829
- * Hindu Widow Remarriage Act, 1856
- * The Child Marriage Restraint Act, 1929
- * Women Property Right Act, 1937"

The following efforts were made to change the status of women: Womens have been victims of exploitation by male dominated society. Women need to be empowered and men need to be oriented about their obligations towards women.

- * To raise women's status in society.
- * To give them the resources they need to become financially independent and on par with men.
- * To advance education for women to enable them to compete with males in the professional sphere.
- * To implement programs aimed at instructing women in self-defense tactics for their own protection.
- * Women must adapt to the evolving society, empower themselves, and assist the government in formulating programs.
- * The pursuit of women's empowerment should be viewed as the beginning of a new era when violations against women are eradicated.

"Each woman would have faced many challenges but when somebody puts you down, it is when you feel the need to rise up." Smt. N.L. Kidwai; "Former Country Head, HSBC India".

Provisions in Constitution for women empowerment: The makers of our Constitution have incorporated certain provisions within the Constitution to ensure the enforcement of Fundamental Rights; the most important is the Right to Constitutional Remedies under Part III. The fundamental rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual, moral and spiritual status and for development.

- * Art. 14: "The government shall not deny to any person equality before law or equal protection of the law".
- * Art. 15: "The Government shall not discriminate against any citizen on the ground of sex. Article 15(3): Special provision enabling the state to make affirmative discriminations in favor of women".
- * Art. 15 (A): "It renounce the practices derogatory to the dignity of women".
- * Art. 16: Equality of opportunity in matters of public employment.
- * Art. 19: Gives the protection of certain rights regarding freedom of speech to every citizen without any biasness of sex or gender:
- * Art. 21: Contains provisions for prrotection of life and personal liberty of persons. It states: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21 not only gives the right to life _but_ it includes the right to life with dignity.
- * Art. 23: For centuries women have been humiliated, exploited, tortured and harassed in all walks of life - physically, mentally and sexually. To safeguard and protect women against exploitation, Article 23(1) of the Constitution of India prohibits traffic in human beings and beggar and other similar forms of forced labour.
- * Additionally, the Directive Principles of State Policy in Part IV of the Indian Constitution lend support to the paradigm of equality, social justice and empowerment which runs through all the principles. Apart from Part III and Part IV the Constitution contains provisions in other parts also empowering women. These provisions include equality in matters relating to voting right has been assured by the Constitution to both men and women.
- * Art. 39: Indicates about certain principles of policy to be followed by the state. The state shall, in particular,



direct its policy towards securing: (a) That the citizens, men and women equally, have the right to an adequate means of livelihood; (b) That there is "equal pay for equal work" for both men and women; (c) That the health and strength of workers, men and women, and the tender age of children are not abused. Under Article 39(d), the state shall direct its policy towards securing equal pay for equal work for both men and women. Further Article 39(e) is aimed at protecting the health and strength of workers, both men women.

* Art. 42: "It directs the state to make provision for ensuring just and human conditions of work and maternity relief".

* Art. 51-A: the Fundamental Duties under Article 51 A also imposes the duty to renounce practices derogatory to the dignity of women on the citizens of India. In recent years, the judiciary has applied the principle of harmonious construction, which implies reading Fundamental Rights and Directive Principles of State Policy together.

Reservation of Seats for Women in Election to Local Bodies:

* The parliament has succeeded in its efforts to provide for reservation of seats for women in election to the Panchayats and the Municipalities. Reservation of seats for women in Panchayats and Municipalities has been provided in Articles 243 D and 243 T of the Constitution of India. Part IX and IX A have been added to the Constitution by the 73rd and 74th Amendment Acts.

Domestic violence is common, mostly against women. Every 29 minutes, a woman in India is raped, and approximately 70% of women have been the victims of sexual assault. Every 60 minutes, there are Dowry deaths. Every nine minutes, women are the victims of violence. The concept of "Women Empowerment" is becoming increasingly meaningless as a result of the prevalence of crimes against women in society.

In "C.B. Mathamma v. Union of India highlighted that both political parties and the court are diligently striving to eliminate gender discrimination. The validity of the Indian Foreign Services (Conduct and Discipline) Rules of 1961 was contested, asserting that a female employee must secure written consent from the government prior to marriage, and that post-marriage, a female member of the service may be compelled to resign at any time. The Honorable Supreme Court determined that this clause is discriminatory against women and, thus, unconstitutional". In "Vishakha & Others against State of Rajasthan, the Honorable Supreme Court determined that the harassment of women in the workplace is a breach of gender justice and the right to life and liberty, therefore infringing upon Articles 14, 15, and 21 of the Constitution of India".

Plans and policies for women empowerment-

* The overall approach to women's issues has changed significantly since the fifth five-year plan (1974-1978), shifting from welfare to development.

* An act of parliament in 1990 established the National Commission for Women (NCW) with the intention of safeguarding women's rights.

* The 73rd and 74th amendments are responsible for the reservation of seats in panchayats and municipalities for women.

* The Convention on the Elimination of All Forms of Discrimination Against Women, or CEDAW for short, was ratified in 1993.

* Equality principles were discussed at the second global summit on human rights, which was held in Vietnam in June 1993, and the fourth global conference on women, which was held in Beijing in 1995.

* Other international treaties for the protection of women include the following:

* The universal declaration of human rights was issued in 1948.

* The Convention on the Political Rights of Women, which was signed in 1952



- * A declaration was made in 1967 calling for the end of all forms of discrimination against women.
- * The Inter-American Convention for the Prevention, Punishment, and Elimination of Violence Against Women, which was established in 1995, and the protocol regarding the convention on the elimination of all forms of discrimination against women, which was established in 1999, are optional.
- * The declaration addressed the safeguarding of women and children during times of emergency (and armed conflict) in 1974.
- " A convention was established in 1964 to establish the minimum age for marriage, as well as the minimum age for consent to marriage.

Smt. I. Gandhi rightly quoted, "To be liberated woman must feel free to be herself, not in rivalry to men but in the context of her own capacity and her personality."

Judicial initiatives towards empowerment of women in India:

Listed below are some of the key rulings that have been handed down in India that have empowered women:

- i. In "Vishaka Versus State of Rajasthan: Sexual Harassment at Work Place: Social worker from Rajasthan was brutally gang raped by five men for preventing a child marriage. In a shocking decision, Trial court acquitted all five accused. Vishakha (group for women's education and research), joined forces with four other women organizations and filed a petition before the Supreme Court of India on the issue 'sexual harassment at work place'. On August 13, 1997 supreme court commissioned the Vishakha guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women".
- ii. In "Vineeta Sharma Versus Rakesh Sharma (2020) The Supreme Court held that daughters have equal coparcenary rights in Hindu Undivided Family (HUF) property. The court held that this right arises by taking birth. So when a daughter is born, she also steps into the co- parcenary as that of a son. However, a daughter born before can claim these rights only with effect from the date of the amendment, i.e., September 9, 2005, with saving of past transactions as provided in the Section 6(1) along with Section 6(5). Further, the court also clarified that since the right in copar- cenary is by birth, father coparcener doesn't need to be living as on 9.9.2005".
- iii. "The Secretary, Ministry of Defense v. Babita Puniya and Ors , The Supreme Court in this case, ushered for transformative constitutionalism by breaking gender stereotypes in Indian Army. The court said that all women army officers are eligible to be appointed in commanding roles and are also entitled to permanent commissions. The Court further said the submissions made by the Ministry of Defense, "are based on sex stereotypes premised on assumptions about socially ascribed roles of gender which discriminate against women. Underlying the statement that it is a "greater challenge" for women officers to meet the hazards of service "owing to their prolonged ab- sence during pregnancy, motherhood and domestic obligations towards their children and families" is a strong stereotype which assumes that domestic obligations rest solely on women." The Court held that such notions are flawed and are in clear violation of Article 14 of the Constitution of India. This judg- ment shall always be celebrated which paved the way for gender equality in defence services".
- iv. "State of Gujarat v. Rameshchandra Rambhai Panchal it held that whether a survivor is habituated to sexual intercourse before the assault has absolutely no bearing on whether she consented when the rape occurred. Section 155 of the Indian Evidence Act, does not allow a rape victim's credibility to be compromised on the ground that she is of generally immoral character. The two-finger test is unconstitutional. It violates the right of the victim to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, give rise to a presumption of consent."
- v. In case of "Gita Hariharan v. RBI, court interpreted in such a way that father and mother get equal status



as a guardian of a minor".

vi. "Punjab and Sind Bank & Ors V Mrs Durgesh Kuwar held that sexual harassment at work violates women's fundamental right to equality, their right to live with dignity and to practice any profession."

vii. "Bhuvaneshwari V. Puranik The Karnataka High Court held that such rules which create division based on gender by permitting a married son but denying a married daughter are discriminatory and unconstitutional. The court held that, marriage does not determine the continuance of the relationship of a child with the parent, whether son or a daughter. Son continues to be a son, both before and after marriage and a daughter should also continue to be a daughter, both before and after marriage. This relationship should not get affected because of marriage."

viii. "Kajal Mukesh Versus State of Maharashtra the Bombay High Court held that prostitution is not an offence under Immoral Traffic (Prevention) Act, 1956. As per the Act, what is punishable is the sexual exploitation or abuse of a person for commercial purpose. The court held that an adult woman has the right to choose their vocation while setting free three sex workers who were detained from a women's hostel in Uttar Pradesh".

ix. "Hina Haneefa Versus State of Kerala A Trans woman, challenged Section 6 of the National Cadet Corps Act which considers only males and females to be eligible for enrollment. The Kerala High Court observed that this is discriminatory and against the state's trans- gender policy and said that a person cannot be denied a legitimate right only because she is a transgender (person). The court has asked the NCC unit of the University College in Thiruvananthapuram to keep the seat vacant until the matter is finally disposed of".

x. "Laxivmi Versus State of India (2006) The Supreme Court acid cannot be sold to a person below 18 years of age. Seller must receive a valid identity proof before selling the acid to a customer".

xi. "Indian Young Lawyer's Association Versus The State of Karnataka it was held that the exclusionary practice at Sabrimala was violating the rights of the women, since it imposed a restriction on their freedom and as such the rule which placed a reaction on their entry was violative of their right to worship. It was also held that exclusion of women cannot be considered as a religious practice".

xii. "Vidya Bal Versus The State Of Maharashtra The court opened the gates of ShaniShingarpur Temple in Maharashtra to everyone irrespective of their gender".

xiii. "Pawan Kumar & Ors Versus The State Of Haryana (Dowry Deaths) it was held that cruelty and harassment would not only mean physical but also mental. As such the husband had committed the dowry death of the deceased".

xiv. "C.B. Muthamma Versus Union of India (Discrimination/Equality) It was held that if a woman has to obtain permission from the government before marriage then the same set of reasoning is also applicable to men. Government was advised to relook rules to remove any discrimination from them".

xv. "D. Velusamy Versus D. Patchaiammal (Domestic Violence) Supreme Court recognized the concept of live-in relationships. It was held that in order to prove a live-in relationship, it would have to be shown that in spite of no marriage, the couples were living together as if they were husband and wife".

Concluding Remarks: India's constitutional provisions for women empowerment represent a comprehensive framework aimed at dismantling gender inequalities and promoting a more just and equitable society. By embedding principles of equality, non-discrimination, and affirmative action, the Constitution of India has laid a strong foundation for addressing both the legal and structural barriers that women face. Articles ensuring equal rights, legal safeguards, and affirmative measures like political reservations underscore the state's commitment to fostering gender equity. However, while these provisions are crucial, the real challenge lies in their effective implementation and enforcement. Legal protections must be matched with robust institutional mechanisms, societal shifts, and proactive governance to ensure women can fully exercise their rights. Continued efforts in education, economic participation, political and



judicial representation are essential for translating constitutional promises into tangible empowerment. In conclusion, India's constitutional framework provides a solid legal basis for women's empowerment, but sustained effort and vigilance are required to actualize its full potential in the everyday lives of women.

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