

# Laws Pertaining to Women's Legal Protection Under Both the Domestic and International Law

Shanaz<sup>1</sup> and Dr. Maruthi T.R.<sup>2</sup>

<sup>1</sup>Research Scholar (Law) Department of Studies in Law University of Mysore

<sup>2</sup>Professor and Dean Faculty of Law Department of Studies in Law University of Mysore

## ARTICLE INFO

**Key words:** Women, discrimination, rights, women empowerment.

## ABSTRACT

The status of women in India has undergone significant changes over millennia, with a rich cultural and religious heritage that reveres women. However, discrimination and mistreatment against women persist in society, rooted in historical norms and stereotypes. This paper aims to shed light on the fundamental rights guaranteed to women under the Indian constitution, the role of Directive Principles of State Policy (DPSP) in protecting them, and the fundamental duties towards women. By improving various facets such as the state, community, organizations, legislation, and judicial interpretations, women can be treated equally, provided freedom, dignified living, and access to justice. Women's empowerment, a process that increases women's options, choices, control, and power, plays a pivotal role in addressing major societal issues such as gender inequality and poverty. This paper emphasizes how the Indian constitution, with its emphasis on gender equality, empowers women. It also discusses the hindrances to women's empowerment, the protection offered by international law, and presents a concise summary of the overall discussion.

## Introduction

This study explores the evolving status of women in India throughout history, highlighting their representation as holy symbols in scriptures, yet also acknowledging the discrimination and mistreatment they face in society. It emphasizes the lack of equal rights for women, as depicted in texts like the Manu Smriti, and the perpetuated stereotype of women being physically weaker. Consequently, women have experienced ongoing repercussions. The paper aims to shed light on the fundamental rights

guaranteed to women under the Indian constitution, as well as the role of the Directive Principles of State Policy (DPSP) in protecting these rights. It also delves into the fundamental duties towards women and discusses the necessary improvements in the state, community, organizations, legislation, and judicial interpretations to achieve equality, freedom, dignified living, and justice for women. Women's empowerment emerges as a process that amplifies women's options, choices, control, and power through their own agency. The abstract emphasizes the importance of women walking independently in the darkness rather

<sup>\*</sup>Corresponding author.

E-mail address: [hajirashanaz@gmail.com](mailto:hajirashanaz@gmail.com) (Shanaz)

Received 10-04-2023; Accepted 05-05-2023

Copyright © Trinity Law Review ([acspublisher.com/journals/index.php/tr](http://acspublisher.com/journals/index.php/tr))

than following someone else's shadow. It recognizes that while men and women may have different roles, their rights should be equal. Women's empowerment is positioned as pivotal in eradicating societal issues like gender inequality and poverty. The status of women in Hindu families has changed from time to time. On one hand, she is considered little better than a slave condemned to drudgery, bought as a chattel and treated as such. On the other hand, those who have had anything to do with tribes reckoning descent from mother are likely to view a woman as the undisputed mistress of the family if not community life as well. There is so much variability in the relation of women to society that any general statement must be taken with caution. Categorically, her utility, resourcefulness in domestic life, refreshing company and affectionate care of children have always proved a great asset to her partner in life and have, to a considerable extent, determined her status at different stages of civilisation.

## Historical Perspective of Women in India

Women in ancient India enjoyed high status in society, and their condition was good. The Vedic women had economic freedom. Women helped their husbands in agriculture pursuits, involved in teaching, spinning and weaving of clothes at home. In the religious field, the wife enjoyed full rights and regularly participated in religious ceremonies with her husband. The Ancient and medieval status of women in modern Indian society regarding Equality, Education, Marriage and Family life, Race and Gender, Religion and Culture is maintained or deteriorated. The Medieval period (Period between 500 A.D to 1500 A.D) proved to be highly disappointing for the Indian women, for their status further declined during this period. Women are not treated with respect as in Ancient Indian society, as there was a lot of crime against women is seen in modern society. The Constitutional provisions are not sufficient to get a respectable position in society.

The status of women in India has been subject to many great changes over the past few millennia. From equal status with men in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been eventful. This paper tries to analyze the status of women in the various period i.e. from ancient to modern era. It tries to delve upon the various issues which would affect the status of women like education, age at marriage, property rights, widow remarriage, sati pratha. It also focuses on how with the advent of Muslim rule, and later British rule affected the status of women in India.

## 2 Status of Women in Ancient India

The Vedic society was a patrilineal one, and hence father was the head of the family. All efforts were therefore made to secure the birth of a son. The Atharveda contains charms, rituals for preferring birth of son over daughter (Altekar: 1956). Ancestor worships was important and sons alone were regarded as eligible for offering oblations to the manes, daughter could not perform this very important duty (Altekar: 1956). Sons were considered as an economic asset of the family. In vedic family, there are references which clearly indicate the equal social and religious status enjoyed by the boys and girls though sons were more desired.

## Constitutional protection

### Article 16

The equality of opportunity in areas of public employment is covered under the constitution<sup>1</sup>. The principles of Equal Employment Opportunity (EEO) apply to access to jobs and working conditions, Interpersonal relationships at work, Performance evaluations, The chance for education and professional advancement.<sup>2</sup> The court<sup>3</sup> determined that if the job is the same, there won't be any pay discrimination because that is guaranteed by the spirit of Article 16.<sup>4</sup> In particular, the State shall focus its policies on ensuring that all citizens, men and women<sup>5</sup> alike, have the right to adequate means of subsistence.<sup>6</sup> The State<sup>7</sup> shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women.<sup>8</sup> The individual in question, who retired from the military in 2007, has been involved in protracted litigation for a long time<sup>9</sup>. In these circumstances, it is appropriate to direct the respondents to pay respondents the same amount for doing the same amount of work and to pay respondents on the assistant librarian scale that was awarded to other parties in P.K. Kaushal's case. The state<sup>10</sup> must establish policies to ensure fair and compas-

<sup>1</sup>art 16

<sup>2</sup><https://www.lawctopus.com/academike/equality-opportunity-public-employment/> (last visited May 11, 2023).

<sup>3</sup>randhir singh v. union of india

<sup>4</sup><https://legalstudymaterial.com/article-16-of-indian-constitution/> (last visited May 05, 2023).

<sup>5</sup>article 39(a)

<sup>6</sup><https://indiankanoon.org/doc/555882/> (last visited May 15, 2023).

<sup>7</sup>art 39(d)

<sup>8</sup><https://indiankanoon.org/doc/608806/> (last visited May 15, 2023).

<sup>9</sup>lawhimachal pradesh state v. rattan lal bhardwaj (last visited May 15, 2023).

<sup>10</sup>art 42

sionate working conditions<sup>11</sup> as well as maternity leave.<sup>12</sup> Promoting the economic and educational goals of Scheduled Castes, Scheduled Tribes, and other vulnerable groups<sup>13</sup> The state<sup>14</sup> has a duty to improve public health<sup>15</sup> and raise the standard of living, nutrition, and living conditions.<sup>16</sup>

The government attempted to justify its actions by citing Article 46 of the Constitution, which was written so that the states could assist the people of the weaker sections in obtaining education and employment without discrimination. However, this decision was overturned because it violates the fundamental right to equality (Article 15). The Directive Principles of State Policies cannot supersede fundamental rights, according to the Supreme Court.<sup>17</sup>

Reservation of seats<sup>18</sup>. Not less than one-third (including seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat. Such seats may be allotted by rotation to different constituencies.<sup>19</sup>

Every Indian citizen have certain obligations<sup>20</sup> to uphold the dignity of women by abstaining from actions that are disrespectful to their worth; to foster harmony and a sense of common brotherhood among all Indians, regardless of their religious, linguistic, regional, or sectional affiliations;<sup>21</sup>

## Special Initiatives for Women:

### 1. NATIONAL COMMISSION FOR WOMEN-

To make recommendations to the government regarding women's policies, a forum for resolving complaints, to offer suggestions for legislative measures, to review women's legal and constitutional protections.

<sup>11</sup> *ruksana v. state of haryana*, 2011 scc online p&h 4666 [https://www.constitutionofindia.net/constitution\\_of\\_india/](https://www.constitutionofindia.net/constitution_of_india/)

(last visited May 15, 2023).

<sup>13</sup> art 46

<sup>14</sup> art 47

<sup>15</sup> *state of madras v. smt. champakaran dorairajan (1951)*- (last visited May 15, 2023).

<sup>16</sup> <https://www.aaptaxlaw.com/> (last visited May 15, 2023).

<sup>17</sup> <https://blog.ipleaders.in/article-46-and-47-of-the-indian-constitution/> (last visited May 15, 2023).

<sup>18</sup> Article 243D.

<sup>19</sup> <https://www.hellocounsel.com/constitution-of-india> (last visited May 15, 2023).

<sup>20</sup> Art 51(e)

<sup>21</sup> <https://www.clearias.com/fundamental-duties/> (last visited May 15, 2023).

## Reservation For Women In Local Self-Government

Women have a reservation in local self-government. In all elected positions in local bodies, whether in rural or urban areas, the 73rd Constitutional Amendment Act, which was passed by Parliament in 1992, guarantees one-third of the total seats for women.

### 3. National plan of action for the Girl Child

#### ***The main objectives under the action plan are:***

The United Nations Children's Fund (UNICEF) has released its 2013 National Policy for Children, which aims to reduce the number of deaths of girls under the age of five and end gender inequality in infant mortality rates. In 2013, they reaffirmed the constitutional pledge to ensure properly developed facilities and opportunities for children at large as well as provide safe drinking water to all.<sup>22</sup>

#### **Some policies or schemes Launched by the government are:**

BETI BACHAO BETI PADHAO (2015) scheme

- Through a lifecycle continuum, BBBP addresses the declining child sex ratio (CSR) and related issues of women's empowerment. The Ministries of Women and Child Development, Health & Family Welfare, and Human Resource Development are working together on it.<sup>23</sup>
- MISSION INDRADHANUSH (2015)- to encourage the universal immunization program
- NEWBORN ACTION PLAN (2014)- implementing and addressing neonatal mortality

## Women Protection Under International Law

The conventions took place because there are certain sections of our society who are weak and vulnerable. The reason for the same may be that either they may be affected due to some history or deep-rooted customs or may be by nature. The sections of the society being referred in here are- women, children, aged people, individuals who are disabled or may be an individual belonging to a

<sup>22</sup> <https://lawtimesjournal.in/national-plan-of-action-for-the-girl-child/> (last visited May 15, 2023).

<sup>23</sup> [https://www.pmindia.gov.in/en/government\\_tr\\_rec/beti-bachao-beti-padhao-caring-for-the-girl-child/](https://www.pmindia.gov.in/en/government_tr_rec/beti-bachao-beti-padhao-caring-for-the-girl-child/) (last visited May 15, 2023).

particular race. Though they all have been provided with certain rights and opportunities by the Government of different States but it is found that their rights have been violated very often that too only on the basis of the position they have in the society. It has also been seen that it is usually the dominant section which violates their rights. United Nations Charter has supported them and provided them with basic rights by propagating a beautiful message that everyone is equal and shall be not discriminated on any grounds unless specifically provided. But, to assure that they have equal rank in the Society, several Nations together have agreed and entered into agreements, conventions. In here, we shall be only dealing with conventions for women.<sup>24</sup>

## **UN Women: The United Nations Entity for Gender Equality and the Empowerment of Women**

The UN organisation devoted to promoting gender parity and women's empowerment is called UN Women. Women frequently face compensation inequalities and lack of access to appropriate jobs due to entrenched gender inequality. Worldwide, women and girls frequently lack access to healthcare and education, are under represented in political and economic decision making, and endure violence and discrimination. UN Women, a global advocate for women and girls, was founded to hasten the process of addressing their needs on a global scale.

The United Nations Entity for Gender Equality and the Empowerment of Women, UN Women, was established by the UN General Assembly in July 2010. By achieving this, UN Member States made historical progress toward advancing the Organization's objectives for gender equality and women's empowerment. It combines and expands upon the significant work of four formerly separate UN entities, all of which had a singular emphasis on empowering women and promoting gender equality.<sup>25</sup>

## **Division for the Advancement of Women (DAW)**

International Research and Training Institute for the Advancement of Women (INSTRAW)

Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI)

<sup>24</sup>Id.

<sup>25</sup> International conventions on women - Law Times Journal, <https://lawtimesjournal.in/international-conventions-on-women/> (last visited May 15, 2023).

United Nations Development Fund for Women (UNIFEM)<sup>26</sup>

## **United Nations Charter-**

It was adopted in 1945 and reaffirmed the faith in fundamental human rights (equal rights of men and women). The UN has supported women's rights since the Organization's founding Charter. "To achieve international cooperation... in promoting and fostering respect for human rights and for basic freedoms for all without difference as to race, sex, language, or religion" is one of the goals of the UN charter.<sup>27</sup>

## **Universal Declaration of Human Rights-**

It was adopted in 1948 and reaffirmed the principle of inadmissibility of discrimination and human beings shall never be discriminated on the grounds of sex. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution<sup>28</sup>.

## **Convention on the Political Rights of Women-<sup>29</sup>**

women shall be entitled to vote in all the elections taking place without any discernment. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages-It came into force on 1964 and laid essentials to marriage (minimum age, registration etc).

## **Declaration on the Protection of Women and Children in Emergency and Armed Conflict<sup>30</sup>-**

It forbids attacks and bombing civilian populations and use of chemical and biological weapons and arms.

<sup>26</sup> UN Women: The United Nations Entity for Gender Equality and the Empowerment of Women <https://www.un.org/youthenvoy/2013/07/un-women-the-united-nations-entity-for-gender-equality-and-the-empowerment-of-women/> (last visited May 15, 2023).

<sup>27</sup> Art 1 UN charter

<sup>28</sup> Art 16 of udhr

<sup>29</sup> 1952

<sup>30</sup> 1974

## Convention on the Elimination of All Forms of Discrimination against Women<sup>31</sup>

It concerns to achieve equal status of men and women. It also provides for health care, economic and social life and women in rural areas.

## Declaration on the Elimination of Violence against Women<sup>32</sup>

The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>33</sup>

## Conclusion

In conclusion, the status of women in India has undergone significant changes throughout history. While women are revered as holy symbols in scriptures, they continue to face discrimination and mistreatment in society. Historical texts such as the Manu Smriti have perpetuated the idea that women are inferior to men, leading to ongoing repercussions for women. However, it is essential to recognize that women have fundamental rights guaranteed to them under the constitution.<sup>34</sup>

<sup>31</sup> 1979

<sup>32</sup> (A/RES/48/104, of 19 December 1993).

<sup>33</sup>

<sup>34</sup> Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 | OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited May 15, 2023).

The Directive Principles of State Policy (DPSP) play a crucial role in protecting women's rights in India. These principles provide guidelines for the state to promote gender equality, justice, and dignified living for women. Additionally, society as a whole has fundamental duties towards women, which should be upheld to ensure their empowerment and well-being.

To achieve equality, freedom, and justice for women, various aspects need improvement. This includes the enhancement of state initiatives, community support, organizational practices, legislation, and judicial interpretations. Women's empowerment is a transformative process that aims to increase their options, choices, control, and power through their own agency.

It is important to emphasize that women should not be confined to anyone else's shadow but should be able to walk independently in the darkness. While men and women may have different roles, their rights should be equal and upheld by society. Women's empowerment plays a crucial role in combating societal ills such as gender inequality and poverty.

Understanding women's empowerment requires acknowledging that it is a context-specific, dynamic process influenced by various intersecting variables. Although it may be a latent and unobservable phenomenon, its impact on society is significant.

This paper has focused on how women in India are empowered by the provisions of the Indian constitution, which emphasize gender equality. The discussion has highlighted the hindrances to women's empowerment, the protection offered by international law, and the overall importance of these topics.

In summary, empowering women in India is essential for creating a just and equal society. By improving the legal framework, social attitudes, and institutional support, women can be treated equally, enjoy freedom, live with dignity, and have justice served. It is a collective responsibility to ensure the empowerment of women and promote their rights and well-being in all spheres of life.