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Gender Equality and Women's Rights: A Study in Indian Constitution

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ABSTRACT

The concept of "Gender Equality" is a fundamental human right. Gender equality refers to the equality of responsibilities, rights, and opportunities for every human being. Every individual of the society yearns to achieve equal status and rights in their life.Indian Constitution gives fundamental rights and basics duties to the citizens of India. Women's rights are recognized as a right in itself, a transformative tool for achieving progress in all other areas of social and economic development. In the present time women's rights denote the gender equality, and that plays a pivotal role in society. Women's rights in Indian Constitution leads to a transformation of the structural factors and that reduced gender inequality. Women are getting opportunities in every aspect in their lives, including political, social, economic and cultural. The main objectives of this research areto understand how women are getting their rights through Indian Constitution and to explore the issues and challenges for women.. This is a qualitative and secondary data based study. This paper also focused on how gender equality plays a role in Indian Constitution. Indian Constitutional articles defined equally rights for every human being; Constitution gives rights for being economically independent, for achieving equal status in society, and for equally participation in politics. This paper discussed about the important constitutional articles for gender equality in India. In this research some obstacles have defined on the path of women's rights and gender equality. In the conclusion part, this paper has been described that Indian constitution mentions lots of articles for gender equality and human rights. Women's social and economic conditions are improving through constitutional rights; now they have rights to live their life.But because of some strictly taboos and customs in society women are not utilizing their constitutional rights, and still they are facing gender inequality problems. And it can be seen that gender equality is a far cry. Women should be educated; through education, they will be aware of their rights and be able to utilize all those constitutional rights.

KEYWORDS: Gender Equality, Women's rights, Indian Constitution, Gender, Women

INTRODUCTION

"The wife is half the men, The best of friends, The root of the three ends of life, And of all that will help in the other world."

-The Mahabharata

"Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance."

- Kofi Annan UN Secretary General



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In every society, everyone wants to live a happy life. Everyone has the right to lead his or her life without any discrimination. It has been considered that all individuals are free to live equal representative life on the bases of caste, race, ethnicity, profession and status, we call that equality. Equality can be defined as the equal opportunities and rights for every human being and for their growth in the society. Gender refers to the characteristics of women, men, girls and boys that are socially constructed. Gender word is not biologically that is socially constructed. Society decides every individual's gender and then create the gender based inequalities. This includes norms, behaviors and roles associated between human beings and their relationship with each others. As an social construct, gender varies from society to society and can change over time. Every individual of the society dreams for equal rights and access to resources available at their disposal but can be seen lot of discriminations especially with women. Gender equality can only be achieved where both men and women individually treated as similarly.

GENDER EQUALITY

Gender is an important factor for the development of society. Gender word is a way of looking at how social norms and power structures impact on the lives and opportunities available to different groups of men and women. Globally, more women than men live in poverty.

According to Kishor (2006) identifies three important aspects of gender namely these are:

- Gender tends not be value neutral -The roles, rights, and obligations assigned to each sex are not just different, but also unequal with male roles and rights generally being valued more highly than female roles and rights.
- Gender involves differences in power, both power to and power over-The concept of power to encompasses legal and informal rights, access to resources, and pursuit of knowledge and personal goals, and cuts across most domains of human functioning, including familial, cultural, and institutional domains. Power over refers to control over societal and household resources and decisions, cultural and religious ideology, and one's own and others' bodies. Importantly, men tend to have greater power than women, and, in some domains, even have power over women.
- Gender is not static or immutable- Being socially constructed, gender roles, rights, and expectations can change over time and across geographical space as societal needs, opportunities, and customs change.

According to Global Gender Gap Index, 2023 has been explained major findings of this report through this figure:





GENDER AND WOMEN

Gender is a social dimension of being male or female. Gender is a person's sense of identification with either the male or female sex, as manifested in appearance, behaviors, and other aspects of every human being. The word gender does not nessarily refers to women as a group or class of society. Rather it is used as an analytical social category to study the problems of women. Gender is a general term but gender equality is necessary for every society. Women contribute in various aspects in society, women's contribution can see in all aspects of life and they enjoy their positions in every society and across the world. But in silence they are suffering with many problems and this is a big disadvantage for women. Women face many barriers in their life. In India there are lot of customs and traditions those followed by women and, make them weak to participate in the society. About India we can say that India being a paradoxes country there is no exception. Women's rights are very important for women for being liberal and for their development in the society. Through the Indian Constitution women have lot of political, social, and economical rights.

Gender gap

India jumped eight spots to rank 127 in the Global Gender Gap Index, 2023. A look at how select countries fared

Rank	Country	Score	Rank change
1	Iceland	0.912	
2	Norway	0.879	+1
59	Bangladesh	0.722	+12
103	Bhutan	0.682	+23
107	China	0.678	-5
115	Sri Lanka	0.663	-5
116	Nepal	0.659	-20
127	India	0.643	+8
142	Pakistan	0.575	+3

CONSTITUTIONAL PROVISIONS FOR GENDER EQUALITY AND WOMEN'S RIGHTS

Women's equalities are based on the gender sensitivity of society towards their problems. The intensification of women's all the problems and their rights all over the world is reflected in the forms of various conventions passed by the United Nations. In Indian Constitution there are provisions of equality before the law or equal protection of the law under article 14th that escaped the gender equality. This is because equality is always supported to be between equals and since the judges did not concede that men and women were equal. Gender equality did not seem to them to be a legally forbidden inequality. In Indian Constitutional theories of rule of law and the fundamental rights stemmed from the struggle for individual liberty and were intended to curb the power of the state. But gender problems came after long time.

OBJECTIVES OF THE STUDY

- 1. To understand how women are getting their rights through Indian Constitution.
- 2. To explore the issues and challenges for women.



RESEARCH METHODOLOGY

The present study is completely based on secondary data. Secondary data has been gathering from Journals papers, Articles, books, Magazines and, e-resources.

DISCUSSION

Our Constitution is the basic document of a country having a special legal holiness, which sets the framework and the principal functions of the organs of the Government of a State. It also declares the principles governing the operation of these organs. The Constitution aims at creating legal norms, social and economic values, which are to be affected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals. The Constitution of India contains various provisions, which provide for equal rights and opportunities for both men and women. The silent features are:-

PREAMBLE

The Preamble is a summary of the constitution that contains the essence of the Constitution and reflects the ideals and aims of the people. Preamble is based on Objective resolution passed by JawaharLal Nehru on 13th December, 1946 and adopted on 22nd January, 1947. The Preamble starts by saying that we, the people of India, give to ourselves the Constitution. The source of the Constitution is thus traced to the people, i.e. men and women of India, irrespective of caste, community, religion or sex. The makers of the Constitution were not satisfied with mere territorial unity and integrity. The Preamble contains the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity.

Justice: social, economic, political; *Liberty:*thought, expression, belief, faith, and worship; *Equality:*status and opportunity; *Fraternity:*dignity of the individual and the unity and integrity of the nation

POLITICAL RIGHTS

Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly represented in politics. Women's representation in the LokSabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the LokSabha and VidhanSabhas. Political rights of women have been brought by the 73rd and 74th Amendments, which reserve seats for women in Gram Panchayats and Municipal bodies. Illiteracy, lack of political awareness, physical violence and economic dependence are a few reasons which restrain women from taking part in the political processes of the country.

ECONOMIC RIGHTS

In the legislation conferring there are equal rights for women and men. These legislations have been guided by the provisions of the *fundamental rights* and *Directive Principles of State Policy*. Here we can see that women have lack of awareness regarding their economic rights. Indian Constitution made these rights for being economically empowered and to improve their condition in matters relating to wages, maternity



benefits, equal remuneration and property/succession have been enacted to provide the necessary protection in these areas.

SOCIAL JUSTICE

Social justice is very important for every human being especially for women because thisis most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of law worked to the disadvantage of a woman accused because in some of the cases it imposed a heavy burden on the prosecutor, for e.g. in cases of rape and dowry. Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, thought of. These examples of gender insensitivity were tackled by the judiciary and incorporated into binding decisional laws to provide social justice in void spheres. Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-Natal Diagnostic Techniques (Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb. In spite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality.

FUNDAMENTAL RIGHTS

Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution. These rights are fundamental since they are guaranteed by fundamental law of country by constitution itself. Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. Justice Bhagwati in Maneka Gandhi v. Union of India8 said: "These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent."

Article: 14 Equality before Law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article: 15 Prohibition of discrimination

This is on the grounds of religion, race, cast, sex, or placeof birth (1) The state shall not discrimination against any citizen on grounds only of religion, race, cast, sex, or place of birth or any of them. (2) Nothing in this article shall prevent the State from making any special provision for women and children.

Article 15(1) prohibits gender discrimination and Article 15(3) lifts that rigor and permits the State to positively discriminate in favor of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. The State in the field of Criminal Law, Service Law, Labour Law, etc. has resorted to Article 15(3) and the Courts, too, have upheld the validity of these protective discriminatory provisions on the basis of constitutional mandate.

Article: 16 Equality of opportunity in matters of public employment

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. (2) No citizens shall, on grounds only of religion, race, cast, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state. The Constitution, therefore, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the Courts realize



that these Articles reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent the Constitution intended. There is still a considerable gap between constitutional rights and their application in the day-to-day lives of most women. At the same time it is true that women are working in jobs which were hitherto exclusively masculine domains. Butthere are still instances which exhibit lack of confidence their capability and efficiency

Article: 21 Protection of Life and Personal Liberty

In this article, Protection of life and personal liberty has been mentioned. "No person shall be depriving of his life or personal liberty except according to procedure established by law.Denial of right of succession to women of Scheduled Tribes amounts to deprivation of their right to livelihood under article 21; Madhukishwar v. state of Bihar,10In Vishaka v. State of Rajasthan11, the Supreme Court, in the absence of legislation in the field of sexual harassment of working women at their place of work, formulated guidelines for their protection. The Court said: "Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right.

Article: 23 Prohibition of traffic in human beings and forced labour

Prohibition of traffic in human beings and forced labour— (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

DIRECTIVE PRINCIPLES OF STATE POLICY

Article: 39 Certain principles of policy to be followed by the state

Certain principles of policy to be followed by the state. The State shall, in particular, direct its policy towards securing - (a) That the citizen, men and women equally, have the right to an adequate means of livelihood; (d) That there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; Article 39(a) directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood. Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State in furtherance of this directive passed the Equal Remuneration Act, 1976 to give effect to the provision. Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.

Article: 42 Provision for just and humane conditions of work and maternity relief

The State shall make provision for securing just and humane conditions of work and for maternity relief. Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc. Uniform Civil Code

Article: 44 Uniform civil code for the citizens

The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India. Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has recognized the necessity



of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc. but as it is only a directive it cannot be enforced in a court of law. However, one of the most dynamic members of the Assembly, Shri K.M. Munshi, expressed his opinion that: "if the personal law of inheritance, succession, etc. is considered as a part of religion, the equality of women can never be achieved."

Parts IV-A

This consists of only one *Article 51-A* was added to the constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of eleven fundamental duties for citizens. Article 51-A (e) is related to women. It states that; "It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women"

Article: 243 D Reservation of seats (73rd Amendment 1993)

(1) Seats shall be reserved for-(a) the Scheduled Castes; and(b) the Scheduled Tribes, In every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to befilled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat13. (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in aPanchayat. (4) The offices of the Chairpersons in the Panchayats at the village or any other vel shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and theScheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of theScheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved forwomen. Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level 14. (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334. (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens. Article: 243 T Reservation of seats (74th Amendment 1993)

Reservation of seats.— (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality. (2) Not less than one-third of the total number of seats reserved under clause (1) shall be



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reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the totalnumber of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334. (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens15. Article: 243 G. Powers, authority and responsibilities of Panchayats Read with Eleventh Schedule16. 243G. Powers, authority and responsibilities of Panchayats -Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to— (a) The preparation of plans for economic development and social justice; (b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

ISSUES AND CHALLENGES FOR WOMEN

In ancient India, women were held in high esteem and the position of a woman in the Vedas and the Upanishads was that of a mother or goddess. In the early Vedic age, girls were looked after with care. Then practice of polygamy deteriorated the status of woman and in the medieval period, the practices of pardah system, dowry, and sati came into being. With the passage of time, the status of woman was lowered. After the advancements made in relevant science and technology, it led to the misuse by practicing female foeticide on a large scale. NFHS data has consistently overstated sex ratio when compared with data from population censuses. In many parts of India, women are viewed as an economic liability despite contribution in several ways to our society and economy. The crime graph against women is increasing at an alarming rate. The condition of an Indian widow is quite deplorable. At home, the woman's contribution towards home as a housewife is not recognized. Education is a potent instrument of women empowerment but it is beyond the reach for many women in India, especially from the rural or remote areas with low income. There are numerous blockades which restricts access to the basic right to education for many women. Traditional mindset results in keeping girls at home for help in household chores or looking after the younger siblings etc, also the lack of usable toilets, safety concerns of adolescent females who have to travel long distances for schools and early age marriages are major deterrents for young girls to get education (Empowering women, 2018).

Domestic Violence involves psychological and bodily abuse against women like slapping, beating, public humiliation, etc. (Saryal, 2014). There, Rape, Sexual Exploitation, molestation, eve-teasing, forced prostitution, sexual harassment at workplaces, it hinders the realization of gender equality and has a negative effect on the overall growth of the country and the well-being of its people (International labourorganization, 2013, p.8).

The horrendous practice of female foeticide exists in India despite such growth and modernization. There



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are many families which regard the girl child as a trouble and burden for the family and have no reservations in preventing their birth by adopting any means. Reason behind such practices is the traditional patriarchal mindset where a male child will become source of income for the family and will carry the family line whereas the girl child will be married off to another family (Gender Discrimination,2016). It has a lasting impact on individuals including psychology and physical being which disturbs the state of mind. In India, the Vishaka Guidelines addressed sexual harassment of women within the workplace and recognized that sexual harassment in the workplace is violation of their basic rights of gender equality, right to life and liberty and the right to any occupation, trade or profession. But still more efforts and awareness are needed to address sexual harassment in the interest of society (International labourorganization, 2013, P.11). etc are a common affair today and in some cases, it's too tragic that it gets global attention.

Men can also be subject to such abuse and exploitation but majorly its women who suffer the most (Dugarova, 2019). Gender inequality is a universal concern and violence and abuse against women is not only a crime but also an infringement of women's human rights. The Convention of the Elimination of All Forms of Discrimination against Women also acknowledges that gender-based violence such as rape affects women's right of equality and freedom (Ignatius, 2013, P. 13-14). The discriminative socialization process is another aspect of inequality towards women which leads to customary practices, more involvement in household activities only (boys not allowed), restricted to play, isolation, separation in schools and public places and restrictions to move freely.Detrimental cultural practices like after marriage husbands dominating the family, dominance from In-laws family, members, never or rarely considered for any decision making, limitations in continuing relationships with brothers, sisters, relatives, child or early marriage, patriarchal attitudes and not able to continue girl or boy friendship after marriage are also contributing factor to the inequality.

A SEPARATE MINISTRY WAS ESTABLISHED IN 2006 TO BOOST EMPLOYALITY OF WOMEN

- Maternity Benefit (Amendment) Act, 2017: It allows for pregnant women to take leave for a total of 26 weeks out of which up to 8 weeks can be claimed before delivery. The woman is also supposed to get paid a benefit at the rate of her daily wage for three months before she goes on maternity leave.
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013: It has been enacted covering all the women, in spite of their age and employment status, and protects them from sexual harassment at workplaces, in both the public and private sectors of the industry where the women are employed.
- Social Security Code, Code on Occupational Safety, Health & Working Conditions Code, and Industrial Relations Code, 2020: Under the new codes, women have to be permitted to work in every sector at night, but it has to be ensured that provision for their security is made by the employer and consent of women is taken before they work at night.
- Beti Bachao Beti Padhao, One Stop Centre (OSC) Scheme, Ujjawala Scheme are some the initiatives launched by the government to address the issue of gender inequality.

CONCLUSION

The women play a strategic role in the society and in the economy. The status of women in India is not even in all the times. In ancient period, they enjoyed equal status with men, in the medieval period, the



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position of Indian women deteriorated. During British rule and after independence many efforts are being made for improving the status of women in India. The government of India, by passing timely and essential Acts and implementing rules and regulations trying to empower and strengthen the women. No doubt, the government of India has many weapons to fight for women empowerment, the prompt and strict implementation is quite essential. Unless the Acts, Policies, Rules, Regulations, etc., are strictly implemented the idea of women empowerment remains unachieved. Hence, the efforts of the government are still inadequate and the process of empowering women in India is long way to go. This study is concluding that in Indian Constitution there are lots of provisions for gender equality. According to constitution women's have social, political, and economic rights but still they are mostly facing gender inequality problem in our society. Some customs and traditions stop to women will be aware about their liberty and rights then they will be able to use properly these rights, then gender equality will be create in the Indian society.

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