

Original Research Article

Role of the Indian Constitution in Controlling Gender-based Violence and Women's Empowerment

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Abstract: Both men and women are actively involved in the growth and formation of their families as well as the larger society. Indeed, one of the main issues of the global women's movement has been the fight for legal equality. In India, women were neglected for centuries and viewed as an oppressed section of society for a long period. Historically, women have been relegated to almost all sections of society. From the cradle to the grave, women are victimized by many evils, including gender-based violence, injustice, discrimination, and subjugation. In contemporary Indian society, one of the main causes of concern is the status of women. They are threatened, tormented, harassed, neglected, and abused. These days, eve-teasing has become so common that abduction and rape are regular incidents. Working women are disheartened everywhere. They are mistreated in all places, and even at home, they are not safe. Despite rising levels of education, gender awareness, and legislation supporting women, progress has been sluggish, and the rate of violence against women is rising. In addition to ensuring gender equality, the Constitution permits the state to enact laws that favour positive discrimination. This article aims to evaluate women's status under the Indian Constitution and how the Constitution, being the supreme document, plays a significant role in achieving gender equality in India. The paper suggests that, regardless of various laws for the equity of women, women's empowerment is critically needed. The irony is that half of the population is

ignorant of the legal protections for women's empowerment and safety provided by the Constitution. This article tries to highlight constitutional provisions, laws, development policies, and schemes relating to women.

Keywords: Gender-based violence, women empowerment, Discrimination, constitutional provisions, laws

Introduction

“I measure the progress of a community by the degree of progress which women have achieved” – Dr. B.R. Ambedkar.

India, the second most populous nation in the world, comprises women as half of the total. The topic of gender based violence and women's empowerment has been an issue of concern in many countries. India's perception of women is peculiar. On the one hand, women are worshiped as goddesses and are 'Shakti' or the embodiment of power; on the other, they are viewed as weak and are raped, sexually exploited, or even killed as fetuses (Shanmugam & Rangasami, 2015). In India, discrimination against women has a long history. According to historical research, women had a high social standing throughout the early Vedic era. Women's social status began to decline, particularly in the later Vedic period (Pal, 2019). Polygamy and widow burning were prevalent in society in that era. Women's status deteriorated during the Middle Ages. The medieval era is actually regarded as the 'dark age' for women. Women's place in society was degraded by practices including child marriage, the devadasi system, dowry and veiling of women. It was only in the 19th century that some social activists like Raja Rammohan Roy, Ishwarchandra Vidyasagar, and Jyotiba Phule started movements and launched campaigns against the social oppression of women, the abolition of Sati, widow remarriage, etc. There were a lot of women who were directly involved in the Indian struggle for freedom from British rule (Chengappa & Roy, 2020).

Due to the revolutionary changes brought by our constitution and efforts made by Indian women, they have earned themselves a respectable place in society. They now receive the same treatment as men. In today's world, women are everywhere – in space, in business, in politics, in the entertainment field, in the defence field, in corporate, and the list goes on (Raavee & Awasthi, 2021). It is indeed a matter of pleasure that the position of women has improved in the past four decades because the Constitution guarantees women's equality on every front. However, it also empowers the state to implement policies in order to abolish all forms of discrimination, inequality or cruelty against women (Sharma, n.d.). All these were the groundwork of women's empowerment in India. In its true sense, it aims not only at a woman's material development but also her overall development in terms of self-realization, identity and economic progress (Chengappa & Roy, 2020).

It is very pathetic to note that, despite the adoption of the constitution, Indian women have yet to receive their fair share of social, political and economic justice as well as equality of status and opportunity to which they are entitled. They still have to deal with a lot of issues, such as economic marginalization, sexual harassment and domestic abuse. For no fault of hers, she has been suppressed and oppressed in every aspect of her life (Shanmugam & Rangasami, 2015). However, I still feel that Indian women are somewhat struggling to maintain their dignity and freedom. They have been the victim of untold miseries, hardships and atrocities that the male-dominated society has fostered and perpetuated (Rout & Bez, 2017).

Therefore, women's empowerment in the present scenario is a means through which any sort of biological or gender discrimination against women can be curbed more effectively, giving women in any society or country a strong hand in developing themselves and the nation (Sharma, n.d.).

Review of Literature

Florence (2022), in his study entitled “Women Empowerment and the Role of Law in India,” notes that women represent half of the population of a society, but it’s a harsh reality that they have been mistreated badly for a long time, and India is no exception. They are below the clutches of numerous ills such as discrimination, violence and subjugation in social and familial circles. In order to ameliorate the condition of women, the paper has emphasized a number of laws, such as the Child Marriage Restraint Act, 1929; the Dowry Prohibition Act, 1961, Maternity Benefit Act, 1961, Minimum Wages Act, 1948, etc.

Maiti, Rajpal & Gupta (2024), in their article “Nexus between Women Empowerment and Gender-based Violence in India: A Pragmatic Insight,” have discussed the concept of women empowerment. The research paper on women’s empowerment focuses primarily on reducing the rise in domestic abuse over the past few decades. The principal objective of the study is to determine whether a regional-specific disparity exists, whether urban and rural disparity exists, and whether women’s empowerment promotes gender violence. The study discovered a regional disparity in gender violence and women’s empowerment. Further, the study also found that the women’s literacy rates and per capita net domestic product are inversely related to gender-based violence. Women’s empowerment is positively associated with gender-based violence.

Objectives of the Study

- To highlight the concepts of women’s empowerment.
- The purpose of this article is to assess women’s status under the Indian Constitution.
- The primary objective of this study is to provide an overview of India’s constitutional and legal protections for women’s rights.
- To discuss the government initiatives and policies for women’s empowerment.

Research Methodology

This work is based on secondary data and is entirely descriptive in nature. It employs a qualitative research methodology, analyzing the Indian Constitution, examining pertinent laws and policies and scholarly literature on the topic. The study uses information gathered from secondary sources, including books, journals, research papers and websites, etc.

Significance of the Study

This research paper contributes to the existing literature on gender-based violence and women’s empowerment in India, emphasizing the critical role of the Indian Constitution in advancing gender equality and defending women’s rights. The paper’s findings and recommendations are intended to inform policymakers, activists, and scholars working to address these issues in India.

Result and Discussion

The findings showed that while there has been progress in recent years, such as more females attending schools, fewer forced and early marriages, and more women being appointed to leadership roles and serving in parliament or other government bodies, gender equality still needs to be further advanced. Education, violence, societal norms, cultural biases and the under-representation of women in positions of power are among the issues highlighted in India.

Concept of Women's Empowerment

Women's empowerment means the emancipation of women from the vicious grip of social, economic, and political factors and prejudice based on sex. This includes allowing women to choose their own paths in life. Empowering women entails giving them more authority and control over their own lives (Adhikari et.al., 2023). Thus, this concept is nothing more than recognizing women's fundamental human rights and creating an atmosphere where they are treated equally to men (Karthikeyan, 2016). For a very long time, women in India were subjected to subjugation, discrimination, gender bias and unequal opportunities. In some communities, they were not allowed to leave their houses and were denied the opportunity to learn, advance, and succeed in life. They belong to the disadvantaged and backward sections of the community. The Indian government, through the Ministry of Women and Child Development, the Ministry of Health and Family Welfare, and the Ministry of Human Development, has launched various schemes for the development, security and prosperity of women (Fernandes & Koya, 2024).

Empowering Women: The Gateway to Gender Equality

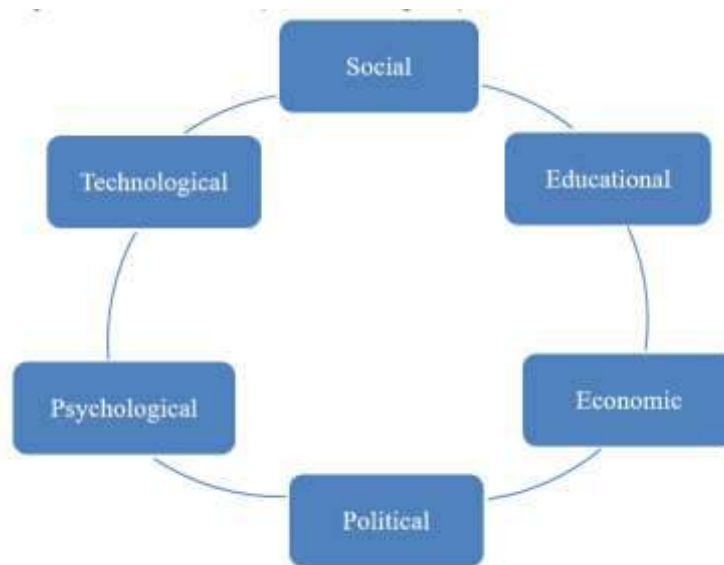


Fig 1: Facets of Women's Empowerment

Constitutional & Legal Protection for Upliftment of Women and Gender Equality

The Indian constitution is a document of law, politics and morality. The Constitution outlines and protects all of our fundamental rights. The most significant law in India, the Indian Constitution, establishes standards for women's rights. Other laws later developed these standards and precepts. Among the fundamental principles defined in the constitution are justice (social, economic and political), liberty (of thought, expression, belief and worship) and equality (of status and opportunity). These values are intrinsically linked to the empowerment of women (Hoque, 2020). Women's empowerment is based on the Directive Principles of State Policy and Fundamental Rights. Article 14 of the constitution (equal protection of laws and equality before the law), Article 15(3) (special provisions for women and children), Article 16(2) (discrimination-free employment opportunities), Article 21 (Right to life and personal liberty includes the right of women to be treated with dignity and decency), Article 23 (prohibits the buying and selling of women, prostitution, and immoral traffic in women), Article 32 (enforcement of the fundamental rights of the women), Article 39(a) (equality in livelihood opportunities for both men and women), Article 39(d) (equal pay for equal work for both men and women), Article 42 (fair and human conditions of work and maternity relief), Article 45 (early childhood care and education for all children, including

the female children, until they reach the age of six years) Article 51A(e) (to renounce practices derogatory to the dignity of women), Article 326 (voting rights), Constitution 73rd Amendment Act, 1992 (representation in PRIs for women and weaker sections), Article 243D (preservation of seats for SC & ST and women), 73rd Constitution Amendment (representation of one-third women in the PRIs) and 74th Constitution Amendment, Act, 1992 (preservation of seats for women and weaker sections in the urban local-self bodies) have made it possible for women in India to become empowered (Mallik, 2021; Ojha, 2011).

The Constitution of India contains progressive legislations for the empowerment of India such as such as Dissolution of Muslim Marriage Act, 1939 (the right to seek the dissolution of her marriage), Hindu Succession Act, 1956 (prohibition of Bigamy and opportunities for divorce), Hindu Marriage Act, 1955 (enjoyment of property rights and other entitlements), Law of Adoption and Maintenance Act, 1956 (maintenance for wife, widow, minor children and poor parents), Immoral Traffic (Prevention) Act, 1956 amended in 1986 (sexual exploitation as cognizable offence) Dowry Prohibition Act, 1961 and Amendment Act, 1986 (prohibition of the dowry system and dowry related offences as cognizable), Medical Termination of Pregnancy Act, 1971 (legalise abortions by qualified professionals by on humanitarian or medical grounds), Equal Remuneration Act, 1976 (equal wage for equal work to both men and women), Family Courts Act, 1984 (establishments of family courts for speedy settlements of family disputes), Indecent Representation of Women (Prohibition) Act, 1986 and the Commission of Sati (Prevention) Act, 1987 (enacted to protect the dignity of women and prevent violence against them as well as their exploitation), Pre-Conception & Pre-Natal Diagnostic Techniques (PNDT) Act, 1994 (prevents the misuse of pre-natal diagnostic technique for sex determination leading to female foeticide), Protection of Women from Domestic Violence Act, 2005 (provides a civil remedy for victims of domestic violence and empowers them to seek protection orders and residence rights), Prohibition of Child Marriage Act, 2006 (prohibits child marriages and offers assistance to victims and raises the legal age of marriage for girls to 18 years), Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (establishes a mechanism for preventing and redressing sexual harassment at workplaces), Criminal Law Amendment Act, 2013 and National Commission for Women Act, 1990 (addresses women's grievances), National Human Rights Commission Act, 1993 were enacted to prevent injustice and atrocities on women in the country (Bala, 2022; Florence, 2022).

Beside these constitutional provisions and enactment of legislations, there are international bodies for the protection of women such as: Commission on the Status of Women 1946, Universal declaration of human rights 1948, Convention on the political rights of women 1952, Convention on the Nationality of Married Women 1957, Consent of Marriage, Minimum Age of Marriage and Registration of Marriages 1962, Declaration on the elimination of all forms of discrimination against women 1967, Declaration on the protection of women and children in emergency and armed conflict 1974, Convention on the Elimination of All Forms of Discrimination against Women 1979, Optional protocol to the convention on the elimination of all forms of discrimination against women 1999 (Rout & Bez, 2017).

Special initiatives for Women's Empowerment

There are numerous and diverse special initiatives in India for the empowerment of women. Some notable examples include:

National Commission for women empowerment (January 1992)

The Government set up this statutory body in 1992 under the National Commission for Women Act 1990. The Commission was established "to review the constitutional and legal safeguards for women; recommend remedial

legislative measures; facilitate redressal of grievances and advise the Government on all policy matters affecting women” (Karthikeyan, 2016). It also addressed the issue of child marriage, sponsored legal awareness programmes, Parivarik Mahila Lok Adalats and reviewed laws such as the Dowry Prohibition Act, 1961, PNDT (Pre-natal Diagnostic Technique) Act 1994, Indian Penal Code 1860 and the National Commission for Women Act, 1990 to make them more stringent and effective (Vijayawargiya, 1992; Arya, 2013).

Reservation for women’s empowerment in local self-government

One-third of the seats in all elected offices in local bodies, whether in rural or urban areas, are guaranteed to women by the 73rd constitutional amendment act, which was passed by the parliament in 1992 (Chattopadhyay & Duflo, 2004).

The national plan of action for the girl child (1991-2000)

The goal of the plan is to ensure survival, protection and development of the girl child (Mukhopadhyay, 1994). It was introduced to prevent female foeticide and infanticide, eradicate gender bias, provide safe drinking water and food close to homes, and rehabilitate and safeguard them from abuse, exploitation, and assault (Karthikeyan, 2016).

National policy for women’s empowerment (2001)

In 2001, a ‘National Policy for Women’s Empowerment’ was created by the Ministry of Human Resource Development’s Department of Women and Child Development. The purpose of this policy is to bring about the advancement, development and empowerment of women (Kumar et al., 2016). Later, in 2010, the Indian government established the ‘National Mission for Empowerment of Women’ to bring together the plans and initiatives of various ministers, departments, and state governments, as well as union territories, to support women’s holistic development (Satyanarayana, 2019).

The Maternity Benefit Amendment Act 2017 for the private sector

This Act came into effect from 1st April 2017. It is an Amendment to the Maternity Benefit Act of 1961. Under this Act, the government extended paid maternity leave from 12 weeks to 26 weeks. It also increased certain benefits to mothers who adopt a child and said that “every woman who adopts a child shall be entitled to 12 weeks of maternity leave, from the date of adoption”. “It added a provision relating to ‘work from home for women, which may be exercised after the expiry of the 26 weeks’ leave period” (Kashyap, 2024).

Schemes for the Empowerment of Women

The Sarva Shiksha Abhiyan (SSA), a national initiative programme for universal elementary education, was started by the Government. The government offers several schemes, including the Support to Training and Empowerment Programme (STEP), Rashtriya Mahila Kosh (RMK), Swarnajayanti Gram Swarozgar Yojna (SGSY), Sampoorna Grameen Rozgar Yojana (SGRY), and Rashtriya Mahila Kosh (RMK), which provides microcredit to impoverished women for various livelihood support and income-generating activities to promote their socio-economic development. The Urban Self-employment Programme (USEP) of the Swarna Jayanti Shahari Rozgar Yojana (SJSRY) assists the urban poor, particularly women, who live below the urban poverty line. Other programmes include the Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGA) (to improve livelihood security in rural areas by giving each household at least 100 days of wage employment in a fiscal year), Nirbhaya Scheme 2012 (to enhance the safety and security of women), Beti Bachao Beti Padhao Scheme 2015 (to ensure survival, protection and educational of the girl child and to prohibit female foeticide). Women Helpline Scheme

2015 (to give 24 hours immediate and emergency response to women affected by the violence), Ujjawala Scheme 2016 (for preventing trafficking and Rescue, Rehabilitation and Re-integration of victims of Trafficking and Commercial Sexual Exploitation), Working Women Hostels (to ensure safe accommodation for women working away from their place of residence), Nari Shakti Puraskar (annual award given by Ministry of Women and Child Development (Government of India) to individual women or to organizations that work towards the cause of women empowerment), Mahila Shakti Kendra Scheme 2017 etc., (For empowering rural women) (Lalichan, 2017; Fernandes & Koya, 2024).

Landmark Supreme Court Verdicts on Women's Rights and Protection

Landmark judgments have played a crucial role in shaping women's rights and protection in India. Here are some of the significant judgements which empower women are as follows:

Tuka Ram and Anr vs. State Of Maharashtra, 1979 AIR 185, 1979 SCR (1) 810

Popularly known as the Mathura rape case was an incident of custodial rape. Two police officers are accused of raping Mathura, a young tribal girl, on the police station grounds. However, the accused were found not guilty by the Supreme Court, which sparked widespread public outrage and eventually resulted in the Criminal Law (Second Amendment) Act 1983 (N0.46) (Gattaiah, 2017).

Air India vs. Nargesh Meerza, [(1981) 4 SCC 335]

This case deals with the women's right to equality. In this instance, the Supreme Court ruled that the clause that required air hostesses to retire on reaching 35 years of age or getting married within the first 4 years of service or on becoming pregnant for the first time was arbitrary and unreasonable and clearly violative of Article 14 of the Indian Constitution (Kaushiki & Garg, 2024).

Mohammad Ahmed Khan vs. Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844

After receiving triple talaq from her husband, a penniless Muslim woman filed a claim for maintenance under section 125 of the Code of Criminal Procedure. This case is commonly referred to as the Shah Bano Case. Under section 125, the Supreme Court ruled that Muslim women have the right to entitled maintenance from their husbands. After the decision, nationwide debates, gatherings and protests followed the ruling. Afterwards, the Rajiv Gandhi-led government overturned the Shah Bano case decision by way of the Muslim Women (Right to Protection on divorce) Act, 1986, which restricted the right of a Muslim woman for maintenance under section 125 of the Code of Criminal Procedure (Kushwaha, 2025).

Vishaka vs. State of Rajasthan (AIR 1997 SC 3011)

This is the most well-known and widely reported gang rape case in India. Five men brutally gang raped a social worker from the State of Rajasthan for stopping a child marriage. Human rights activists, NGOs, advocates and others filed a petition to the Supreme Court of India regarding the issue of 'sexual harassment at work'. The trial court shockingly found all five defendants not guilty. The Supreme Court ruled in this historical decision that sexual harassment at workplace violates Articles 15 and 21 of the Constitution. To give women a secure workplace, the Supreme Court established the Vishaka guidelines on 13th August, 1997 and defined 'sexual harassment'. The Indian Parliament recently passed the 'The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013' (Naina Kapur, 2013; Sharma, n.d.).

Shayara Bano vs. Union of India (AIR 2017 SC 4609)

In this case, the Court held that the practice of 'Triple Talaq' is against the sentiments of the Holy Quran. This led to the Muslim Women Protection of Rights of Marriage Act, 2019. This act stipulates that any Muslim husband who pronounces the word 'Triple Talaq' to his wife will face a maximum sentence of three years in prison and a fine (Srivastava, 2022; Herklotz, 2017).

The Secretary, Ministry of Defence vs. Babita Puniya (2020)

In this case, the Supreme Court granted a permanent commission to women in the Indian Armed Forces. They are now eligible for the ranks, benefits, pension, and other schemes which are available to men in the armed forces (Dhananjaya Y Chandrachud, 2024).

As a result, it can be seen that women's empowerment relies heavily on the judiciary as well as the legislature. They are empowered by the judiciary through both its traditional and activists role. The traditional function of the judiciary is to administer justice by interpreting laws. Sometimes, the judiciary can empower women through the broad interpretation of various legislation and the Constitution. Another function of the judiciary is the activist role, also referred to as 'Judicial Activism', in which the judiciary uses its activist power when there is no specific law for a particular offence (Gattaiah, 2017).

Conclusion

India has a variety of provisions and laws that defend women across various aspects of life, including those about criminal offences and family issues, etc. These laws have played an important role in shielding women from assault and discrimination while fostering gender equality. The constitution creates a legal framework that aims to safeguard women's rights through its many provisions. Key amendments and landmark judgements have further reinforced this framework, opening doors for justice and advancing gender equality. However, there are still some challenges in putting these rules into practice. These challenges encompass a lack of awareness, societal and cultural norms, and weak enforcement mechanisms. Therefore, to stop discriminatory practices against the fairer sex, we must educate and sensitize every member of society regarding women's issues and try to inculcate a sense of unity and equality among them. Apart from the government, efforts are needed from various NGOs and enlightened citizens of the nations to empower women by giving them equitable access to education and decision-making authority without any prejudice. India can become a powerful nation only if it truly empowers its women.

Suggestions & Recommendations

India is still ranked 136th out of 187 countries in the Human Development Index, even after so much progress and development. This indicates that there is a need for work at the grassroots level. Besides that, according to the Global Gender Gap Report released in 2020, India's rank was 112th. Issues of gender inequality and discrimination are still prevailing in different areas of the country and are largely unrecognized. The following are a few suggestions which can be implemented for the women to progress beyond what they already achieved:

- First of all, education should be the primary focus to empower women with special emphasis on skill development, financial literacy and leadership training to raise their socio-economic status.
- The majority of women do not benefit from the laws and policies aimed at empowering them. Therefore, there should be widespread awareness campaigns to teach them about their legal protection available and

the unacceptable nature of gender-based violence. Hence, appropriate awareness and promotion of these laws are highly crucial, as most of the women are not aware of these laws.

- These days, they cannot openly go and talk about women-centric issues. This is usually seen in the rural and backward areas of society. Therefore, it is necessary to establish a safe environment where women can come together and talk about female-centric issues and support each other.
- Establish district-level mechanisms, such as women's helplines and counselling centres, to provide support and assistance to victims of gender-based violence.
- Incorporate gender-sensitive education into school curricula to promote equality and challenge stereotypes. And also engage with media to promote positive portrayals of women and challenge stereotypes.
- Independent bodies should be established to monitor the implementation of laws and policies related to gender-based violence and guarantee accountability for failures in the system.
- Encourage community-driven initiatives that include boys and men in discussions and programs aimed at changing societal attitudes and behaviours that support violence against women.

Findings of the Study

- The study has found that female persistent domination over time has been mainly caused by the insufficient economic independence, unequal distribution of power between men and women and especially in decision making at every level.
- From cradle to grave, women are subjected to poverty, discrimination, atrocities and marginalization.
- According to this study, women are largely neglected at the highest levels of public entities, leading to their marginalization in the decision-making process. Considering its vastness, for instance, India has less than the bare requirement of female representation in legislatures and the Parliament.
- The research shows that despite the legal framework, women's access to justice is hindered by societal outlooks, a lack of awareness and inadequate law enforcement.

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