



Women's Empowerment & The Constitution of India

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Abstract

Women have been exploited for ages in Indian Androcentric Society. As India was under colonial rule for about two hundred years, Indians were not in a position to think independently about the way of keeping women away from exploitation. After Independence, the constituent assembly began to believe that women should enjoy equal rights as much as men. The Directive Principles of State Policy outline the humanitarian and socialist principles that compel the state to elevate the status of women to a prestigious level to achieve a genuine social revolution. These principles mandate that the state avoid the long-standing practice of discrimination between men and women, secure all citizens' right to work, ensure equal wages for equal work, and make special arrangements, such as maternity relief, to provide women with a decent standard of living. The distinct empowerment of women, as reflected in the Indian Constitution, is a testament to the efforts made to uplift their status after Independence. However, due to a lack of acute social consciousness and proper education, this effort of the constitution remains far from achieving women's empowerment at the grassroots level. Yet, with the rise of conscience, there is a hopeful potential for women to be empowered and create an enlightened society in the future.

Key Words: Constitution, Androcentric, Equality, Gender, Patriarchal, Equality of sex

Humans are born and brought up in society. The influence of society is, more or less, seen in erecting individuality, character, and conscience. Indian society has been guided and controlled by males since ancient times. In a patriarchal society, men were responsible for ruling the society, making laws, and maintaining order. When men were dominating women only in the political domain, all other sectors should have to be opened for women. However, men with political power began to make laws in their favour, leaving women with little chance to demonstrate their power anywhere in society. Thus, the patriarchal society was gradually becoming an androcentric society, and women have been exploited for ages in society. In this way, social customs were established to favour men and keep women obedient to them. Due to sexual differences, men are not able to be pregnant and give birth to the baby like women, and so, they need the women under their control to have sexual enjoyment and progeny.

Women differ from men in terms of biological features, physical traits, reproductive organs, chromosomes, and hormone levels. This physical difference is known as sex difference, considered a fixed attribute at birth. It is natural, and nothing is under control to regulate these attributes, so humans must give in to these in-born achieved features.

Depending on this difference, women should not be segregated from men, as both are humans having merely some biological variations, like male, female, and intersex. But society discriminates women from men depending on some socially and culturally defined roles, behaviours, expressions, and identities associated with being men and women. This artificial difference between men and women created by society is known as gender difference. Gender is not static; it can vary across cultures, periods, and even within individuals. Gender is nurtured, fluid, and expressed in various ways, like masculine, feminine, and gender non-binary. Though both the differences, viz., sex difference and gender difference, are threats to the proper development of society, the second is more harmful than the first one because gender difference creates a stereotype superstructure from which humans face difficulty in coming out.

“Each society slowly transforms a male or female into a man or a woman, into masculine and feminine, with different qualities, behavior patterns, roles, responsibilities, rights and expectations.”¹

Due to this artificially created gender difference, it is penetrated in the human mind that men can do some work that women are not eligible for. A male child should be men-like, and women should be women-like. Two domains are made for two different genders. If anyone belonging to the women's domain behaves like a man or does some work previously assigned to a man, society criticizes her and mocks her as a man. However, she is a woman in respect to the sex category. The same humiliating treatment may be delivered from the society to one belonging to men's domain when he behaves like a woman. Thus, someone is identified with a particular gender that may not match the sex she is assigned at birth. This is the tendency to make women inferior and feminine based on artificially creating a superior masculine world, a conspiracy against women to confine within the feminine regime and not enter the masculine purview. Due to the narrow interests of some people, this discrimination prevails in society, but both men and women should be considered as humans, keeping gender differences aside; they should be given equal opportunity according to their potentialities.

“We must assess people as individuals, not merely lump them into ‘female’ and ‘male’ if we are to find out what they are really like; and must keep the roles occupied by females and males flexible if people are to be able to do what they are best suited for.”²

Society traditionally considers that one who is born with the female sex cannot belong to the masculine gender. This tradition has been a part of society for ages.

“It is gender, not sex which has determined that, (almost) everywhere, women as a group are considered inferior to men”³

Even in the modern age, we are astonished at seeing a woman with a burning butt in between her lips or on pilot's seat in any vehicle. Due to gender difference practices, we are spinning around the confined place like a bee buzzing in a neck-tight bottle. Despite scientific advancements, we are not an exception to think that women can do what men have been ascribed to do from time immemorial. Women can creep into the masculine regime and have the victory, leaving men behind. Though women cannot overcome the sex difference, for it is inherent, achieved at birth, they can win over the gender difference, an imaginary creation of society. The great souls, the *Mahātmās* of India, felt this truth when India became free from the fetters of colonial rule. They realized that the age-old practice of gender

difference should be minimized to achieve a truly reformed, advanced society with maximum potential. To reach this goal, women should be given the proper place that they deserve; they should be offered legal support for coming out of the confinement of the feminine domain for breaking the cordon of gender discrimination. For this purpose, the Constituent Assembly, which was responsible for framing the constitution of independent India, recognized the importance of including equality of sex in the constitution and took the legal initiative to break down the prolonged practices of gender discrimination through the principle of equality of sex. When all, irrespective of man, woman, and intersex, will be considered as only humans, keeping sex differences aside; gender differences will gradually be obliterated from society. Without the eradication of gender discrimination, the thought of women's empowerment is futile, like a hare's horn.

Before Independence, Indian leaders, who led the Indian freedom movement, demanded equal status for the Indians and the British. However, after Independence, their attitude shifted to focusing on ensuring liberty for all Indians, intending to achieve equality of status between men and women. As India is a multi-lingual, multi-racial, multi-religious country, there are so many differences in this country. Still, above all these differences, the gender difference deserves utmost attention because it affects both inside and outside the domestic realm. They intended to eliminate all forms of discrimination, including those based on sex differences. This intention is very much evident when the Constitution of India takes the oath to secure "EQUALITY of status and of opportunity" ⁴ for all its citizens in the Preamble. The Commonwealth of India Bill, drafted by Annie Beasant in 1925, demanded seven fundamental rights, one of which was non-discrimination on the grounds of sex. Several of these rights were later replicated as the Fundamental Rights in Part III of the Constitution of India and in Part IV of the Constitution as the Directive Principles of State Policy. The Fundamental Rights are the basic human rights that apply to all citizens, irrespective of their race, place of birth, religion, caste, creed, or gender. These rights are enforceable by the Courts, subject to specific restrictions. However, the Directive Principles of State Policy are of a different nature; these serve as guidelines for the government in framing laws, and therefore, they are not enforceable by the courts.

In Part III of the constitution, the Right to Equality is embodied in Articles 14, 15, and 16. These three articles collectively outline the fundamental principles of equality before the law and non-discrimination. Article 14 ensures equality before the law and states,

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."⁵

This particular article avoids all types of differences, including sex differences, and includes the equal subjection of all persons to the authority of law and equal treatment in similar circumstances. Article 15 prohibits discrimination on the grounds of sex along with other differences and states,

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."⁶

In addition to this, the state is not prohibited from making special provisions if needed. Article 16 guarantees equality of opportunity in matters of public employment and assures

"(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 citizen shall, on grounds only of religion, race, caste, 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." ⁷

Thus, Article 16 provides women with the opportunity to secure employment and become self-dependent and financially supported, which is the most crucial foundation for women empowerment in male dominated society.

Through the Directive Principles of State Policy in Part-IV of the Constitution, the state is directed in Article 39 towards securing

"That the citizens, men and women equally, have the right to an adequate means of livelihood; that there is equal pay for equal work for both men and women; 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."⁸

In Article-42 the State is directed towards making "Provision for securing just and humane conditions of work and for maternity relief."⁹ In this way the Constitution of India tries to make the women empowered through the abolition of the discrimination between the men and women, and at the same time directs the state to take adequate steps for ensuring the dignity of the women in Indian society.

The Directive Principles of State Policy empower the state to protect the status of women and to ensure the equality of wages for all working people across different spectrums. The Equal Remuneration Act was passed in 1976 to provide equal pay for equal work for both men and women. This act abolishes the long-standing practice of paying men more than women for the same job. In the work field, both men and women are equal in terms of wages. Apart from the equality of status in the economic spectrum, the inclusion of women in the political sphere was ensured through the reform of the system of elected village councils, known as Panchayati Raj. Being influenced by the Directive Principles, one-third of the total number of seats have been reserved for Panchayats at every level, and in the case of Bihar, half of the seats have been reserved for women. Thus, the constitution has taken the initiative to give women equal status to that of men in all sectors of society.

Although the constitution has been making an effort to uplift the status of women, some provisions, such as the 'Right to Religion,' contradict the implementation of a uniform civil code for all Indian citizens. Due to widespread opposition from various religious groups and political parties, the goal of implementing a uniform law for the betterment of all women has not been achieved till now. For example, in 1985-86, the Supreme Court ruled that Shah Bano, a Muslim woman, was entitled to receive alimony from her former husband, who had divorced her in 1978, under Indian law applicable to all Indian women. But the Shah Bano case provoked a political firestorm in India and evoked outrage in the Muslim community, taking advantage of the 'Right to Religion' embedded in the same constitution. At last, the parliament was compelled to pass the Muslim Women Protection of Rights on Divorce Act in 1986, overturning the verdict of the Supreme Court. Therefore, the constitution itself faces some impediments to implementing a uniform law for the empowerment of all Indian women, despite having a good will to develop the status of women.

The women in India sometimes do humiliate themselves. When women are not happy despite having one or two daughters, their dream is to have a son to play with in their lap. When they are pining for a son, their focus on the son becomes dominant, and the daughters

will feel insulted and humiliated. Moreover, having more than two children is against the country's interests in present time of inflation and a huge population. Daughters are not accepted as the heir of the property. However, daughters should be considered legal heirs and be able to take care of their parents equally, just like sons. The women take care of the male child more than the female child and give special treatment and attention to a male child, while the female child should need that treatment for her biological issues. Mothers-in-law often deprive their daughters-in-law of giving proper place in the family what they deserve. The women are lagging despite having proper provisions for women in the Indian Constitution. The efforts of the constitution will not be adequately reflected in society until women are educated and conscious of their status in the right way.

The Constitution of India, including the articles for equality of status, will be appropriately implemented if all the limitations mentioned above are eradicated from the society. Women should empower themselves by setting themselves free from androcentric customs entirely.

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