

# GENDER JUSTICE UNDER INDIAN CONSTITUTION

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## ABSTRACT

Over a very long period of time, Gender Inequality and differences existed in almost all societies of the world and hence the problem regarding gender inequality in India is not a recent development. The complicated set of shared images and conceptions that are stereotypically attributed to women are passed on generation by generation because these over a span of time became social norms and have not been questioned. In India, gender inequality started showing its colour from the later Vedic period and till now it is a debatable issue because as argued, a woman throughout her life cycle faces numerous problems. Gender Equality refers to equality in the number and in the relative power, status and role of women in the society. This paper does not concern itself with Feminist Jurisprudence merely; rather it tries to evaluate the status of a woman in the light of Indian Constitution and how the Constitution as a foundation document can play an instrumental role in bringing gender equality in India and whether the goal has been at all achieved. When we go through the various provisions of the Constitution it seems evident that the Rights guaranteed to women are at par with the Rights of men. Along with that, in some cases women enjoy the benefit of certain special provisions as well. Here arises the question of gender neutrality which I have dealt with in my paper. I put emphasis on the Preamble of the Constitution, Fundamental Rights, Directive Principles, Fundamental duties and certain judicial pronouncements.

Through my work I tried to analyze how far the Constitution of India is successful in making de jure equality into de facto equality and the methodology of my study is a Doctrinal one.

Key words: Gender inequality, gender equality, fundamental rights, directives, fundamental duties, de jure equality, de facto equality.

## INTRODUCTION

*“Though the Constitution guarantees gender equality, it has not been implemented in the country, in spite of more than 60 yrs of independence” - Justice V. Gopala Godwa.<sup>45</sup>*

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<sup>45</sup> *Gender equality still a distant concept in India*, THE HINDU, March 8 2015 (1<sup>st</sup> Sept,2015, 9:30 p.m.)  
<http://www.thehindu.com/news/cities/Hyderabad/gender-equality-still-a-distant-concept-in-india/article6970916.ece>

Gender is basically a socio-cultural term which contains in itself the socially ascribed roles, attributes and behaviors given to a man and a woman in the society. Time and again we have seen that Indian society has enslaved the mind of a woman, she has been discriminated from the very inception of birth through female infanticide. Even before birth, female feticide and sex selective abortion, battering during pregnancy, coerced pregnancy etc. are very common in a country like India. After birth too, a woman throughout her life cycle faces discrimination and violence. She faces emotional and physical abuse, differential access to food and medical care, genital mutilation, sexual abuse by family members and outsiders, rape, sexual harassment at workplace, trafficking, forced prostitution, dowry related violence and what not. Gender inequality should be understood from that era when the Hindu sage, Manu said that a woman should remain under eternal bondage. He said that a woman must be in the custody of her father when she is a child, she must be under the custody of her husband when married and must be under the custody of her son in old age or as a widow. Gender inequality means that when a specific gender is regarded as a minority group and a set of complex images and conceptions are attributed to such gender and is passed on from generation to generation through customs and practices. It is worthwhile to mention here that the position of a woman in India has changed from time to time. While, gender equality refers to the equality in numbers and in relative powers of both the genders in a society and where they are given equal roles, status and importance. The Indian society gives woman a dual character. <sup>46</sup>Sometimes she is considered as a divine force, she is compared with goddess, she represents “shakti” and aggressiveness while sometimes the religious texts and customs enforce such a role upon woman which signifies that a woman should not have her own purpose in life, she should be kept under the control of man and her whole life and existence is for the sake of the man.

Thus, a woman is meant to be fertile, patient and benevolent. Now, let us throw some light on the changing social position of woman from time to time:-

**Vedic Period:** The Vedic period was the era when women did enjoy a dominant place in the society. Women enjoyed the Right to education and they studied in gurukuls. According to the Rig Veda, it was stated that the home has its foundation in the women mass. <sup>47</sup>Women like ApalaAtreyi (daughter of Atri Rishi, her hymns occur in Rig Veda), ViswavaraAtreyi (composer of Rig Veda) Gargi (the first woman philosopher of ancient India), Maitreyi (an educated woman

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<sup>46</sup>M A Kelkar, *Man-woman relationship in Indian philosophy* (1<sup>st</sup> Sept, 2015, 10:00 p.m.), [unipune.ac.in/snc/cssh/ipq/english/IPQ/26.../26-1/26-1-6.pdf](http://unipune.ac.in/snc/cssh/ipq/english/IPQ/26.../26-1/26-1-6.pdf)

<sup>47</sup>*Four Famous Female Figures in Vedic India*, ABOUT RELIGION (1<sup>st</sup> Sept, 1 a.m.), [http://hinduism.about.com/od/history/a/ghosha\\_lopamudra\\_maitreyi\\_gargi.htm](http://hinduism.about.com/od/history/a/ghosha_lopamudra_maitreyi_gargi.htm)

who contributed towards her husband's spiritual thoughts) etc. played a very important role in the society. Manusmriti states that Woman respected where, Gods roam there. In Upanishad, wives were regarded as true companion of her husband. In the Vedic period,<sup>48</sup> girls were permitted to undergo thread ceremony (upanayana); there was absence of pardah system; there was right to select life partners; there was the right to widow re-marriage. Also, women from Kshatriya caste were given martial arts and arms training.

**Post-Vedic Period:** During this period, there was a degradation in the position of women. In this period the concept of class and gotra developed. Manu in his writings talked about a patriarchal society and said that the dominance of men should be increased. In this age a girl child was regarded as a curse; they were denied access to education and pre-puberty marriages originated. Girls were not allowed to undergo thread ceremony like that of Vedic age. However, women's right to property existed through the concept of stridhan and the Brahmin girls were allowed to receive education; training in military sciences etc.

**Medieval Period:** This period was considered as the dark-age for women where their position considerably deteriorated. In this period India was invaded by foreign conquerors which resulted in the decline in the status of women. When the Muslims came to India, they brought with them their own culture. In quoran it is stated that<sup>49</sup> "Men are the maintainers of women because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion [committing a religious sin], admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you, do not seek a way against them; surely Allah is High, Great." The invading soldiers committed violence against the women and then only to safeguard women from them, the pardah system evolved wherein women were placed behind veils. The practice of Polygamy started and the<sup>50</sup> invading soldiers picked up any women they wanted. Girl child was considered as a curse during this period because she brings with her various problems relating to women which were prevalent at that time. Social evils like sati, child marriage, female infanticide etc increased at an alarming rate.<sup>51</sup> In this period Devdasi System also came up where girls were considered as servants of Gods. The Devdasi system was

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<sup>48</sup>Mamta Rao, Law Relating to Women and Children (Eastern Book Company, Lucknow, 3<sup>rd</sup> Edition, 2010).

<sup>49</sup>*Does the Qur'an Say Men Can Beat Their Wives?* (1<sup>st</sup> Sept, 2015, 10:46p.m.), [www.answermuslims.com/.../does-quran-say-men-can-beat-their-wife..](http://www.answermuslims.com/.../does-quran-say-men-can-beat-their-wife..)

<sup>50</sup>AvinashGadhre, *Print Article : The Socio-Economic Status of Women in India* (1<sup>st</sup> Sept, 2015, 10:57p.m.), [http://www.legalservicesindia.com/article/print.php?art\\_id=1867](http://www.legalservicesindia.com/article/print.php?art_id=1867).

<sup>51</sup>Supra Note6

set up as a conspiracy between the priests and feudal class. Also, the system of dowry became prevalent and the custom of jauhar was noticed in the Hindu Rajput families. In the custom of jauhar, the wives of the rajputs who went for a fight committed suicide when the clans became sure enough that the rajputs are not going to die in the battle field.

British Period: During this period, the position of women changed considerably. At least, there was an attempt to uplift the standard of women and treat them as equals with men. During the British period, the economic, social and political structure of India underwent a change and an attempt was made to eliminate the inequalities between men and women. Women were provided with certain educational, employment, political and social rights. Various movements like the Bhakti Movement, Social Reform Movement, Nationalist Movement, Tebhaga and Telengana Movement came up during this period where women played a dominant role. The Christian missionaries took up the interest of imparting female education. In 1882, the Hunter Commissions emphasized on female education. The Indian National Conference which started in 1885 stated certain disabilities relating to women like child marriage, polygamy, sale of girls, inhuman torture upon widows, non-access to education etc. Raja Ram Mohan Roy played an important role in getting the sati system removed and raised voices against child marriage. He also fought for the right of inheritance of women.<sup>52</sup> Ishwar Chandra Vidyasagar launched a movement for the right of widows to re-marry and also pleaded for education of women.<sup>53</sup> Maharaja S. Rao, ruler of Baroda State worked for prevention of child marriages, polygamy and getting the rights of education to women and right of re-marriage of widows.<sup>54</sup> Swami Vivekananda, Annie Besant, Mahatma Gandhi etc took interest in the social and political rights of women.<sup>55</sup> Some women commissions like the Bangamahilasamaj, the Ladies Theosophical Society etc functioned at local levels to promote modern ideas for women. The enacted laws pertaining to women during this period mainly concentrated on rights of women such as marriage, property, employment etc. The prominent Acts were the Child Marriage Restraint Act, Hindu Women's Right to Property Act, the Hindu Succession Act, the Factory Act, the Employees State Insurance Act, Married Women's Property Act, Married Women's Property Extension Act, The Hindu Law of Inheritance (Amendment Act) etc. As mentioned

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<sup>52</sup> *Women in India - Wikipedia, the free encyclopedia* (1<sup>st</sup> Sept, 2015, 11 p.m.),  
[https://en.wikipedia.org/wiki/Women\\_in\\_India](https://en.wikipedia.org/wiki/Women_in_India).

<sup>53</sup> Linda Heaphy, *Life in India: The Practice of Sati or Widow Burning* (1<sup>st</sup> Sept, 12:11 p.m.),  
<http://www.kashgar.com.au/articles/life-in-india-the-practice-of-sati-or-widow-burning>.

<sup>54</sup> Supra Note 6

<sup>55</sup> Narendra Prasad, *Women and Development* (1<sup>st</sup> Sept, 12:28 p.m.),  
<https://books.google.com.pk/books?isbn=8131300749>

earlier, women were here in the forefront of Social Reform Movement. There was great agitation against the system of sati which leads to its prevention in 1829 and enabled the remarriage of widows in 1856. In 1883, kadambinibas and chandramukhibasu completed B.A. from Calcutta University and they were the first female graduates in British India. During 1920-70 Indian women focused on gaining equality by becoming active in politics and by forming different associations.<sup>56</sup> During this period, a few women emerged from within the reformed families who formed certain organizations. BrahmoSamaj was established in Eastern India, Arya Samaj in Northern India and Theosophical Society in Southern India. One of the prominent ladies to do so was Swarnakumaridevi (daughter of Devendranath Tagore) who formed the ladies society in Calcutta in 1882. In the same year Ramabaisaraswati formed the aryamahilasamaj in Pune and then the shardasadan in Bombay. The bharatmahilaparishad was inaugurated in 1905. Between 1917-1945, two main issues that women's movements took up were political rights for women and reform of the personal laws. This initiated the formation of Women's Indian Association in 1917 by Annie Besant. The women's organizations concentrated on issues like birth control, child marriage, divorce, inheritance, employment of women in industries, uniform civil legislation etc.<sup>57</sup> In 1917 Anasuyasarabhai led the Ahmadabad textile workers strike and in 1920 the Ahmadabad textile mill workers union was established under her leadership.

Post-British Period: During this period, the immediate concerns of women were not constitutional rights but political reality. India went through the phase of partition and thousands of men and women fled from one country to another. Women in this era were a part of a new State which evolved and the Framers of the Indian Constitution made it a point to ensure that specific needs of women are met.

## **FRAMERS OF THE CONSTITUTION AND THEIR NOTION TOWARDS GENDER JUSTICE**

The Constitutional framers started their work much before independence when they first met in the Constituent Assembly on 9<sup>th</sup> December, 1946.<sup>58</sup> The Framers of the Constitution took almost three years (2 years, 11 months, 17 days) to frame the Constitution. The cabinet mission recommended that the members are to be chosen through indirect election by the members of

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<sup>56</sup>AparnaBasu, *Indian Women's Movement* (1<sup>st</sup> Sept, 2015, 12:45 p.m.), <http://gpsctaiyari.com/Books/aoxbulikuuobapli4nnwxcx20Indian%20Women%E2%80%99s%20Movement.pdf>

<sup>57</sup>Supra Note 12

<sup>58</sup>*First Day in the Constituent Assembly*, Indian Parliament, (1<sup>st</sup> Sept, 2015, 12:05 p.m.), <http://parliamentofindia.nic.in/ls/debates/facts.htm>

provincial legislative assembly and thereafter 292 members were elected; 93 members represented the Princely States and 4 members represented the chief commissioner's provinces. Among the framers of the Constitution the prominent names were Dr Ambedkar, Pandit Nehru, Dr Rajendra Prasad, Sardar Patel, Maulana Azad, Acharya Kriplani and Pandit Govind Pant. On Dec 13, 1946, Pandit Nehru moved the objectives of the Constitution through which India evolved as sovereign, independent and republic state and the future governance of the country was vested upon the Constitution. Another objective of the draft constitution was that all the people of India should be guaranteed and secured with <sup>59</sup>justice (social, economic and political), equality of status and opportunity, equality before law, freedom of thought, faith, worship, vocation, association, action, expression and belief. However, these were subjected to Law and public morality. As mentioned above, Dr Ambedkar was one of the prominent persons in the drafting committee of the Constitution. Not only that, he was the chairman of the drafting committee. As a member of the legislative council, Dr Ambedkar raised his voice on women's issues and he played a very important role while giving shape to the provisions relating to equality of women in the Indian Constitution. Even before drafting the constitution, Dr Ambedkar through his works expressed his great concern towards the women mass in India and advocated equality. He always measured the progress of a community in the lights of the progress of women. Ambedkar through his paper <sup>60</sup> "Caste in India-Mechanism, Genesis and Development" talked about the relationship between caste and gender. In this work he drew an inference that caste was merely created by the Brahmins of ancient India. These Brahmins enslaved the minds of women and found means of controlling and subjugating them. Dr. Rajendra Prasad in his book <sup>61</sup> "Correspondence and Select documents" said that basic education should be given to girls, including those of backward classes and they should be encouraged to earn a living both through skilled and unskilled labor. He also said that women

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<sup>59</sup>Supra Note 14

<sup>60</sup>Dr B.R. Ambedkar, *Dr. BR Ambedkar Castes in India Their Mechanism, Genesis*, SCRIBD, (2<sup>nd</sup> Sept, 2015, 5:45 a.m.), <https://www.scribd.com/doc/209776841/Dr-B-R-Ambedkar-Castes-in-India-Their-Mechanism-Genesis-and-Development-1916>

Ratnesh Katulkar, Dr Ambedkar on woman liberation, (2<sup>nd</sup> sept, 2015, 5:50 a.m.), <http://www.countercurrents.org/katulkar310808.htm>.

<sup>61</sup>Dr Rajendra Prasad, *Dr Rajendra Prasad: Correspondence and Select Documents : Presidency Period* (2<sup>nd</sup> September, 2015, 5:57 a.m.), [https://books.google.co.in/books?id=IRKq0J6PiCEC&pg=PA530&lpg=PA530&dq=rajendra+prasad+on+women&source=bl&ots=PgPo7J\\_VFe&sig=KwikEtDquONnO6p7H-5ZvAQ9FL0&hl=en&sa=X&ved=0CDAQ6AEwBWoVChMItMTN7OrdxwIVDxmOCh0UDwKt#v=onepage&q=rajendra%20prasad%20on%20women&f=false](https://books.google.co.in/books?id=IRKq0J6PiCEC&pg=PA530&lpg=PA530&dq=rajendra+prasad+on+women&source=bl&ots=PgPo7J_VFe&sig=KwikEtDquONnO6p7H-5ZvAQ9FL0&hl=en&sa=X&ved=0CDAQ6AEwBWoVChMItMTN7OrdxwIVDxmOCh0UDwKt#v=onepage&q=rajendra%20prasad%20on%20women&f=false)

should be included in village council, education councils, local bodies and legislatures in the country and they must be encouraged to fill up political posts. When the Constitution was being drafted, Pandit Nehru talked about the liberty of thought, expression, belief, religion and worship of all citizens of India. He said that women have the right to equality and equity. According to him, the Indian customs and practices very intelligently allotted an inferior status to women and in such a social condition; women were unable to realize their full potential. These eminent personalities thus made an effort to ensure that the Rights of women under Indian Constitution are at par with that of men and accordingly they framed the Constitution.<sup>62</sup> Several Acts were passed to ensure equal Rights of women such as the Child Marriage Restraint Act, the Special Marriage Act, the Hindu Succession Act, Dowry Prohibition Act, Equal Remuneration Act, Indecent Representation of Women (Prohibition) Act, Maternity Benefit Act, Muslim Women's (Protection Of Rights On Divorce) Act, National Commission for Women Act, Special Marriage Act etc.

## **INDIAN CONSTITUTION AND GENDER JUSTICE**

The Preamble of the Constitution clearly states that equality should be given to all citizens in terms of status and opportunity. It must be understood that guaranteeing Rights to people of a community becomes useless unless and until those Rights are equally enjoyed by all members of the community. The framers of the constitution aimed at ensuring equality of status and opportunity through the Preamble. Equality is the touchstone of Indian Constitution. The Preamble of the Constitution inter alia talks about social, political and economic justice for all citizens of the country. The Preamble talks about social justice which should be understood in the light of ensuring abolition of all sorts of inequalities which may result from inequality in wealth, status, class, caste, sex, race, title etc. Economic justice ensures that every person should get his just dues for the labour given by him/her irrespective of caste, creed, sex, status etc. Political justice ensures that unnecessary distinction among men and women in political matters should not be allowed. The provision contains in itself the essence of universal adult suffrage. The Preamble talks about dignity of an individual and that dignity should be ensured by guaranteeing equal fundamental rights to all individuals. Dignified lives contain in itself the essence of equality and freedom. All the fundamental rights contained in part-III of the constitution are

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<sup>62</sup>*Alphabetical List-Central Acts*, India Code (2<sup>nd</sup> September, 2015, 6:18 a.m.), <http://indiacode.nic.in/incodis/alpha.htm>

applicable to all citizens of India irrespective of sex. Art-14 specifically states that within the territory of India, the state shall not deny to any person equality of law or equal protection of law. Then, Article-15(1) states that the state shall not discriminate against any citizens “only” on the ground of religion, race, caste, sex, place of birth or any one of them.<sup>63</sup>The provision further states that religion, caste, sex, place of birth, race or any one of them cannot be the “only” ground whereby any person is subjected to any disability, liability, restriction or condition and hence the throwing open of public places. Thus,<sup>64</sup> Article-15(1) prohibits gender discrimination. However, certain fundamental rights contain specific provisions to protect the rights of women. It is worthwhile to mention here that the principle of Equality does not connote that the same law should be applied to everyone; rather it talks about equality of treatment under equal circumstances. Thus, Art-15(3) positively discriminates in favour of women and permits the state to make special provisions for them. Art-15(3) should be understood in the light of “equal treatment under equal circumstances” or “equality among equals.” The framers of the constitution very well understood that women in the then Indian society did not have equal political, economic and social status as that of men. They felt an urge to uplift women and bring them under the same sun. Thus, Art-15(3) validates positive discrimination and it is in no way contradictory to Art-15(1).<sup>65</sup> Art-16 talk about equality of opportunity in case of public employment. Equal employment opportunity means equal access to jobs and conditions of work. It also contains in itself the essence of equal evaluation of performance. It must be noted here that Art-16 talks about employment or appointment to any office under State only. Matters relating to employment mean all matters prior or subsequent to the employments which are connected with the employment.<sup>66</sup> Art-23 specifically prohibits traffic in human beings. On the basis of this Article, legislature passed the Suppression of Immoral Traffic Act, 1956 (now renamed as Immoral Traffic Prevention Act, 1956) which aims at abolishing prostitution and other forms of trafficking. Along with this, the Andhra Pradesh legislature has enacted the Devdasis (Prohibition of Dedication) Act, 1988 to prohibit the practices of dedicating women to deities and temples. The Directive Principles of State policy contained in Part-IV of the Constitution incorporate many directives to the state to improve the status of women and for their protection.<sup>67</sup> Art-39(a) directs the State to secure its policy so that the citizens (both men and

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<sup>63</sup>P.M. BAKSHI, THE CONSTITUTION OF INDIA, Pg-31, (Universal Law Publication, New Delhi, India, 11<sup>th</sup> Edition, 2011).

<sup>64</sup> Supra Note 19

<sup>65</sup> Supra Note 19

<sup>66</sup> Supra Note 19

<sup>67</sup> Supra Note 19

women) have equal rights to adequate means of livelihood. <sup>68</sup>Art-39(d) directs the State to secure equal pay for equal work for both men and women. The State gave effect to this provision by enacting the Equal Remuneration Act, 1976. Art-39(e) specifically directs the State not to abuse the health and strength of workers (both men and women). <sup>69</sup>Art-42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. For this purpose the Maternity Benefit Act has been enacted. <sup>70</sup>Article-44 directs the State to secure the citizens of India with a uniform civil code throughout the territory of India. Dr Ambedkar was in favor of reformation of personal laws and establishment of Uniform Civil Code. The first woman chief justice Leila Seth said that a common civil code would ensure that the harmful customary practices which are degrading to the dignity of woman can be broken down with an uniform civil code. There was an existing controversy that a uniform civil code shall take away the religious rights of individuals. To this, justice Leila Seth correctly replied that uniform civil code will not take away the religious rights of people. <sup>71</sup> It will only ensure that a woman has her equal property rights, her right to adopt, her right against arbitrary divorce, her right to inheritance and her right against the practice of polygamy by her husband even if her father or husband gets converted to another religion. Through the 73<sup>rd</sup> and 74<sup>th</sup> amendment of Indian Constitution, reservations of seats were provided to women in elections to the Panchayat and municipalities. <sup>72</sup>Art-243D of the Constitution provides that in the direct election in every panchayat not less than 1/3<sup>rd</sup> of total number of seats are to be reserved for women. Article-243T(3) provides for reservation of seats for woman in direct elections to every municipality. Art-51A(e) inter alia states that it is the duty of every citizen of India to renounce from practices which are derogatory to the dignity of women.

## JUDICIAL TRENDS AND PRACTICAL REALITY

***Fundamental Rights and women:*** As mentioned earlier, the Constitution of India guarantees all such rights to women which are given to men. Women thus enjoy the Right to Equality, the Right to freedom, the Right against exploitation, the Right to freedom of religion, Cultural and Educational Rights and the Right to Constitutional remedies. Now, let us throw some light on

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<sup>68</sup> Supra Note 19

<sup>69</sup> Supra Note 19

<sup>70</sup> Supra Note 19

<sup>71</sup> Ramachandra Guha, *Towards A Gender Sensitive Civil Code-Hindustan Times* (2<sup>nd</sup> Sept, 2015, 2:45 p.m.), <http://ramachandraguha.in/archives/towards-a-gender-sensitive-civil-code-2.html>.

<sup>72</sup> Supra Note 19

the attitudes of judiciary on women and whether the judiciary has been successful in making de jure equality into de facto equality.

It was rightly decided in the landmark case of *Nargesh Meerza vs Air India*<sup>73</sup> that a woman shall not be denied employment merely on the ground that she is a woman. This leads to violation of Article-14 of the Constitution. In the present case, an air-hostess of Air India challenged the service rules of Air India where air hostesses were barred from getting married within a period of 4 years from the date of their joining. The rule further stated that the air-hostesses shall lose their jobs if they become pregnant and also that they will retire at the age of 35 years (exception can be made only if managing director extends the term by 10 years at his own discretion). The Apex Court that that even though the first provision is reasonable, the second and third provisions are cruel, arbitrary and unconstitutional.

In the case of *C.B Muthamma vs Union of India*<sup>74</sup>, a writ petition was filed before the Apex Court which challenged Rule-8(2) of the Indian Foreign Service (Conduct and Discipline) Rules,1961. In this rule it was stated that an unmarried woman member before getting married must take the permission of the Government and even after marriage she might be asked to resign the office any time if it is found that her family life is affecting her work efficiency. The Apex Court in this case declared the rules relating to seniority and promotion in Indian Foreign Service to be unconstitutional and violative of Article-15 of the Indian Constitution. Along with this, the court held that the rules contain essence of masculinity in them, as if an attempt has been made to dominate the weaker sex.

In the case of *C.Rajakumari vs Commissioner*<sup>75</sup> of Police, Hyderabad a question was raised before the Andhra Pradesh High Court pertaining to the fact whether the beauty contests which indecently represents a women's body, figure and form is violation of Article-15 of the Constitution. The court held that if any beauty contest degrades women's body or any part of the body in such a way that it is indecent and is injurious to public morality then such beauty contest would be violative of the provisions of Indecent Representation of Women(Prohibition) Act,1986 and also unconstitutional as it violates Articles-14,21 and 51A.

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<sup>73</sup>1981 AIR 1829, 1982 SCR (1) 438

<sup>74</sup>1979 AIR 1868, 1980 SCR (1) 668

<sup>75</sup>1998 (1) ALD 810, 1998 (1) ALD Cri 298, 1998 (1) ALT 329

In the case of *Vishal Jeetvs Union of India*<sup>76</sup> the petitioner filed a writ petition by way of public interest litigation and sought certain directions from the court. He wanted the court to look into issues of red light areas and forced prostitution. He also wanted the court to look into the system of devdasi and yogins which are famous systems of dedication of young girls to deities and a way of prostitution. Considering all the aspects of matter before it, the Supreme Court issued certain directions. The court observed that on the strength of Article 23(1) of the Constitution the legislature has passed the Immoral Traffic (Prevention) Act, 1956 and it gave certain directives to the State Govts and Union territories to take steps to eradicate child prostitution and set up adequate rehabilitative homes.

In the case of *Suchita Srivastava and another vs Chandigarh administration*<sup>77</sup>, a woman's right to make reproductive choice is a part of personal liberty conferred under Article-21 and that may include procreation as well as abstaining from procreation. The court further stated that a woman has the right to refuse to participate in sexual activity.

In the case of *P.B. Vijaykumar and another vs Govt of Andhra Pradesh*<sup>78</sup>, the petitioner challenged Rule-22A(2) of Andhra Pradesh State And Subordinate Service Rules as violative of Articles-14 and 16(4) of the Indian Constitution. Sub Rule 2 of rule-22A is read as "In the matter of direct recruitment to posts for which women and men are equally suited, other things being equal, preference shall be given to women and they shall be selected to an extent of at least 30% of the posts in each category of O.C., B.C., S.C., and S.T. quota." The petitioner argued that the State cannot make any reservation in favour of women in relation to appointments or posts under the State because this would lead to discrimination on the ground of sex in public employment or appointment to posts under the State and would violate Art-16(2). The court here held that while dealing with employment under the State both articles-15 and 16 has to be kept in mind. The court also stated that the power conferred by Article-15(3) is wide enough to cover the entire range of state activity including employment under state. The court clearly stated that Rule-22A(2) provides for preference being given to women to the extent of 30% of the posts, other things being equal and thus it is not reservation for women in the normal sense of the term. The court held that this rule is within the ambit of Art-15(3) and hence constitutional.

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<sup>76</sup>1990 AIR 1412, 1990 SCR (2) 861

<sup>77</sup>2009 S.L.P. (C) No. 17985

<sup>78</sup>1995 AIR 1648, 1995 SCC (4) 520

Now, this judgment was given by a Bench headed by Justice Manohar Sujata. Her contention was that since women of India have been socially and economically handicapped for centuries, they were not adequately represented in the socio-economic activities of the nation and thus Article-15(3) to bring about equality between men and women. Thus, preference for women to the extent of 30% is just in the light of Art-15(3). Justice Sujata being a lady judge herself may have been a little biased while setting aside the judgement of High Court as it strikes down the second part of Rule-22A(2).

Similarly, in the case of *Vijay Lakhmi vs Punjab University*<sup>79</sup> and others question was raised against preference being given to a woman as principal of a government college for girls. It was said that this preferential attitude is violative of the Right to equality. However, the court held that Art-14 does not bar rational classification and the question of inequality does not arise if there are different sets of circumstances. Also, Art-15(3) empowers the State to make special provisions for women and children. The court gave its judgment in the light of the nature of duties assigned to a principal in relation to girl students and thus held that appointment of lady principal in Women's College or a lady teacher therein cannot be held to be violative either of Article 14 or Article 16 of the Constitution, because classification is reasonable and it has a nexus with the object sought to be achieved. The court while dealing with this case referred to the case of P.B. Vijaykumar where the court had dealt with similar kind of situation.

In the case of *Abdul Aziz vs State Of Bombay*<sup>80</sup>, the constitutional validity of Sec-497 (adultery) of the Indian Penal Code was challenged on the ground that it is violative of Articles-14 and 15(1) of the Constitution. In case of an offence of adultery, the Indian Penal Code, 1860 punishes only the male counterpart and exempts the woman from punishment. The petitioner argued that this section is violative of the principle of Right to Equality because even though, in case of adultery, a woman is equally liable as that of her male counterpart, she is exempted from the eyes of Law. If we read Sec-497 of the Indian Penal Code it is clear to us that the section punishes the offence of adultery committed with a married woman without the consent of her husband. Thus, if a sexual intercourse happens between a married man and an unmarried woman, or a widow, or a married woman whose husband gives consent, the crime would not be constituted. Thus, the petitioner argued that this section intends to make an irrational classification between men and women. However, the Apex Court rejected the contention and

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<sup>79</sup>2003 SCC (8) 440

<sup>80</sup>1954 AIR 321, 1954 SCR 930

said that it is a commonly accepted notion that it is a man who is the seducer and not the woman. Also, the classification was not based on sex alone.

This argument given by the court is ridiculous because when two adult person goes into an adulterous relationship that is a consensual one. Also, this section somewhat contains in itself the essence of fight between two male persons over a claim i.e “woman.” The National Commission for Woman turned down the proposals of amending Sec-497 of Indian Penal Code because there contention was that by punishing women, marriage cannot be saved. Also, maximum married women in the present society are still unempowered. Imprisonment of a woman will further destroy her family life and social life. Thus we see that through this section, legislature intends to safeguard the institution of marriage and if a woman is held equally liable for an adulterous act as that of her male counterpart then she will get stigmatized, her family life will be ruined and since women are the sole savior of the institution of marriage; it will also lead to a breakdown of such institution. It is evident from the above discussion that women still now are understood in the light of men, family and society. She is not understood as a free reasonable human being who is capable of giving consent in case of adultery and understanding the consequences of such consent.

In the light of this discussion, *Leela vs State of Kerala*<sup>81</sup> demands special attention. In this case Sec-66(1)(b) of the Factories Act was challenged on the ground that it violates Articles-14, 15 and 16 of the Indian Constitution. But the petition was dismissed on the ground that Sec-66(1)(b) contains in itself a special provision in favour of woman. The Kerala High Court held that the Factories Act is a piece of social welfare legislation and the basic objective of Sec-66(1)(b) is to regulate the working hours. The section ensures that women are not taken away from their families or exposed to hazardous work in factories at night. The court also held that the very nature of the women is commitment to the family and thus lady constables are not asked to go to patrol at night, lady waitresses in hotels are not asked to work at night.

From this point of view of the court, the social reality of so-called modern women is established. A woman’s role is still calculated in the sphere of her being a mother, being a wife and being the sole protector of her family. Similar kinds of role are not attributed to her male counterpart. Thus, time and again she is and should be understood in the light of a man.

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<sup>81</sup>2004 (102) FLR 207, 2004 (2) KLT 220, (2004) III LLJ 106 Ker

However, it is worthwhile to mention that the Court gave a different view in the case of *Smt. Savitri vs Bose*<sup>82</sup>. In this case the decision of the excise authorities to prefer men over women in granting licenses for opening of liquor shops was struck down. It was held by the Allahabad High Court that such discrimination was not permitted under Art-15(1) and 15(3) of the Constitution.

***Directive Principles and Women:*** The Directive Principles of State Policy enshrined in part-IV of the Indian Constitution contains certain provisions which deal with the welfare and development of woman.

The framers of the Constitution prohibited forced labour in any form including beggar and traffic in human beings under Article-23. In *Neeraja Chowdary vs State of Madhya Pradesh*<sup>83</sup>, Justice Bhagwati held that women and children cannot be compelled to work under unhygienic conditions because it is a kind of bonded labour which is prohibited under Art-21 and Art-23 of the Constitution.

In the case of *Randhirsingh vs Union of India*<sup>84</sup>, the Apex Court talked about the doctrine of equal pay for equal work. It was held that the doctrine is applicable in case of both men and women. Art-39(d) of the Indian Constitution provides that there shall be equal pay for equal work for both men and women. But Article-37 on the contrary says that directive principles are not enforceable in nature. But when fixation of pay scales of government employees is based on unreasonable classification which violates Art-14 and Art-16 of the Constitution, the courts are allowed to enforce the doctrine of equal pay for equal work. Thus the court held that the principle of equality is enshrined in the provisions of the Equal Remuneration Act, 1976.

Again, in the case of *Bhagwan Das vs State of Haryana*<sup>85</sup>, the Supreme Court declared that when persons are doing similar kind of work under similar condition, then they cannot be denied of their right of equal pay for equal work on the ground that their mode of recruitment was different. Furthermore, the court stated that temporary or casual workers have a right to same pay as that of permanent workers if they perform similar kind of work under similar conditions.

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<sup>82</sup>AIR 1972 All 305

<sup>83</sup>AIR 1984 SC 1099, 1984 (2) Crimes 511 SC, 1984 LabIC 851, 1984 (1) SCALE 874, (1984) 3 SCC 243

<sup>84</sup>1982 AIR 879, 1982 SCR (3) 298

<sup>85</sup>1987 AIR 2049, 1987 SCR (3) 714

***Fundamental Duties and Women:*** We have seen that <sup>86</sup>Art-51A(g) requires the citizens of India to renounce from practices which are derogatory to the dignity of women. But somewhere this provision seems contradictory with <sup>87</sup>Art-51A(f) which requires the citizens of India to preserve the rich heritage of our composite culture. From the above detailed discussion in the introductory part of this paper, it seems evident that the customs and practices which were preserved through Indian culture never considered woman as a free independent individual, except that during the early Vedic period. Indian culture has always defined woman in the light of men, as if she is not the subject, as if she is not an essential. She has always been regarded as incidental and the society has attributed different colours to woman at different phases. However, many philosophers argue that the religious models on man-woman relationship did consider a dominant position of woman. <sup>88</sup>The Shiva-Shakti Model of Saiva philosophy says that both men and women are equal. <sup>89</sup>The Shiva-Shakti Model of Shakta philosophy talks about a form of life where women's position is higher than that of men. <sup>90</sup>The Brahma-maya model does not connote any separate status to women because maya cannot be differentiated from brahma. However, the <sup>91</sup>Purusha-prakti model gives stress on the differences between a man and a woman. Thus, we see that in the religious scripts and through Indian culture, woman on one hand has been considered as a source of Shakti and Prakti-who is the creator as well as the destroyer; who is the undestroyable matter of this universe; while on the other hand she is considered as Maya-which is the source of procreation. Maya does not have any independent existence and she only functions for the playful enjoyment of Brahma. Thus, we can draw an inference that Indian culture itself is contradictory in nature.

***Women and politics:*** We have already mentioned that there was an attempt of adequate representation of women in the political field and thus Art-243D and Art-243T came into being. There carried with themselves a weapon of feminism. But, the situation remained the same. Most of the States did implement the provisions but in reality it did not make the situation any better. It has been argued that the elected women were merely titular heads who were so very influenced by their male relatives that they represented their views in the council. These women worked on the advices given by their male relatives. Thus, even though the provisions make

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<sup>86</sup> Supra Note 19

<sup>87</sup>Supra Note 19

<sup>88</sup> Supra Note 2

<sup>89</sup> Supra Note 2

<sup>90</sup> Supra Note 2

<sup>91</sup> Supra Note 2

look futile but the woman representations are merely acting as rubber stamp figures. There is lack of actual participation by them in the political sphere.

## **RIGHT OR PRIVILEGE?**

Because of the physical structure of a woman, her role, her status and the present condition of Indian society woman have been given special protection under the umbrella of Law. A woman in the Indian society is illiterate, irrational, and ignorant of her legal rights. Her mind is enslaved by the Patriarchal societal structure. She is economically dependent and politically underpowered. The situation of men and women in Indian society are different. As we know, the State can treat different persons differently if the circumstances are unequal. Aristotle talked about the principle of treating likes as likes and unlike as unlike. A woman is unlike man. Her social condition is unlike man. Women as a class differ from men as a class. Thus, they should be treated separately. They should be treated specially. Art-15(3) can treat women separately and give more preference to them on the note that the aim or object is to form an egalitarian society. Art-15(3) is known as protective discrimination. A woman being a part of a weaker class, a woman being a part of the less powerful section of the community needs to be protected. Her dignity needs to be safeguarded by the State. In the case of *Dattatreya Motiramvs State of Bombay*<sup>92</sup>, Chief Justice Chagla held that “State could discriminate in favour of women against men, but it could not discriminate in favour of men against women”. This is because men is inherently superior. Similarly, in the case of *Balan Nair vsBhavaniAmm*<sup>93</sup>, the Kerala High Court observed that Art-15(3) and Article-39 aim at assisting women and children in distress. The State is very much empowered to make special laws for women to bring about freedom and equality for women and to protect their dignity. Through the judicial pronouncements it is evident that the court tried its best to be more considerate to women. However, time and again it has looked upon woman in the light of men. As we have seen in the case of <sup>94</sup>*Abdul Aziz*, the Apex Court looked upon woman in the light of her family, her duties towards her family and society and the sole object of the court was to safeguard the institution of marriage. Similarly, in the case of <sup>95</sup>*Leela*, the Kerala High Court ensured that women give time to their families at night after working in the factories the whole day. This is because, the society demands so. A woman can never be pure consciousness. She

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<sup>92</sup>AIR 1953 Bom 311, (1953) 55 BOMLR 323, ILR 1953 Bom 842

<sup>93</sup>AIR 1987 Ker 110

<sup>94</sup>Yusuf Abdul Aziz vs The State Of Bombay, 1954 AIR 321, 1954 SCR 930

<sup>95</sup>Leela vs State Of Kerala, 2004 (102) FLR 207, 2004 (2) KLT 220, (2004) IILLJ 106 Ker

can never be free having independent existence. She should not have her own purpose for life and her whole existence should be for the sake of man, family and society. What the society can do is give special privileges to woman to safeguard her woman-like qualities, her dignity, and her modesty. Her physical well being is a concern of the court and that of public interest and care. It is a privilege to her. The object of Right to equality is equal political, economic and social rights for woman. Equality and liberation of woman should aim at transforming societies where a woman can decide what role to play, including traditional roles if they feel like. Equality should aim at changing the perspective of society towards woman. It should aim at changing the social position of woman. It also contains in itself the building of one's own self esteem. What the judiciary did was provide temporary special measures to woman keeping in mind the age old gender relations. The judiciary should aim at bringing equality in the true sense of the term and not provide special privileges to woman keeping in mind their distressed social condition. It should aim at changing the present social condition and reverse the historical disadvantages woman has faced. However, for woman belonging to socially disadvantaged groups like dalits, tribals, religious minorities, differently-abled etc. judiciary may grant certain rights in form of privileges.

## **CONCLUSION**

It is evident from the above discussion that the Constitution of India contains various provisions relating to equality between men and women and there are certain cases where women have been given special importance. Along with that certain legal provisions for women have been enacted viz: the Factories Act, Maternity Benefit Act, Dowry Prohibition Act, Equal Remuneration Act, Child Marriage Restrain act, Medical Termination of Pregnancy Act, National Commission for Women Act, Protection of woman from domestic violence Act, Protection of women against sexual harassment at workplace etc. However, till date that women's rights are violated now and then. Sex violence and gender based violence are increasing at an alarming rate. The Verma Committee Report of Jan 23<sup>rd</sup>, 2013, gave a detailed over view of the crimes relating to women and suggested certain reforms. I personally believe that the increase in women-related violence is the direct result of the fact that differences between men and women are more highlighted lately and women are provided with certain temporary privileges. Equality should be brought back to a place where both men and women can embrace it and it needs to be re-claimed in a way that is inclusive of men. When violence against women is highlighted through media, violence against men should also be brought into

account. It must be remembered that when women are expected to stay at home, protect the family and be good mothers; men are expected to go out and be bread-earners. If women are oppressed by the social idea of beauty, men are oppressed by the social idea of success. I believe that the present idea of equality is less dynamic in its approach and it must be re-claimed in a way to which even men can relate. Then only equality in the true sense of the term would be possible.