



CONSTITUTIONAL INTERPRETATION OF PROTECTIVE RIGHTS OF WOMEN AND CHILDREN IN INDIA

Dr. Krishan Kumar

Assistant Professor in Law, C. R. Law College, Hisar (Haryana)

krishankajal2010@gmail.com

Abstract-- The Indian Constitution acts as a transformative document ensuring equality, dignity and protection for its citizens, particularly for marginalized groups like women and children. Despite constitutional guarantees, the actual realization of these rights remains inconsistent due to socio-economic challenges and patriarchal structures. This paper explores the constitutional provisions, legislative enactments, judicial interpretations, and international perspectives relevant to the protective rights of women and children in India. The article further incorporates doctrinal analysis, latest case law, and suggests policy-level reforms necessary for advancing the constitutional mandate.

Keywords: *Women's Rights, Child Protection, Constitutional Law, Judicial Interpretation, Gender Equality, Human Rights*

1. INTRODUCTION

In a society rooted in patriarchal norms and systemic inequalities, the role of the Constitution as a protective shield for vulnerable groups becomes critical. The Constitution of India envisages a social order based on equality and justice, aiming to protect the dignity and rights of all individuals, especially women and children¹. However, despite progressive legislation and active judicial intervention, these groups continue to face exploitation, discrimination, and violence.²

The framers of the Constitution incorporated various provisions to empower women and protect children, drawing inspiration from global human rights movements and international treaties. These provisions are interpreted not in isolation but in harmony with India's social realities and international commitments.³

2. NATIONAL SCENARIO

2.1. Constitutional Provisions: The Constitution contains both justiciable and non-justiciable provisions to protect women and children:

- Article 14: Equality before the law.⁴
- Article 15(3): Permits special provisions for women and children.⁵
- Article 21: Guarantees the right to life and personal liberty, interpreted broadly to include the right to dignity, education, and protection from violence.⁶
- Article 39(e) & (f): Ensures health and strength of women and children are not abused.⁷
- Article 42: Maternity relief and humane working conditions.⁸

These constitutional mandates act as a moral and legal foundation for legislation and policy aimed at safeguarding these groups.

2.2. Legislative Framework: India has enacted various statutes aligned with constitutional goals:

- The Protection of Women from Domestic Violence Act, 2005⁹
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹⁰
- The Prohibition of Child Marriage Act, 2006¹¹
- The Protection of Children from Sexual Offences (POCSO) Act, 2012¹²
- The Juvenile Justice (Care and Protection of Children) Act, 2015¹³

These laws are vital tools for enforcement of constitutional guarantees.



2.3. Judicial Interpretation: Indian judiciary has played an instrumental role in interpreting these rights:
1) *Dattatraya Motiram More v. State of Bombay*¹⁴ This was one of the earliest and most significant cases that interpreted Article 15(3), which allows the State to make special provisions for women and children, acting as an exception to the general prohibition against discrimination under Article 15(1). Constitutional Provision: Article 15(1): Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 15(3): States: “Nothing in this article shall prevent the State from making any special provision for women and children.”

Issue: Whether reservation of seats for women in educational institutions or other preferential treatment amounts to discrimination in violation of Article 15(1), or is protected under Article 15(3)?

The Bombay High Court upheld the validity of special provisions made for women, observing:

Article 15(3) is a specific enabling provision which allows the State to discriminate positively in favor of women and children. Such provisions do not violate the equality principle of Article 15(1), as Article 15(3) creates a constitutional exception.

It affirmed the legality of affirmative action (positive discrimination) for women and children.

It established that protective laws or schemes for women do not violate the fundamental right to equality, as long as they are reasonable and serve a beneficial purpose.

2) *Yusuf Abdul Aziz v. State of Bombay*¹⁵

Issue: Constitutionality of Section 497 IPC (Adultery) which exempted women from punishment.

The Supreme Court held that Section 497 IPC was valid as it was a “special provision for women” under Article 15(3). The Court emphasized that positive discrimination in favor of women was permissible and intended to protect them.

3) *Anuj Garg v. Hotel Association of India*¹⁶ Issue: Validity of Section 30 of the Punjab Excise Act, which prohibited employment of women in premises where liquor is served.

- The Supreme Court struck down the provision.
- It held that Article 15(3) does not justify stereotypes or regressive laws.
- Special provisions must be empowering and not based on patriarchal notions.

4) *Revathi v. Union of India*¹⁷ Whether Section 198(2) Cr.P.C. (which barred wives from prosecuting husband's lover) violates equality. Supreme Court upheld the provision, reasoning that it was a special protection intended to maintain family peace, and thus saved under Article 15(3).

5) *Government of Andhra Pradesh v. P.B. Vijaya Kumar*¹⁸ Issue: Challenge to Andhra Pradesh rules reserving 30% of posts in public services for women. Supreme Court upheld the reservation, holding that Article 15(3) extends to employment and is not confined to education or social benefits. The power to make special provisions for women includes reservation in public employment.

6) *Valsamma Paul v. Cochin University*¹⁹ Can a woman who acquires Scheduled Caste status by marriage claim reservation benefits? Court ruled that status acquired by marriage does not entitle the person to claim caste-based benefits. However, it upheld the importance of Article 15(3) in ensuring genuine affirmative action.

7) *Rajesh Sharma v. State of U.P.*²⁰ Issue: Misuse of Section 498A IPC (dowry harassment) by women – whether safeguards dilute women's protection. Court introduced guidelines to prevent misuse, but clarified that women's protections are rooted in Article 15(3) and must not be eroded unjustly.

8) *Union of India v. K.P. Joseph*²¹ Issue: Challenge to preferential treatment for women under employment rules. Supreme Court upheld the rule, reiterating that Article 15(3) allows such beneficial treatment, even if it affects men adversely.

9) *State of Kerala v. N.M. Thomas*²² Can reservation or relaxation in rules be made for women in public

employment? Though the case primarily discussed Article 16(4), it reaffirmed that Article 15(3) is a valid basis for giving concessions to women, especially in employment.

10) *Air India v. Nargesh Meerza*²³ Issue: Air India regulations that terminated air hostesses upon marriage or pregnancy – whether valid. Supreme Court struck down the rules as violative of Article 14 and held that such provisions were not protected under Article 15(3) as they were discriminatory and not in the interest of women.

11) *Vishaka v. State of Rajasthan* laid down guidelines for prevention of sexual harassment at workplaces in the absence of legislation, drawing from CEDAW.²⁴

12) *Sheela Barse v. Union of India* highlighted the plight of children in jails, directing legal aid and separate care homes for them.²⁵

13) *Gaurav Jain v. Union of India* upheld rights of children of sex workers and emphasized their right to dignity and education.²⁶

14) *Independent Thought v. Union of India* held marital rape with a minor wife as unconstitutional under Article 21, expanding the scope of child protection.²⁷

3. INTERNATIONAL PERSPECTIVES

3.1. *CEDAW (1979)*: India ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1993. It obligates states to eliminate discrimination in legal, political, and economic spheres.²⁸ Indian courts have invoked CEDAW principles in several decisions including *Vishaka v. State of Rajasthan*.

3.2. *Convention on the Rights of the Child (CRC), 1989*: Ratified by India in 1992, the CRC ensures children's rights to survival, development, protection, and participation.²⁹ This has influenced statutes like POCSO and the Juvenile Justice Act.

3.3. *Universal Declaration of Human Rights (UDHR), 1948*: Articles 1, 3, and 25 of UDHR advocate the rights to dignity, security, and protection. Indian courts have often referred to these in interpreting Article 21.³⁰

3.4. *Sustainable Development Goals (SDGs)*: Goals 5 (Gender Equality) and 16 (Peace, Justice and Strong Institutions) focus on eliminating violence against women and children. India's schemes like Beti Bachao Beti Padhao resonate with these aims.³¹

4. CONSTITUTIONAL COMMITMENT FOR WELL-BEING

4.1. Doctrinal Frameworks:

- Doctrine of Progressive Realization of Rights: Recognized by Indian courts in cases involving socio-economic rights, it acknowledges that rights evolve over time and must be protected incrementally.³²
- Transformative Constitutionalism: Advocated in *Navtej Singh Johar v. Union of India*, the doctrine enables courts to interpret the Constitution as a dynamic, living document geared toward social justice.³³
- Parens Patriae: The State is seen as the guardian of those unable to care for themselves, including children. Applied in *Laxmi Kant Pandey v. Union of India*, regarding inter-country adoptions.³⁴

4.2. Role of Welfare Schemes:

- Integrated Child Protection Scheme (ICPS): Operationalizes constitutional goals of Articles 15(3), 21 and 39.
- Maternity Benefit Scheme and POSHAN Abhiyaan: Realize Article 42 obligations for women's welfare.
- National Commission for Women (NCW) and National Commission for Protection of Child Rights



(NCPCR): Institutional mechanisms created to ensure monitoring and enforcement of protective rights.³⁵

5. SUGGESTIONS

1. Strengthening Institutional Monitoring: State Commissions for Women and Child Welfare must be empowered with enforcement powers.
2. Education and Legal Awareness Campaigns: Rights-based awareness must begin at the school level to empower future generations.
3. Judicial Training and Sensitization: Regular workshops on gender justice and child rights for judges and police officers.
4. Time-bound Disposal of Cases: Fast-track courts for POCSO and domestic violence cases must be made functional in every district.
5. Statutory Incorporation of International Treaties: Provisions of CEDAW and CRC should be codified into enforceable domestic law.
6. Use of Technology: Child helplines, women's safety apps, and AI-driven grievance redressal can enhance access to justice.
7. Stronger Data Systems: A centralized, publicly accessible database of child and women rights violations for transparent tracking and policy reform.

6. CONCLUSION

While the Constitution of India lays a strong foundation for the protection of women and children, the real-world challenges are immense. Discriminatory cultural norms, inadequate implementation, and lack of awareness remain persistent barriers. Courts have often stepped in to breathe life into dormant constitutional promises, but the burden of enforcement largely rests with the State.

True constitutional justice requires an ecosystem where rights are known, respected, and effectively enforced. This can only be achieved when both institutional mechanisms and civil society actively collaborate.

REFERENCES AND FOOTNOTES

- [1] Granville Austin, the Indian Constitution: Cornerstone of a Nation (Oxford University Press, 1966).
- [2] Law Commission of India, 262nd Report on Death Penalty (2015).
- [3] B. Shiva Rao, The Framing of India's Constitution: A Study (Indian Institute of Public Administration, 1968).
- [4] Constitution of India, Art. 14.
- [5] Ibid., Art. 15(3).
- [6] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
- [7] Constitution of India, Art. 39(e) - (f).
- [8] Ibid., Art. 42.
- [9] Protection of Women from Domestic Violence Act, 2005.
- [10] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- [11] Prohibition of Child Marriage Act, 2006.
- [12] Protection of Children from Sexual Offences Act, 2012.
- [13] Juvenile Justice (Care and Protection of Children) Act, 2015.
- [14] Dattatraya Motiram More v. State of Bombay, AIR 1953
- [15] Yusuf Abdul Aziz v. State of Bombay AIR 1954 SC 321
- [16] Anuj Garg v. Hotel Association of India (2008) 3 SCC 1
- [17] Revathi v. Union of India AIR 1988 SC 835
- [18] Government of Andhra Pradesh v. P.B. Vijaya Kumar (1995) 4 SCC 520
- [19] Valsamma Paul v. Cochin University (1996) 3 SCC 545



- [20] Rajesh Sharma v. State of U.P. (2017) 8 SCC 46
- [21] Union of India v. K.P. Joseph AIR 1973 SC 303
- [22] State of Kerala v. N.M. Thomas (1976) 2 SCC 310
- [23] Air India v. Nargesh Meerza AIR 1981 SC 1829
- [24] Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
- [25] Sheela Barse v. Union of India, (1986) 3 SCC 596
- [26] Gaurav Jain v. Union of India, (1997) 8 SCC 114.
- [27] Independent Thought v. Union of India, (2017) 10 SCC 800.
- [28] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.
- [29] UN General Assembly, Convention on the Rights of the Child (CRC), 1989.
- [30] Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759.
- [31] NITI Aayog, SDG India Index Report 2023.
- [32] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
- [33] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
- [34] Laxmi Kant Pandey v. Union of India, (1984) 2 SCC 244.
- [35] Government of India, Annual Report of the Ministry of Women and Child Development, 2023-24.