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FROM COLONIAL PATERNALISM TO CONSTITUTIONAL ACCOUNTABILITY: THE HISTORICAL ROOTS OF POLITICAL RESPONSIBILITY FOR WOMEN'S PROTECTION

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ABSTRACT

Women's rights have gone through significant historical and constitutional evolution. In this context, a shift can be observed from colonial paternalism perpetrated by patriarchal authorities to a more rights-based approach, enshrined in the Constitution of India. The state's duty to protect women has evolved from a simple act of kind governance to a constitutional responsibility rooted in principles of justice, equality and dignity. This study argues that to achieve gender justice in post-independent India, one must recognise the colonial legacies that continue to influence contemporary state structures. The historical analysis of Mrinalini Sinha and Geraldine Forbes, along with key feminist legal theories from Mackinnon, Nussbaum, Butler and political philosophy from Rawls, emphasises constitutional accountability within a larger framework of reform, nationalism, and moral politics. It emphasises that the state's responsibility towards women is both a historical legacy and a constitutional obligation. This highlights the need for political will, institutional reform, and a governance that is sensitive to gender issues.

Keywords: Colonial Masculinity – Paternalism - Constitutional Accountability - Substantive equality - Dignity.

1. INTRODUCTION

The state has a political responsibility to protect and fulfil rights within its jurisdiction. When this responsibility is seen in reference to women's rights, it becomes imperative that the government exercises its organs to uphold its constitutional duty to ensure the safety, equality, and dignity of women. This obligation is more than a moral and symbolic duty; it is a legal obligation based on the constitutional principles of equality and non-discrimination (Articles 14,15). The jurisprudence on women's rights has advanced through the judicial acknowledgement of autonomy of women and the accountability of the state, which were recognised in cases like *Vishakha v State of Rajasthan*¹ and *Mukesh v State of NCT of Delhi*.² These cases represent the result of a long intellectual and political evolution that goes back to colonial India, wherein women were dependents requiring protection rather than independent individuals entitled to rights enforceable by law. Colonial masculinity and the Women's Question motivated the nationalists in generating public debates of the 19th and 20th century. Social reformers challenged the British administrators and brahmanical patriarchy by re-examining the ancient law codes and practices to promote a progressive and rational society. Such debates further hindered women's progress, as before 1915 there was a scarcity of women led organisations, that changed soon after. Women began to organise and lead, challenging both patriarchy and hegemonic authority of the colonisers. This shift was pivotal in the women's demand for agency and leadership. The post-independence phase saw a nexus of such attributes rooted to political responsibility that was shaping the ever changing ideological, institutional and social frameworks. This perspective suggests that political liability is historically contingent, emerging from specific contexts rather than merely existing as a universal constitutional principle.

2. HISTORIOGRAPHICAL OVERVIEW

The study of masculinity in India has undergone a notable shift over the past several decades. The early scholars defined masculinity on fixed binaries and the studies challenged these assumptions, emphasizing instead that masculinity is historically produced, relational, and performed. Various scholars have analysed masculinity within the context of colonial rule, nationalist politics, psychoanalytic discourse, and regional social reform movements.³ Ashis Nandy's⁴ work marked one of the earliest attempts to conceptualize masculinity in colonial

1 1997 6 SCC 241

2 2017 6 SCC 1

3 Joseph S Alter, *The Wrestler's Body: Identity and Ideology in North India* (University of California Press 1992).

4 Ashis Nandy, *The Intimate Enemy: Loss and Recovery of Self under Colonialism* (Oxford University Press, 1983).

India. He argued that colonial rule was structured through a hierarchy of gendered identities, where *purushatva* (manliness) was valued over *naritva* (womanliness), and both stood above *klibatva* (femininity in men). According to Nandy, nationalist figures such as Tilak attempted to revive a militant indigenous masculinity in response to colonial authority, while Gandhi inverted the hierarchy by valourising qualities associated with femininity.

Mrinalini Sinha's⁵ work represents a significant rethinking of masculinity in the colonial context. Rather than viewing masculinity as a stable cultural essence, Sinha argues that gender identities were continually negotiated and reshaped through political and social conflict. Her study of controversies such as the Age of Consent Bill demonstrates that colonial and Indian masculinities were formed relationally between the colonizers and the colonized, and among different social groups within Indian society. Thus, they highlighted the plurality of masculinity. As opposed to masculinity Sudhir Kakkar's⁶ analysis portrays the mother as a simultaneously idealized and feared figure, shaping male subjectivity. However, it has been criticised by Tanika Sarkar,⁷ who shows that such maternal tropes in nationalist discourse were political constructions rather than expressions of timeless psychological conflict.

Historical analyses further reveal how masculinity became intertwined with nationalist and reformist politics. Partha Chatterjee⁸ argues that the division between the 'public' and 'private' spheres was central to nationalist ideology in Bengal, with the public coded as masculine and the private as feminine. This framework enabled nationalist leaders to claim moral and spiritual superiority within the domestic sphere while accepting western dominance in material and political domains. Studies such as Charu Gupta⁹ whose work on Hindu revivalist movements in Uttar Pradesh and J. Devika¹⁰ whose research on gender and social reform in Kerala show that these gendered divisions shaped political identity, community formation, and everyday performances of masculinity across regions.

5 Mrinalini Sinha, *Colonial Masculinity: The 'Manly Englishman' and the 'Effeminate Bengali' in the Late Nineteenth Century* (Manchester University Press 1995).

6 Sudhir Kakkar, *Intimate Relations: Exploring Indian Sexuality* (University of Chicago Press 1989).

7 Tanika Sarkar, *Hindu Wife, Hindu Nation: Community, Religion, and Cultural Nationalism* (Permanent Black 2001).

8 Partha Chatterjee, 'The Nationalist Resolution of the Women's Question' in Kumkum Sangari and Sudesh Vaid (eds), *Recasting Women: Essays in Colonial History* (Zed Books, 1989)233-253.

9 Charu Gupta, *Sexuality, Obscenity: Women, Muslims and the Hindu Public in Colonial India* (Permanent Black 2001).

10 J Devika, *Engendering Individuals: The Language of Re-forming in Early Twentieth Century Kerala* (Orient Blackswan 2007).

Taken together, these studies demonstrate that masculinity in India cannot be reduced to a fixed cultural essence, rather produced through ideological historical processes visible through quotidian interactions. Post-colonial masculine identities were reshaped especially visible through the responses of nationalists and reformers. The debate categorically examines various intersectional frameworks to understand reform and control simultaneously.

3. COLONIAL ENCOUNTERS: INTERACTION OF THE PUBLIC AND THE PRIVATE

Women's upliftment was a central concern of the nineteenth and early twentieth century British India. Social reform destabilised the Indians compelling them to re-evaluate their cultural traditions *vis a vis* the West.¹¹ Their treatment was framed as the measure of society's morality and cultural identity.¹² The efforts made towards reform remained chained to caste, patriarchy and nationalism.¹³ The abolition of sati in 1829 under Governor-General Lord William Bentinck is often seen as the first major colonial intervention into women's lives. Reformers like Raja Rammohan Roy condemned sati as a distortion of Hindu scripture and a violent patriarchal practice.¹⁴ While the ban was supported by emerging liberal elites, conservative factions viewed it as an attack on Hindu autonomy. The debate over sati marks the beginning of a pattern in which women's bodies and social roles became battlegrounds for negotiating cultural authority under it.¹⁵

A. Child Marriage and the Age of Consent

The question of child marriage emerged prominently in the late nineteenth century. Legal cases such as the tragic death of Phulmoni Dasi and the notable *Rakhmabai* case (1884–1888) generated widespread debate.¹⁶ Reformers including Ishwar Chandra Vidyasagar, Keshub Chandra Sen, and Behramji Malabari advocated state intervention to prevent child marriage, arguing for modern conjugal values rooted in consent and maturity.¹⁷ However, nationalist

11 Uma Chakraborty, *Gendering Caste Through a Feminist Lens* (Popular Prakashan 2011)42.

12 Lata Mani, *Contentious Traditions: The debate on Sati in Colonial India* (University of California Press 1998)125.

13 Sumit Sarkar and Tanika Sarkar (eds), *Women and Social Reform in Modern India: A Reader*(Indiana University Press 2011)182.

14 Ramkrishna Mukherjee, *The Rise and Fall of the East India Company* (Popular Prakashan 1974)77.

15 Lata Mani, *Contentious Traditions: The debate on Sati in Colonial India* (University of California Press 1998)132.

16 Geraldine Forbes, *Women in Modern India* (Cambridge University Press 2011)58.

17 Mytheli Sreenivas, *Wives, Widows and Concubines: The Conjugal Family Ideal in Colonial India* (Indiana University Press 2008)212.

leaders like Bal Gangadhar Tilak opposed such laws, claiming they permitted colonial intrusion into Hindu domestic life. The Child Marriage Restraint Act of 1929 (popularly known as the Sharda Act) represented a partial victory for reformers, though enforcement remained limited.¹⁸ The Age of Consent debate framed female sexuality almost exclusively in terms of reproduction and moral propriety, marginalizing autonomy and personal choice. This was visible in the dominant Anglo-Indian medical opinion¹⁹, the Calcutta Medical Society²⁰, the opponents of the Bill, as well as the nationalist actors.²¹ Consequently, the public opinion and discussion of sexuality by women was disparaged. Despite the apparent opposition, both the colonial advocates and the nationalist opponents upheld patriarchal norms and reinforced male authority. Both the supporters and the opponents emphasized reproductive readiness and morality, demonstrating convergence in gendered assumptions.²²

B. Widow Remarriage and Property Rights

Widowhood was a deeply stigmatized condition, especially among upper-caste Hindu communities. Vidyasagar's campaign for widow remarriage culminated in the Hindu Widow Remarriage Act of 1856, yet widow remarriage remained rare due to economic and caste-based anxieties.²³ Property rights were central to these debates. The Married Women's Property Act of 1874 and the Hindu Women's Right to Property Act of 1937 created openings for women's economic security, but patriarchal and joint-family norms continued to limit women's ability to exercise legal rights.²⁴

C. The Devadasi System and the Anti-Nautch Movement

18Nupur Chaudhuri and Margaret Strobel (eds), *Western Women and Imperialism: Complicity and Resistance* (Indiana University Press 1992)94.

19 Which equated puberty with readiness for sexual activity. A number of Anglo-Indian papers criticized Hindu women for openly discussing sexual practices, framing them as morally "debased." Medical expertise was also invoked to justify controlling female sexuality and regulating marriage practices. Dr. Cheevers' work argued that Bengali girls were artificially "ripened" for sexual intercourse. Lady Doctors like Edith Pechey - Phipson proposed higher ages for female consent yet faced criticism for perceived emotional bias. The medico-legal data on sexual abuse of child-wives were instrumental in reinforcing gendered and nationalist arguments rather than advancing women's rights.

20 Colonial officials also reinforced this view.

21 These agreed that women's sexual and reproductive capacity defined their "fitness" for marriage and consent.

22 The supporters highlighted sexual abuse of child-wives as evidence for the Bill, focusing on male depravity rather than systemic exploitation. The opponents claimed European "honeymoon" practices were more harmful than Indian child-marriages, shifting attention from child-wives to adult women as the source of male sexual excitement.

23 Sumit Sarkar. *Writing Social History* (Oxford University Press 1997)201.

24 Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton University Press1993)147.

By the late nineteenth century, the devadasi institution had come under scrutiny for its association with hereditary female performers whose labour was increasingly sexualized under colonial moral frameworks.²⁵ The Anti-Nautch Movement sought to abolish temple dancing, framing it as immoral. However, this movement often erased the cultural and artistic contributions of devadasi women. Figures like Rukmini Devi Arundale participated in reconstructing Bharatanatyam as a 'classical' art detached from its Devadasi lineage.²⁶ Legislative steps including the Bombay Devadasi Protection Act, 1934 and the Madras Devadasi Act, 1947 formalized prohibition, though the practice persisted in altered forms. Women's education was central to reform discourse; missionaries, reformist religious societies such as the Brahmo Samaj, Prarthana Samaj, and Dev Samaj and the aristocratic patrons supported female schooling.²⁷ Early education focused on domestic virtues meant to produce refined wives and mothers but the emergence of new women²⁸ signalled the beginning of women's entry into professional spheres. However, educational reforms remained class and caste specific, benefiting primarily upper caste urban women but were framed for the service of the family and the nation.²⁹ Indian women, though active in advocacy, were largely excluded from the dominant discourse.³⁰ Some were constrained by orthodox restrictions and the narrow framing of the debate and some were silent.³¹ The debates on matters of women reinforced colonial notions of male authority, tying legal and moral legitimacy to masculinity. The colonial and nationalist discourses valorised male judgment over female autonomy, reinforcing the invisibility of women's public agency.³²

The debate illustrates how colonial and nationalist agendas intersected to shape social reform, law, and gender norms. The Nationalist opposition to the Bill framed resistance as moral or

25 Daves Soneji, *Unfinished Gestures: Devadasis, Memory, and Modernity in South India* (University of Chicago Press 2012) 33.

26 Janet O'Shea, *At Home in the World: Bharata Natyam on the Global Stage* (Wesleyan University Press 2007) 119.

27 Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996) 71.

28 Like Kadambini Basu, the first Indian woman graduate (1883)

29 Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1993) 164. The establishment of institutions such as Lady Hardinge Medical College in 1916 expanded women's professional possibilities but continued to frame women's education in service of the family and nation

30 Both Pandita Ramabai and Rakhmabai Modak organized women's support in Bombay and Poona, including Bengal middle and the upper-class women were less visible.

31 The women's periodicals, such as the *Bambodhini Patrika*, were largely silent on the Bill until decades later, despite a tradition of writing on child-marriage and early maternity. Various petitions and separate women's meetings in support of the Bill were systematically ignored in colonial and nationalist narratives.

32 The newspapers and officials repeatedly emphasized male self-restraint as the proper response to sexual matters, while criticizing women for public engagement. This is seen in the framing of the debate, particularly in Bengal where there was limited participation of elite women and the centrality of male authority was maintained.

cultural defence yet relied on colonial assumptions about female sexuality. Colonisers aligned their reforms keeping in mind colonial masculinity to shape its legal discourse which was reinforced by its critiques oblivious to gender, race and class. This complex interplay was visible through their interaction wherein the reformist efforts actively worked towards women's marginalization, structurally erasing her agency.

4. EMERGENCE OF WOMEN AS POLITICAL AGENTS

In the late 19th and early 20th centuries, a new class of women emerged in India whose interests extended beyond the domestic sphere. Educated in English as well as in vernacular languages, these women began communicating with others in their communities and became increasingly aware of women's conditions in Indian society through reading journals and periodicals. Marginalized by traditional norms, they sought companionship among like-minded women and were often encouraged by men to join women's associations and clubs. Local women's organizations and auxiliaries of the Indian National Congress and the National Social Conference soon developed, reflecting women's growing social and political concerns.

In the early years of women's participation in the public, many women's organizations were founded by men,³³ often as extensions of contemporary religious reform movements. The Brahmo Samaj, for instance, developed educational programs, journals, and regular meetings to advance women's education. The Sadharan Brahmo Samaj also promoted gender equality, forming associations that included both men and women. Similarly, the Prarthana Samaj took up social reforms for women's upliftment. These groups imagined the ideal woman as a capable housewife who would enter the public sphere only in times of crisis, such as floods, famines, or plagues.³⁴ However, women doubted whether their male colleagues truly addressed women's issues. The women soon demanded that such organisations be restricted only to women or called for a separate women's wing for their own discussions. The Bharata Mahila Parishad³⁵ in its first meeting, saw the participation of around 200 women excluding men and discussed matters such as medical relief, domestic life, early marriage, and child welfare.³⁶ Attendance

33 In 1882 Justice Ranade assisted Pandita Ramabai Saraswati in establishing the Arya Mahila Samaj, dedicated to the general enlightenment and progress of women. Weekly lectures were held in private homes, allowing women to gather, learn, and build friendships.

34 'Arya Mahila Samaj' (n.d) notes by Mrs Leela Joshi (received from the author); 'Arya Mahila Samaj: An Appeal' (n.d.), encyclostyled sheet received from Sarojini Pradhar; 'Pandita Ramabai Saraswati' *Women's Forum* (March–April 1972) cited in Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996) 66.

35 An auxiliary of the National Social Conference, was formed seventeen years after the NSC's establishment.

36 'The Ladies Gathering' *Indian Ladies' Magazine* 4 (1905) 219-220 in Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996) 67.

soon grew to nearly 700 women. Their aim in meeting separately was to first educate themselves about these issues before engaging in broader reforms.³⁷ Similarly Stri Zarhosti Mandal (Parsee Women's Circle) and Anjuman-e-Khawatin-e-Islam (Muslim Women's Association)³⁸ in Punjab worked under the support of powerful men led by elite women.³⁹

However, male-led organizations often imposed limitations on women's roles. They continued to regard the household as a woman's primary domain, envisioning her as a modernized homemaker knowledgeable in hygiene and child-rearing. Women were encouraged to participate in social service but discouraged from engaging in political agitation. Women in these organisations were not treated as equal companions. Their independence was curtailed whenever they acted autonomously.⁴⁰ For instance, Haimabati Mitra, a child widow from Bengal, responded to Brahmo Samaj stating, "the future depends on God's will, of course. My wishes are of little consequence."⁴¹ Similarly, in the Parsee Panchayat, women's proposals of eliminating gender-based discrepancies of inheritance rules were rejected. Britishers also failed in their attempt to extend women's autonomy. In *Rukhmabai's* case the court ordered her to live with her husband or face imprisonment, which was supported by Bal Gangadhar Tilak as it was consistent with the Dharmashastras, although Rukhmabai Defence Committee fought hard to dismantle it. Geraldine Forbes points out that the modern colonial administrators could not protect women who challenged patriarchy.⁴² She further observed that by August 1947 women's organizations were the second most representative body that trained women for leadership. This 'new woman' was both a companion, an ideal mother and a credit to her nation.⁴³ The legal reforms addressed critical injustices and social change unfolded gradually and unevenly. The reform movements simultaneously opened new possibilities for women and reinforced patriarchal control by defining women's progress in terms of national honour and

37 Annual membership Data available in Indian Ladies Magazine 1906–1908 cited in Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996) 68.

38 Begum Shah Nawaz and her mother, Amir-un-Nisa, initially worked in male-founded organizations but later established independent groups such as the Anjuman-e-Khawatin-e-Islam (Muslim Women's Association) in Punjab, eventually playing a leading role in the All-India Muslim Women's Conference.

39 Among other initiatives was the Stri Zarhosti Mandal (Parsee Women's Circle), engaged in plague relief under Mr. Naoroji Patuck's guidance. Its first president, Miss Sherenmai M. Cursetjee, held the position for 36 years. Supported by Sir Ratan Tata, the Mandal organized medical aid and vocational training programs. *See generally* Geraldine Forbes, *Golden Jubilee Stri Zarhosti Mandal, 1903–1953*(1953); 'Silver Jubilee Sir Ratan Tata Industrial Institute, 1928–1953', (Bombay 1953) 5-7.

40 Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996) 69.

41 *Ibid*

42 Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996)70

43 Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996) 64–65.

cultural continuity. The emergence of women-led organizations ultimately altered the terrain by asserting women's own political subjectivity and their right to shape public discourse.

A. The Women's India Association

The Women's India Association (WIA) founded by Margaret Cousins started in 1915. The members of this organisation were women who belonged to regional organisations, Tamil Madar Sangam and Theosophical Society who later joined the National Indian Association. These organisations wanted to combine education with recreation activities of crafts and sports. The results went in favour of women as there was no opposition from the Hindu men.⁴⁴ Membership was open to both the Indians and the Europeans. By the end of its first year there were 33 branches and after a span of another five years 2300 members. All branches were self-governing which mobilized the branches to express women's opinion.⁴⁵ The WIA was the women's organization who met the Secretary of State Montagu in 1917 to request the franchise for women. The Association also wrote extensively on current events, women's conditions and matters of interest of women. But the Associations had its limitations. Its members pointed out the difficulty to bring the reluctant sisters together. Simultaneously there was enthusiasm among the elite women all over India to form local branches. They collected funds to begin classes which saw mainly adult participants. The association also organised lectures on franchise, hygiene and child welfare.⁴⁶ The WIA also fought for the self-respect momentum where they wanted to establish a caste free society for students. The Self Respect movement limited the appeal of WIA to caste women. By the early twentieth century, women themselves began to form and lead organizations such as the National Council of Women in India and All India Women's Conference (1927). These groups shifted reform discourse from philanthropy to rights-based activism. They advocated legal equality, expanded educational access, and women's suffrage, linking women's emancipation to nationalist goals.⁴⁷ This period marks the transition of women from objects of reform to subjects of political agency.

B. The National Council of Women in India

44 D. Jinarajadasa, 'The Emancipation of Indian Women' in C.W. Dijkgraaf (ed), *Transactions of the Eighth Congress of the Federation of European National Societies of the Theosophical Society, held in Vienna, July 21-26, 1923*(Amsterdam 1923)86.

45 Women's India Association, *Quinquennial Report, 1917-1922*, (WIA Papers).

46 Correspondence between Chhanganram Mehta to D. Jinarajadasa (May 2, 1918); C. Mehta to M. Cousins (June 17, 1991); C. Mehta to Dear Sisters cited in Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996)74.

47 Prachi Deshpande, *Creative Pasts: Historical Memory and Identity in Western India, 1700-1960* (Columbia University Press 2007)211.

The National Council of Women (NCWI) in India was formed in 1925 by establishing links with the International Council of Women (1888). They opposed passive charity and worked by forming committees to collect information, prepared memoranda and presented it to the authorities towards freedom of movement for women. One such Committee dealt with legislation and was active under the leadership of Mithan Tata Lam, the first Indian woman to pass the bar exam. Thus, petition politics became the active arena of this organisation. The women leaders followed their male counterparts and proved to the British officials that they too were the enlightened 'new women.' The severe drawback of this organisation was its high membership fees resulting in lack of participation of local women. It was also politically and socially conservative as it remained aloof from the struggle for independence.⁴⁸ There were many within the organization who defied the orders of the leaders and fought for the rights of women workers but received backlash within and outside her organisation.⁴⁹

C. The All-India Women's Conference

The All-India Women's Conference (1927) aimed at developing educational models suitable for Indian women and informing the British government. They organised themselves to prepare a memorandum. In these conferences it was clear that they wanted to develop models where their position would act as supplemental to that of men. They would also focus on ideals of motherhood and other welfare programs. They called for moral and physical education for women and deplored against child marriage and for educating women under purdah.⁵⁰ During the Civil Disobedience Movement the organization decision remained apolitical. Their project was not popular with Muslim women as they were strictly against the tampering of the Quran.

The engagement of the women's organisations especially in Child Marriage Restraint Act helped them recognise the importance of effective petitioning and action. In 1860 the age of consent for both married and unmarried girls was fixed at 10 years which was questioned in the 1880s. By 1891, the amendment of the criminal code the age of consent was increased to 12. However, the matter resurfaced after a span of three decades. In 1927, Rai Sahib Harbilas Sarda introduced the Hindu Child Marriage Bill but simultaneously Katherine Mayo published her

48 Bengal Provincial Council Report, *NCWI Report 1928-1929*, cited in Geraldine Forbes, *Women in Modern India* (Cambridge University Press 1996)75-77; When an Indian woman was called for the post of a Probationary Officer she was soon replaced by a British Woman, since it was considered too progressive for the Indian women which must be avoided.

49 The activities of Maniben Kara were questioned both by women workers and her organisation for her attempts to include women as important participants of trade unions.

50 All India Women's Conference, *Report on Educational Reform, Poona (January 1927)* (AIWC Library New Delhi) 28-32.

famous work *Mother India*. Coming from a Britisher it undoubtedly attacked the Indian social customs, berating Indian men for raping the child brides. The reform movements and the associations displayed a similar feature whereby both colonial and nationalist actors prioritized moral propriety over female autonomy. Hereby, the study of colonial masculinity helps us to see the deep connections between gender, power, and empire.

5. INDIAN CONSTITUTION AND LEGAL DUTY

After the adoption of the Constitution in 1950, India witnessed a major shift from the colonial paternalism which was accompanied by a novel ideal national framework having its own constitutional morality. This transformation was about the acknowledgement of women's rights as constitutional requirements, not just mere acts of reform. The deliberations made within the Constituent Assembly stays witness of this transformative journey. Members such as Hansa Mehta, Renuka Ray and Durgabai Deshmukh advocated for the recognition of gender equality as a fundamental right. Hansa Mehta had asserted that "equality must not remain a pious wish but must be made a justiciable right."⁵¹ Further, she was of the opinion that equality could lead to attaining social, economic and political justice in independent India and it would serve as the foundation of mutual understanding and cooperation between men and women.⁵² Thus, her role was significant in shaping the culture of constitutional governance which shifted from protective paternalism to a model based on equality. This lead to the shaping of texts and the spirit of equality and non-discrimination enshrined in Articles 14,15 and also extended it to public employment through Article 16 of the constitution of India.⁵³ Additionally, Article 15(3) enshrined that state could make special provisions for women as well as children which recognised that formal equality cannot eradicate deeper structural inequalities of post-colonial societies.

6. POLITICAL RESPONSIBILITY AS A CONSTITUTIONAL LIABILITY

It is the constitutional obligation of India to uphold the idea of gender protection and not merely a political goal of the state. This gets strengthened by the assertion of affirmative actions by the state for women to achieve substantive equality and not just formal equality. Dr. B. R. Ambedkar advocated in the Constituent Assembly that women's equality was crucial to the

⁵¹ Constituent assembly debates, Vol VII (22 November 1948)889

⁵² Hansa Mehta, 'Social, Economic and Political Justice for Women of India' in *Selected Speeches of Women Members of the Constituent Assembly* (Rajya Sabha Secretariat, New Delhi2012)67-68.

⁵³ Constituent Assembly Debates, Vol. VII (22 November 1948) Speech of Hansa Mehta on art 15 (Draft Constitution art 9); Constituent Assembly Debates, vol. VII (24 November 1948) Debates on special provisions for women (art 15(3)).

‘foundation of democracy’ and could not rely solely on political goodwill.⁵⁴ Similarly, the evolution from moral obligation to legal liability is a pivotal theme in the jurisprudence of the Supreme Court of India. In its formative years, constitutional development was characterized by a narrow interpretation of equality, as evidenced in the case of *State of Madras v Chamapakam Dorairajan*.⁵⁵ However, subsequent rulings marked a significant expansion of the interpretation of state responsibility. This line of interpretation also applied to the issue of gender equality. The Supreme Court has considered this as pivotal for imposing a positive constitutional duty on the state. In *C.Masilamani Mudaliar v Idol of Sri Swaminathaswami*, the court states that gender equality and dignity are not just goals to strive for; they are “constitutional goals to be attained.”⁵⁶ In *Air India v Nargesh Mirza*, the court struck down discriminatory employment rules. These rules violated Articles 14 and 16 by reinforcing gender stereotypes and undermining women’s dignity.⁵⁷ In *Vishakha v State of Rajasthan*⁵⁸, the court asserted that gender equality is not only about protection from sexual harassment but also to ensure the right to work with dignity. It was further affirmed by the court that state has to take active measures to prevent gender assaults and ensure institutional safeguards as a key essential under Articles 14, 15, and 21 of the constitution. The court also emphasized on the necessity to bridge domestic constitutional guarantees with international commitments, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In *Lata Singh v State of Uttar Pradesh*⁵⁹, the court ruled that infringement of women’s right to select her partner is a violation of Articles 14, 19 and 21 of the Constitution of India. Thus, it asserted that it is imperative for the state to protect individual autonomy and this duty is not discretionary but rooted in the constitutional guarantees of upholding fundamental rights. In the judgement of *Mukesh v State (NCT of Delhi)*⁶⁰ the court emphasized on the constitutional moral obligation of the state to guarantee the safety of women which is an integral component of the right to life and dignity. It reframed the idea of protection, construing it not merely as an act of charity but a constitutional entitlement. Thus, the accountability of the state extends beyond taking legislative measures, the necessity of effective enforcement, institutional reform, and a comprehensive approach towards gender sensitization across all governance frameworks.

54 Constituent Assembly Debates, Vol. VII (22 November 1948) 781 (Speech of Dr. B. R. Ambedkar).

55 AIR 1951 SC 226

56 (1996) 8 SCC 525, 532.

57 (1981) 4 SCC 335, 349-350.

58 1997 6 SCC 241

59 2006 5 SCC 475

60 2017 6 SCC 1

There are robust jurisprudential and theoretical concepts inherent within the discourse of political responsibility to ensure gender protection. In *A Theory of Justice*, John Rawls asserts that there shall be fairness in the allocation of rights and opportunities. When this applies to the realm of gendered political responsibility it becomes essential to ensure that women's freedoms transcend formal acknowledgement and are substantively real thus making it an enforceable right. To achieve this goal, state must design institutions that mitigate and combat social and economic inequalities, thereby preventing the materialization of gendered vulnerabilities. Furthermore, the notion of Rawls on 'duty of justice' reflects well within the Indian constitutional framework where the governance mechanism is a vehicle of moral responsibility to reinforce equitable treatment and opportunities for all genders.⁶¹ Analyzing this discourse through a feminist critical lens reveals significant limitations within the theories. Catherine Mackinnon have contended that legal neutrality facilitates the perpetuation of male dominance by overlooking structural subordination of women. This critique demanded for a more nuanced understanding of equality which avows systemic inequalities embedded within the legal realm.⁶² Thus, legal system should recognise gender not as a mere identity but a complex power dynamic that affects social interactions. In line with this perspective, Martha Nussbaum's 'Capabilities Approach' asserts on developing a framework by the state which enables all individual to function in ways which is in consonance with their capabilities, thereby fostering a more equitable social structure.⁶³ Thus, the state has not only the responsibility to enact laws but also foster social conditions that facilitates women to fully realize and enjoy their potential. Judith Butler introduces a post structural perspective to this discussion, wherein she argues that the legal discourse on women's protection by the state reinforces the patriarchal understanding of a victim.⁶⁴ Consequently, political responsibility of the state includes a critical self-reflection on how the protective frameworks sustain dependency.

The constitutional jurisprudence has adopted the progressive discourse on substantive equality, reflecting the feminist ideology as discussed above and it is notably seen in cases like *Anuj Garg v Hotel Association of India*. The court's remarkable adoption of transformative jurisprudence is reflected through its articulation that "legislation grounded in protective discrimination must be re-examined from the standpoint of empowerment."⁶⁵ These pivotal

61 John Rawls, *A Theory of Justice* (Rev Edn, Harvard University Press 1999) 3

62 Catherine Mackinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989)238-240.

63 Martha C Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press 2000) 5-6.

64 Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge 1990) 4-6.

65 (2008)3 SCC 1

moments signifies that the Indian constitutional journey has shifted the role of the state as mere protector to an active emancipator, thereby establishing a robust expression of political responsibility as a form of constitutional accountability.

7. INTERNATIONAL FRAMEWORK AND COMPARATIVE CONSTITUTIONALISM

The discourse on women's protection in India must be seen in the context of comprehensive legal contours of international human rights law. The mid twentieth century marked a seminal period wherein global consensus developed on the principle of gender equality. This consensus was expressed in key international instruments like the Universal Declaration of Human Rights (UDHR, 1948) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979). These instruments imposed obligation on state parties to eradicate all forms of discrimination through essential legislative and administrative measures aimed at achieving gender equality. This consequentially imposed an imperative on India to develop robust legal framework to protect and promote women's rights.⁶⁶

Article 2 of the CEDAW mandates that states establish legal protections for women's rights through competent tribunals. Additionally, Article 5 asserts for the modification of social and cultural patterns that perpetuate gender stereotypes.⁶⁷ In 1993, India ratified the Convention, marking a significant shift from perceiving gender justice as a social issue to recognizing it as a legal obligation. This reasoning was established in the case of *Vishakha v State of Rajasthan* where the court noted that "any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions."⁶⁸ This approach affirmed CEDAW's principles of dignity, equality, and protection from gender based harm into enforceable norms inherent in the heart of Indian constitutional law. Later, *Apparel Export Promotion Council v A K Chopra*⁶⁹ reaffirmed this interpretative approach and focused on judiciary's role in aligning international human rights law with the constitutional guarantees. Thus, it asserted on India's commitment to CEDAW which moved gender justice from a policy goal to a legal requirement. This judicial stand also establishes that political responsibility transcends national boundaries.

⁶⁶ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, arts 2-5.

⁶⁷ *Ibid*

⁶⁸ (1997) 6 SCC 241, 249 (para 7-8).

⁶⁹ (1999) 1 SCC 759, 772 (para 26).

Numerous constitutional regimes of the world have integrated the principle of gender equality as a key indicator of democratic legitimacy. The United Kingdom (UK) had a complicated legal system that used to operate within the European Union and the European Convention on Human Rights (ECHR), which is now included in the Human Rights Act. The UK's legal framework was consolidated with the Equality Act, 2010, which addressed direct discrimination, indirect discrimination, but it offers very limited provisions for affirmative action.⁷⁰

Notably, the South African constitution of 1996 enshrines the concept of equality before the law in Section 9, which not only mandates the protection of women's rights but also empowers the implementation of affirmative action to promote gender equity. While the Canadian Charter of Rights and Freedoms, 1982 enunciates the principle of equality before law in Section 15.⁷¹ Both of the legal developments in these states affirm the importance of equal treatment before law and also validates affirmative actions as a means to address historical and systemic inequalities. By acknowledging this, the constitutional commitment expressly asserts political responsibility with the pursuit of transformative justice which would be designed to uplift the marginalized groups of the society. India's constitutional framework although perceives protection of a women as a matter of governance than a mere obligation but it's experience is shaped by its historical legacies of caste hierarchy and patriarchy. Thus, it necessitates a comprehensive consideration of gender, class and community and their impact on governance and policy making.

8. POST-COLONIAL GOVERNANCE AND THE PERSISTENCE OF PATRIARCHAL STRUCTURES

Despite the constitutional developments the post-colonial governance in India has kept many colonial bureaucratic reminiscences. The state still views women as vulnerable entity who is dependent on patriarchs.⁷² For instance, the Dowry Prohibition Act, 1961, while progressive in intent, was enforced through a criminal justice system influenced by patriarchal policing and biases in evidence. Similarly, the Immoral Traffic (Prevention) Act, 1956 led to the criminalization of women instead of providing them protection.⁷³ The persistence of these administrative attitudes reflects what Ratna Kapur calls the "post-colonial governance of

⁷⁰ Equality Act 2010, s s 13, 19 (U.K.)

⁷¹ Canadian Charter of Rights and Freedoms 1982, s 15(2).

⁷² Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India 1800-1990* (Zubaan 1998) 174-178.

⁷³ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999) 96-101.

sexuality.” This is a system where women’s bodies are subject to control, surveillance, and rescue.⁷⁴ Political responsibility, in this sense, is weakened when protection focuses on discipline instead of empowerment.

The concept of political responsibility also connects with economic policy. Since the 1990s, neoliberal reforms have changed the gender dynamics of labour, mobility, and vulnerability. More women are joining the informal sector, which has exposed them to new risks like insecurity, lack of social protection, workplace harassment, and gender based violence in public places.⁷⁵ The state’s response has often been limited to legislative actions like the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which was a delayed development after the 1997 *Vishakha* judgement. This projects the difference between states’ commitments and actual implementation. Feminist economist Naila Kabeer points out that, “the rhetoric of empowerment cannot substitute for the redistribution of power.”⁷⁶ Therefore, political responsibility must involve structural changes that address not only legal gaps but also the socio-economic factors that contribute to vulnerability. In contemporary India, discourse around protection promotes cultural nationalism through campaigns promoting moral policing which shows a persistent paternalistic approach.⁷⁷ Hence, it becomes the legal duty of the state to overcome the continuing historical patterns.

9. THE CONTEMPORARY CRISIS OF POLITICAL RESPONSIBILITY

Judicial activism cannot replace political accountability as observed in the case of *Nirbhaya* which sparked off public outrage leading to mammoth legislative reforms. However, the ongoing failures in implementation show a pattern of inaction. In *Independent Thought v Union of India*⁷⁸, the court read down the marital rape exception for girls aged 15 to 18, acknowledging that sexual autonomy is a constitutional value. However, the failure to criminalise marital rape for adult women shows the reluctance of political institutions to turn judicial rulings into laws. While the judiciary defines the moral responsibility, the executive and the legislature have the duty to carry it out.

74 Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (Glasshouse Press 2005) 54-59.

75 Kalpana Kannabiran, ‘Women, Law and the State: India’s Contemporary Debates’ (2014) 49 (2) *Contributions to Indian Sociology* 139, 141.

76 Naila Kabeer, *Reversed realities: Gender Hierarchies in Development Thought* (Verso 1994) 105, 106.

77 Tanika Sarkar, *Hindu Wife, Hindu Nation: Community, Religion and Cultural Nationalism* (Permanent Black 2001) 203-207.

78 2017 10 SCC 80

The failure to ensure women's safety, especially in rural and conflict prone areas, shows a lack of political commitment. The National Crime Records Bureau (NCRB) reported in 2023 that crimes against women rose considerably from the previous years, with over 4,48,211 cases registered nationwide.⁷⁹ Despite this alarming data, funding for women's welfare programmes remains low. It is less than 0.6% of the total union budget for 2024-2025.⁸⁰ This gap highlights the rhetoric behind ensuring substantive equality of women and treating them as coequals. In this context, political responsibility requires accountability in financial, administrative, and ethical matters.

The media also has a role in generating public discourse and their narratives frequently sensationalize violence against women while neglecting structural causes. Feminist media scholar Shohini Ghosh asserts that "the mediatization of sexual violence often transforms political failure into a spectacle of national shame, devoid of systematic critique."⁸¹ The public anger following incidents like the Nirbhaya⁸², Hathras⁸³, R.G. Kar Medical College,⁸⁴ Durgapur Medical College student's⁸⁵ rape cases show a moral awakening, but often the reaction from political quarters is reflective of a patriarchal undertone which blames the victim for her plight.⁸⁶ However, political institutions often react with symbolic laws instead of real change.⁸⁷ Genuine political responsibility requires not just reactive governance but also proactive changes in social norms through education, awareness, and representation.

A. Accountability Gaps and the Path Ahead

⁷⁹ National Crime Records Bureau, *Crime in India 2023* (Ministry of Home Affairs, 2024) 72.

⁸⁰ Government of India, *Union Budget 2024-2025: Gender Budget Statement* (Ministry of Finance 2024) 6.

⁸¹ Shohini Ghosh, 'Violence Against Women and the Politics of Representation' (2015) 50 (43) *Economic and Political Weekly* 56, 59.

⁸² Garima Bakshi, 'The "Nirbhaya" Movement: An Indian Feminist Revolution' (2017) 17 (2) *GNOVIS Journal Georgetown University A journal of communications, culture and Technology* file:///C:/Users/hi/Downloads/Garima_Bakshi.pdf accessed 1 November 2025.

⁸³ Namita Bajpai and Somrita Ghosh, 'Hathras gangrape victim even denied dignity in death' *The New Indian Express* (1 October, 2020) <https://www.newindianexpress.com/nation/2020/Oct/01/hathras-gang-rape-victim-even-denied-dignity-in-death-whats-happening-in-up-2204146.html> accessed 1 November 2025.

⁸⁴ Pushkar Tiwari, A Rape-Murder, Then Massive Protests: Timeline of Kolkata's R.G. Kar College Case' *NDTV* (18 January 2025) <https://www.ndtv.com/india-news/rg-kar-hospital-rape-murder-case-sanjay-roy-a-murder-then-massive-protests-timeline-of-kolkata-college-case-7501913> accessed 1 November 2025.

⁸⁵ 'Bengal Governor files report on Durgapur gang rape to President, Home Ministry: Official' *The Hindu* (16 October 2025) <https://www.thehindu.com/news/national/west-bengal/bengal-governor-files-report-on-durgapur-gang-rape-to-president-home-ministry-official/article70169761.ece> accessed 1 November 2025.

⁸⁶ Erin Watson Lynn, 'India-still blaming victims for violence against women' *The Interpreter* (Lowy Institute, 16 January, 2017) <https://www.lowyinstitute.org/the-interpreter/india-still-blaming-victims-violence-against-women> accessed 2 November 2025; Namita Bhandare, 'Rape and victim-blaming cues from leaders, judges' *Hindustan Times* (18 October, 2025), <https://www.hindustantimes.com/opinion/rape-and-victim-blaming-cues-from-leaders-judges-101760804810103.html> accessed 1 November 2025.

⁸⁷ Shohini Ghosh, "Violence Against Women and the Politics of Representation" (2015) 50(43) *Economic and Political Weekly* 61

Nivedita Menon argue that the feminist movement needs to shift from asking for protection to demanding autonomy and justice. Menon believes that protection is a patriarchal idea that treats women as dependents of the state. Political responsibility should be seen as a duty to promote women's involvement in public decision making, and it should not be confined within the idea to keep the 'weaker sex' safe. This translates into ensuring that women are represented in legislatures, bureaucracy, and the judiciary, thereby changing the gendered structure of political power itself. The debate about women's rights increasingly refers to restorative and transformative justice frameworks which unlike punitive models, focuses on reconciliation and reform. It also recognises the systemic nature of perpetuating gender injustice.⁸⁸ The Justice Verma Committee Report of 2013 recommended a broad set of reforms to combat sexual violence against women. It suggested to connect legal reforms with police training, education and community development.⁸⁹

The half-hearted implementation by the administration of these recommendations shows a need of developing a culture within the administration which acknowledges that political responsibility goes beyond creating laws. Thus, the *grundnorm* of Indian administrative regime has to be interpreted in the light of feminist perspective. Feminist constitutionalists Catherine Albertyn and Ruth Rubio –Marin suggests a governance whose fundamental ideology should be shaped around gender justice focusing on care, equality, and participation.⁹⁰ While the Indian constitutional ideology is focused on Articles 14, 15 and 21 which reflects the ideological basis of Albertyn and Marin. However, the need is the political will to transform these ideological thrusts into tangible experiences.

10. CONCLUSION

The study of associations, organisations and social reform movements helps us in understanding the two major issues in relation to colonialism. The first is how to move beyond narrow political debates that focus on only one issue at a time. The second is how to rethink history so that the experiences of both colonizers and colonized people are understood together, not as separate stories. Examining colonial masculinity gives us new ways to connect and understand feminist and anti-colonial ideas. Social and political movements often treat

88 Pratiksha Baxi, "Rethinking Gender Neutrality in Law: The Case of Domestic Violence in India" (2012) 19(2) *Indian Journal of Gender Studies* 193, 196.

89 Justice JS Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India 2013) 10-12.

90 Catherine Albertyn and Ruth Rubio Marin, 'Feminist Constitutionalism: Global Perspectives' in Beverley Baines, Daphne Barak Erez and Tsvi Kahana (eds), *Feminist Constitutionalism* (CUP 2012) 15-19.

feminism and cultural nationalism as if they cannot work together. However, understanding masculinity within the context of colonialism shows that these two are deeply linked and that neither can be fully understood in isolation.

Research on colonial India had mainly focussed on women especially in their role in nationalist movements and how it affected them. After close scrutiny it can be observed that it was patriarchy which shaped both nationalism and parallelly reinforced patriarchal ideas through its anti-colonial movements, often suggesting that the goals of anti-colonialism were limited by gender hierarchies. The study of colonial masculinity reveals that feminist and anti-colonial struggles cannot be separated, because both are part of the same system of power. Feminist scholars have often examined how patriarchy had shaped gender roles, the study of colonial masculinity shows that ideas of manhood were also influenced by race, class, religion, and nationality. Thus, feminist analysis must consider all forms of social relations i.e., economic, political, and cultural and not just gender alone, in order to understand how gender operates within wider systems of power. The interaction between the “manly Englishman” and the “effeminate Bengali”⁹¹ in the nineteenth century demonstrates that British and Indian histories were closely linked through imperialism, both seen as parts of one imperial system both influencing each other. This integrated approach also sheds light on debates about class and power in both Britain and India.⁹² Placing these discussions within the same imperial framework reveals that both societies were shaped by the same global structure of empire and capitalism.

This nexus in the contemporary politico-legal backdrop has to be seen in the light of the concept of political responsibility regarding the legal protection of women in India. It is a dynamic and intricate obligation, shaped by historical contexts, colonial legacies, and feminist advancements. The combined interpretation of Articles 14, 15 and 21 establishes a gender sensitive rule of law where political responsibility resonates with constitutional accountability but despite the promises of emancipation inherent in the constitution, systemic patriarchy persists the institutions of governance. Judicial developments from *Vishakha* to *Anuj Garg* shifted the ideology from moral aspiration to enforceable right through emancipatory legislations. Nevertheless, as feminist scholar Catherine Mackinnon asserts “law’s neutrality is

91 Mrinalini Sinha, *Colonial Masculinity: The ‘Manly Englishman’ and The ‘Effeminate Bengali’ in the Late Nineteenth Century* (Manchester University Press 1995)

92 In Britain, historians have long argued about whether the ruling class was mainly aristocratic or bourgeois. Meanwhile, historian Ranajit Guha has shown that both the British and Indian elites in colonial India ruled through force rather than consent—a form of control he called “dominance without hegemony.”

often male,” explains that equality is usually understood from a masculine point of view.⁹³ Thus, political responsibility is not to follow legal rule but to seek a shift in governance to achieve substantive equality and dignity for women. The constitutional ideal of justice should be seen in the light of India’s commitment to international instruments like the CEDAW and Beijing Platform for Action. Hence, elements like caste, class, religion and sexuality which multiplies the vulnerabilities of women cannot be addressed through single protective model.⁹⁴ The state as the custodian of constitutional morality must uphold feminist policy making and its enforceability.

As articulated by the Supreme Court in *Navtej Singh Johar v Union of India*⁹⁵ “constitutional morality is not a natural sentiment; it has to be cultivated.” This cultivation epitomizes the essence of political responsibility, necessitating that moral imagination and legal accountability should be read together. Whereas colonial paternalism positioned women as subjects of governance and nationalist ideology portrayed them as guardians of virtue, the constitutional framework must recognise them as equal citizens and agents of sovereignty. Indian democratic ethos has matured from the idea of benevolent patriarchy to enforceable accountability towards gender justice. It’s worth is gauged from its commitment to uphold dignity, freedom and security of its vulnerable population and not merely from its rhetoric of equality. In this context, the protection of women transcends a mere gender issue; it serves as the litmus test for the efficacy of constitutional governance itself.

93 Catherine Mackinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 32.

94 Catherine Mackinnon, *Are Women Human? And Other International Dialogues* (Harvard University Press 2006) 42-45; United Nations, *Report of the Fourth World Conference on Women: Beijing, 4-15 September 1995* (UN Doc A/CONF.177/20/Rev.1, 1996) para 58; Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women* (16 December 2010) UN Doc CEDAW/C/GC/28, para 18.

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