

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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CONSTITUTIONAL SAFEGUARDS FOR VULNERABLE GROUPS: A COMPARATIVE ANALYSIS OF WOMEN, CHILDREN AND INDIGENOUS PEOPLE

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Abstract

The study analyses constitutional protection of the stringent groups of women, children and indigenous people against social injustices in a comparative context within the context of equality, dignity and social justice advocacy. The idea is to examine the constitutional protection of the unique vulnerability of these groups, and identify their efficiency in practice. The approach is analytic and doctrinal and is based on the provisions of the constitution, rulings of the court and international systems to evaluate the legal protections and how they are applied. The data show that, despite offering extensive protection in the form of the basic rights, affirmative action, and welfare facilities, the effectiveness of constitutions mainly hinges on their enforcement, institutional responsibility, and community knowledge. These protections are further enhanced by judicial activism and international conventions, but discrimination, marginalization, and ineffective implementation continue to occur. The study presents the conclusion that longer-term work, involving policies, and including the involvement of vulnerable groups are the key to substantive equality and meaningful empowerment.

Keywords: *Constitutional safeguards, vulnerable groups, women, children, indigenous people, equality, judicial activism, social justice.*

1. Overview

The protection of vulnerable groups under the Constitution is a cornerstone of a present-day democratic state to guarantee equality, dignity, and social justice to historically disfavored groups. Women, children, and indigenous people, are vulnerable populations that are systemically discriminated against, socio-economically disadvantaged, and excluded in the decision making. As the highest law of the country, constitutions offer a roadmap to combat

these inequalities by covering the basic rights, affirmative action and shields¹. In other nations that have constitutional protections, the constitutional protections are not merely meant to avoid discrimination, but create substantive equality by identifying the particular needs and vulnerabilities of such groups. These protections are strengthened by legal means, institutional structures and policy measures with a view towards empowerment and inclusion².

All three groups are safeguarded by the larger principle of equality and non-discrimination, although, the exact protection in each case is different, depending on their special needs. Whereas the right of women is centered on gender justice and the promotion of equal opportunities, the children right is centered on the protection and development, and then the indigenous right revolves around the preservation and sovereignty of the culture. Though they have strong constitutional frameworks in place, success in these safeguards has been highly dependent on how they are implemented, their awareness and institutional responsibility. Enhanced legal enforcement, inclusive policy, and active inclusion of these groups in governance are key measures towards having a real constitutional justice and social equity³.

2. Meaning of vulnerable groups

The constitutional protection of the vulnerable groups is a critical component of the fair and equal society. The constitution, in relation to any democratic system, is not only a way of setting up the state but also acts as a moral and legal compass to safeguard the disadvantaged or the marginalized. Vulnerable groups can basically be defined as groups in the society that tend to be discriminated against, socially excluded, and resources access constrained because of one or more of their characteristics such as gender, age, ethnicity or socio-economic status. These groups usually have no influence to effectively demand their rights and thus they need special consideration and protection under the law⁴.

Constitutional protection extends beyond non-discrimination; it allows the state to take positive action like reservation, welfare programs and special-purpose policy, to bring the

¹ Monteiro T.S. and Nalini R., "Mental Health at the Intersections of Marginalization: A Conceptual Model to Explore the Mental Health Concerns of Women Sanitation Workers in India", (2021) 15(2) *Asian Social Work and Policy Review* 102.

² Ganty S., "Prohibition of Discrimination on Grounds of Social Condition: Making Socio-Economically Disadvantaged People Visible", (2016) *SSRN Electronic Journal*.

³ Kumar K.K. and Reddy R.K.V., "Unpacking Exclusion in the National Education Policy 2020: Challenges and Opportunities for Inclusive Education", (2025) 23(1) *Jharkhand Journal of Development and Management Studies*.

⁴ Rudy R., "Implementation of Civil Rights against Vulnerable Groups in the Legal and Constitutional System in Indonesia", (2022) *Hasanuddin Law Review*.

playing field on an equal playing field. These checks also have a legality that individuals and groups may pursue justice in a court of law and this enhances accountability and rule of law. The area of comparison between women, children, and indigenous people raises the theme of the variety of vulnerabilities and the necessity of the constitutional reaction on the specific cases. As a group, women are discriminated and unequal in social, economic, and political aspects due to gender bias. The children need protection because they are not mature in terms of their bodies and their minds are vulnerable to exploitation and neglect. The indigenous people, however, are representatives of communities that have unique cultural identities, systems of traditional knowledge, a strong attachment to land and natural resources, which are usually threatened by outsiders⁵.

3. Constitutional Safeguards for Women

The existence of constitutional protections of vulnerable groups reflects the pledge of a democratic state to embrace justice, equality, and human dignity. Women especially have been discriminated against and marginalized in social, economic and political spaces in the past, and constitutional protection is necessary to enable them. The Constitution in India offers a robust statutory approach to the problem of gender-based inequalities and encourages the substantive equality. The cornerstones of constitutional protection of women are equality before the law and non-discrimination. Article 14 of the Constitution of India is a guarantee to equality before the law and (Article 15) explicitly prohibits discrimination based on sex. It also enables the state to grant special consideration to the women bearing in mind the fact that the same treatment might not necessarily lead to equal results. Article 16 brings this principle to the public employment, so that women are granted an equal opportunity in the state services⁶.

The Constitution guides state to make sure that women are not trafficked, forced to labor or otherwise abused in any way. Laws, which are based on the constitutional requirements like legislation against domestic violence, sexual harassment, or even human trafficking aim at providing women with a safe environment. The crime committed against women, despite these measures is still a significant issue pointing to loopholes in implementing the measures and more awareness, institutional sensitivity and accountability. Maternity benefits and labor rights also show a protective outlook of the Constitution towards the welfare of women. In India the

⁵ Rafferty Y., "International Dimensions of Discrimination and Violence against Girls: A Human Rights Perspective", (2013) 14(1) *Journal of International Women's Studies* 1.

⁶ Shultziner D. and Carmi G.E., "Human Dignity in National Constitutions: Functions, Promises and Dangers", (2014) 62(2) *The American Journal of Comparative Law* 461.

Directive Principles of State Policy promote the state to give fair and humane conditions of labor and maternity relaxations⁷.

Progressive judicial interpretation of the constitution has played a critical role in shaping and underpinning constitutional protections of women in India, and provides gender equality, dignity, and protection against discrimination and violence. In the case of *Vishaka v. State of Rajasthan*, the Supreme Court established the land mark Vishaka Guidelines that would check sexual harassment in the workplace as it was deemed to violate fundamental rights in Articles 14, 15, and 21. Equally, discrimination of service terms accorded to air hostesses in *Air India v. Nergesh Meerza* was also overruled, enhancing gender equality in employment. In *Shayara Bano v. Union of India*, the Court found the practice of instant triple talaq to be unconstitutional and support the dignity and rights of Muslim women. Moreover, the decriminalization of adultery in *Joseph Shine v. Union of India* led to the fact that women should be regarded as equal associates and not as property of their husbands. Moreover, in *Mary Roy v. State of Kerala*, women were granted equal rights to inheritance under syrian Christian law by the Court. These historic decisions demonstrate how constitutional guarantees have been creatively invoked to foster substantive equality, seen as a way to prevent women against injustice, and empower them in the public as well as in the domestic contexts⁸.

Another important area of women empowerment in the constitution is political participation. This movement has seen a large number of women being represented in the grassroot democracy through introduction of reservation of women in local self-governments institutions, Panchayats and Municipalities. This has seen women take an active role in decision making and to solve problems facing their societies. Altogether, the most significant constitutional provisions especially Articles 14, 15 and 16 offer a thorough framework to promote the rights of the women in India although this programme should be pursued on a regular basis in order to develop the guarantees into substantive equality⁹.

4. Constitutional Safeguards for Children

Children must have safety under the constitution because this is an indication of the state to ensure the wellbeing, dignity and holistic growth of the youngest citizen because children need

⁷ Arowolo G.A., "Protecting Women from Violence through Legislation in Nigeria: Need to Enforce Anti-Discrimination Laws", (2020) 20(4) *International Journal of Discrimination and the Law* 245.

⁸ Parmar S., "The POSH Act, 2013: The Law against Sexual Harassment at Workplace in India", (2023) *Zenodo (CERN European Organization for Nuclear Research)*.

⁹ Kumar S. and Ghosh A.K., *Elected Women Representatives in Local Rural Governments in India: Assessing the Impact and Challenges* (Observer Research Foundation, New Delhi, 2024).

special security based on their physical and mental immaturity. The Constitution of India offers a good ground on child welfare, as it entrenches rights to survival, development and freedom against exploitation. One of the milestones is the Right to Education as stipulated in Article 21A that provides free and compulsory education to children between the ages of 6-14. This does not only facilitate literacy but also provides a means of social empowerment and equality as children of deprived backgrounds can use these opportunities to end poverty circles¹⁰.

Another important point of constitutional protection is protection against child labor and abuse. Article 24 clearly states that children under the age of 14 should not be employed in hazardous industries and this aspect demonstrates the duty and responsibility of the state to protect children against economic exploitation and against unhealthy working environment. These measures are supplemented by larger legal frameworks and policies that help to prevent child trafficking, physical and emotional abuse, and neglect. In India, constitutional protection of children has been greatly reinforced by judicial interpretation where the courts have actively involved in widening the scope of child rights. In the case *Unni Krishnan v. State of Andhra Pradesh*, the Supreme Court established the right to education as a basic right as per Article 21, and in turn, to realise Article 21A was subsequently inserted into the constitution. In *Sheela Barse v. Union of India*, the Court highlighted the value of treating children in conflict with the law with proper care, protection and separate detention facilities thus reinforcing the juvenile concept of justice. Moreover, the Court in the case of *Bandhua Mukti Morcha v. Union of India*, extended the right of protection against exploitation and hazardous working environments to the children¹¹.

The right to growth and the right to eat are also critical because the growth of children requires proper healthcare, food, and environment. The orders issued by the Constitution help the state enhance societal wellbeing and make sure that children lack a chance of losing such needs as food. These constitutional principles are the basis of programs connected with mid-day meals, immunization, and child welfare services which play a role in the combating of malnutrition and in supporting the physical and cognitive growth. Collectively these constitutional clauses form a holistic structure that in the end must be implemented successfully, and be taken accountable by institutions, and be willing to commit the society in

¹⁰ Mekonen Y., "Measuring Government Performance in Realising Child Rights and Child Wellbeing: The Approach and Indicators", (2010) 3(2) *Child Indicators Research* 205.

¹¹ Thapa N., *Protection and Care of Juveniles: The Recent Trend in Juvenile Justice in India* (Doctoral Dissertation, University of North Bengal, 2012).

the long run¹².

5. Constitutional Safeguards for Indigenous People

The protection of indigenous peoples is based on the acknowledgement of their unique identity, culture and their historical marginalization. In the cases of other countries such as India, critically indigenous peoples, chiefly, the Scheduled Tribes, are accepted within the constitution as a group that needs special protection in order to maintain their customary habits, lingo, and traditional ways of existence. Cultural recognition is not done to pay lip service but is the foundation of guaranteeing the dignity and heritage continuity. This principle has been affirmed by the judiciary in cases like *State of Kerala v. N.M. Thomas* in which the significance of affirmative action and protective discrimination was highlighted to empower disadvantaged groups including tribal population¹³.

The indigenous people have land and resource rights that are core to their livelihood, culture, and spirituality, because the land is the heart of their livelihoods and culture. The legislation and the constitution provisions attempt to make tribal land prohibitive to alienation and exploitation. An example of such a step was the case of *Samatha v. State of Andhra Pradesh* which ruled that tribal land under Scheduled Areas cannot be leased to non-tribal or private mining firms to protect the community ownership and control of natural resources. Likewise in the case of *Orissa Mining Corporation vs. Ministry of Environment and Forest*, the Court preserved the rights of tribal communities to determine the utilization of their sacred land which confirmed the principle of community consent¹⁴.

Self-governance and independence are also some substantial constitutional protections especially through the Fifth and Sixth Schedules of the Constitution of India. Through these provisions, there can be a decentralized administration in the tribal localities, which is the ability to allow the indigenous people to govern themselves, according to their own priority laws and practices. Autonomous District Councils with legislative and administrative powers are provided by the Sixth Schedule, in particular. This essentiality of tribal self-rule has been enhanced by acts such as the Panchayats (Extension to Scheduled Areas) Act (PESA) which was passed giving the village assemblies the necessary powers to make local decisions. Courts

¹² Keeley B., Little C. and Zuehlke E., *The State of the World's Children 2019: Children, Food and Nutrition—Growing Well in a Changing World* (UNICEF, 2019).

¹³ Kania M.M., “The Rights of Indigenous Peoples in Peru: From Socio-Political Marginalization to the Modern Principles of Multiculturalism”, (2016) (17) *Ad Americam: Journal of American Studies* 11.

¹⁴ de Mesa J.M., “‘Land is Life’: Cultural Energies of Indigenous Spirituality”, in *Indigenous Voices in the Sustainability Discourse* 71 (2010).

have been willing to grant such autonomy as is reflected in the case of *Union of India v. Rakesh Kumar* where the Court maintained the reservation system and representation of Scheduled Tribes in the local government institutions¹⁵.

6. Role of Judiciary and Institutions

The judiciary and the statutory bodies have played an instrumental role in making the constitution to reinforce the protection of vulnerable individuals like women, children, and indigenous people. Courts, especially in India have been proactive to have intellectual interpretation of fundamental rights to a progressive end in that they may make sure that the constitutional guarantees can be actualized in the form of protection. The judicial activism has dilated the rights scope by inventing interpretations, particularly under Article 21, thus solving such problems as dignity, safety and livelihood¹⁶.

A few landmark decision cases demonstrate how the judiciary has been proactive in safeguarding vulnerable groups. In *Vishaka V. State of Rajasthan*, the Supreme Court provided directions to stop sexual harassment in the workplace as gender equality is recognized as one of the basic rights. Likewise, the case of child labor, *M.C. Mehta v. State of Tamil Nadu* guided the action towards the rehabilitation and education of child labor victims. *Samatha v. State of Andhra Pradesh*, the Court supported the claim of tribal communities in their land rights, and limited the transfer of their land to non-tribals and other privates. These instances show legislative gaps being bridged by judicial intervention and the reinforcement of legislative protection of the underprivileged groups¹⁷.

The national commissions together with the judiciary promote a crucial role in institutions concerning rights protection. Among such issues the National Commission for Women undertakes to combat gender discrimination, gender violence, and legal awareness usually with suggested policy changes and legal reforms¹⁸. National Commission on Protection of Child Rights deals with ensuring that laws and policies do not diverge in sectors that relate to child rights especially in sectors such as education, child labour and prevention of abuse. In a similar manner, the National Commission of Scheduled Tribes preserves the interests of the

¹⁵ Idiculla M., “Unpacking Local Self-Government”, (2020) 53(1) *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* 30.

¹⁶ Irving H., *Gender and the Constitution: Equity and Agency in Comparative Constitutional Design* (Cambridge University Press, 2008).

¹⁷ Goel A., “Vishaka and Others v. State of Rajasthan: The Importance of Due Process and Its Effectiveness in Addressing Sexual Harassment”, (2021) *SSRN* (Paper No. 3859309).

¹⁸ Lundy L., “Children’s Rights and Educational Policy in Europe: The Implementation of the United Nations Convention on the Rights of the Child”, (2012) 38(4) *Oxford Review of Education* 393.

native communities since it not only oversees the constitutional rights, justifies grievances and provides advice to the government concerning tribal interests¹⁹.

7. International Framework

The global conventions and norms, which have evolved under the auspices of the United Nations, have greatly influenced the international system of safeguarding vulnerable categories of people including women, children, and indigenous populations. These conventions provide the standards of human rights that are universally accepted and use them to inform national constitutions and legal systems on protecting marginalized groups. They focus on equality, dignity and protection against exploitation and promote proactive programs towards empowerment by the states. These international instruments, particularly in the interpretation of constitutional rights, have become an increasing focus of courts in various jurisdictions, including *Vishaka v. State of Rajasthan* (1997) where the international conventions were applied to provide the guidelines on workplace harassment²⁰.

The Convention on Elimination of all forms of discrimination of women (CEDAW) is a source of women rights across the world. It requires the end of discrimination in political, social, economic and cultural areas and fosters substantive equality. Indicatively, in the case of *Apparel Export Promotion Council v. A.K. Chopra* (1999) the court strengthened the safeguard against sexual harassment, based on the principles of CEDAW. In the same way, the United Nations Convention on the Rights of the Child (UNCRC) puts emphasis on the comprehensive development of children, and guarantees rights to education, protection, survival, and participation. The judicial acknowledgment of the child rights is obvious in the case of *M.C. Mehta v. State of Tamil Nadu* (1996) that dealt with the problem of child labor and the role of the state within the constitutional and international responsibilities²¹.

To indigenous people, the United Nations declaration on the rights of indigenous people (UNDRIP) offers a complete guideline so that their right to self-determination, preserving their culture and land are acknowledged. It is not legally binding at all; nevertheless, it has a strong impact on national policies and judicial decisions. In the case of *Samatha v. State of Andhra Pradesh* (1997) tribal land rights were reinforced, echoing with the principles of UNDRIP.

¹⁹ Harper C. and Jones N., "Opportunities and Challenges in Promoting Policy- and Practice-Relevant Knowledge on Child Rights", (2010).

²⁰ Bizzarri M., "Protection of Vulnerable Groups in Natural and Man-Made Disasters", in *International Disaster Response Law* 381 (TMC Asser Press, The Hague, 2012).

²¹ Zwingel S., *How Do International Women's Rights Norms Become Effective in Domestic Contexts?: An Analysis of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* (Doctoral Dissertation, University of Bochum, 2005).

These international tools, along with the constitutional protections, support each other by offering an international benchmark, facilitating accountability and allowing courts to be more progressive and accommodating in their approach to protecting at risk groups²².

8. Conclusion

The study indicates that constitutional protection of women, children and indigenous people is very crucial in enhancing equality, human dignity and social justice in a democratic society. Considering their special vulnerabilities, these groups receive exclusive safeguards in the form of basic rights, affirmative action, and welfare. Although the Constitution outlines a very detailed legal and institutional framework, the efficiency of these protections greatly relies on the adequate enforcement, knowledge, and responsibility. These are further fortified by judicial action and international systems of human rights. But there are still so many issues such as discrimination and marginalization. Thus constant drive by enforcement, inclusivity and inclusion of vulnerable groups is a key continuous endeavor to have actual empowerment and substantive equality.

²² Cambou D., “The UNDRIP and the Legal Significance of the Right of Indigenous Peoples to Self-Determination: A Human Rights Approach with a Multidimensional Perspective”, in *The United Nations Declaration on the Rights of Indigenous Peoples* 33 (Routledge, 2020).