



# INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

**IJLAR**

+91 70421 48991  
editor@ijlar.com  
www.ijlar.com

## **DISCLAIMER**

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **WOMEN'S EMPOWERMENT IN INDIA: A JUDICIAL RESPONSE**

AUTHORED BY - HEMANT KUMAR VARUN\*

## **Abstract**

This paper examines the role of the Indian judiciary in promoting women's empowerment. It traces constitutional and statutory foundations, highlights landmark judgments that shaped women's rights. Improvement in the status of women was a solemn Pledge made by founding fathers of Constitution and accepted subsequently by the government from the very start of independent India. So many legislative, administrative and judicial steps have been taken for development of the women. The judiciary plays a crucial role in women's empowerment by interpreting and enforcing laws, addressing gender discrimination, and promoting equality through judicial activism. This includes striking down discriminatory laws, establishing legal precedents, and advocating for broader social and economic changes. The judiciary has addressed various forms of gender discrimination, including sexual harassment in the workplace, denial of property rights, and discriminatory personal laws. The judiciary has played a key role in protecting women's rights in various areas, including property rights, inheritance, and freedom of choice. The judiciary has also been involved in reforming criminal laws to ensure that they are gender-sensitive and do not perpetuate discriminatory practices.

## **Introduction**

Women's empowerment in India is a multi-dimensional objective: it includes equality before law, bodily autonomy, economic opportunity, social dignity, political participation, and freedom from gender-based violence. Over seven decades after independence, the Indian Constitution and subsequent legislation enshrine formal equality, but the substantive realization of rights remains uneven. In this context the judiciary — and particularly the Supreme Court and High Courts — have played an outsized role, often stepping in to fill legislative or executive gaps, interpreting rights in expansive ways, and issuing remedial guidelines. This paper maps that judicial role: what

has been achieved, where the courts have innovated, and the limits of judicial remedies for entrenched social inequality.

## **Methodology and Scope**

This study is doctrinal and analytical: it synthesizes key judgments, statutes, and authoritative commentary to trace judicial contributions to women's empowerment in India. The focus is on major Supreme Court and selected High Court decisions that have had systemic effects (e.g., guidelines, reinterpretation of personal laws, sexual harassment jurisprudence, family law reform, criminal law changes). The paper draws on primary sources (judgments, statutes) and secondary legal analyses.

## **Constitutional and Statutory Foundations**

The Indian Constitution provides the legal backbone for gender equality. Article 14 guarantees equality before the law; Article 15 prohibits discrimination on grounds of sex; Article 16 protects equality of opportunity in public employment; Article 21 secures life and personal liberty, which courts have read to include bodily integrity, privacy, and autonomy. Article 39 (a) provides men and women equally, have the right to an adequate means of livelihood. Article 39 (d) equal pay for equal work for both men and women. Article 42 provides maternity relief. For working women. These provisions underpin judicial interventions in areas ranging from sexual violence to inheritance and employment discrimination. Parliament has enacted statutes specifically addressing women's concerns.

## **Judicial Landmarks in the Struggle for Gender Justice**

### **1. Maintenance Jurisprudence**

The Shah Bano case<sup>1</sup> is a landmark that demonstrated the Supreme Court's willingness to apply secular statutory protections even where personal law claims were invoked. The Court upheld a divorced Muslim woman's right to maintenance under Section 125 of the Criminal Procedure Code, treating the provision as a secular, gender-neutral protection that

---

<sup>1</sup> Mohd. Ahmad Khan v. Shah Bano Begum AIR 1985 SC 945.

covered all citizens. The decision triggered strong political backlash and led to the Muslim Women (Protection of Rights on Divorce) Act, 1986, which narrowed the scope of maintenance as interpreted in Shah Bano. Subsequent judicial interpretation ensured that the 1986 Act could be read to preserve some maintenance rights under Section 125, illustrating continued judicial engagement with the interaction between religious personal laws and secular statutory protections. The case remains central for debates on uniform civil codes, gender justice, and legislative responses to court rulings<sup>2</sup>.

## 2. Equal Succession Rights

In Mary Roy case<sup>3</sup>, the Supreme Court held that Syrian Christian women in Kerala were entitled to inherit property identically to men under the Indian Succession Act, 1925, rather than under a discriminatory customary law. This judgment invalidated regressive customs and applied statutory uniformity to secure women's property rights. The decision had significant socio-economic implications by strengthening women's claims to assets and economic independence.

## 3. Vishaka Guidelines — Addressing Sexual Harassment at Work.

Long before specific workplace harassment legislation, the Supreme Court in Vishaka case<sup>4</sup> formulated a set of binding guidelines to prevent and redress sexual harassment at the workplace. The Court defined sexual harassment, recognized its impact on women's right to equality and work, and mandated employer obligations (e.g., internal complaints committees) to investigate complaints. The Vishaka framework later catalyzed legislative action — the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — but the guidelines themselves were a seminal judicial intervention that translated constitutional guarantees into workplace protections.

---

<sup>2</sup> V.N, Shukla, Costitution of India 384 EBC Lucknow 2016.

<sup>3</sup> Mary Roy v. State of Kerala AIR 1986 SC 1011.

<sup>4</sup> Vishaka v. State of Rajasthan AIR 1997 SC 3011

#### 4. Daughter's equal right to ancestral property

**Vineeta Sharma vs. Rakesh Sharma**<sup>5</sup> is a landmark judgment that affirmed a **daughter's equal right to ancestral property** in a Hindu Undivided Family (HUF) under the Hindu Succession (Amendment) Act, 2005.

The three-judge bench delivered a clear, unambiguous ruling on August 11, 2020, to resolve conflicts from previous judgments and eliminate historical gender bias in inheritance law:

- **Right by Birth:** The Court ruled that a daughter becomes a **coparcener** (a joint heir) in the ancestral property by birth, in the same manner as a son.
- **Father's Survival Not Required:** The daughter's right is an "unobstructed heritage" and does not depend on whether her father was alive on the date the 2005 amendment came into force (September 9, 2005).
- **Retroactive Application:** The provisions of the amendment are retroactive in application, meaning they confer benefits based on the antecedent event of birth, with rights enforceable from September 9, 2005, onwards.
- **Sham Partitions Invalid:** Any oral partition or unregistered partition deed made to deliberately deprive a daughter of her share in the property shall not be entertained and can be reopened in court.

#### 5. Permanent Commission (PC) to women officers in the Indian Army

The case of Secretary, Ministry of Defence v. Babita Puniya<sup>6</sup> was a landmark Supreme Court of India judgment that granted **Permanent Commission (PC)** to women officers in the Indian Army, striking down discriminatory policies based on gender stereotypes. The Court ruled that denying PC to women on the Short Service Commission (SSC) violated fundamental rights (Articles 14 & 15) and ordered equal opportunities for career growth, promotions, and pensions for women officers, treating them on par with male counterparts. Women officers serving on SSC were denied PC, limiting their careers and pensions, unlike male officers. The Ministry of Defence (MoD) cited administrative challenges, hazardous postings, maternity issues, and Article 33 (allowing

---

<sup>5</sup> AIR 2020 SC 3717

<sup>6</sup> (2020) 7 SCC 469

fundamental rights restrictions for armed forces) as reasons for the policy. Court Struck down the MoD's policy as discriminatory and based on gender stereotypes. Affirmed women's right to equal employment and service, even within the armed forces. Directed that all women SSC officers be considered for PC without discrimination, regardless of service length. Ensured equal benefits, promotions, and pension eligibility, aligning them with male officers.

## 6. Decriminalized adultery

**Joseph Shine v. Union of India**<sup>7</sup> was a landmark 2018 Supreme Court case that **decriminalized adultery** in India by unanimously striking down Section 497 of the Indian Penal Code (IPC). The Court declared the 158-year-old law unconstitutional, holding it violated fundamental rights to equality, non-discrimination, and personal liberty.

The petition challenged the constitutional validity of two main provisions:

- **Section 497 of the IPC:** This law defined adultery as an offense committed by a man who had sexual intercourse with the wife of another man without that man's consent. It specifically exempted the woman from punishment, even as an abettor.
- **Section 198(2) of the Code of Criminal Procedure (CrPC):** This procedural provision allowed only the husband of the woman involved to file a complaint for the offence of adultery.
- The petitioner argued these sections were archaic, discriminatory, and violated Articles 14 (equality before law), 15 (prohibition of discrimination on grounds including sex), and 21 (protection of life and personal liberty) of the Indian Constitution.
- The Supreme Court, in its unanimous verdict, made the following key observations and holdings:
- **Violation of Gender Equality:** The Court held that Section 497 was based on patriarchal notions and gender stereotypes, treating women as the "chattel" or property of their husbands. This was deemed a violation of the right to equality under Article 14.

---

<sup>7</sup> (2019) 3 SCC 39

- **Infringement of Personal Liberty and Dignity:** The judgment recognized the right to dignity, privacy, and sexual autonomy as intrinsic to Article 21. It held that the state had no business interfering in the private, consensual relationships of adults.
- **Adultery as a Civil Wrong:** The Court clarified that while adultery would no longer be a criminal offense leading to imprisonment, it would remain a **civil wrong** and a valid ground for obtaining a divorce.
- **Struck Down Related Provision:** Correspondingly, Section 198(2) of the CrPC was also declared unconstitutional as the substantive offense it related to was struck down.

## 7. Sabarimala Temple entry case

In *Indian Young Lawyers Association v. State of Kerala* is a significant Supreme Court case., declared the long-standing prohibition on women of menstruating age (10 to 50 years) entering the Sabarimala temple unconstitutional. The core legal questions involved the interplay between religious freedom (Articles 25 and 26) and the rights to equality and non-discrimination (Articles 14, 15, and 17). The Court examined whether Ayyappa devotees constituted a distinct religious denomination and if the ban was an "essential religious practice".

The majority on the Supreme Court's Constitution Bench found that the exclusion of women aged 10-50 violated Articles 14, 15, and 25. They determined that the practice was not an **essential religious practice** protected by Article 25. The Court also held that Ayyappa devotees were part of the Hindu faith, not a separate religious denomination, and that Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which allowed the custom, was unconstitutional.

## 9. Right to Mariage

In *Lata Singh vs. State of Uttar Pradesh* case the Supreme Court affirmed that any major individual has the fundamental right to marry a person of their choice, regardless of caste or religion, and that such couples are entitled to police protection from harassment or violence. The court strongly condemned "honour killings" and caste-based violence.

## Conclusion

The concept of 'empowerment' is nurtured by 'power'. Generally, 'power' is considered the ability to perform a task. In social contexts, power means authority, the right to command, the power to rule or control, or the ability to influence. Thus, empowerment generally means increasing power where it exists or is lacking. "Empowerment has become a popular term today. It means decentralizing rights and power. Its objective is to empower marginalized groups to participate in decision-making processes. In other words, to give voice to those who cannot speak. Active social activists want the government to empower poor people, including women, through welfare programs and legal initiatives. Until these people are truly empowered, power will continue to be exercised by others rather than those for whom it truly belongs" (K. D. Gangrede, 2001).

The concept of women's empowerment is not new. It has always existed in all societies, but the conceptualization of women's empowerment as an ideology, its use as a social movement, and its expansion among the masses can be considered new. It has now evolved from "women's welfare" to "women's development," and from "women's development" to "empowerment," and is being discussed, reported, and critically evaluated. Even more new is the recognition of girls and women as a "special group" and the international recognition of the need to pay special attention to key issues related to women's empowerment. Even more new is the growing understanding and realization that women's empowerment is essential for international, national, social, and family development and progress. It is also recognized and acknowledged that real commitment and effort are needed at the government, non-governmental, and individual levels to achieve women's empowerment.

Women's empowerment means making them economically independent, self-confident, and positive about their identity so that they can cope with difficult situations and participate in development efforts. An empowered woman should be able to participate in decision-making processes. Education plays a vital role in this direction.

The Indian judiciary has been instrumental in advancing women's rights: from enforcing maintenance and property rights to innovating remedies against sexual harassment. Courts have

demonstrated creativity and moral leadership by translating constitutional guarantees into tangible protections. Nevertheless, judicial pronouncements alone cannot achieve comprehensive women's empowerment. Implementation gaps, socio-economic inequalities, political reactions, and the limits of adjudication demand a cooperative approach: robust legislation, executive commitment, social transformation, and empowered civil society. For meaningful empowerment, the judiciary should continue to act as a principled catalyst safeguarding rights, setting standards, and monitoring implementation while legislatures, administrations, and communities undertake the long work of structural change. Only through such an integrated strategy can legal victories translate into everyday equality for Indian women.

