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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.

THE EVOLVING JURISPRUDENCE OF EQUALITY: A STUDY OF JUDICIAL DISCRETION AND WOMEN'S RIGHTS IN INDIA

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Abstract

Gender inequality is a problem that many societies around the world are still dealing with. Women have been treated unfairly and have been marginalized for a very long time. India is no different from the rest of the world when it comes to gender inequality. The Indian legal system has started to realize that it needs to do something about these differences. Gender inequality is still an issue, and the Indian legal system is trying to address it. Women in India are slowly getting the same rights as men, and the judiciary is playing a role in this. The Constitution of India is really about making things equal for everyone. It says no to treating people because of their gender. The Constitution of India has goals to make things fair for women. It wants women to have the same chances as men when it comes to learning, getting a job, and being part of public life. Things are changing really fast in our country; this has made the courts do things differently. The judges are now using their judgment to make sure the law is fair for people living today. They are especially trying to protect women. This is a change from just following the law to really trying to do what is right. The Indian judiciary is becoming more about doing what is fair and just than just following the rules. The judiciary plays a part in helping women become more empowered. The courts have helped to make the promises in the Constitution and the laws more meaningful. They have made sure that women are treated with dignity and fairness and that they are equal to men. The judiciary has done this by giving meaning to the rights that women have under the Constitution and the laws. This study looks at how the courts in India have helped to develop laws that support women's

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rights. Women's empowerment is an issue with many different parts, so the research looks at what the courts have decided in many different situations to show how they have made the law fairer and considerate of women's needs.

Keywords: Gender Equality, Women's Rights, Judicial Role, Legal Interpretation, Women's Empowerment.

1. Introduction

Equality, dignity, and social justice can be related to the rights of women, who are a vital constituent of human rights. The discrimination, exclusion, and unequal treatment of women based on their gender have been present in society across centuries. These disparities were so entrenched in social traditions, religious beliefs, and even the law that accorded male dominance and denied women autonomy of choice, whether in the personal or public arenas. Women were therefore often denied any political participation, employment, property, and education.³ These injustices that had existed over a long period of time led to the demand for women's rights as a solution. It is a fight of a group to achieve the status of women as independent entities and not as the servants of men. Gradually, this struggle transformed into social reform movements, which transformed into organized legal and political movements demanding structural change. The understanding that gender inequality impedes social development has prompted states and institutions to rethink the conventional standards and provide reforms to empower women.⁴

The history and culture of women regarding their rights in India is a different story. The Indian society has also experienced both times of relative gender equality and times of harsh discrimination. Although historical writings reveal that women used to enjoy educational and religious rights, other subsequent social trends contributed to their being marginalized. Efforts by the Indian legal system, and in particular post-independence, have tried to rectify these historic injustices by the use of constitutional provisions, legislation, and judicial redress.⁵ The modern

³ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* 23 (Cambridge University Press, New Delhi, 1994).

⁴ Ratna Kapur & Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* 45 (Sage Publications, New Delhi, 1996).

⁵ M.P. Jain, *Indian Constitutional Law* 1180 (LexisNexis, New Delhi, 7th edn., 2014).

society no longer considers the issue of women's rights as a privilege but as a legal right that is necessitated by the constitutional morality and the international human rights ethical standards. The use of tools like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has strengthened the worldwide devotion to gender equality and affects the domestic legislation, including in India. It is therefore imperative to know the history of the rights of women in order to be grateful for the movements that have been made and the struggles that have yet to be solved, even now.⁶

2. Research Problem

Equality, dignity, and non-discrimination are ensured in the Indian Constitution, despite the long list of legal provisions and progressive court decisions; women in India still remain the victims of systemic discrimination, social exclusion, and gender-based violence. There still exists a large disparity between the ideal/formal legal equality and substantive equality on the ground.

The research problem, thus, is based on the following basic issues:

1. Whether judicial discretion in India has been effective in changing constitutional guarantees into actual and enforceable rights for women?
2. Whether a dependency on judicial intervention is a replacement for the legislative and executive failures to defend the rights of women?

3. Research Objectives

The objectives that will guide the study are as follows:

- To discuss the constitutional structure regarding equality and women's rights in India.
- To examine how the judiciary interprets and expands the rights of women as a way of judicial discretion.
- To determine iconic court cases that have helped to establish gender equality jurisprudence.
- To determine whether judicial activism has succeeded in reducing gender discrimination and empowering women.
- To determine the loopholes in the provisions of the law and the real practice of the rights of women.

⁶ Convention on the Elimination of All Forms of Discrimination Against Women, 1979, art. 2.

- To investigate the role of international human rights tools on judicial rulings in India in matters concerning women.
- To propose policies to enhance the legal and institutional processes to ensure effective fulfillment of women's rights.

5. Research Methodology

The research methodology adopted in this study is a doctrinal and analytical research methodology, and it involves the analysis of constitutional provisions, laws passed by the Parliament, and judicial rulings on the issue of the rights of women in India. Its main sources are primary sources and secondary sources.

The study is a qualitative and interpretative one, covering judicial reasoning and the transformation from formal to substantive equality. It is both descriptive and evaluative by nature, and the aim is to determine how well judicial discretion would assist in ensuring gender justice and also detect gaps between the legal provisions and their actual application.

6. Literature Review

The problem of gender equality and women's rights has received considerable academic attention in different jurisdictions, and feminist legal theorists and socio-legal scholars have critically examined the role of law in reinforcing and combating gender-based inequalities. The available literature offers a good theoretical and analytical picture of how the jurisprudence on equality is changing, and the importance of judicial discretion in the advancement of women's rights in India. Catharine A. MacKinnon, in her "Towards a Feminist Theory of the State", maintains that the law is not a neutral tool but tends to reproduce and support patriarchal power relations. She criticizes the idea of formal equality by highlighting the fact that by treating the male and female as equal, it does not automatically result in actual equality because it fails to address structural disadvantages experienced by women. Her analysis is especially applicable in the Indian context, where the

judiciary has been moving towards the greater acknowledgment of substantive equality and in combating systemic discrimination instead of simply providing formal legal parity.⁷

Ratna Kapur and Brenda Cossman, In *Subversive Sites Feminist Engagements with Law in India* considers the connection between feminist politics and law reform. They critically evaluate the ways the strategies addressing gender inequality have been applied through legal means, besides pointing out the weaknesses of making use of law as the only instrument of bringing social change. The authors believe that even though judicial rulings have been important in promoting the rights of women, they can also serve to perpetuate the status quo when they are not coupled with wider social transformation. Their works provide valuable insight into the opportunities and limitations of judicial intervention in the realization of gender justice.⁸

All of these scholarly works show that, although the law and judiciary are crucial in promoting the rights of women, substantive equality cannot be achieved without a set of progressive legal interpretations, good implementation, and social change. The literature, therefore, will substantiate the main question of the research by outlining the advantages and disadvantages of judicial discretion in tackling gender inequality.

7. Historical Development of Women's Rights

Traditionally, the role of women in society has been influenced more by patriarchal societies. Women in most ancient societies were subordinate, with most of them being restricted to domestic duties. Their marital or familial status was frequently combined with that of their fathers or husbands, and they had little control over property and personal choices. The control of the male was supported by social norms and customary laws, which further justified the inequality between the genders.⁹

⁷ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 161 (Harvard University Press, Cambridge, 1st edn., 1989).

⁸ Ratna Kapur & Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* 32 (Sage Publications, New Delhi, 1st edn., 1996).

⁹ Gerda Lerner, *The Creation of Patriarchy* 212 (Oxford University Press, New York, 1st edn., 1986).

The position of women in the early Vedic age was quite high in India. They were educated, they attended religious practices, and they had the freedom to choose marriage partners. But, as time went on, the hard nature of the social customs like child marriage, dowry, and other limitations upon female remarriage caused a gradual degradation of the female position. These customs made discrimination a constitutional practice, and women lacked individuality and pride.¹⁰

The colonial era was a decisive period in the history of women's rights in India. Due to the exposure to modern education and liberal ideas, people began to form social reform movements that challenged the oppressive customs. Another important role was taken by reformers such as Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar to promote the education of women and legal reforms, such as the end of sati and the legalization of widow remarriage. Females themselves slowly took an active part in reform movements. The increased number of women's organizations and journals gave room to express issues that concerned education, health, and legal rights.¹¹ The women's involvement in nationalistic movements during the freedom struggle also enhanced their demand for the right to equal political and civil rights.

The Indian Constitution, since its independence, has provided a solid ground for the rights of women by ensuring that they are treated equally before the law and there is no discrimination on the grounds of sex. Articles 14, 15, and 16 confirm the equality in protection of laws, and Article 15(3) allows the State to make special provisions for women in accordance with the realization of historical inequalities. These constitutional safeguards reflect a conscious effort to address historical disadvantages faced by women.¹²

After independence, legislative efforts extended the area of rights of women with regard to the personal statutes, employment provisions, and welfare provisions. Laws like the Hindu Marriage Act, the Hindu Succession Act, and amendments provided by the act identified the civil rights of women to divorce, succession, and maintenance.¹³ The judiciary has additionally taken a proactive

¹⁰ Altekar A.S., *The Position of Women in Hindu Civilization* 134 (Motilal Banarsidass, Delhi, 2nd edn., 1956).

¹¹ Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* 88 (University of California Press, Berkeley, 1st edn., 1998).

¹² M.P. Jain, *Indian Constitutional Law* 1175 (LexisNexis, New Delhi, 7th edn., 2014).

¹³ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 156 (Oxford University Press, New Delhi, 1st edn., 1999).

stance by interpreting constitutional provisions in a progressive manner to safeguard women's dignity and equality.¹⁴ The judiciary has also become proactive in that it interprets the provisions of the constitution in a progressive way to protect the dignity of women and equality.

The international women's rights movement had a lot of influence on the legal attitude of gender equality in India. The implementation of CEDAW in 1979 highlighted the role of the State to fight against discrimination against women in every aspect of life. The signing of CEDAW by India enhanced the gender-sensitive law and policy advocacy on the domestic level. Judicial decisions that have involved sexual harassment, domestic and reproductive rights have also extended the rights of women in recent times. Nevertheless, even with the progress of the law, social attitudes and structural obstacles still reflect on the effective implementation. This highlights the need to continue reforming the law, create more awareness, and transform society in order to have actual gender equality among women.¹⁵

8. Rights of Women under the Indian Legal Framework

The Indian legal system is very elaborate and wide, and safeguards the rights of women. It consists of constitutional guarantees, statutory laws, administrative interpretations, and social welfare programs. Since it is a fact that women have traditionally been the victims of discrimination, exploitation, and marginalization, it is the role of the Indian Constitution and other related laws to deliver more than formal equality but substantive justice. The legal community recognizes the fact that gender-based inequalities necessitate some special protection and affirmation in a way that upholds the dignity of women, their independence, and equal standing in society.¹⁶

The rights of women are founded in the Constitution of India. Article 14 ensures that there is equality before the law and equal protection of the law, and therefore, women are treated equally to men in the area of law. This provision puts in place the principle that the State has to be fair and reasonable to women. In Article 15, discrimination on the basis of sex is forbidden, and Article

¹⁴ Vishaka v. State of Rajasthan, AIR1997 SC 3011 (India).

¹⁵ Naina Kapur, *Sexual Harassment at Workplace in India* 72 (Oxford University Press, New Delhi, 1st edn., 2009); Radhika Coomaraswamy, "Gender Equality and the International Legal Framework" (1994) 15 *Human Rights Quarterly* 246.

¹⁶ Upendra Baxi, *The Future of Human Rights* 147 (Oxford University Press, New Delhi, 3rd edn., 2008).

15(3) gives the power to the State to create special provisions for women to counter past inequalities. It is a clause that legalizes the protective discrimination against women.¹⁷

Article 16 enhances equality by ensuring that all have an equal chance in the area of public employment and also by barring discrimination based on sex. The combination of these provisions portrays the constitutional pledge of gender equality in public life. Article 21, which states the right to life and personal liberty, has been construed by the courts to encompass the right to live with dignity, privacy, bodily integrity, and reproductive choice, thus broadening the rights of women beyond an ordinary physical presence.¹⁸

The rights of women are also reinforced in the Directive Principles of State Policy. Article 39(a) says that the State shall provide equal means of livelihood to men and women, and Article 39(d) requires equal pay for equal work. Article 42 asks the State to achieve fair and decent working and maternity leave arrangements that recognize the duality of women as family members and as employees. These principles may not be enforceable, but they shape legislative and executive action. Article 51A(e), which is added as a Fundamental Duty, also compels all citizens to denounce any culture that degrades the dignity of women. This echoes the constitutional vision of the fact that the preservation of the rights of women is not merely the role of the State, but of society.¹⁹

The criminal law ensures that women are not exploited and are not subject to violence. The Indian Penal Code offers certain provisions related to crimes against women, including cruelty by husband or relatives (Section 498 of IPC/ Sec 86 BNS 2023), dowry death (Section 304B of IPC/ Sec 80 of BNS), sexual harassment, molestation, and trafficking. These are provisions to prevent offenses and offer a legal solution to women victims. Women have further rights under the procedural safeguards in the Criminal Procedure Code. Women have a right to receive preferential treatment on issues of bail, against night arrests, and protection during search and medical

¹⁷ M.P. Jain, *Indian Constitutional Law* 1172 (LexisNexis, New Delhi, 7th edn., 2014).

¹⁸ Justice V.R. Krishna Iyer, *Human Rights and Inhuman Wrongs* 89 (B.R. Publishing Corporation, Delhi, 1st edn., 1990).

¹⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 324 (Oxford University Press, New Delhi, 1st edn., 1966).

examination.²⁰ The requirement to investigate suspicious cases of married women who passed away within seven years of marriage, as found in amendments to Sections 174 and 176 of the CrPC (194 and 196 of BNSS 2023), shows that the legislature is conscious of the dowry-related deaths. Legislation that pertains to employment holds a crucial importance in getting economic justice to women. The Maternity Benefit Act of 1961 covers maternity leave, medical benefits, and security against dismissal during pregnancy. It acknowledges maternity as a social role and makes sure that women are not discriminated against in their jobs because of motherhood.²¹ The Equal Remuneration Act, 1976, applies the principle of equal pay for equal work and outlaw discrimination against women in the process of recruiting, promotion, and service provisions. Nevertheless, the Act has been a major measure towards equality in the workplace despite the difficulties of its implementation. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a law that embodies protection measures against workplace harassment. It obligates the internal and local Complaints Committee constitution and obligates the employer to ensure a safe working environment. This Act is a change in the judicial principles of statutory security.²²

The rights of women are governed by personal laws in matters of the family, such as marriage, divorce, maintenance, adoption, and inheritance. The Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 have made great improvements in the legal position of women, as they gave them the right to divorce, maintenance, and property. Daughters have also been empowered as coparceners due to the amendments and judicial interpretation. The Special Marriage Act, 1954, gives an opportunity to women by giving a secular basis of marriage regardless of religion, with independence and free choice.²³ Muslim Personal Law (Shariat) Application Act, 1937, governs the personal affairs of Muslims, though there is still controversy on gender justice in personal laws. The Family Courts Act, 1984, is designed to ensure that family disputes are resolved as quickly as possible, and women judges should be appointed to the courts since family adjudication has to be sensitive.

²⁰ K.D. Gaur, Textbook on Indian Penal Code 512 (Universal Law Publishing, New Delhi, 6th edn., 2016).

²¹ P. Ishwara Bhat, Law and Social Transformation 203 (Eastern Book Company, Lucknow, 2nd edn., 2018).

²² Naina Kapur, Sexual Harassment at Workplace in India 118 (Oxford University Press, New Delhi, 1st edn., 2009).

²³ Paras Diwan, Family Law 278 (Allahabad Law Agency, Faridabad, 10th edn., 2013).

There are a number of social acts that deal with systemic violence and social evils that are ravaging women. The Dowry Prohibition Act, 1961, tries to do away with the dowry system, and the criminal law was changed to impose a severe penalty for dowry-related offenses.²⁴ Civil remedies are outlined in the Protection of Women against Domestic Violence Act, 2005, to include protection orders, maintenance, right of residence, and compensation. It has acknowledged domestic violence as a human rights infringement and not a personal issue. The Medical Termination of Pregnancy Act, 1971, ratifies the rights of women against pregnancies by allowing them to have an abortion under certain conditions, to balance between health, autonomy, and social facts. The Indecent Representation of Women (Prohibition) Act, 1986, aims to avoid objectification of women in the media and advertisements.²⁵

The aspect of women's rights is divided into political empowerment. The 73rd and 74th Constitutional Amendments make provisions for the reservation of seats to women in Panchayats and Municipalities. This has greatly expanded the participation of women in grassroots governance and decision-making, which collectively contribute to local-level social transformation.²⁶

9. Rights of Women under the International Framework

The international framework on the rights of women was formed due to the world's acknowledgment of the fact that women have, over the years, been victims of systemic discrimination, exclusion, and violence in societies. The feminine concerns have long been regarded as something personal or cultural and not subject to legal review. As the international human rights law was developed following the Second World War, the international community realized that the rights of women are a component element of the universal human rights and indispensable in ensuring equality, justice, and sustainable development.²⁷

²⁴ Flavia Agnes, "Protecting Women against Violence? Review of a Decade of Legislation" (2005) 40 Economic and Political Weekly 4561.

²⁵ Ratanlal & Dhirajlal, *The Indian Penal Code 689* (LexisNexis, New Delhi, 34th edn., 2017).

²⁶ B.L. Fadia, *Indian Government and Politics 412* (Sahitya Bhawan, Agra, 13th edn., 2016).

²⁷ Henry J. Steiner, Philip Alston & Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals 174* (Oxford University Press, Oxford, 3rd edn., 2008).

The establishment of the United Nations marked a turning point in the global protection of women's rights. The UN Charter of 1945 reaffirmed faith in fundamental human rights and explicitly recognized the equal rights of men and women. This commitment laid the foundation for international norms aimed at eliminating gender-based discrimination. To strengthen this objective, the United Nations established the Commission on the Status of Women in 1946. The Commission became the principal policy-making body for promoting gender equality and improving the status of women worldwide. It has played a crucial role in drafting international instruments and monitoring the implementation of women's rights.²⁸ The first complete international declaration that declares equality of rights of men and women was the Universal Declaration of Human Rights (UDHR), which was adopted in 1948. Articles 1 and 2 ensure that there is equality in the dignity and rights with no discrimination due to sex. UDHR acknowledges civil, political, economic, social, and cultural rights such as the right to life, education, labor, equal pay and wages, and even to be part of the masses. Even though it is not legally binding, it creates the moral and legal basis of the modern human rights law.²⁹

The Convention on the Political Rights of Women, 1953, was a historic Treaty that guaranteed an equal participation of women in political life. It also ensures that women have a right to vote, to be elected, to occupy a place of office under equal terms as their male counterparts, as political participation is a fundamental democratic right. The Convention on the Nationality of Married Women, 1957, solved the problem of women losing nationality in case of marriage or divorce. It confirmed that marriage would not impact the nationality of the woman, and hence safeguarded the legal identity of the woman and her independence.³⁰

In 1967, the Declaration on the Elimination of Discrimination against Women summed up gender equality principles in the field of education, employment, marriage, and family relations. It stressed

²⁸ Charter of the United Nations, 1945, Preamble & art. 1; Malcolm N. Shaw, *International Law* 276 (Cambridge University Press, Cambridge, 8th edn., 2017).

²⁹ Universal Declaration of Human Rights, 1948, arts. 1 & 2; Hurst Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law" (1995) 25 *Georgia Journal of International and Comparative Law* 287.

³⁰ Convention on the Political Rights of Women, 1953, arts. 1–3; Convention on the Nationality of Married Women, 1957, art. 1.

the protection of maternity and the fair access of women to the social and economic realities. Even though it was not legally binding, it laid the groundwork for a set international convention.³¹

CEDAW is the Convention that discusses the greatest number of rights of women throughout the world. CEDAW, also known as the International Bill of Rights to Women, defines what discrimination is and mandates states to eliminate it in all places. It emphasizes the actual equality and discusses structural and cultural issues that women are experiencing. CEDAW contains the rights, which are concerned with education, employment, health, marriage, relations within the family, and political engagement. It also obliges the States to make changes in social and cultural patterns that support stereotypes. International supervision is done by periodic reporting to the CEDAW Committee.³²

The Optional Protocol to CEDAW strengthens enforcement by introducing individual complaint and inquiry mechanisms. Women can approach the CEDAW Committee after exhausting domestic remedies, enhancing accountability at the international level.³³

The Declaration on the Elimination of Violence against Women, 1993, acknowledges violence against women as a violation of human rights. It also describes violence in a general way as a form of physical, sexual, and psychological abuse in both the political and domestic front, and requires States to undertake both proactive and reactive actions. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Particularly Women and Children (2000) discusses the rights of human beings and the issue of trafficking as a grave form of abuse of human rights. It has paid much attention to the protection of victims, their improvement, and cooperation with other nations.³⁴ At the regional level, the SAARC Convention on Preventing and Combating Trafficking

³¹ Declaration on the Elimination of Discrimination against Women, 1967, arts. 6–10.

³² Convention on the Elimination of All Forms of Discrimination Against Women, 1979, arts. 1–5; Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives* 221 (University of Pennsylvania Press, Philadelphia, 1st edn., 1994).

³³ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1999, arts. 1–2.

³⁴ Declaration on the Elimination of Violence against Women, 1993, art. 1; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, art. 3; SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002, art. 2.

in Women and Children to prostitution, 2002, is the collective attempt to fight the exploitation of gender in South Asia.³⁵

The rights of women are strengthened by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which were adopted in 1966 and which ensure equality before the law, non-discrimination, equal pay, health, education, and social security. These Covenants give binding duties to the parties of the State to guarantee that there is gender equality.

10. Role of Judiciary in Protecting the Rights of Women in India

The concept of social justice and constitutional government revolves around the protection of women's rights. Traditionally, Indian women have been the victims of systematic discrimination based on patriarchy, the social norms of behavior, economically dependent behavior, and cultural factors. Since constitutional rights provide equality, dignity, and freedom, women have still been unequal in terms of education, work, political representation, and personal freedom, and disproportionately exposed to violence and exploitation.

Gender equality has been thoroughly detailed in the Constitution of India. Article 14 provides equity before the law and equal protection under the law. Article 15(1) forbids discrimination based on sex, and Article 15(3) specifically authorizes the State to provide special treatment to women. This section of the Constitution has been used to offer affirmative action and discrimination to benefit women. Additionally, Article 21, which grants the right to life and personal liberty, has been narrowed down by the courts to provide the right to live with dignity, privacy, bodily integrity, and reproductive autonomy. The compulsion of ensuring social justice, equal pay for equal work, and the human nature of work, such as maternity relief, are strengthened in the Directive Principles of State Policy, especially Articles 38, 39, and 42. The judiciary has always balanced the Fundamental Rights with the Directive Principles to enhance the rights of women and make them substantively equal.

³⁵ International Covenant on Civil and Political Rights, 1966, arts. 2 & 3; International Covenant on Economic, Social and Cultural Rights, 1966, arts. 3 & 7; Olivier De Schutter, *International Human Rights Law* 312 (Cambridge University Press, Cambridge, 2nd edn., 2014).

The Indian judicial system has denounced a minute and literal method of interpretation by advancing to a dynamic and purposive method. In *S.P. Gupta v. Union of India*, the Supreme Court noted that the law should follow the changing social values and realities, and judges should interpret statutes creatively to meet constitutional objectives.³⁶

Likewise, in *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, the Court held that judges are not only law interpreters but also play a part in the development of the law, more particularly in the attainment of constitutional goals like equality and justice.³⁷ This philosophy formed the basis of judicial activism in the area of women's rights, especially where the legislature was silent or society opposed the move.

Empowerment of women is achieved through education. The cases that followed at the beginning were also conservative on the social front. In *State of Madras v. Champakam Dorairajan*, the Madras High Court upheld a decision barring a woman from admission, taking a limited view of constitutional provisions by ruling that Article 29(2) did not explicitly prohibit discrimination based on sex."³⁸ This ruling was massively criticized as promoting discrimination in the name of institutional autonomy. Also, in *Padmaraj Samarendra v. State of Bihar*, the Patna High Court sitting over the matter maintained that women in medical colleges deserved to be allotted seats as this was necessary to provide female doctors in the society, and that the fact that this was done did not imply unconstitutional discrimination.³⁹

Employment discrimination has been one of the most massive fields where judicial action can be taken. Some of the service regulations used to subject women to unreasonable restrictions depending on marriage and pregnancy. In the landmark case *Air India v. Nergesh Meerza*, the Supreme Court quashed service regulations requiring air hostesses to retire upon their first pregnancy, but upheld the restriction on marriage within the first four years of employment. The Court famously ruled that pregnancy is a natural biological event and not a disability, pronouncing

³⁶ AIR 1982 SC 149.

³⁷ (1995) 5 SCC 457.

³⁸ AIR 1954 Mad. 67.

³⁹ AIR 1979 Pat. 266.

the mandatory retirement rule as 'arbitrary, callous, and cruel,' and in clear violation of Article 14 of the Constitution."⁴⁰

Equality in pay has been a key concept that has been implemented by the judiciary. The majority of the cases presented to the Supreme Court in *Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa* ruled that women stenographers were paid less than men to do the same job, which was against the Equal Remuneration Act and Articles 14 and 16.⁴¹ The judiciary has also provided a lot of protection to maternity rights. In *B. Shah v. Presiding Officer, The Labour Court* acknowledged that maternity benefits are necessary in maintaining the health of women and in making them be in a position to juggle between reproductive and productive activities.⁴² Once more, in the *Municipal Corporation of Delhi v. Female Workers*, maternity benefits were also provided to all the workers, including those who worked part-time or on a daily wage. This advocated the concept of social justice and dignity.⁴³

The judicial system has always supported regulations and special protections to make women more politically active. In *Dattatraya Motiram v. State of Bombay*, the reservation of women in municipal bodies was upheld to be a valid exercise of power under Article 15(3).⁴⁴ In the same case, *Ram Chandra Mohton v. State of Bihar* Provisions of the to co-opt women into Panchayat Samitis were maintained, and the Court understood the backwardness of women in politics and their need for institutional backing.⁴⁵ Such judicial declarations reinforced the constitutional vision that would be achieved later by the 73rd and the 74 th Constitutional Amendments, which guaranteed reservation of women in the local self-government institutions to one-third.

The judicial reaction to women's crimes, especially rape, has changed a lot. Early judgments were usually biased by the patriarchal approach that focuses on corroboration and physical resistance. The *Tukaram v. State of Maharashtra (Mathura case)* decision was controversial. A case in the, in

⁴⁰ AIR 1981 SC 1829

⁴¹ AIR 1987 SC 1281.

⁴² AIR 1978 SC 12.

⁴³ (2000) 3 SCC 224.

⁴⁴ AIR 1953 Bom. 311.

⁴⁵ AIR 1966 Pat. 214.

which the Supreme Court exonerated accused policemen because of the absence of bodily harm and alleged consent was a source of outrage across the nation and a revelation of rape jurisprudence.⁴⁶

Later reforms were more victim-centric in nature. In *State of Punjab v. Gurmit Singh*, the Court ruled that the prosecutrix does not need corroboration in the testimony and that in-camera trials are necessary to safeguard dignity.⁴⁷ In *State of Himachal Pradesh v. Raghubir Singh*, the Court explained that it is only through the credible testimony of the victim that one can be convicted.⁴⁸ *Vishaka v. State of Rajasthan* was a watershed case in the field of women's rights jurisprudence.⁴⁹ In the absence of any laws, the Supreme Court established binding principles to prevent sexual harassment in the workplace, claiming that it contravened Articles 14, 15, 19, and 21. The Court relied on international agreements such as the CEDAW to incorporate international human rights into the Indian law. The Vishaka Guidelines were a binding law until the passage of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, in Article 14.

In *Chairman, Railway Board v. Chandrima Das*, the Supreme Court granted compensation to a woman in Bangladesh who was raped by the railway workers, established that rape is a crime contravention of Article 21, and that the remedies of the law were accessible to non-citizens too.⁵⁰ Likewise, in *Delhi Domestic Working Women's Forum v. Union of India*, it was the Court that provided detailed principles of legal assistance, anonymity, trials in camera, and compensation to the victims of rape, having acknowledged the trauma that the crime and the judicial procedure itself bring.⁵¹

⁴⁶ (1979) 2 SCC 143.

⁴⁷ (1996) 2 SCC 384.

⁴⁸ (1993) 2 SCC 622.

⁴⁹ AIR 1997 SC 3011.

⁵⁰ AIR 2000 SC 988

⁵¹ (1995) 1 SCC 14.

11. Conclusion

Human rights cannot be discussed without the rights of women, and they are the foundation of a just, democratic, and egalitarian society. Women in the past have suffered systemic discrimination due to patriarchal social systems, cultural aspects, financial dependency, and legal marginalization. The feminist struggle for women's rights has not been just a search for equality in form but one of dignity, independence, and material justice. The history of the development of the rights of women is a reflection of the gradual development of the realization that gender inequality is a hindrance to social development and prevents the constitutional values.

The Constitution of India gives a very strong structure of safeguarding the rights of women in terms of guaranteeing equality, non-discrimination, and personal liberty. Articles 14, 15, and 21, as well as Directive Principles and Fundamental Duties, put together a vision of gender justice. Nevertheless, constitutional promises are not enough, but they need to be actively interpreted, realized, and extended to address evolving social facts. Here is where the judicial system has come in and transformed things. Court intervention has been instrumental in harmonizing the gap between the law and real-life experiences. Indian courts have interpreted equality and dignity in a broadened way through the use of dynamic and purposeful interpretation, seeing women not as passive recipients, but as bearers of rights. The rulings in education, employment, maternity benefits, political participation, sexual harassment, rape jurisprudence, and recompense to the victims demonstrate that the judges are concerned with constitutional morality and social justice. The courts have also played the role of a reform agent of the legislature. Cases like *Vishaka v. India*, *State of Rajasthan*, demonstrate how the international human rights laws, such as CEDAW, can be used by the courts to seal gaps in legislation and establish standards to be followed. Likewise, the concept of progressive understandings of Article 21 has changed the rights of women concerning their bodies, privacy, and choice to have a baby into enforceable constitutional guarantees. On the international level, the legal acknowledgment of women's rights as human rights has reinforced the domestic law systems. The UDHR, CEDAW, ICCPR, and ICESCR, among other instruments, underline that women cannot be discriminated against due to a cultural element, and such a practice is a breach of basic human rights. The involvement of these

instruments in India has affected their judicial reasoning and strengthened gender-sensitive interpretations of domestic law.

Substantive equality of women is still a challenge, even in the wave of significant legal and judicial achievements. Patriarchal attitude, social resistance, ignorance, and poor enforcement of laws are still going on to frustrate the rights of women. Rape of women, discrimination in the workplace, inequality in accessing education and job opportunities, and underrepresentation in decision-making institutions all underscore the fact that there is still a wide gap between the law and practice. Therefore, as much as the judiciary has become a great enforcer of women's rights, the ultimate empowerment must be carried out in a comprehensive perspective with the law, institutions, and society. Judicial activism should be supported by the responsiveness of the legislature, administrative effectiveness, and social transformation.

12. Suggestions

12. 1. Enhancing Implementation Mechanisms: Women's laws are normally weakened through poor implementation. Special surveillance organizations, expedited courts dealing with women's offenses, and the responsibility of police departments should be reinforced so as to make their enforcement effective.

12. 2. Judicial Sensitization and Gender Training: Through a program of perpetual gender-sensitization of judges, prosecutors, and police officials, we must break the unconscious biases of our officials and achieve justice that is victim-focused.

12. 3. Legal Awareness and Access to Justice: A good number of women do not know their rights in the law. Legal literacy programs, free legal services, and community-based outreach services should be increased, especially among rural and marginalized groups.

12. 4. Integration of Personal Laws to Constitutional Values: By integrating the personal laws with the constitutional values on equality, dignity, and non-discrimination, gender justice must be achieved in all the personal laws.

12. 5. Societal and Educational Reform: It is not possible to eliminate gender inequality only through legal reform. Patriarchal norms should be actively fought by education systems, media, and civil society, and the rights of women should be respected.

12. 6. Additional Judicial Activism: The judiciary should remain proactive in the interpretation of the law based on constitutional morality and international human rights, particularly in cases where gaps in laws exist.

