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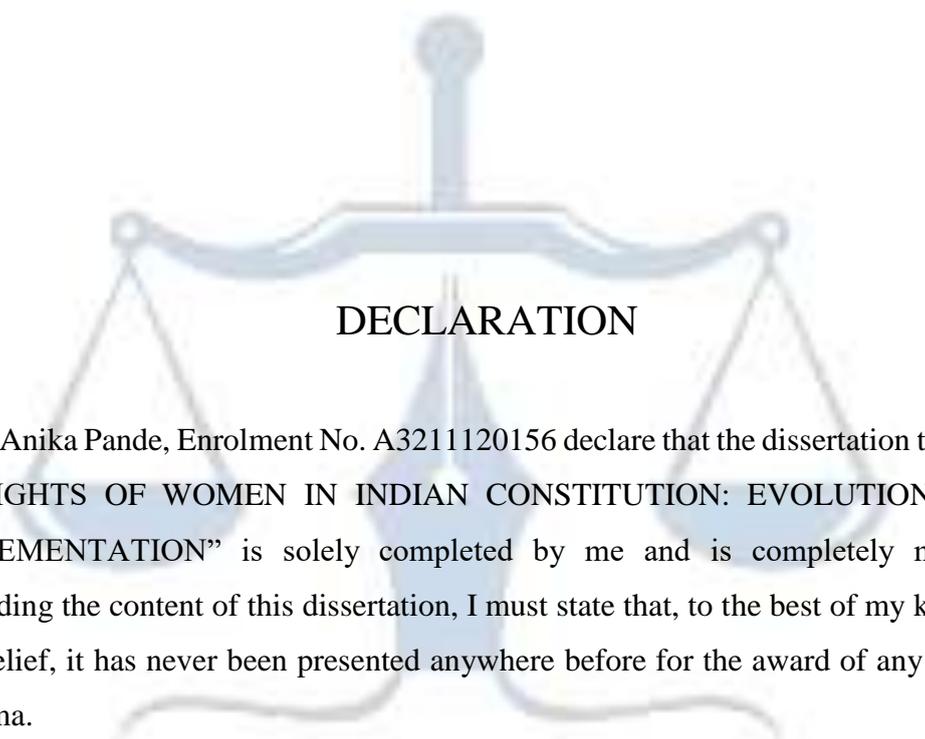
RIGHTS OF WOMEN IN INDIAN CONSTITUTION: EVOLUTION AND IMPLEMENTATION

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ANIKA PANDE

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LIST OF ABBREVIATIONS

S.NO.	Abbreviation	Full Form
1.	AIR	All India Report
2.	BCI	Bar Council of India
3.	CAW	Crime against women
4.	CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
5.	BNSS	Bharatiya Nagrik Suraksha Sanhita
6.	DVC ACT	Protection of Women from Domestic Violence Act, 2005
7.	ICC	Internal Complaints Committee
8.	BNS	Bharatiya Nyaya Sanhita
9.	LCI	Law Commission of India
10.	NCW	National Commission for Women
11.	NGO	Non-governmental Organisation
12.	PCPNDT ACT	Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
13.	POCSO ACT	Protection of Children from Sexual Offences Act, 2012
14.	SC	Supreme Court
15.	SCW	State Commission for Women
16.	UDHR	Universal Declaration of Human Rights
17.	UN	United Nations
18.	UNCEDAW	United Nations Committee on the Elimination of Discrimination Against Women

1G.	VAW	Violence against Women
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LIST OF CASES

S.No.	Case Name	Citation
1.	Vishaka and Others v. State of Rajasthan and Others	AIR 1997 SC 3011
2.	Shah Bano Begum v. Mohd. Ahmed Khan	AIR 1985 SC 945
3.	National Commission for Women v. Union of India	(2005) 12 SCC 241
4.	Air India v. Nargesh Meerza	AIR 1981 SC 1829
5.	Anuj Garg v. Hotel Association of India	(2008) 3 SCC 1
6.	Joseph Shine v. Union of India	(2019) 3 SCC 39
7.	Shayara Bano v. Union of India	(2017) 9 SCC 1
8.	C.B. Muthamma v. Union of India	1979 AIR 1868, 1979 SCR (3) 94
9.	Mary Roy v. State of Kerala	AIR 1986 SC 1011
10.	Bodhisattwa Gautam v. Subhra Chakraborty	AIR 1996 SC 922
11.	Lata Singh v. State of Uttar Pradesh	AIR 2006 SC 2522
12.	State of Punjab v. Gurmit Singh	AIR 1996 SC 1393
13.	Apparel Export Promotion Council v. A.K. Chopra	AIR 1999 SC 625
14.	Madhu Kishwar v. State of Bihar	(1996) 5 SCC 125
15.	Danial Latifi v. Union of India	AIR 2001 SC 3958
16.	Delhi Domestic Working Women's Forum v. Union of India	(1995) 1 SCC 14

17.	Independent Thought v. Union of India	(2017) 10 SCC 800
18.	Tukaram v. State of Maharashtra (Mathura Rape Case)	1979 AIR 185, 1979 SCR (1) 810
19.	State of Maharashtra v. Madhukar Narayan Mardikar	(1991) 1 SCC 57
20.	State of H.P. v. Nikku Ram	(1995) Supp (2) SCC 529
21.	Sheela Barse v. State of Maharashtra	AIR 1983 SC 378
22.	Tuka Ram Soren v. State of Jharkhand	(2008) 16 SCC 569
23.	Charu Khurana v. Union of India	(2015) 1 SCC 192
24.	Rajesh Sharma v. State of U.P.	(2018) 10 SCC 472
25.	Lalita Kumari v. Government of Uttar Pradesh	(2014) 2 SCC 1

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PREFACE

The struggle for women's rights in India has been an ongoing journey that intersects with various domains of law, society, and politics. This dissertation, titled "Rights of Women in Indian Constitution: Evolution and Implementation," explores the historical evolution, legislative framework, judicial interpretations, and societal impacts concerning women's rights in India. Through a detailed examination, it investigates the role of constitutional provisions, statutes, and judicial activism in shaping the rights of women, focusing on their practical implementation and the challenges faced in achieving gender justice.

The first chapter of this study introduces the constitutional foundations of women's rights, analyzing key provisions such as Articles 14, 15, and 21 of the Indian Constitution, which enshrine the principles of equality and non-discrimination. The role of the judiciary in interpreting these provisions and ensuring their effective implementation is highlighted, illustrating how the Indian judiciary has played a pivotal role in shaping women's rights, from *Vishaka v. State of Rajasthan* to cases such as *Shah Bano* and *National Commission for Women v. Union of India*.

Chapter two and subsequent chapters delve into various dimensions of gender equality, focusing on legislative measures like the *Protection of Women from Domestic Violence Act, 2005*, and the *Criminal Law (Amendment) Act, 2013*, which aimed to curb violence against women. Furthermore, the dissertation examines the impact of international frameworks, including CEDAW and the Beijing Declaration, which have significantly influenced India's policies on women's rights.

In addition to legal reforms, the dissertation discusses the persistent societal challenges that hinder the realization of gender justice. Patriarchal mindsets, social discrimination, and barriers to effective implementation of laws remain significant obstacles in achieving full gender equality. The study emphasizes the importance of education, legal literacy, and societal transformation in achieving real change.

Finally, the dissertation concludes by offering a future roadmap for advancing women's rights in India. It argues that while legal reforms have made substantial

progress, the path to gender equality requires a sustained collective effort, encompassing better law enforcement, increased political representation for women, and a continuous challenge to ingrained social biases.

This work aims to provide a comprehensive understanding of the evolution of women's rights within the framework of Indian law, with an emphasis on both achievements and ongoing challenges. By examining legal, social, and political dimensions, it contributes to the broader discourse on gender equality, aiming to inspire further reforms and awareness in India's journey towards true gender justice.



CHAPTER 1: INTRODUCTION

1.1 BACKGROUND AND SIGNIFICANCE OF THE STUDY

The struggle for gender equality has been a pivotal issue not only globally but also within the Indian social and legal fabric. Since ancient times, women in India have faced numerous social, political, and economic disadvantages, stemming largely from rigid patriarchal norms and systemic discrimination. Although there were periods in history when women enjoyed a high status in society, the general trend over centuries reflected a gradual erosion of their rights and status. The Indian Constitution, framed during the period of India's emergence as an independent nation, sought to address these entrenched inequalities by incorporating specific provisions aimed at safeguarding and promoting the rights of women.¹

The significance of the study on women's rights within the Indian Constitution lies in understanding how the framers envisioned an egalitarian society, free from gender-based discrimination. Despite constitutional guarantees, the ground realities reveal persistent gaps between the law's promise and its actual implementation. Exploring this dynamic is critical, not only from a legal perspective but also from a socio-cultural and policy viewpoint. Analyzing the evolution and implementation of these rights helps in identifying where reforms have succeeded and where further interventions are necessary. It also underscores the resilience of the Indian democracy in its attempts to transform deeply rooted social attitudes through legal mechanisms.²

Moreover, this study gains particular relevance in the context of contemporary debates around gender justice, rising instances of violence against women, and demands for more inclusive policymaking. The Constitution remains a living document, and its interpretation with regard to women's rights continues to evolve

¹ Austin, Granville, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966)

² Bhattacharya, Sabyasachi, *The Indian Constitution: A Historical Perspective* (Oxford University Press 2019)

through legislative and judicial processes. A critical examination of this trajectory can offer valuable insights into the ongoing challenges and the ways forward.

1.2 RESEARCH OBJECTIVES

This dissertation is guided by several core objectives. First, it aims to trace the historical evolution of women's rights in India leading up to the framing of the Constitution. Second, it seeks to critically analyze the constitutional provisions that explicitly or implicitly deal with women's rights. Third, it will evaluate the effectiveness of legislative and judicial measures taken to implement these constitutional ideals. Fourth, the study endeavors to identify the persistent barriers that inhibit the full realization of women's rights in practice. Finally, it will propose suggestions for strengthening the constitutional commitment towards gender equality in India.

1.3 RESEARCH QUESTIONS

The central research questions that this study seeks to answer are:

- How have women's rights evolved historically in India leading up to constitutional recognition?
- What are the key constitutional provisions that protect and promote women's rights?
- How effective have legislative and judicial measures been in realizing constitutional ideals?
- What are the contemporary challenges in the implementation of these rights?
- What reforms are necessary to better fulfill the constitutional promise of gender equality?

1.4 SCOPE OF THE STUDY

The scope of this dissertation encompasses an analysis of women's rights as enshrined in the Indian Constitution, along with related legislative measures and judicial interpretations. The study focuses primarily on the period from the

inception of the Constitution in 1950 to the contemporary era, highlighting major legal developments, landmark cases, and significant policy initiatives. It also includes a brief comparative perspective to situate the Indian experience in the broader global context.

While the primary focus remains on constitutional and legal frameworks, the study necessarily engages with social and cultural aspects influencing the realization of women's rights. However, it does not delve deeply into sector-specific studies such as women's rights in employment or healthcare, except where they are directly linked to constitutional mandates.

1.5 RESEARCH METHODOLOGY

This dissertation adopts a doctrinal research methodology, primarily based on secondary sources. It involves a critical analysis of constitutional provisions, legislations, judicial decisions, scholarly articles, reports of governmental and non-governmental bodies, and international instruments relevant to women's rights. The research is qualitative in nature, focusing on legal analysis and critical evaluation rather than empirical data collection. Wherever necessary, a comparative approach has been used to draw parallels between Indian and foreign jurisdictions.

Primary sources such as the Constitution of India, significant statutes, and landmark judgments form the backbone of the research. Secondary sources like books, journal articles, and reports help in providing context, interpretation, and critical viewpoints. Citation follows a consistent style, and all references have been duly acknowledged to maintain academic integrity.

1.6 CHAPTER ORGANIZATION

The dissertation is organized into eight chapters.

- The first chapter introduces the topic, outlines the research objectives, questions, methodology, and scope.
- The second chapter discusses the historical evolution of women's rights in India.

- The third chapter analyzes the constitutional provisions specifically related to women.
- The fourth chapter explores legislative measures and the role of judiciary in expanding women's rights.
- The fifth chapter evaluates institutional mechanisms aimed at the protection of women's rights.
- The sixth chapter discusses contemporary challenges in the realization of these rights.
- The seventh chapter presents a comparative analysis with other jurisdictions and the role of international law.
- The final chapter concludes the study with findings and recommendations for reform.

1.7 RATIONALE FOR THE STUDY

The rationale behind this dissertation stems from the pressing need to bridge the gap between the legal recognition of women's rights and their actual realization. Although India has made significant strides in enacting progressive laws and policies, ground-level implementation remains fraught with challenges. Societal attitudes, economic disparities, political marginalization, and institutional inertia continue to undermine constitutional guarantees.³

Moreover, the constitutional framework has shown remarkable adaptability through judicial activism, but this process has not been without contradictions. Landmark decisions such as *Vishaka v. State of Rajasthan* (1997)⁴ and *Shayara Bano v. Union of India* (2017)⁵ demonstrate the judiciary's proactive role in safeguarding women's rights. However, there are also instances where the courts have failed to fully enforce constitutional principles. A critical analysis of this dynamic helps in understanding the role of various stakeholders in promoting gender justice.

³ Choudhury, Cyra Akila, 'Constitutionalizing Women's Rights in India: Problems and Prospects' (2020) 35(2) Indian Law Review 157

⁴ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011



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In addition, recent developments such as the criminalization of triple talaq, debates over women's entry into religious spaces, and movements like #MeToo have brought the discourse on women's rights back to the center of public attention. Therefore, this study is both timely and essential in mapping the journey of constitutional promises and their practical implications.

1.8 IMPORTANCE OF CONSTITUTIONALISM IN WOMEN'S RIGHTS

The Indian Constitution represents the collective will of a newly independent nation determined to break free from the shackles of colonial oppression and social inequalities. Constitutionalism, as a doctrine emphasizing the rule of law, fundamental rights, and separation of powers, provides the theoretical and practical foundation for gender equality. For women, the Constitution is not merely a legal document but a powerful instrument of empowerment, offering both rights and remedies against discrimination and oppression.⁶

The framers, deeply influenced by global human rights movements and indigenous struggles for social reform, embedded equality principles in the very fabric of the Constitution. Articles 14, 15, and 16, for instance, go beyond formal equality to endorse substantive measures for achieving actual gender parity. Similarly, the Directive Principles of State Policy advocate for maternity relief, equal pay, and the welfare of women workers, recognizing that mere formal rights are insufficient without supportive socio-economic measures.⁷

Thus, constitutionalism is pivotal not only for legal entitlements but also for reshaping social norms and collective consciousness. It provides a continuous standard against which laws, policies, and societal practices must be measured and corrected.

1.9 CHALLENGES TO CONSTITUTIONAL IMPLEMENTATION

⁶ Baxi, Upendra, *The Future of Human Rights* (Oxford University Press 2008)

⁷ Galanter, Marc, *Law and Society in Modern India* (Oxford University Press 1989)

Despite constitutional mandates, the lived experiences of Indian women reveal significant discrepancies. Discrimination persists in various forms ranging from overt violence to subtle social exclusion. Legal measures, while important, often fall short without corresponding societal change. For instance, despite the constitutional guarantee of equal pay for equal work, women in India continue to face a wide gender wage gap across sectors.⁸

Another challenge lies in the intersectionality of oppression. Women belonging to marginalized communities such as Dalits, Adivasis, and religious minorities often face compounded disadvantages. The constitutional promise of equality must therefore be understood and implemented in an intersectional framework that accounts for multiple forms of discrimination.⁹

Judicial interventions have at times been inconsistent, and enforcement mechanisms such as the National Commission for Women suffer from limited powers and resource constraints. Patriarchal mindsets within law enforcement agencies and the judiciary itself sometimes dilute the effectiveness of otherwise progressive laws.

1.10 CONCLUSION

The study of women's rights in the Indian Constitution is a profound reflection on the country's broader struggles with democracy, equality, and social justice. It is a journey marked by significant achievements but also by persistent challenges. Constitutional guarantees have undeniably expanded the horizons of possibilities for Indian women, yet the full realization of these rights demands not only robust legal frameworks but also transformative changes in societal attitudes and institutional practices.

⁸ International Labour Organization (ILO), *Global Wage Report 2022–2023: The Impact of COVID-19 and Inflation* (ILO 2023)

⁹ Crenshaw, Kimberlé, 'Demarginalizing the Intersection of Race and Sex' (1989) 1989 University of Chicago Legal Forum 139

CHAPTER 2: HISTORICAL EVOLUTION OF WOMEN'S RIGHTS IN INDIA

2.1 INTRODUCTION

The evolution of women's rights in India is a narrative woven deeply into the broader history of the subcontinent's social, political, and legal developments. Throughout India's long history, women's rights have undergone significant shifts sometimes progressive, sometimes regressive reflecting the changing dynamics of power, culture, religion, and economy. Understanding this trajectory is crucial because the constitutional guarantees provided to Indian women after independence were not created in a vacuum. They were informed by centuries of experiences, struggles, setbacks, and partial victories. The framing of women's rights within the Constitution must therefore be read against this rich, complex historical backdrop.

In ancient times, Indian society demonstrated both remarkable respect for and notable restrictions on women, depending on the region, community, and era. Women in the early Vedic period are often credited with relatively high social standing, evidenced by their participation in intellectual, spiritual, and public life (Altekar, 1956).¹⁰ However, over time, socio-religious practices began to confine women within narrower domestic spheres. Codified texts like the Manusmriti laid down increasingly patriarchal norms that emphasized women's dependence and subservience to male authority.¹¹

The medieval period compounded these challenges. With the onset of various Islamic dynasties and later Mughal rule, new cultural practices blended with existing patriarchal structures to reinforce systems that restricted women's freedoms. Practices such as purdah and the normalization of child marriage gained stronger footholds during this time.¹² Yet, even amid these constraints, periods of resilience and resistance persisted, notably through movements like Bhakti and

¹⁰ Altekar, A.S., *The Position of Women in Hindu Civilization* (Motilal Banarsidass 1956)

¹¹ Doniger, Wendy and Brian K. Smith, *The Laws of Manu* (Penguin Classics 1991)

¹² Hasan, Mushirul, *Writing India's Partition: Some Observations* (Oxford University Press 2007)

Sufism, which sometimes offered spaces for women to assert spiritual and social agency.¹³

Colonialism introduced a different complexity to the question of women's rights. British administrators, viewing Indian society through orientalist and paternalistic lenses, often highlighted the "plight" of Indian women as a justification for imperial rule. Simultaneously, social reformers within India, such as Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar, initiated campaigns against practices like sati and for women's education, arguing that reform was essential for national rejuvenation.¹⁴ Yet, the colonial state's interventions were selective and strategic, often reinforcing caste and religious divisions to maintain control, rather than pursuing a genuine transformation of women's lives.¹⁵

The freedom movement of the early twentieth century marks a crucial turning point. As nationalist struggles gained momentum, women were mobilized on an unprecedented scale. Political leaders recognized the symbolic and strategic importance of women's participation, leading to a new public visibility for women in protests, marches, and revolutionary activities. Figures like Sarojini Naidu, Kasturba Gandhi, and Aruna Asaf Ali not only participated in political movements but also inspired broader societal conversations about the role and rights of women in an independent India.¹⁶ The idea that women's emancipation was an essential component of national liberation became widely accepted among progressive nationalists.

When the task of constitution-making began after independence, the framers were deeply aware of the historical injustices suffered by women. Leaders such as Dr.

B.R. Ambedkar, Hansa Mehta, and Rajkumari Amrit Kaur strongly advocated for embedding gender equality into the very fabric of the Indian state.¹⁷ This conscious

¹³ Sharma, Arvind, *Women in Indian Religions* (Oxford University Press 2002)

¹⁴ Forbes, Geraldine, *Women in Modern India* (Cambridge University Press 1996)

¹⁵ Chatterjee, Partha, 'The Nationalist Resolution of the Women's Question' in *Recasting Women* (Kali for Women 1989)

¹⁶ Jayawardena, Kumari, *Feminism and Nationalism in the Third World* (Verso 1986)

¹⁷ Austin, Granville, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999)

commitment was shaped by the recognition that formal independence from colonial rule would be incomplete without social and gender justice.

However, it is critical to recognize that legal and constitutional guarantees alone could not instantly erase centuries of entrenched inequality. The framing of women's rights in the Constitution was just one step albeit a foundational one in a longer, continuing struggle for substantive equality. Historical structures of oppression and discrimination could not be dismantled overnight. The social, cultural, and economic contexts that had historically marginalized women continued to exert influence even after 1947, necessitating ongoing activism, policy reforms, and social change.

The historical evolution of women's rights in India, therefore, is a story of both progress and paradoxes. Each phase of Indian history ancient, medieval, colonial, and modern contributed distinct elements to the contemporary framework of women's rights. Ancient India provided early examples of women's participation and recognition; medieval India reflected periods of severe contraction in rights; colonial India opened spaces for reform while simultaneously entrenching certain hierarchies; and the freedom movement galvanized both mass participation and intellectual advocacy for women's empowerment.

This chapter aims to provide a comprehensive understanding of these historical shifts. It seeks to trace the legal, social, and political transformations that culminated in the recognition of women's fundamental rights in the Indian Constitution. By doing so, it highlights the importance of history not merely as a record of the past but as a vital context for interpreting present challenges and future possibilities. Without this historical understanding, efforts to secure gender equality risk being superficial or disconnected from the deeper roots of societal norms and resistance.

Thus, the story of women's rights in India is not linear or monolithic. It is a story marked by resilience, struggle, negotiation, and adaptation. It is shaped by countless unnamed women, reformers, revolutionaries, lawmakers, and ordinary citizens who, across generations, pushed the boundaries of what was possible. Their legacy endures today, reminding us that rights are never simply granted — they are claimed, fought for, and continuously defended.

2.2 STATUS OF WOMEN IN ANCIENT INDIA

The status of women in ancient India is a subject layered with both complexity and contradiction. Historians and scholars largely agree that women's positions varied dramatically across different periods, communities, and classes, making any singular portrayal inadequate. However, broad patterns can be identified, especially when analyzing major epochs such as the Vedic, post-Vedic, and early historic periods. In many ways, the trajectory of women's rights and roles during ancient times reveals both the high ideals and the stark realities of Indian civilization.

During the early Vedic period (approximately 1500–1000 BCE), women enjoyed relatively high status and autonomy in society. They were educated, could participate in religious rituals, and had access to intellectual pursuits. Ancient texts like the Rigveda mention women scholars such as Gargi and Maitreyi, who engaged in philosophical debates and discussions with male sages.¹⁸ Marriage during this time was more of a partnership rather than an institution of domination. The ritual of swayamvara, where a woman had the right to choose her husband, also suggests a degree of agency in personal decisions.¹⁹ Women were not just passive participants but active agents in shaping the religious and social frameworks of early society.

Further evidence of women's autonomy can be found in their property rights. Some Vedic hymns suggest that women could inherit and own property independently, although such instances were rare and primarily limited to higher strata of society.²⁰ The spiritual equality of men and women was a strong feature of Vedic thought; the concept of Ardhanarishvara depicting the divine as half male and half female symbolized the essential balance and interdependence between genders.

However, the later Vedic period (around 1000–500 BCE) witnessed a gradual decline in women's rights. The composition of Smriti literature, particularly texts like the Manusmriti, began to codify social norms that curtailed women's freedoms. The Manusmriti emphasized the dependency of women on male guardianship first

¹⁸ Altekar, A.S., *The Position of Women in Hindu Civilization* (Motilal Banarsidass 1956)

¹⁹ Jaiswal, Suvira, *Women in Early India: Problems and Perspectives* (Manohar Publishers 1981)

²⁰ Sharma, R.S., *Material Culture and Social Formations in Ancient India* (Macmillan 1987)

under the father, then husband, and later son.²¹ It stated, "A woman must be subject to her father in childhood, her husband in youth, and her sons in old age." These prescriptions effectively institutionalized a structure where women were denied legal and social independence throughout their lives.

The shift from a largely pastoral economy to agrarian settlements may have contributed to this decline. As property rights and inheritance became more rigidly defined, patriarchal structures sought to control women's reproductive and labor capacities to secure lineage and property.²² Religious rituals, once accessible to women, increasingly became male-dominated spheres. Education for women dwindled, and their participation in intellectual activities was considerably reduced.

By the time of the Mauryan Empire (4th–2nd centuries BCE), women's roles became more circumscribed, especially in urban centers. Kautilya's Arthashastra reflects a utilitarian view of women, seeing them primarily in relation to their roles within the family and economy. Although some women served as courtesans, spies, and even royal advisors, their legal rights were minimal compared to their male counterparts.²³ State control over marriage, sexual conduct, and widowhood became more pronounced during this period.

Nevertheless, certain avenues for autonomy persisted. For example, women who became nuns or joined religious sects like Buddhism and Jainism could carve out spaces of independence. The Buddhist canon records numerous instances of women monks (bhikkhunis) achieving high spiritual status, and figures like Mahaprajapati Gautami, the Buddha's foster mother, were instrumental in establishing the order of nuns.²⁴ These alternative religious movements occasionally offered women pathways to agency outside traditional domestic roles.

The status of women varied greatly according to class, caste, and region. Elite women in royal households often wielded considerable political influence behind the scenes. Historical records from the Sangam period in South India (circa 300

²¹ Doniger, Wendy and Brian K. Smith, *The Laws of Manu* (Penguin Classics 1991)

²² Chakravarti, Uma, *Gendering Caste: Through a Feminist Lens* (Sage Publications 1993)

²³ Trautmann, Thomas R., *Kautilya and the Arthashastra: A Statistical Investigation of the Authorship and Evolution of the Text* (Brill 1971)

²⁴ Barnes, Nancy Schuster, 'Buddhist Women and the Nuns' Order in Asia', in Religion (1984)



BCE–300 CE) highlight the significant presence of women poets and warriors.²⁵ In contrast, lower-caste and tribal women sometimes retained more economic and social freedom because their communities depended heavily on collective labor and had less rigid gender norms.²⁶

Social customs concerning marriage and family life underwent important transformations during this period. The institution of Sati, the practice of a widow immolating herself on her husband's funeral pyre began to appear sporadically in certain regions, although it was neither universal nor compulsory at this stage.²⁷ The glorification of widowhood and the ideal of pativrata (the devoted wife) were promoted through literature and folklore, reinforcing ideals of feminine sacrifice and subordination.

Despite the growing constraints, ancient India produced many women of remarkable stature. In addition to philosophical figures like Gargi and Maitreyi, royal women such as Queen Didda of Kashmir and empresses of the Gupta era played key roles in governance and culture. Artistic representations from ancient temples and sculptures such as those found at Khajuraho depict women not merely as objects of beauty but also as powerful, independent beings engaged in music, dance, and worship, suggesting a nuanced and sometimes empowering view of femininity.²⁸

Education, though increasingly restricted, did not disappear entirely. Centers of learning like Takshashila and Nalanda are believed to have admitted women, albeit in limited numbers and circumstances.²⁹ Religious education for women persisted in various sects, especially among the Buddhist and Jain communities, though broader access to scholarly pursuits remained elusive.

²⁵ Hart, George L., *Poems of Ancient Tamil: Their Milieu and Their Sanskrit Counterparts* (University of California Press 1975)

²⁶ Omvedt, Gail, *Dalit Visions: The Anti-caste Movement and the Construction of an Indian Identity* (Orient Longman 1993)

²⁷ Majumdar, R.C., *The History and Culture of the Indian People Vol. II* (Bharatiya Vidya Bhavan 1951)

²⁸ Dehejia, Vidya, *Discourse in Early Buddhist Art: Visual Narratives of India* (IB Tauris 1997)

²⁹ Ghosh, Pika, *Temple to Love: Architecture and Devotion in Seventeenth-century Bengal* (Indiana University Press 2006)

In sum, the status of women in ancient India was characterized by a dynamic interplay between opportunity and oppression. The early promise of gender parity in Vedic society gave way to increased regulation and restriction in subsequent eras. Yet, moments of agency, autonomy, and achievement remained possible, reflecting the resilience of Indian women even within restrictive systems. Understanding this ancient context is crucial, as it establishes both the historical depth of patriarchy in India and the long tradition of resistance and reimagination by women themselves.

This complex heritage continues to influence contemporary debates on gender equality, reminding us that the struggle for women's rights in India is not a recent phenomenon, but a deeply rooted, ongoing historical process. The journey from the spiritual debates of Vedic women to the constitutional guarantees of modern India is thus one of continuity, rupture, and relentless aspiration.

2.3 STATUS OF WOMEN IN MEDIEVAL INDIA

The medieval period in Indian history, spanning roughly from the 8th to the 18th century, was marked by major socio-political changes that significantly affected the status of women. This era witnessed the establishment of Islamic rule in significant parts of the subcontinent, the flourishing of regional kingdoms, and eventually the rise of Mughal power. Throughout these centuries, the position of women saw both continuities and profound transformations, often determined by the interplay between indigenous traditions and new cultural influences.

In the early medieval period, particularly under the rule of regional dynasties such as the Cholas, Chalukyas, and Rashtrakutas in South India, women maintained a considerable degree of agency within society. Epigraphic evidence from temple inscriptions in Tamil Nadu, for example, reveals that women actively participated in temple management, land transactions, and religious endowments (Sastri, 1955).³⁰ Some women even held positions of local administrative responsibility, highlighting the complex and non-monolithic nature of gender roles during this era. In cultural life, women were prominent as poets, dancers, and musicians, with institutions like the Devadasi system emerging, where women were dedicated to

³⁰Sastri, K.A. Nilakanta, A History of South India (Oxford University Press 1955)



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temple service and enjoyed significant cultural stature, albeit within a framework that would later become exploitative (Kersenboom, 1987).³¹

Nevertheless, the broader medieval period saw the gradual tightening of patriarchal norms, particularly among the upper castes. The practice of child marriage gained prevalence during this time, and girls were often married before reaching puberty. A combination of religious texts, social customs, and concerns over female chastity led to this development. The ideal of the chaste, obedient wife became deeply entrenched, limiting women's mobility and autonomy in ways that had not been uniformly observed in earlier periods (Sharma, 1987).³²

The advent of Islamic rule in India, beginning with the Delhi Sultanate (13th–16th centuries), brought new legal and cultural frameworks that influenced gender relations, though often in complex and localized ways. Islamic law provided for certain rights to women such as inheritance rights, rights to initiate divorce (khula), and protections against arbitrary treatment which sometimes stood in contrast to prevailing Hindu norms (Engineer, 2008).³³ Muslim women in India, particularly those belonging to elite classes, could own property, conduct trade, and in some cases, wield political power. Figures such as Razia Sultana, who ruled Delhi briefly in the 13th century, represent rare but significant examples of female authority during this period (Jackson, 1999).³⁴

However, the influence of purdah (seclusion of women) grew increasingly prominent. Originally a Persian and Central Asian practice, purdah was adopted by Muslim ruling classes and, over time, spread to sections of Hindu society, particularly among the Rajputs and other upper-caste communities. Purdah severely restricted women's mobility, education, and participation in public life. The practice of veiling and the confinement of women to domestic spheres symbolized the growing limitations on women's autonomy (Chatterjee, 1993).³⁵ In many cases, the

³¹ Kersenboom, Saskia C., *Nityasumangali: Devadasi Tradition in South India* (Motilal Banarsidass 1987)

³² Sharma, R.S., *Material Culture and Social Formations in Ancient India* (Macmillan 1987)

³³ Engineer, Asghar Ali, *The Rights of Women in Islam* (New Dawn Press 2008)

³⁴ Jackson, Peter, *The Delhi Sultanate: A Political and Military History* (Cambridge University Press 1999)

³⁵ Chatterjee, Kumkum, *The Cultures of History in Early Modern India: Persianization and Mughal Culture* (Oxford University Press 1993)

spread of purdah was as much a reaction to political insecurity and the need to protect the 'honor' of women as it was a cultural or religious practice.

One of the most tragic practices affecting women during the medieval period was the institutionalization and expansion of sati, the immolation of widows on their husband's funeral pyres. While sati had existed sporadically in earlier centuries, it became more widespread and socially valorized during this period, particularly among Rajput and Brahmin communities (Yang, 2008).³⁶ Sati was promoted as the ultimate act of wifely devotion and was sometimes celebrated in ballads and popular memory. However, many historical records also suggest that sati was often coercive, with widows being pressured or forced to sacrifice themselves, highlighting the extreme vulnerability of women, particularly widows, in medieval society.

Women's education in medieval India suffered a serious setback. Access to learning, which had been more readily available during earlier periods, became increasingly restricted to a small elite. Female literacy rates declined, and societal attitudes toward educating girls became more conservative. In most communities, a girl's training was focused on domestic duties and religious rituals, with little emphasis on intellectual development (Thapar, 2002).³⁷ Some exceptions persisted notably, royal women and women from scholarly families sometimes received private education but these were rare and did not reflect the general trend.

Despite these adverse conditions, women continued to exert influence within certain spheres. Queens and consorts often acted as political advisors, regents, or even de facto rulers during periods of crisis. The Bhakti and Sufi movements of medieval India also provided important platforms for women's spiritual expression. Female saints like Mirabai, Akka Mahadevi, Lal Ded, and others challenged conventional gender norms by asserting their direct relationship with the divine, outside the

³⁶ Yang, Anand A., 'Sacred Mandates and Imperial Authority: Sati and Widow Burning in Colonial India', in *Comparative Studies in Society and History* (2008)

³⁷ Thapar, Romila, *Early India: From the Origins to AD 1300* (University of California Press 2002)

bounds of patriarchal authority (Hawley, 2015).³⁸ Their poetry and teachings, still celebrated today, reflect powerful acts of resistance and self-assertion.

The Bhakti movement, in particular, questioned caste and gender hierarchies. Women devotees, irrespective of their social background, found a voice within the movement that the rigid structures of Brahmanical orthodoxy had often denied them. Mirabai, the Rajput princess who defied her royal family to sing and dance in devotion to Krishna, stands as a symbol of spiritual rebellion against societal constraints (Chaudhuri, 1993).³⁹ Through devotional songs and personal example, these women saints expanded the horizons of what was considered acceptable female behavior.

In Islamic traditions, the Sufi orders similarly opened limited spaces for women's agency. Sufi shrines, though largely male-dominated, often welcomed women pilgrims, and some female mystics gained reputations for their piety and spiritual authority (Ernst, 1997).⁴⁰ While these instances did not translate into widespread structural changes, they underscore the persistence of female voices even within restrictive environments.

Social practices such as dowry also became more institutionalized during the medieval period, leading to further commodification of women within marriage alliances. Dowry, originally a practice intended to secure the bride's economic security, evolved into a major social burden and a tool for reinforcing economic and caste inequalities (Chowdhry, 1998).⁴¹ Families often faced severe financial strain to provide dowries for daughters, and women who brought insufficient dowries faced discrimination and ill-treatment within marital homes.

As the Mughal Empire (1526–1857) consolidated power, there were both regressive and progressive influences on women's lives. While practices such as purdah and child marriage continued or even deepened, certain Mughal emperors and

³⁸ Hawley, John Stratton, *A Storm of Songs: India and the Idea of the Bhakti Movement* (Harvard University Press 2015)

³⁹ Chaudhuri, Nirad C., *The Autobiography of an Unknown Indian* (Macmillan 1993)

⁴⁰ Ernst, Carl W., *The Shambhala Guide to Sufism* (Shambhala 1997)

⁴¹ Chowdhry, Prem, *The Veiled Women: Shifting Gender Equations in Rural Haryana* (Oxford University Press 1998)

empresses took initiatives that had a positive impact on women's status. Empress Nur Jahan, wife of Jahangir, is a prominent example of a woman who wielded immense power in the Mughal court, issuing royal decrees and influencing imperial policies (Lal, 1980).⁴² Architectural patronage by royal women, such as the commissioning of gardens, tombs, and mosques, also indicates their significant roles in shaping cultural life.

Despite these scattered instances of female authority and empowerment, the general trajectory of medieval India was one of increasing confinement, control, and codification of women's subordination. Women's bodies became symbolic battlegrounds for community honor, political rivalry, and religious identity, a phenomenon that would have lasting implications for gender relations in South Asia.

Understanding the medieval period is crucial not only because it highlights the roots of many social practices that persist today, but also because it reminds us that resistance, negotiation, and female agency have long been part of India's historical narrative. Women's experiences in medieval India were not uniform: they varied greatly across region, religion, caste, and class. Nevertheless, the dominant trend was one of increasing marginalization, against which women continuously struggled in various ways through devotion, scholarship, political engagement, and spiritual rebellion.

2.4 STATUS OF WOMEN IN COLONIAL INDIA

The colonial period in India, stretching from the mid-18th century to the mid-20th century, brought about profound social, political, and economic transformations that deeply impacted the lives of Indian women. British colonial rule, through its administrative systems, education policies, and reform initiatives, interacted with indigenous traditions in complex and often contradictory ways, both challenging and reinforcing existing gender hierarchies. The status of women during this period cannot be understood merely as a linear progression towards emancipation; it was

⁴² Lal, Ruby, *Domesticity and Power in the Early Mughal World* (Cambridge University Press 1980)

shaped by contestations between colonial authorities, Indian reformers, nationalist leaders, and women's voices themselves.

One of the most significant aspects of colonial influence was the introduction of Western education, which gradually opened up new possibilities for women. Missionary activities and the efforts of British administrators led to the establishment of girls' schools, although such initiatives faced strong resistance initially from conservative sections of Indian society (Forbes, 1996).⁴³ Pioneering figures like John Elliot Drinkwater Bethune, who established Bethune School for girls in Calcutta in 1849, symbolized the early efforts towards educating Indian women (Sarkar, 2001).⁴⁴ Despite initial challenges, education for girls expanded slowly, creating the first generation of educated women who would later play crucial roles in social reform and nationalist movements.

At the same time, colonial interventions often revealed a deep paternalistic attitude towards Indian society. British officials frequently justified colonial rule by pointing to the "degraded" condition of Indian women as evidence of India's civilizational backwardness. This framing, sometimes called the "civilizing mission," portrayed Indian men as oppressors and Indian women as victims, necessitating British intervention (Chatterjee, 1989).⁴⁵ Practices such as sati (widow immolation) and child marriage were particularly singled out as symbols of Indian barbarism. The banning of sati in 1829 under Governor-General Lord William Bentinck was a landmark event, yet it was also emblematic of the colonial state's selective engagement with social reforms (Mani, 1998).⁴⁶

Indian social reformers of the 19th century, deeply influenced by both indigenous traditions and Western liberal ideas, took up the cause of women's upliftment. Leaders like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and Mahadev Govind Ranade advocated for reforms such as widow remarriage, raising the age of

⁴³ Forbes, Geraldine, *Women in Modern India* (Cambridge University Press 1996)

⁴⁴ Sarkar, Sumit, *Modern India 1885–1947* (Macmillan 2001)

⁴⁵ Chatterjee, Partha, 'The Nationalist Resolution of the Women's Question' in *Recasting Women: Essays in Indian Colonial History* (Kali for Women 1989)

⁴⁶ Mani, Lata, *Contentious Traditions: The Debate on Sati in Colonial India* (University of California Press 1998)

marriage, and promoting women's education (Sen, 2002).⁴⁷ The Hindu Widows' Remarriage Act of 1856, championed by Vidyasagar, legally permitted Hindu widows to remarry, a radical move at a time when widows were often marginalized and forced into lives of deprivation. However, these reforms were met with fierce resistance from orthodox elements, highlighting the contested nature of social change.

While reformers emphasized women's education and rights within a framework of religious and social reform, colonial authorities often remained hesitant to impose drastic changes that might destabilize their rule. They feared that alienating conservative Indian elites would threaten political stability. As a result, many progressive legal changes, such as raising the minimum age of marriage through the Age of Consent Act of 1891, were modest and incremental (Gupta, 2001).⁴⁸ This tension between reformist impulses and political caution defined much of the colonial government's approach to women's issues.

The late 19th and early 20th centuries saw the rise of an emergent women's movement in India, with women beginning to organize themselves into associations and platforms to advocate for their rights. Organizations like the Bharat Mahila Parishad (founded in 1905) and the Women's Indian Association (founded in 1917) became crucial spaces where women articulated demands for education, suffrage, and social reform (Forbes, 1996).⁴⁹ Educated middle-class women, predominantly from urban centers like Bombay, Calcutta, and Madras, began to engage in public life, challenging the notion that women's place was solely in the domestic sphere.

The colonial economy also had profound impacts on women's lives. The commercialization of agriculture, expansion of railways, and introduction of new industries altered traditional family structures and labor patterns. In many cases, women from marginalized communities entered the workforce in plantations, factories, and domestic service, often under exploitative conditions (Chaudhuri,

⁴⁷ Sen, Sukumar, *History of Bengali Literature* (Sahitya Akademi 2002)

⁴⁸ Gupta, Charu, *Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India* (Permanent Black 2001)

⁴⁹ Forbes, Geraldine, *Women in Modern India* (Cambridge University Press 1996)

1993).⁵⁰ While upper-caste women experienced increasing seclusion through the reinforcement of purdah, working-class women often faced the double burden of labor and gender discrimination. Thus, colonial modernity created sharply divergent experiences for women across class, caste, and community lines.

The nationalist movement further complicated the status of women in colonial India. On the one hand, nationalist leaders like Mahatma Gandhi encouraged women's participation in public protests, marches, and boycotts. Gandhi's call for women's active involvement in the Non-Cooperation Movement (1920–22) and later the Salt March (1930) symbolized a significant departure from traditional gender norms (Jayawardena, 1986).⁵¹ Thousands of women from diverse backgrounds took to the streets, picketed liquor shops, and courted arrest, redefining political activism in gendered terms. Participation in the nationalist struggle allowed many women to step into public spaces previously denied to them.

On the other hand, nationalist discourse often framed women symbolically as bearers of tradition and culture. Women's role was idealized within the private sphere as preservers of moral and spiritual values, even as they were mobilized for public action. This dichotomy between the empowered nationalist woman and the idealized domestic figure reflected the broader tensions within the Indian nationalist imagination about modernity, tradition, and gender (Chatterjee, 1989).⁵² Women thus became both subjects and symbols of political aspirations, sometimes empowering, but often constraining their real autonomy.

Legal reforms continued during the late colonial period, albeit unevenly. The Child Marriage Restraint Act of 1929, also known as the Sarda Act, sought to curb child marriage by setting minimum ages for marriage at 14 for girls and 18 for boys. While the law marked an important symbolic victory for social reformers, its enforcement remained weak due to widespread social resistance and the limited

⁵⁰ Chaudhuri, Nupur, 'Indian Women's Movement in Historical Perspective,' in *South Asia Bulletin* (1993)

⁵¹ Jayawardena, Kumari, *Feminism and Nationalism in the Third World* (Verso 1986)

⁵² Chatterjee, Partha, 'The Nationalist Resolution of the Women's Question' in *Recasting Women: Essays*



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reach of the colonial legal apparatus (Mukherjee, 2010).⁵³ Nevertheless, such legislation laid the groundwork for future reforms in independent India.

One of the notable developments of this period was the gradual emergence of women as lawmakers and policy influencers. Women such as Sarojini Naidu, Annie Besant, and later Vijaya Lakshmi Pandit became prominent political leaders, advocating for women's rights alongside broader nationalist goals. The formation of the All India Women's Conference (AIWC) in 1927 provided a critical forum for women's activism, focusing on issues like education, health, child welfare, and legislative reforms (Forbes, 1996).⁵⁴ Through petitions, conferences, and participation in legislative councils, Indian women began to demand political rights, including the right to vote and hold public office.

The Montagu-Chelmsford Reforms of 1919 introduced limited franchise rights for women, a milestone achievement that was further expanded under the Government of India Act of 1935. Although voting rights were initially restricted by property and education qualifications, the inclusion of women in the political process represented a significant break from the past (Jayawardena, 1986).⁵⁵ Women were no longer merely subjects of reform; they were increasingly becoming agents of change.

Culturally, the colonial period also witnessed a flourishing of women's writing. Female authors, poets, and journalists emerged, voicing the experiences, aspirations, and challenges faced by Indian women. Writers like Rokeya Sakhawat Hossain, who wrote the feminist utopian story *Sultana's Dream* in 1905, and later authors like Toru Dutt and Cornelia Sorabji, expanded the intellectual horizons for women and contributed to the shaping of a feminist consciousness (Burton, 1998).⁵⁶

However, it is important to recognize that the benefits of colonial modernity were not evenly distributed. Rural women, lower-caste women, and women from

⁵³ Mukherjee, Sumita, *Indian Suffragettes: Female Identities and Transnational Networks* (Oxford University Press 2010)

⁵⁴ Forbes, Geraldine, *Women in Modern India* (Cambridge University Press 1996)

⁵⁵ Jayawardena, Kumari, *Feminism and Nationalism in the Third World* (Verso 1986)

⁵⁶ Burton, Antoinette, *Burdens of History: British Feminists, Indian Women, and Imperial Culture, 1865-1915* (University of North Carolina Press 1998)

marginalized communities often remained excluded from educational and economic opportunities. The rhetoric of reform and nationalism often prioritized the concerns of urban, upper-caste women, leaving vast sections of the female population on the margins.

In sum, the colonial period was a time of profound contradictions for Indian women. It was an era of both oppression and opportunity, restriction and resistance. Colonial interventions, indigenous reform movements, nationalist mobilizations, and women's own initiatives interacted to create a complex and evolving landscape of gender relations. The seeds of future struggles for equality and empowerment were sown during this period, setting the stage for the constitutional guarantees and legal reforms that would emerge after independence. The experiences of women during colonial India thus remain a crucial chapter in understanding the broader trajectory of women's rights in the country.

2.5 WOMEN'S MOVEMENTS BEFORE INDEPENDENCE

The women's movements that emerged before India's independence were marked by a unique blend of social reform, political activism, and struggles for gender justice. These movements did not arise in isolation but were deeply embedded within the broader currents of social change, nationalism, and colonialism. They reflected the evolving aspirations of Indian women and played a crucial role in laying the foundation for later feminist activism in independent India. Women's movements during this period were not monolithic; they were shaped by varying ideological frameworks, regional contexts, religious affiliations, and class dynamics.

The earliest expressions of organized women's activism in India were closely tied to social reform efforts initiated during the 19th century. As colonial critiques of Indian society focused on practices like sati, child marriage, and the general subjugation of women, Indian reformers responded by advocating for change. Reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and Jyotirao Phule championed causes like widow remarriage, female education, and the abolition of untouchability, recognizing that the upliftment of women was integral

to broader social progress (Sen, 2002).⁵⁷ However, these early efforts were often led by men, and women's own voices, though present, remained relatively muted.

By the late 19th century, Indian women began forming their own organizations and asserting their agency more directly. One of the earliest all-women's organizations, the Bharat Mahila Parishad, was founded in 1905 as a branch of the Indian National Social Conference. This body emphasized the education of women, the eradication of social evils, and the promotion of female leadership (Forbes, 1996).⁵⁸ These organizations, while initially elitist and urban-centered, signaled an important shift: women were beginning to move from being mere subjects of reform to active participants and leaders in social change.

The early 20th century witnessed a dramatic expansion of women's activism, as Indian women increasingly entered public life. A major catalyst for this was the rise of Indian nationalism. The Swadeshi Movement (1905-1908), which protested against the partition of Bengal, saw unprecedented female participation. Women not only boycotted British goods but also organized picketing, meetings, and the promotion of indigenous industries (Chatterjee, 1989).⁵⁹ This engagement with nationalist causes allowed women to claim public spaces, albeit often within the framework of nationalist respectability and cultural symbolism.

One of the most significant developments was the establishment of the Women's Indian Association (WIA) in 1917 in Madras by influential leaders such as Annie Besant, Margaret Cousins, and Dorothy Jinarajadasa. The WIA was notable for advocating women's rights on a national platform, including issues like female education, the abolition of child marriage, and women's suffrage (Forbes, 1996).⁶⁰ It marked the beginning of organized efforts by Indian women to secure political rights. In the same year, a delegation of women under the leadership of Sarojini Naidu met the British authorities to demand voting rights for women, indicating a bold assertion of political agency.

⁵⁷ Sen, Sukumar, *History of Bengali Literature* (Sahitya Akademi 2002)

⁵⁸ Forbes, Geraldine, *Women in Modern India* (Cambridge University Press 1996)

⁵⁹ Chatterjee, Partha, 'The Nationalist Resolution of the Women's Question' in *Recasting Women: Essays in Indian Colonial History* (Kali for Women 1989)

⁶⁰Ibid 58



The foundation of the National Council of Women in India (NCWI) in 1925 and the All India Women's Conference (AIWC) in 1927 further institutionalized women's activism. The AIWC, in particular, became a powerful platform for mobilizing women across linguistic, religious, and regional lines. It was instrumental in campaigning for female education, reform of personal laws, health care, and political rights (Burton, 1998).⁶¹ The conference regularly passed resolutions, petitioned colonial authorities, and organized awareness campaigns, demonstrating the growing sophistication and reach of the women's movement.

Women's involvement in the nationalist struggle deepened during movements such as the Non-Cooperation Movement (1920), the Civil Disobedience Movement (1930), and the Quit India Movement (1942). Figures like Kamaladevi Chattopadhyay, Aruna Asaf Ali, and Kasturba Gandhi emerged as prominent leaders who not only supported but often spearheaded critical actions. Gandhi's strategies of nonviolent resistance particularly encouraged the participation of women, arguing that their moral strength and capacity for sacrifice made them ideal satyagrahis (Jayawardena, 1986).⁶² In turn, mass participation in nationalist campaigns helped women transcend traditional domestic roles and experience political activism firsthand.

However, women's involvement in the nationalist movement was not without contradictions. Even as women stepped into public protests, the rhetoric of nationalism often emphasized their roles as mothers, daughters, and guardians of Indian culture. The nationalist framework did not fully question the patriarchal structures that confined women's identities to the private sphere (Chatterjee, 1989).⁶³ As such, while women gained visibility and political experience, their emancipation was frequently framed within traditional notions of femininity and sacrifice.

An important strand within the pre-independence women's movements was the demand for reforms in personal laws, especially among Hindu and Muslim

⁶¹ Burton, Antoinette, *Burdens of History: British Feminists, Indian Women, and Imperial Culture, 1865-1915* (University of North Carolina Press 1998)

⁶² Jayawardena, Kumari, *Feminism and Nationalism in the Third World* (Verso 1986)

⁶³ *Ibid* 59

communities. Women activists realized that legal inequalities within marriage, divorce, and inheritance posed major obstacles to genuine equality. The AIWC, for example, campaigned vigorously for the codification of Hindu personal laws to improve the rights of women within the family (Forbes, 1996).⁶⁴ Similarly, debates around Muslim women's rights, especially regarding polygamy and divorce, gained attention, although efforts at reform were often fraught with religious sensitivities and political resistance.

Class and caste divisions also shaped the character of women's movements before independence. Early activism was dominated by upper-caste, English-educated, urban women who had greater access to public forums. The concerns of peasant women, tribal women, and Dalit women were often marginalized within mainstream organizations. It was only in the 1930s and 1940s, with the rise of leftist and communist groups, that issues of working-class women, labor rights, and economic exploitation began to receive more attention (Chaudhuri, 1993).⁶⁵ Leaders like Rameshwari Nehru and Subhadra Joshi highlighted the need for a broader, more inclusive women's movement that addressed economic as well as social oppression.

Despite these limitations, the pre-independence women's movements made significant strides. One major achievement was the inclusion of women's suffrage in the political agenda. While initial franchise reforms such as the Government of India Act, 1919 were restrictive, persistent lobbying by women's groups led to broader franchise rights under the Government of India Act, 1935. Although still limited by property and literacy qualifications, the right to vote represented a crucial symbolic and practical victory for Indian women (Mukherjee, 2010).⁶⁶

Another important contribution was the emergence of a cadre of women leaders who would go on to shape independent India's constitutional and political frameworks. Women like Sarojini Naidu, Hansa Mehta, Rajkumari Amrit Kaur, and Durgabai Deshmukh were key participants in the Constituent Assembly,

⁶⁴ Ibid 58

⁶⁵ Chaudhuri, Nupur, 'Indian Women's Movement in Historical Perspective,' in South Asia Bulletin (1993)

⁶⁶ Mukherjee, Sumita, Indian Suffragettes: Female Identities and Transnational Networks (Oxford University Press 2010)

influencing debates on fundamental rights, social justice, and gender equality (Forbes, 1996).⁶⁷

Culturally, women's movements before independence fostered a vibrant intellectual climate. Female writers, poets, and journalists such as Kamini Roy, Rokeya Sakhawat Hossain, and Pandita Ramabai articulated powerful critiques of social norms and advocated for women's empowerment through their works (Burton, 1998).⁶⁸ These voices helped create a rich legacy of feminist thought that would continue to inspire future generations.

In conclusion, the women's movements before independence were complex, multifaceted, and deeply intertwined with broader political struggles. While they achieved important gains in education, legal reforms, and political representation, they also faced limitations related to class, caste, and the persistence of patriarchal ideologies. Nevertheless, by the time India attained independence in 1947, Indian women had carved out an undeniable presence in the public sphere and had sown the seeds for a more comprehensive struggle for gender justice in the decades to come.

2.6 IMPACT OF SOCIAL REFORM MOVEMENTS ON WOMEN'S RIGHTS

The social reform movements of the 19th and early 20th centuries profoundly influenced the evolution of women's rights in India. They laid the groundwork for questioning traditional social structures, introducing the idea that women's subjugation was not divinely ordained but rather a consequence of societal practices that could, and should, be changed. These movements did not merely aim to adjust women's roles within existing systems but often called for a fundamental reimagining of gender relations. The reformers, although primarily male, recognized that social progress was incomplete without the upliftment of women, and thus women's issues became a focal point of broader projects of social transformation.

⁶⁷ Ibid 58

⁶⁸ Ibid 61

One of the earliest arenas where the impact of social reform was most visible was the campaign against sati, the practice where a widow was expected to immolate herself on her husband's funeral pyre. Reformers like Raja Ram Mohan Roy championed the abolition of sati not merely as a humanitarian cause but as a symbol of broader efforts to liberate Indian society from oppressive customs. His efforts, which culminated in the enactment of the Bengal Sati Regulation of 1829 by Lord William Bentinck, marked one of the first legal interventions aimed specifically at protecting women's rights (Sarkar, 2002).⁶⁹ The success of the anti-sati campaign demonstrated that entrenched social practices could be legally and socially challenged, setting an important precedent.

Education emerged as another critical focus of reform efforts. Visionaries like Ishwar Chandra Vidyasagar, Jyotirao Phule, and later, Savitribai Phule, argued that women's education was essential for the moral and intellectual advancement of society. Vidyasagar's relentless advocacy led to the opening of schools for girls in Bengal, while Savitribai Phule, often referred to as India's first woman teacher, established schools for girls and lower-caste children in Maharashtra (Forbes, 1996).⁷⁰ These initiatives were revolutionary in a society where educating girls was often seen as unnecessary or even dangerous. The belief that educated women would become better mothers, wives, and social beings permeated these movements, but over time, the broader benefits of women's education became more widely recognized.

Alongside education, the movements targeted the reform of marriage practices, particularly child marriage and the status of widows. The legal age for marriage was extremely low, leading to high rates of child mortality, health complications, and the denial of educational opportunities for young girls. The efforts of reformers, often working through petitions, public debates, and legislative lobbying, eventually led to the enactment of the Age of Consent Act, 1891, which raised the minimum age for consummation of marriage to 12 years (Oldenburg, 2002).⁷¹ Though this act was limited in scope and largely symbolic, it represented an

⁶⁹ Sarkar, Sumit, *Modern India: 1885-1947* (Macmillan India 2002)

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

⁷¹ Oldenburg, Veena Talwar, *Dowry Murder: The Imperial Origins of a Cultural Crime* (Oxford University Press 2002)

acknowledgment by the colonial state of the problem and a move toward greater legislative protection for young girls.

Widow remarriage was another critical issue addressed by social reformers. In traditional Hindu society, widows were subjected to severe social ostracization and were often forced to live lives of penance and deprivation. Ishwar Chandra Vidyasagar championed the cause of widow remarriage, arguing from both humanitarian and scriptural perspectives that Hinduism did not prohibit the remarriage of widows. His efforts culminated in the Widow Remarriage Act of 1856, a significant step forward in restoring dignity and rights to widowed women (Sarkar, 2002).⁷² Although widow remarriage remained rare and socially stigmatized for decades, the very fact of its legal acceptance was a crucial victory for women's rights.

Caste and gender issues were also interconnected in the discourse of social reform. Jyotirao and Savitribai Phule extended their efforts to the intersection of caste oppression and gender discrimination, emphasizing the need to uplift lower-caste women who were doubly marginalized (Omvedt, 2008).⁷³ Their activism highlighted that the women's question could not be adequately addressed without challenging broader systems of social hierarchy and exclusion. Thus, social reformers introduced a more layered understanding of oppression, although mainstream movements often prioritized the concerns of upper-caste Hindu women.

Religious reform movements also contributed to the evolution of women's rights. The Brahmo Samaj, founded by Raja Ram Mohan Roy and later led by Debendranath Tagore and Keshub Chandra Sen, promoted ideas of monotheism, rationalism, and social equality, including the upliftment of women. Similarly, the Arya Samaj, under Swami Dayanand Saraswati, emphasized a return to the "pure" Vedic tradition, which was interpreted as supportive of women's education and against child marriage (Sharma, 2002).⁷⁴ While these movements were often

⁷² Sarkar, Sumit, *Modern India: 1885-1947* (Macmillan India 2002)

⁷³ Omvedt, Gail, *Seeking Begumpura: The Social Vision of Anticaste Intellectuals* (Navayana 2008)

⁷⁴ Sharma, Arvind, *Hinduism and Human Rights: A Conceptual Approach* (Oxford University Press 2002)

limited by their own patriarchal biases, they nonetheless opened important spaces for women to assert their rights and participate in public life.

Muslim reform movements also engaged with women's issues, though the context was different. Leaders like Sir Syed Ahmed Khan promoted women's education, albeit within culturally acceptable bounds. Reformers like Rokeya Sakhawat Hossain went further, openly challenging patriarchal norms within the Muslim community. Her establishment of the Sakhawat Memorial Girls' School in Kolkata and her writings, including *Sultana's Dream*, called for a complete rethinking of gender roles and Muslim women's empowerment (Minault, 1998).⁷⁵

The impact of these social reform movements was not only legislative but also ideological. They began to change the societal discourse on women's roles and rights. Where once religious and cultural justifications had overwhelmingly been used to enforce women's subordination, reformers turned those same traditions into tools for arguing the case for equality. They demonstrated that the upliftment of women was not only compatible with Indian cultural values but essential to the regeneration of the nation. This strategic invocation of tradition made women's rights a palatable cause for a society deeply attached to its cultural heritage.

Nevertheless, the social reform movements had their limitations. Women's rights were often framed within the larger goals of social order, moral reform, and national pride, rather than as a recognition of women's inherent autonomy. The concept of women's emancipation remained largely paternalistic, with male reformers assuming the role of protectors and guides rather than seeing women as independent agents of change (Sangari & Vaid, 1989).⁷⁶ This constrained the radical potential of these movements but did not entirely erase their significance.

Women's own participation in these reform movements gradually increased over time. Although initially, women were subjects of reform rather than active reformers, by the late 19th and early 20th centuries, women were taking leadership

⁷⁵ Minault, Gail, *Secluded Scholars: Women's Education and Muslim Social Reform in Colonial India* (Oxford University Press 1998)

⁷⁶ Sangari, Kumkum and Vaid, Sudesh (eds), *Recasting Women: Essays in Indian Colonial History* (Rutgers



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roles. Figures like Pandita Ramabai, who founded the Arya Mahila Samaj to promote women's education and legal rights, exemplified this transition from passive beneficiaries to active advocates (Forbes, 1996).⁷⁷ Pandita Ramabai's critique of both Hindu patriarchy and British colonialism revealed an early feminist consciousness that challenged multiple layers of oppression.

The broader political implications of these reform movements were also significant. By fostering a culture of debate, critique, and legal activism, they prepared the ground for women's participation in the nationalist movement. The skills, networks, and platforms developed through social reform efforts became invaluable as women stepped into the freedom struggle, demanding not only political independence but also gender justice.

In conclusion, the impact of social reform movements on women's rights in India was profound and multifaceted. These movements challenged deep-seated practices like sati, child marriage, and widow ostracism, advanced the cause of female education, and began to reshape societal attitudes toward women's roles. While the reformers' efforts were often limited by their own patriarchal assumptions and the socio-cultural contexts of their times, they succeeded in making women's rights a subject of public debate and legal intervention. Most importantly, they laid a crucial foundation for the later feminist movements in India, embedding within Indian society the idea that social progress was inextricably linked to gender justice.

⁷⁷ Forbes, Geraldine, *Women in Modern India* (Cambridge University Press 1996)

CHAPTER 3: CONSTITUTIONAL

PROVISIONS FOR WOMEN'S

RIGHTS

3.1 INTRODUCTION

The adoption of the Constitution of India in 1950 marked a profound moment not only in the nation's political history but also in the articulation of social justice, particularly with respect to the rights of women. In a society deeply marred by centuries of gender-based discrimination, exclusion, and marginalization, the founding fathers of the Indian Republic recognized that the democratic project would be incomplete without a deliberate and systematic attempt to secure substantive equality for women. The Indian Constitution, in its very fabric, enshrines the values of equality, dignity, and freedom, and sets out an elaborate framework for promoting and protecting women's rights in both public and private spheres (Austin, 1999).⁷⁸

From the outset, the Constitution sought to reject the social hierarchies and discriminatory practices that had long oppressed women in India. During the Constituent Assembly Debates, members like Hansa Mehta, Rajkumari Amrit Kaur, and Renuka Ray were vocal about ensuring that women were not left dependent on the goodwill of others but were recognized as equal citizens in their own right. Their interventions helped shape the language of equality in the Constitution. As Dr. B.R. Ambedkar emphasized during the debates, political democracy would be meaningless without social democracy, and the guarantee of gender equality was a crucial component of this vision (Austin, 1999).⁷⁹

The Preamble of the Constitution itself reflects a conscious choice to promise "equality of status and opportunity," a guarantee that is gender-neutral but intrinsically significant for the emancipation of women. Although the Preamble is not enforceable in a court of law, it serves as a guiding light for constitutional

⁷⁸ Austin, Granville, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1999)

⁷⁹ *Ibid* 78.

interpretation, legislation, and governance (Granville, 1999).⁸⁰ Every substantive provision concerning rights and duties within the Constitution finds resonance with the ideals proclaimed in the Preamble. Thus, the Preamble's emphasis on equality, justice, and dignity sets the stage for understanding women's constitutional rights not merely as entitlements but as fundamental prerequisites for a truly democratic society.

Part III of the Constitution, which deals with Fundamental Rights, lays down enforceable guarantees that are vital to ensuring women's legal equality. Articles such as 14 (Equality before law), 15 (Prohibition of discrimination), 16 (Equality of opportunity), 19 (Freedoms), and 21 (Protection of life and personal liberty) together create a strong normative framework supporting women's rights in varied spheres. Indian courts, through their dynamic interpretations, have expanded the horizons of these provisions to cover several dimensions of women's lives, ranging from bodily autonomy to workplace equality. For instance, in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241⁸¹, the Supreme Court of India used Articles 14, 15, 19, and 21 to create legally binding guidelines to protect women from sexual harassment at workplaces, demonstrating the living character of constitutional protections (Chandrachud, 2013).⁸²

Moreover, the Directive Principles of State Policy (DPSPs) enshrined in Part IV of the Constitution, though non-justiciable, serve as important guidelines for shaping legislation and governance policies. They reflect the commitment of the State to secure to women economic justice (Article 39(a)), maternity relief (Article 42), and promote the welfare of the people (Article 38) by securing a social order permeated by justice, social, economic, and political. These principles complement the Fundamental Rights, emphasizing that formal equality must be matched with

⁸⁰ Granville, Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999)

⁸¹ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

⁸² Chandrachud, Abhinav, *Due Process of Law: A Comparative Study* (Eastern Book Company 2013)

substantive measures that address material inequalities between men and women (Pathak, 2002).⁸³

Equally significant is the Constitution's allowance for positive discrimination in favor of women. Article 15(3) explicitly permits the State to make special provisions for women and children, acknowledging that sometimes affirmative action is necessary to achieve genuine equality. This understanding recognizes that systemic disadvantages cannot be erased merely by guaranteeing formal equality; targeted interventions are required to dismantle entrenched structural barriers. Affirmative policies like reservation for women in Panchayati Raj Institutions under the 73rd Constitutional Amendment Act, 1992, stem directly from this constitutional vision (Jayal, 2006).⁸⁴

The 73rd and 74th Amendments, which reserved one-third of seats for women in rural and urban local bodies respectively, represent a watershed moment in the political empowerment of women. Before these amendments, women's representation in politics was almost negligible. Post-amendment, millions of women entered the decision-making spaces at the grassroots level, altering the traditional gender dynamics and initiating broader conversations about women's leadership roles (Jayal, 2006).⁸⁵ It is crucial to observe that such measures do not violate the principle of equality under Article 14; rather, they seek to actualize the deeper constitutional promise of substantive equality.

Beyond formal provisions, judicial activism has played a pivotal role in expanding the scope of women's rights under the Constitution. The Indian judiciary, particularly the Supreme Court and High Courts, have, through progressive judgments, interpreted the Constitution in ways that have protected and advanced the interests of women. A shining example is *Mary Roy v. State of Kerala* (1986) AIR 1011 SC⁸⁶, where the Supreme Court invalidated discriminatory provisions in the Travancore Christian Succession Act, thus ensuring equal property rights for

⁸³ Pathak, Bindeshwar, *Road to Freedom: A Sociological Study on the Abolition of Scavenging in India* (Motilal Banarsidass 2002)

⁸⁴ Jayal, Niraja Gopal, *Democracy and the State: Welfare, Secularism and Development in Contemporary India* (Oxford University Press 2006)

⁸⁵ *Ibid* 84.

⁸⁶ *Mary Roy v. State of Kerala* (1986) AIR 1011 SC

Christian women (Mehta, 2017).⁸⁷ Similarly, in *Shayara Bano v. Union of India* (2017) 9 SCC 1⁸⁸, the Supreme Court struck down the practice of instant triple talaq, holding it unconstitutional as it violated women's fundamental rights under Articles 14, 15, and 21.

Importantly, the judiciary has often relied on international conventions like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979,⁸⁹ while interpreting constitutional provisions. In *Vishaka v. State of Rajasthan*⁹⁰, the Court held that in the absence of specific domestic legislation, international norms consistent with fundamental rights must be read into Indian law (*Vishaka*, 1997). This judicial methodology has enriched the constitutional framework for women's rights, aligning it with evolving international human rights standards.

However, the existence of constitutional guarantees alone does not automatically translate into real change. The implementation of these rights faces significant challenges owing to societal prejudices, patriarchal mindsets, economic dependencies, and administrative apathy. Legislative efforts like the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, attempt to operationalize constitutional mandates, but enforcement remains a critical bottleneck. The gap between constitutional ideals and social reality continues to pose a major obstacle to achieving gender equality in India (Agnes, 1999).⁹¹

The Constitution also envisions a transformative role for itself. It is not merely a static repository of rules but a dynamic instrument capable of responding to evolving social realities. Women's movements, legal reforms, judicial innovations, and international influences have all interacted with constitutional provisions to expand the meaning and scope of women's rights over time. The judiciary has been

⁸⁷ Mehta, Pratap Bhanu, *The Burden of Democracy* (Penguin Books 2017)

⁸⁸ *Shayara Bano v. Union of India* (2017) 9 SCC 1

⁸⁹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

⁹⁰ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

⁹¹ Agnes, Flavia, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999)

especially proactive in recognizing emerging forms of discrimination and evolving new doctrines, such as the "right against sexual harassment" and the "right to privacy," thereby progressively realizing the constitutional vision (Chandrachud, 2013).⁹²

Thus, the Indian Constitution represents both a foundational and a continuously evolving framework for women's rights. Its explicit provisions for equality, non-discrimination, positive action, and dignity, coupled with interpretative dynamism by courts, offer a comprehensive toolkit for achieving gender justice. Nevertheless, real progress requires more than constitutional text; it demands active engagement from all pillars of the State and society. Only by bridging the gap between constitutional ideals and lived realities can the full promise of women's constitutional rights in India be realized.

In the chapters that follow, a detailed examination of these constitutional provisions will be undertaken, analyzing their scope, judicial interpretations, legislative responses, and the ground realities of their implementation. The journey of women's rights under the Indian Constitution is a testimony to the evolving nature of democratic ideals in India, resilient, adaptive, and forever striving towards the realization of true equality.

3.2 THE PREAMBLE AND THE VISION OF EQUALITY

The Preamble to the Indian Constitution, although not a substantive source of rights or obligations by itself, provides the foundational spirit behind the various constitutional provisions. It enunciates the ideals that the Constitution seeks to achieve, namely, justice, liberty, equality, and fraternity. Specifically, the promise of "equality of status and opportunity" holds immense significance for understanding the constitutional position of women's rights in India. When the framers of the Constitution adopted the Preamble, they consciously chose to

⁹² Chandrachud, Abhinav, *Due Process of Law: A Comparative Study* (Eastern Book Company 2013)

emphasize equality, not merely as a political or civil right but as a holistic societal goal (Austin, 1999).⁹³

The notion of equality in the Preamble is broad and inclusive. It extends beyond formalistic treatment and aims at substantive equality where women are not only declared equal but are placed in conditions where they can genuinely realize their potential. The guarantee of equality was meant to serve as an antidote to centuries of discrimination based on caste, gender, religion, and social status. Women's equality thus forms a central pillar of the constitutional edifice, envisioned as a prerequisite for the realization of democracy in its truest sense (Granville, 1999).⁹⁴

It is important to recognize that the Preamble's emphasis on equality is not isolated but informs the interpretation of all other constitutional rights. The Supreme Court has, in multiple instances, referred to the Preamble while interpreting fundamental rights. In *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225,⁹⁵ the Court held that the Preamble forms part of the Constitution and reflects its basic structure, which cannot be abrogated even by constitutional amendments. Consequently, the promise of equality embedded in the Preamble is inviolable and must guide all constitutional interpretations, particularly those related to women's rights.

Furthermore, the ideal of equality must be read alongside the commitment to justice, social, economic, and political proclaimed in the Preamble. The juxtaposition of these ideals suggests that mere formal equality is insufficient; the State must actively intervene to dismantle systemic inequalities. This understanding underpins provisions such as Article 15(3), which enables the State to make special provisions for women and children without violating the principle of equality (Rai, 2010).⁹⁶ The intersection of justice and equality thus sets a strong moral and constitutional foundation for affirmative action in favor of women.

⁹³ Austin, Granville, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1999)

⁹⁴ Granville, Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999)

⁹⁵ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225

⁹⁶ Rai, Mrinal Satish, *Law of Reservations and Anti-Discrimination: Indian and Comparative Perspectives* (Oxford University Press 2010)

In *Indra Sawhney v. Union of India* (1992) Supp (3) SCC 217,⁹⁷ the Supreme Court elaborated that equality under the Constitution is not mere formal equality but real, effective equality. Although the case was concerned with reservations based on caste, its reasoning is equally applicable to gender justice. The Court emphasized that where historical disadvantages impede a group's ability to compete equally, the State must take positive action to rectify such inequalities. Therefore, women's reservations in political bodies, preferential schemes in education and employment, and protective legislation can be traced back to the constitutional promise embedded in the Preamble.

Moreover, the idea of fraternity mentioned in the Preamble also has implications for women's rights. Fraternity implies a sense of brotherhood and sisterhood, which necessarily includes mutual respect and concern across genders. Building a society based on fraternity necessitates eradicating practices that marginalize or oppress women. Thus, practices like dowry, domestic violence, and exclusion of women from political participation violate not only the right to equality but also the ideal of fraternity, which the Constitution cherishes (Chandrachud, 2013).⁹⁸

The judiciary has often relied upon the spirit of the Preamble to develop doctrines that protect women's rights. For instance, in *Joseph Shine v. Union of India* (2019) 3 SCC 39,⁹⁹ where the Court decriminalized adultery, it reasoned that treating women as property or subordinates was antithetical to the constitutional promise of dignity and equality. The Court reiterated that equality is a dynamic concept that must evolve with societal transformations, and the Preamble's vision provides the bedrock for this evolution.

The dynamic and aspirational nature of the Preamble ensures that women's rights are not static but capable of progressive realization. It encourages courts, legislators, and civil society to constantly strive toward greater inclusion, empowerment, and

⁹⁷ *Indra Sawhney v. Union of India* (1992) Supp (3) SCC 217

⁹⁸ Chandrachud, Abhinav, *Due Process of Law: A Comparative Study* (Eastern Book Company 2013)

⁹⁹ *Joseph Shine v. Union of India* (2019) 3 SCC 39

protection of women. The Preamble, thus, serves as the North Star guiding the constitutional journey toward a gender-just society.

In conclusion, the Preamble's vision of equality, justice, liberty, and fraternity sets a powerful normative framework that permeates the entire Constitution. For women, this vision has translated into enforceable rights, affirmative action measures, and an evolving jurisprudence of equality. However, the realization of this vision remains an ongoing project, requiring persistent legal, political, and social efforts.

3.3 FUNDAMENTAL RIGHTS AND GENDER JUSTICE

Part III of the Indian Constitution, containing Fundamental Rights, represents the cornerstone of individual freedoms and protections against State and private action. Fundamental Rights are justiciable, meaning they are enforceable by the courts, and any law inconsistent with them can be struck down under Article 13. For women in India, these rights form the first line of constitutional protection against discrimination, exclusion, and violence. The conceptualization of gender justice under the Constitution is deeply rooted in the Fundamental Rights framework, particularly through Articles 14, 15, 16, 19, and 21.

Article 14 mandates that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. This article embodies the general principle of equality and non-discrimination. The Supreme Court, in *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3,¹⁰⁰ observed that equality is a dynamic concept and cannot be restricted to formal treatment. In the context of gender, Article 14 has been used extensively to challenge laws and practices that discriminate against women.

For instance, in *Charu Khurana v. Union of India* (2015) 1 SCC 192,¹⁰¹ the Supreme Court struck down the Film Employees Federation's rules that prohibited women from working as make-up artists, holding that such discrimination violated Articles

¹⁰⁰ *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3

¹⁰¹ *Charu Khurana v. Union of India* (2015) 1 SCC 192

14 and 15. The Court reaffirmed that equality demands dismantling structural barriers and not merely offering identical treatment to all.

Article 15(1) specifically prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 15(3) carves out an exception, empowering the State to make "special provisions" for women and children. This constitutional design reflects a nuanced understanding of equality, accommodating both formal and substantive approaches. It recognizes that achieving real gender equality sometimes requires targeted measures rather than neutral policies.

This provision has legitimized various affirmative actions, including women's reservations in education, employment, and politics. In *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1,¹⁰² the Court struck down Section 30 of the Punjab Excise Act, 1914, which prohibited the employment of women in premises where liquor was consumed, noting that protective discrimination must be based on sound empirical evidence and not on stereotypical assumptions about women's vulnerability.

Article 16 guarantees equality of opportunity in matters relating to employment under the State. It reinforces the commitment to gender justice by ensuring that women are not unfairly excluded from public employment opportunities. The courts have consistently held that barriers placed on women's employment opportunities violate Article 16 unless justified by compelling reasons (Mehta, 2017).¹⁰³

Article 19, particularly the right to freedom of speech and expression (Article 19(1)(a)) and the right to practice any profession or carry on any occupation (Article 19(1)(g)), has important implications for women's autonomy and agency. Restrictions on women's rights to express themselves or participate in public and professional life are subject to strict scrutiny under Article 19. In *Indian Young Lawyers Association v. State of Kerala* (Sabarimala case) (2019) 11 SCC 1,¹⁰⁴ the Court held that exclusion of women from the Sabarimala temple violated their rights under Articles 14, 15, 19, and 25.

¹⁰² *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1

¹⁰³ Mehta, Pratap Bhanu, *The Burden of Democracy* (Penguin Books 2017)

¹⁰⁴ *Indian Young Lawyers Association v. State of Kerala* (2019) 11 SCC 1

Article 21 guarantees the right to life and personal liberty. The scope of Article 21 has been expansively interpreted by the judiciary to include a range of rights crucial for women, such as the right to live with dignity, the right to privacy, and the right against sexual harassment. In *Vishaka v. State of Rajasthan* (1997) 6 SCC 241,¹⁰⁵ the Supreme Court recognized sexual harassment at the workplace as a violation of women's right to life and dignity under Article 21.

Similarly, the Court in *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1,¹⁰⁶ recognized the right to privacy as a fundamental right under Article 21. This decision has significant implications for women's bodily autonomy and reproductive rights, empowering them to make choices free from external coercion.

In addition to these direct provisions, the principle of gender justice is reinforced by the Directive Principles of State Policy (Part IV) and Fundamental Duties (Part IVA). Although not justiciable, they provide valuable interpretative guidance for the judiciary and the legislature. Article 39 specifically directs the State to ensure that men and women have the right to an adequate means of livelihood and equal pay for equal work.

Moreover, the judiciary has recognized that Fundamental Rights must be interpreted harmoniously with Directive Principles to promote the values of social justice. In *Randhir Singh v. Union of India* (1982) 1 SCC 618,¹⁰⁷ the Court held that although the Directive Principles are not enforceable by courts, the principle of "equal pay for equal work" could be read into Articles 14 and 16.

In conclusion, the framework of Fundamental Rights under the Indian Constitution offers a powerful and dynamic mechanism for advancing gender justice. By prohibiting discrimination, mandating equality, securing freedoms, and guaranteeing dignity, the Constitution establishes a robust foundation for women's rights. However, constitutional protections are only as effective as their realization

¹⁰⁵ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

¹⁰⁶ *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1

¹⁰⁷ *Randhir Singh v. Union of India* (1982) 1 SCC 618

in practice, necessitating continuous vigilance, legal activism, and societal commitment.

3.3 FUNDAMENTAL RIGHTS AND GENDER JUSTICE

The Indian Constitution, particularly Part III, offers a comprehensive framework of Fundamental Rights that serve as the bulwark of gender justice. These rights are intended not just as theoretical guarantees but as living, enforceable standards against both State action and societal discrimination. They set the stage for a transformative conception of gender equality, one that moves beyond mere formal assurances to actual empowerment and dignity for women.

Article 14, which guarantees equality before the law and equal protection of the laws, has been foundational in developing gender jurisprudence. As observed by the Supreme Court in *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3,¹⁰⁸ equality is a dynamic concept that must be read in light of contemporary societal conditions. This has allowed the judiciary to adopt a progressive interpretation that addresses not only overt discrimination but also systemic biases that hinder women's access to justice and opportunity.

An illustrative case is *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1,¹⁰⁹ where the Supreme Court invalidated a provision of the Punjab Excise Act that prohibited women from being employed in establishments where liquor was served. The Court emphasized that protective legislation cannot be based on outdated stereotypes about women's vulnerability but must instead empower them to exercise autonomy and choice. Here, Article 14 was interpreted to include the principle of substantive equality, requiring the removal of systemic barriers rather than mere formal equal treatment.

Article 15(1) specifically prohibits discrimination on the ground of sex, among others. However, Article 15(3) creates an important exception by allowing the State to make special provisions for women and children. This blend of prohibitive and affirmative action embodies a nuanced vision of equality, recognizing that historical

¹⁰⁸ *E.P. Royappa v. State of Tamil Nadu* (1974) 4 SCC 3

¹⁰⁹ *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1

disadvantage requires not just the absence of discrimination but positive support mechanisms. Schemes like reservations for women in Panchayati Raj institutions and special welfare legislations such as the Protection of Women from Domestic Violence Act, 2005 are legitimized under this provision (Basu, 2012).¹¹⁰

Article 16, guaranteeing equality of opportunity in public employment, has been crucial in enabling women's participation in the public sphere. In *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310,¹¹¹ the Court held that equality under Article 16 must be substantive, allowing for affirmative action to bring historically marginalized groups, including women, to an equal footing.

The bundle of freedoms under Article 19, particularly freedom of speech and expression (19(1)(a)) and freedom to practice any profession (19(1)(g)), holds significant importance for women's rights. The Court in *Indian Young Lawyers Association v. State of Kerala* (2019) 11 SCC 1¹¹² (Sabarimala case) recognized that women's freedom to practice religion and enter temples cannot be curtailed based on biological factors, reinforcing the idea that constitutional freedoms apply fully to women.

Article 21, which guarantees the right to life and personal liberty, has perhaps had the most transformative impact on women's rights. The expansive interpretation of Article 21 has allowed courts to protect women's bodily autonomy, privacy, and dignity. In *Vishaka v. State of Rajasthan* (1997) 6 SCC 241,¹¹³ the Court, in the absence of domestic legislation, laid down guidelines for preventing sexual harassment at the workplace, grounding them firmly in Articles 14, 15, 19, and 21.

Further, in *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1,¹¹⁴ the Court recognized a woman's reproductive choice as a fundamental right under Article 21, noting that the right to make decisions about one's body is an inseparable part of personal liberty.

¹¹⁰ Basu, D.D., *Introduction to the Constitution of India* (23rd edn, LexisNexis 2012)

¹¹¹ *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310

¹¹² *Indian Young Lawyers Association v. State of Kerala* (2019) 11 SCC 1

¹¹³ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

¹¹⁴ *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1

Thus, Fundamental Rights provide a powerful, multidimensional framework for gender justice. They enable courts to intervene not just against explicit discrimination but also against systemic practices that undermine women's autonomy, dignity, and equality.

3.4 JUDICIAL INTERPRETATIONS AND EXPANSIONS

The role of the judiciary in expanding the scope of women's rights in India cannot be overstated. Judicial activism, particularly by the higher judiciary, has played a critical role in interpreting the Constitution progressively to address evolving societal challenges. Courts have not confined themselves to the textual guarantees but have creatively interpreted constitutional provisions to strengthen gender justice.

The Vishaka Guidelines laid down in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241¹¹⁵ represent a landmark moment where the Supreme Court filled the legislative vacuum regarding sexual harassment at the workplace. Recognizing sexual harassment as a violation of Articles 14, 15, 19, and 21, the Court invoked international conventions, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹¹⁶ ratified by India, to frame binding guidelines until proper legislation was enacted. This expansive approach underscored the judiciary's role as a catalyst for gender justice.

In *Laxmi v. Union of India* (2014) 4 SCC 427,¹¹⁷ concerning acid attacks, the Court directed the government to regulate the sale of acids and to ensure the rehabilitation of victims. The Court's proactive stance expanded the right to life and personal liberty under Article 21 to include protection against grievous forms of gender-based violence and the provision of remedial measures.

The judgment in the *Joseph Shine v. Union of India* (2019) 3 SCC 39¹¹⁸ case marked another bold step where the Supreme Court decriminalized adultery under

¹¹⁵ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

¹¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

¹¹⁷ *Laxmi v. Union of India* (2014) 4 SCC 427

¹¹⁸ *Joseph Shine v. Union of India* (2019) 3 SCC 39

Section 497 of the Indian Penal Code. The Court held that treating women as the property of their husbands was inconsistent with the constitutional guarantee of equality and dignity. The judgment dismantled an archaic law rooted in patriarchal values and reaffirmed that marriage does not subordinate a woman's autonomy.

Similarly, the *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1¹¹⁹ decision, while primarily concerning LGBTQIA+ rights, reaffirmed the importance of constitutional morality and the need to protect individual autonomy and dignity, principles equally applicable to women's rights.

In the *Sabarimala* case, the Court recognized that religious freedom could not be used to justify gender-based exclusions. Justice D.Y. Chandrachud, in his concurring opinion, emphasized that the Constitution must be interpreted to dismantle structures of exclusion and subordination rather than preserve them.

Further, the judiciary has interpreted Directive Principles in light of Fundamental Rights to promote women's welfare. In *Air India v. Nergesh Meerza* (1981) 4 SCC 335,¹²⁰ the Court struck down regulations that mandated air hostesses to retire upon marriage or pregnancy, holding them discriminatory and violative of Articles 14, 15, and 16.

Thus, through an expansive, purposive interpretation of the Constitution, the Indian judiciary has been pivotal in deepening the rights discourse around gender justice. Judicial pronouncements have pushed the envelope of constitutional guarantees, progressively realizing the vision of substantive equality, dignity, and autonomy for women.

3.5 DIRECTIVE PRINCIPLES AND THE EMPOWERMENT OF WOMEN

While Fundamental Rights provide enforceable claims, the Directive Principles of State Policy (Part IV of the Constitution) outline the broad socio-economic goals that the State must strive to achieve. Though non-justiciable, the Directive

¹¹⁹ *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1

¹²⁰ Air India v. Nergesh Meerza (1981) 4 SCC 335



Principles carry immense moral authority and have been increasingly used by courts to shape constitutional interpretation.

Article 39(a) directs the State to ensure that men and women equally have the right to an adequate means of livelihood. This provision recognizes that formal equality is insufficient without addressing the economic structures that perpetuate women's subordination. In a country where women constitute a large portion of the informal workforce and face pervasive wage gaps, the significance of Article 39(a) cannot be understated.

Article 39(d) mandates that there should be equal pay for equal work for both men and women. This has found judicial endorsement in cases like *Randhir Singh v. Union of India* (1982) 1 SCC 618,¹²¹ where the Court recognized equal pay for equal work as an emanation of Articles 14 and 16 read with Directive Principles.

Article 42 calls for the State to make provision for securing just and humane conditions of work and maternity relief. This provision underpins legislations such as the Maternity Benefit Act, 1961 and the Code on Social Security, 2020, which provide critical protections to women in the workforce. The Court in *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (2000) 3 SCC 224¹²² held that even casual women workers are entitled to maternity benefits, thereby affirming the expansive reading of Article 42.

Article 45 and Article 46 concerning free and compulsory education and promotion of educational and economic interests of weaker sections have special relevance for women. The right to education has been recognized as critical for empowering women to realize other rights and participate fully in social, economic, and political life. The enactment of the Right of Children to Free and Compulsory Education Act, 2009, operationalizes this goal and is seen as an important tool for girls' empowerment.

The impact of Directive Principles is also visible in the realm of political empowerment. Article 243D and Article 243T, inserted through the 73rd and 74th

¹²¹ *Randhir Singh v. Union of India* (1982) 1 SCC 618

¹²² *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (2000) 3 SCC 224

Constitutional Amendments, mandate reservations for women in Panchayati Raj Institutions and Municipalities, respectively. These amendments reflect the constitutional commitment to promote women's participation in decision-making processes at the grassroots level.

Although the Directive Principles are not directly enforceable, courts have consistently emphasized their importance in constitutional interpretation. In *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310,¹²³ Justice Krishna Iyer observed that the Directive Principles are the conscience of the Constitution and Fundamental Rights must be interpreted harmoniously with them.

Thus, the Directive Principles provide an aspirational framework that complements Fundamental Rights, guiding the State's policies and laws towards greater gender equality and social justice. They represent the constitutional promise of a society where women are not merely protected but empowered to participate as equals in all spheres of life.

3.6 RIGHT TO EQUALITY AND WOMEN: CASE LAW DEVELOPMENTS

The right to equality enshrined in Articles 14 to 18 of the Indian Constitution has become the bedrock for the protection and advancement of women's rights in India. Over the years, courts have consistently interpreted these articles in a progressive manner to dismantle patriarchal structures embedded in social and legal systems. These judicial pronouncements have breathed life into constitutional ideals, moving beyond the mere text to implement transformative change.

One of the earliest cases where the right to equality was tested in the context of women's rights was *Air India v. Nergesh Meerza* (1981) 4 SCC 335.¹²⁴ In this case, regulations that forced air hostesses to retire upon marriage, pregnancy, or upon reaching a certain age were challenged. The Supreme Court struck down these conditions as arbitrary and violative of Article 14. The Court observed that compelling women to leave employment upon natural biological changes was

¹²³ *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310

¹²⁴ Air India v. Nergesh Meerza (1981) 4 SCC 335



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deeply discriminatory and inconsistent with the principles of human dignity and gender equality.

In *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1, the Court once again dealt with a law that appeared protective on the surface but was in reality paternalistic and discriminatory. Section 30 of the Punjab Excise Act prohibited the employment of women in premises where liquor was served. The Court found this provision unconstitutional, observing that the State cannot resort to measures that reinforce gender stereotypes under the guise of protection.¹²⁵ This case is significant because it emphasized the notion of substantive equality rather than formal equality.

Similarly, the Supreme Court in *Charu Khurana v. Union of India* (2015) 1 SCC 192 dealt with the denial of makeup artist licenses to women by the Cine Costume Make-Up Artists and Hair Dressers Association. The Court held that denying women the right to practice their profession solely based on their gender was a direct violation of Articles 14, 15, and 19(1)(g).¹²⁶ It reiterated that equality must be understood in its truest sense, not merely as equal treatment but as equal opportunity and access.

Another significant development was in *Secretary, Ministry of Defence v. Babita Puniya* (2020) 7 SCC 469, where the Court mandated the grant of permanent commissions to women in the Indian Army. Until then, women were offered only Short Service Commissions. The Court recognized that barring women from permanent commissions reinforced deeply entrenched stereotypes and was antithetical to the constitutional promise of equality.¹²⁷

In the realm of service jurisprudence, the decision in *C.B. Muthamma v. Union of India* (1979) 4 SCC 260 is also notable. Here, the requirement for women to obtain government permission before marriage, as a condition for their continuation in

¹²⁵ *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1

¹²⁶ *Charu Khurana v. Union of India* (2015) 1 SCC 192

¹²⁷ *Secretary, Ministry of Defence v. Babita Puniya* (2020) 7 SCC 469

service, was held unconstitutional. Justice V.R. Krishna Iyer famously remarked that “our Constitution is as secular as it is anti-sexist”.¹²⁸

These cases demonstrate the judiciary's evolving commitment to ensuring that the right to equality is not reduced to an abstract ideal but is actively enforced to counteract historical and structural disadvantages faced by women. Equality is understood today not merely as the absence of discrimination but as the presence of enabling conditions for women to thrive.

3.7 RIGHT TO LIFE AND PERSONAL LIBERTY: EXPANDING HORIZONS FOR WOMEN

Article 21 of the Constitution, which guarantees the right to life and personal liberty, has been expansively interpreted to include a host of rights that impact women profoundly. Initially read narrowly, the right to life has come to mean the right to live with dignity, autonomy, privacy, and freedom from violence—all essential components for women's empowerment.

A seminal moment came with *Vishaka v. State of Rajasthan* (1997) 6 SCC 241. The Court, recognizing the absence of legislative measures to protect women from sexual harassment at the workplace, laid down the famous Vishaka Guidelines. It held that sexual harassment is a violation of Articles 14, 15, 19(1)(g), and 21.¹²⁹ The judgment was a landmark in acknowledging that women's right to a safe working environment is essential for their dignity and personal liberty.

In *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1, the Court recognized a woman's right to make reproductive choices as part of her personal liberty under Article 21. The judgment stressed that decisions regarding abortion must respect women's bodily autonomy and privacy.¹³⁰ This approach marked a decisive shift towards acknowledging women as full bearers of constitutional rights, not merely in relation to the family or community.

¹²⁸ C.B. Muthamma v. Union of India (1979) 4 SCC 260

¹²⁹ Vishaka v. State of Rajasthan (1997) 6 SCC 241

¹³⁰Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1



More recently, in *KS Puttaswamy v. Union of India* (2017) 10 SCC 1, the nine-judge bench of the Supreme Court recognized the right to privacy as an intrinsic part of the right to life and personal liberty. The judgment emphasized that bodily autonomy is central to human dignity, laying a strong foundation for reinforcing women's sexual and reproductive rights.¹³¹

Cases like *Laxmi v. Union of India* (2014) 4 SCC 427 concerning acid attacks further emphasized the State's positive obligation under Article 21 to prevent acts of gender-based violence and to rehabilitate victims adequately.¹³² The Court directed the regulation of acid sales and the provision of compensation schemes for victims.

The jurisprudence around honor killings also reflects the expansive reading of Article 21. In *Shakti Vahini v. Union of India* (2018) 7 SCC 192, the Supreme Court directed States to take preventive steps against honor killings and to protect individuals exercising their choice of marriage.¹³³ The Court emphasized that personal liberty includes the right to choose a life partner without interference from external forces, including one's family or community.

Thus, the expansion of Article 21 has proven to be a crucial constitutional tool for advancing women's rights. It recognizes that the mere absence of arbitrary State action is insufficient and that the State has a positive duty to create an environment where women can live with dignity and full autonomy.

3.8 RIGHT AGAINST EXPLOITATION AND WOMEN'S PROTECTION

The right against exploitation, contained in Articles 23 and 24 of the Constitution, addresses grave social evils that have historically afflicted women, such as human trafficking, forced labor, and child labor. These provisions are aimed at dismantling exploitative structures and ensuring human dignity, which are particularly critical for the marginalized sections of society, including women.

¹³¹ *KS Puttaswamy v. Union of India* (2017) 10 SCC 1

¹³² *Laxmi v. Union of India* (2014) 4 SCC 427

¹³³ *Shakti Vahini v. Union of India* (2018) 7 SCC 192

Article 23(1) prohibits traffic in human beings, begar (forced labor), and other similar forms of forced labor. The Supreme Court in *People's Union for Democratic Rights v. Union of India* (1982) 3 SCC 235 explained that Article 23 protects not just citizens but all persons against exploitation.¹³⁴ The Court emphasized that forced labor is not restricted to physical coercion but extends to economic compulsion as well a reality faced by countless women in informal sectors.

Human trafficking remains a severe issue despite constitutional prohibitions. The Immoral Traffic (Prevention) Act, 1956 (amended in 1986) was enacted to give effect to Article 23 by criminalizing trafficking for commercial sexual exploitation. However, societal attitudes continue to stigmatize victims rather than focusing on the traffickers, requiring a broader attitudinal and legal shift.

The Supreme Court in *Bodhisattwa Gautam v. Subhra Chakraborty* (1996) 1 SCC 490 recognized rape as a violation of Article 21 and 23, characterizing it as not only a crime against an individual but also an assault on human dignity.¹³⁵ The Court emphasized that survivors of sexual assault are entitled to compensation for the violation of their fundamental rights.

Article 24 prohibits the employment of children below the age of 14 in hazardous industries. This provision has special implications for young girls who are often pushed into domestic work, factories, and even illicit trades at an early age. Legislation such as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, seeks to operationalize this constitutional mandate.

Importantly, the Court in *MC Mehta v. State of Tamil Nadu* (1996) 6 SCC 756 dealt with the issue of child labor and emphasized the need for rehabilitation schemes, recognizing the special vulnerability of the girl child.¹³⁶

Thus, Articles 23 and 24 establish the constitutional basis for protecting women and girl children from exploitative practices. However, the realization of these protections requires not merely penal statutes but also comprehensive social and

¹³⁴ *People's Union for Democratic Rights v. Union of India* (1982) 3 SCC 235

¹³⁵ *Bodhisattwa Gautam v. Subhra Chakraborty* (1996) 1 SCC 490



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economic policies that address the root causes of exploitation, such as poverty, illiteracy, and societal discrimination.



CHAPTER 4: CONSTITUTIONAL AMENDMENTS AND THEIR ROLE IN STRENGTHENING WOMEN'S RIGHTS

4.1 INTRODUCTION: THE NEED FOR CONSTITUTIONAL AMENDMENTS FOR WOMEN

The Indian Constitution, since its inception, has been a dynamic document capable of evolution through the process of amendments. The founding fathers foresaw the need for flexibility to meet the changing aspirations of the people, including the empowerment of marginalized groups such as women. While the Constitution originally embedded the principles of equality, non-discrimination, and liberty, over time it became clear that mere formal recognition was insufficient to dismantle deep-rooted social inequalities. Women continued to face systemic barriers in political representation, access to justice, education, and employment.

Recognizing these continuing challenges, successive governments introduced constitutional amendments as corrective measures. These amendments sought not only to bridge existing gaps but also to create proactive obligations on the State to ensure women's effective participation in social, economic, and political life. The constitutional journey of women's rights thus mirrors India's broader trajectory of social justice and democratization.

Constitutional amendments have functioned as both instruments of empowerment and vehicles of social reform. From the introduction of affirmative action measures to the strengthening of fundamental duties towards promoting gender equality, amendments have played a vital role in operationalizing constitutional morality.¹³⁷ This chapter explores some of the key amendments that have directly or indirectly influenced women's rights and analyses their socio-legal impacts.

4.2 THE 73RD AND 74TH CONSTITUTIONAL AMENDMENTS: POLITICAL EMPOWERMENT OF WOMEN

¹³⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 2000) 50



One of the most significant strides towards gender empowerment was the enactment of the 73rd and 74th Amendments to the Constitution in 1992. The 73rd Amendment inserted Part IX dealing with Panchayati Raj Institutions (PRIs), while the 74th Amendment inserted Part IXA concerning Urban Local Bodies. Both amendments mandated the reservation of one-third of seats for women in local governance structures.¹³⁸

Article 243D and Article 243T respectively provided that not less than one-third of the total number of seats to be filled by direct election in every Panchayat and Municipality shall be reserved for women, including the seats reserved for Scheduled Castes and Scheduled Tribes. Additionally, one-third of the offices of Chairpersons in Panchayats and Municipalities were also reserved for women.

This move was revolutionary in several ways. Firstly, it was a constitutional recognition of the fact that without affirmative action, women would remain underrepresented in political processes due to structural and societal constraints. Secondly, it marked a paradigm shift by moving beyond tokenism to genuine inclusion. Empirical studies have shown that women's participation in grassroots governance has led to prioritization of issues like education, health, and sanitation.¹³⁹

In *State of Uttar Pradesh v. Pradhan Sangh Kshettra Samiti* (1995) Supp (2) SCC 305, the Supreme Court emphasized that reservations under the 73rd Amendment aim to strengthen democracy at the grassroots and ensure inclusive participation.¹⁴⁰ Women who once remained confined to private spheres began emerging as leaders in public life, challenging gender norms entrenched in Indian society.

However, challenges remain. Often, the phenomenon of "sarpanch pati" where husbands of elected women representatives exercise de facto control highlights the limitations of legal reform without accompanying social transformation. Nonetheless, the amendments have opened up new avenues for women's political

¹³⁸ Constitution of India, Art. 243D and 243T

¹³⁹ Bina Agarwal, *Gender and Green Governance* (Oxford University Press 2010) 113

¹⁴⁰ *State of Uttar Pradesh v. Pradhan Sangh Kshettra Samiti* (1995) Supp (2) SCC 305

empowerment, and states like Bihar and Madhya Pradesh have even increased the reservation for women to 50%.

Thus, the 73rd and 74th Amendments stand as landmark measures that not only constitutionalized women's right to political participation but also recognized the need for systemic support to achieve substantive equality.

4.3 THE 86TH CONSTITUTIONAL AMENDMENT: RIGHT TO EDUCATION AND WOMEN

The 86th Constitutional Amendment Act, 2002, inserted Article 21A, making the right to free and compulsory education a fundamental right for children between the ages of 6 and 14 years.¹⁴¹ Though gender-neutral in its phrasing, this amendment has had a profound impact on the empowerment of girls and, by extension, women.

The amendment addressed a crucial structural barrier: the lack of access to education for girls due to poverty, patriarchal mindsets, and infrastructural deficits. It is well recognized that education is a key catalyst for breaking the cycle of poverty and disempowerment. Educated women are more likely to participate in the workforce, assert their rights, make informed decisions regarding health and family, and contribute to the community's development.

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) was enacted to operationalize Article 21A. Section 12(1)(c) of the RTE Act mandates 25% reservation in private unaided schools for children from disadvantaged groups, including girls from marginalized communities.¹⁴²

In *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 1, the Supreme Court upheld the constitutionality of the RTE Act, emphasizing that the right to education is a means to ensure equality and human dignity.¹⁴³ The judgment recognized the State's duty to eliminate socio-economic disparities that impede access to education, particularly for vulnerable sections like girls.

¹⁴¹ Constitution (Eighty-Sixth Amendment) Act, 2002

¹⁴² Right of Children to Free and Compulsory Education Act, 2009, Section 12(1)(c)

¹⁴³ Society for Unaided Private Schools of Rajasthan v. Union of India (2012) 6 SCC 1



Government initiatives like "Beti Bachao, Beti Padhao" have sought to complement constitutional mandates by creating awareness and improving enrolment rates for girls. As per recent data from the Unified District Information System for Education (UDISE), the gender gap in school enrolment has significantly narrowed at the primary and secondary levels.¹⁴⁴

Therefore, the 86th Amendment, while framed as a children's right, has played a transformative role in advancing women's rights by empowering them through education, thereby promoting a more egalitarian society.

4.4 THE 102ND AND 103RD AMENDMENTS: RESERVATION AND ITS IMPACT ON WOMEN

The 102nd and 103rd Constitutional Amendments, though not exclusively directed at women, have important implications for marginalized women through affirmative action measures.

The 102nd Amendment Act, 2018, granted constitutional status to the National Commission for Backward Classes (NCBC) under Article 338B.¹⁴⁵ This institutional strengthening has opened avenues for addressing intersectional discrimination faced by women belonging to backward classes, enabling more robust policy interventions.

Similarly, the 103rd Constitutional Amendment Act, 2019, introduced reservations for economically weaker sections (EWS) of society in educational institutions and public employment, adding Articles 15(6) and 16(6).¹⁴⁶ Though controversial, this amendment extends affirmative action benefits to economically disadvantaged women, thereby recognizing economic deprivation as an axis of discrimination alongside caste and gender.

In *Janhit Abhiyan v. Union of India* (2022) 10 SCC 867, the Supreme Court upheld the constitutionality of the EWS reservations, stating that affirmative action need

¹⁴⁴ UDISE+ 2021-22 Report, Ministry of Education, Government of India

¹⁴⁵ Constitution (One Hundred and Second Amendment) Act, 2018

¹⁴⁶ Constitution (One Hundred and Third Amendment) Act, 2019

not be confined solely to caste-based discrimination.¹⁴⁷ The judgment acknowledged that multiple and overlapping forms of disadvantage, including gender and economic hardship, must be addressed.

Critics argue that these measures may dilute the focus on caste and gender-based oppression. Nevertheless, when combined with gender-sensitive policies, these amendments can serve as tools to uplift women from marginalized and impoverished backgrounds, thereby advancing the constitutional goal of social justice.

Thus, the 102nd and 103rd Amendments exemplify the evolving understanding of inequality in India, encompassing not just historical injustices but also contemporary forms of economic and social exclusion that affect women in particular ways.

4.5 FUNDAMENTAL DUTIES AND GENDER JUSTICE: THE 42ND AMENDMENT

The 42nd Constitutional Amendment Act, 1976, often called the "Mini Constitution," brought several significant changes, including the insertion of Article 51A which enumerated Fundamental Duties.¹⁴⁸ Among these, the duty "to renounce practices derogatory to the dignity of women" (Article 51A(e)) holds special significance.

By imposing this duty on every citizen, the amendment recognized that the State alone cannot dismantle deep-seated social prejudices; collective societal change is also necessary. Practices like dowry, female infanticide, honor killings, and discrimination against women in inheritance and property rights are perpetuated by social norms as much as by legal inadequacies.

The judiciary has, on several occasions, emphasized the importance of Fundamental Duties in shaping a responsible citizenry. In *AIIMS Students' Union v. AIIMS* (2002) 1 SCC 428, the Supreme Court observed that Fundamental Duties,

¹⁴⁷ *Janhit Abhiyan v. Union of India* (2022) 10 SCC 867

¹⁴⁸ Constitution (Forty-Second Amendment) Act, 1976

though non-justiciable, provide valuable guidance for judicial interpretation of rights and statutes.¹⁴⁹

Similarly, the emphasis on dignity in Article 51A(e) has been invoked in cases like *Independent Thought v. Union of India* (2017) 10 SCC 800, where the Court criminalized marital rape of minors, holding that societal practices derogatory to women's dignity must be eradicated.¹⁵⁰

Although Fundamental Duties are not enforceable by courts, they influence legislative and judicial approaches toward creating a gender-just society. Educational curricula today also integrate gender sensitization modules, partly inspired by the vision encapsulated in Article 51A.

Thus, the 42nd Amendment, through its articulation of societal duties, underscores the idea that achieving gender equality requires a collective commitment by citizens, not merely governmental action.



¹⁴⁹ *AIIMS Students' Union v. AIIMS* (2002) 1 SCC 428

¹⁵⁰ Independent Thought v. Union of India (2017) 10 SCC 800



CHAPTER 5: THE ROLE OF JUDICIARY IN ADVANCING WOMEN'S RIGHTS IN INDIA

5.1 INTRODUCTION: THE JUDICIARY AS A CATALYST FOR WOMEN'S EMPOWERMENT

The judiciary in India plays a critical role in shaping the country's approach to gender justice and women's rights. In a legal system that balances constitutional mandates with a diverse range of personal laws, the role of courts in safeguarding women's rights cannot be overstated. The judiciary not only interprets and enforces laws, but also acts as a dynamic force that influences the evolution of legal principles, directly impacting the lives of women.

While the legislative and executive branches of the government draft policies and pass laws, it is the judiciary that holds the power to transform these laws into a robust tool for social justice, particularly in the area of gender equality. Without judicial interpretation and innovation, many fundamental rights, including those related to women, would remain inaccessible or ineffective in practice. It is through judicial activism and the interpretation of constitutional provisions such as Articles 14 (equality before the law), 15 (prohibition of discrimination on grounds of sex), and 21 (right to life and personal liberty) that the courts have ensured the protection and enhancement of women's rights.

The Indian Constitution, as an overarching legal document, guarantees the protection of the rights of women. Article 15 explicitly prohibits discrimination on grounds of sex, and Article 14 ensures equality before the law for all citizens, including women. However, these constitutional rights would not have been fully realized without the proactive intervention of the judiciary, which has consistently sought to interpret these provisions in a manner that upholds gender equality and provides justice for women.

The judiciary, especially since the late 20th century, has become an active participant in advocating for women's rights. This period saw the emergence of judicial activism, where the courts began interpreting laws in a progressive and dynamic manner, pushing the boundaries of legal norms to promote gender equality.

Through key judgments, the courts have addressed critical issues such as sexual harassment, domestic violence, reproductive rights, and the unequal status of women in personal laws. This proactive judicial stance has been crucial in addressing societal and legal gaps that hindered women's access to justice.

Judicial intervention has been instrumental in enhancing the understanding and application of women's rights in contemporary India. Cases related to sexual harassment in the workplace, domestic violence, and maintenance rights have highlighted the gaps in the legal system and underscored the need for judicial involvement. Furthermore, the courts have often played a role in addressing systemic inequalities, pushing for legislative reforms and challenging social practices that perpetuate gender-based discrimination.

Through landmark cases and judicial interpretation, the Indian judiciary has created a legal environment where women's rights are not just theoretical concepts but are actively protected and enforced. By interpreting the Constitution's guarantees of equality and personal liberty in a gender-sensitive manner, the judiciary has laid the groundwork for the ongoing struggle for women's empowerment in India.

5.2 THE EXPANSION OF FUNDAMENTAL RIGHTS FOR WOMEN: LANDMARK JUDGMENTS

The Indian judiciary has been at the forefront of expanding the fundamental rights of women through its interpretation of the Constitution. Judicial activism, particularly in the 1980s and 1990s, transformed the legal landscape, ensuring that women's rights were no longer confined to abstract concepts but became actionable rights that could be enforced. The landmark judgments of the Supreme Court in cases relating to women's rights have paved the way for legislative reforms, raised public awareness, and significantly influenced the legal protection of women's rights.

One of the earliest and most significant judgments that contributed to the expansion of fundamental rights for women was *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.¹⁵¹ The case expanded the interpretation of Article 21, which guarantees

¹⁵¹ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248

the right to life and personal liberty. The Supreme Court held that the right to life includes the right to live with dignity, and that any law that takes away a person's liberty must be just, fair, and reasonable. This ruling was groundbreaking because it extended the scope of fundamental rights to include social and economic rights, thereby improving the legal protection available to women.

In particular, the Court in *Maneka Gandhi* ruled that the right to life under Article 21 is not limited to mere physical existence, but encompasses the right to a dignified life. This judgment laid the foundation for several subsequent decisions that have played a critical role in enhancing women's rights. It set the stage for a more inclusive interpretation of the Constitution, recognizing that a person's right to dignity includes freedom from discrimination, violence, and exploitation. This was a significant leap forward in the judicial approach to gender justice, as it acknowledged the challenges women face in securing their basic rights, and the importance of legal safeguards in addressing these issues.

Another landmark judgment, *Vishaka v. State of Rajasthan* (1997) 6 SCC 241¹⁵², addressed the issue of sexual harassment at the workplace, a form of discrimination that was previously unaddressed in Indian law. In this case, the Supreme Court laid down the "Vishaka Guidelines," which defined sexual harassment and outlined the responsibilities of employers to prevent and address such behavior. The guidelines were a significant judicial intervention, as they filled a legal vacuum in the absence of specific laws on sexual harassment.

The *Vishaka* judgment also held that sexual harassment violates a woman's fundamental right to gender equality (under Article 14) and the right to life and liberty (under Article 21). The judgment marked a shift towards gender-sensitive jurisprudence, providing a judicial framework for the protection of women from workplace harassment and promoting a safer working environment for women across India. Although the guidelines were later incorporated into the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act,



2013, the Vishaka decision remains an iconic example of judicial intervention in advancing women's rights in India.

Similarly, in *Shah Bano Begum v. Union of India* (1985) 2 SCC 556,¹⁵³ the Supreme Court extended the protection of maintenance rights to Muslim women, interpreting Section 125 of the CrPC to apply to all women, regardless of religion. This was a highly controversial decision at the time, as it challenged the traditional interpretation of Muslim personal law. The Court ruled that the right to maintenance, which is a part of the right to life under Article 21, extends to Muslim women after divorce, irrespective of religious boundaries.

The Shah Bano case led to widespread debate over the intersection of religion and women's rights. Although the Muslim Women (Protection of Rights on Divorce) Act, 1986, was passed in response to the ruling, curtailing the scope of the Shah Bano decision, the case remains a landmark in the struggle for women's legal rights in India. It highlighted the need for uniformity in the treatment of women across different religious communities and sparked national discussions about the reform of personal laws to ensure gender equality.

Another landmark case that further expanded the scope of women's rights was *Rajesh Sharma v. State of Uttar Pradesh*(2017) 2 SCC 442,¹⁵⁴ where the Supreme Court addressed the misuse of Section 498A of the Indian Penal Code, which deals with cruelty by husbands and in-laws. In this case, the Court clarified that complaints under Section 498A should not be used as a tool for harassment. However, it also emphasized the need to protect women from the perils of domestic violence, ensuring that any misuse of the law would not undermine the fundamental rights of women to live free from cruelty.

Through these landmark judgments, the judiciary has played a crucial role in shaping the legal framework for women's rights in India. The Court has ensured that the fundamental rights of women are interpreted in a way that reflects the changing socio-economic realities, addressing issues such as workplace harassment, domestic violence, and the right to maintenance. The proactive role of the judiciary in

¹⁵³ *Shah Bano Begum v. Union of India* (1985) 2 SCC 556

¹⁵⁴ *Rajesh Sharma v. State of Uttar Pradesh* (2017) 2 SCC 442

expanding and safeguarding the rights of women underscores its crucial function as a catalyst for social and legal reform.

5.3 JUDICIAL ROLE IN PROTECTION AGAINST DOMESTIC VIOLENCE

Domestic violence has been a pervasive issue in India for decades, affecting women across various socio-economic backgrounds. The Indian judiciary has played a pivotal role in providing legal recourse and protection to women experiencing domestic violence, particularly through the interpretation and enforcement of laws such as the Protection of Women from Domestic Violence Act (PWDVA), 2005. The Act, a significant legislative measure aimed at addressing domestic violence, was introduced to provide comprehensive protection to women facing physical, emotional, economic, or sexual abuse at the hands of family members.

Prior to the enactment of the PWDVA, women subjected to domestic violence had limited legal recourse, with most cases being dismissed under the premise of personal or family matters. The judiciary, recognizing the inadequacy of existing laws, became increasingly proactive in addressing this issue. Through judicial intervention, the courts interpreted the provisions of the law in a progressive manner, ensuring that women were granted protection, not only from physical abuse but also from mental and emotional harm.

In the case of *V.D. Bhanot v. Union of India* (2012) 5 SCC 16,¹⁵⁵ the Supreme Court highlighted the crucial role of the judiciary in safeguarding women from domestic violence. The Court emphasized that domestic violence violates a woman's constitutional rights to equality (Article 14), non-discrimination (Article 15), and protection of life and liberty (Article 21). The ruling expanded the understanding of domestic violence, underscoring that abuse is not limited to physical harm but also includes emotional and psychological violence. The Court's interpretation of domestic violence as a multi-faceted issue provided a robust legal foundation for victims to seek redress, irrespective of the nature of the abuse they suffered.

¹⁵⁵ *V.D. Bhanot v. Union of India* (2012) 5 SCC 16

In *V.D. Bhanot*, the Court also emphasized the importance of providing women with immediate relief through protection orders, which could be issued by the court to prevent the abuser from contacting or residing with the victim. This decision marked a significant turning point in the judicial approach to domestic violence, as it recognized that emotional and psychological abuse could have long-lasting detrimental effects on a woman's well-being, and therefore, warranted legal protection. Moreover, the judiciary's role in upholding the rights of women under the PWDVA demonstrated the judiciary's broader commitment to protecting women from violence in their homes.

The judiciary has continued to play a vital role in shaping the legal landscape for women experiencing domestic violence. In the landmark case of *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1,¹⁵⁶ the Supreme Court ruled that the right to privacy is a fundamental right under the Indian Constitution, protecting individuals from unwarranted intrusions into their personal lives, including within the home. This case reinforced the importance of personal autonomy and highlighted the need to safeguard women from domestic violence, not only in public but also in private spaces. By recognizing the right to privacy, the Court ensured that women had the legal recourse to prevent domestic violence within their own homes, establishing a more inclusive and protective judicial approach toward women's rights.

These judicial decisions underline the proactive role of the judiciary in interpreting and enforcing laws aimed at protecting women from domestic violence. They reflect the judiciary's commitment to interpreting constitutional provisions in ways that provide concrete legal protections for women and establish a supportive environment for their empowerment.

5.4 JUDICIAL INTERVENTIONS IN SEXUAL HARASSMENT CASES

Sexual harassment in the workplace has been a persistent problem in India, often going unreported and unpunished due to societal taboos and a lack of legal awareness. The judiciary, recognizing the urgent need to address this issue, took significant steps in shaping the legal framework for sexual harassment cases in

¹⁵⁶ K.S. Puttaswamy v. Union of India (2017) 10 SCC 1



India. One of the most notable cases in this regard was *Vishaka v. State of Rajasthan* (1997) 6 SCC 241,¹⁵⁷ in which the Supreme Court issued a landmark judgment that defined sexual harassment and set out guidelines for its prevention and redress.

In the *Vishaka* case, the Court acknowledged that sexual harassment violated women's fundamental rights to equality (Article 14), non-discrimination (Article 15), and the right to life and liberty (Article 21). The judgment established the *Vishaka* Guidelines, which laid down detailed procedures for the prevention, prohibition, and redressal of sexual harassment at the workplace. These guidelines were a significant step in the judicial approach to sexual harassment, as they provided clear and comprehensive directions for employers, making it mandatory for them to set up mechanisms for handling complaints of sexual harassment and ensuring a safe working environment for women.

The *Vishaka* Guidelines were a judicial intervention in the absence of specific legislation on the issue. This proactive approach demonstrated the judiciary's understanding of the socio-cultural context of India, where women were often reluctant to report sexual harassment due to fear of stigmatization or retaliation. The guidelines emphasized the importance of confidentiality and support for victims, ensuring that they had a safe space to lodge complaints without fear of retribution. Moreover, they stipulated that employers had a duty to prevent sexual harassment by creating awareness and setting up internal complaints committees to handle allegations.

In *B.S. v. State of Rajasthan* (2015) 12 SCC 289,¹⁵⁸ the Supreme Court further refined the judicial approach to sexual harassment, recognizing the need for a holistic response to the problem. The Court reiterated that employers must take immediate action when a complaint of sexual harassment is lodged, and emphasized the role of internal complaints committees in ensuring that complaints were dealt with swiftly and fairly. The ruling also highlighted the importance of timely redress and adequate compensation for victims of sexual harassment, ensuring that the legal

¹⁵⁷ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

¹⁵⁸ *B.S. v. State of Rajasthan* (2015) 12 SCC 289

system provided not just a remedy, but also a deterrent against harassment in the workplace.

In subsequent cases, the Court has continued to expand on the legal framework for sexual harassment, strengthening the protection for women and ensuring that employers comply with their obligations under the law. The continued judicial intervention has ensured that the issue of sexual harassment remains a priority, and has contributed to the development of a more gender-sensitive legal environment in India.

The judiciary's role in addressing sexual harassment has been crucial in ensuring that women are not subjected to discrimination or violence in the workplace. By interpreting existing constitutional rights in a manner that promotes gender equality and protecting women's dignity, the judiciary has made a significant contribution to advancing women's rights in India.

5.5 EMPOWERMENT OF WOMEN THROUGH JUDICIAL INTERPRETATION OF PERSONAL LAWS

Personal laws in India, which govern marriage, divorce, inheritance, and property rights, have long been a source of gender inequality. Women, especially in religious minority communities, often face discriminatory practices that hinder their ability to exercise their rights. The judiciary has been instrumental in interpreting and reforming personal laws to ensure gender equality and justice for women. Through progressive judicial rulings, courts have expanded the scope of women's rights within the framework of personal laws.

One of the most significant judicial interventions in this area was the Shah Bano case (1985) 2 SCC 556,¹⁵⁹ where the Supreme Court addressed the issue of maintenance rights for divorced Muslim women. The case brought attention to the lack of uniformity in maintenance rights across different religious communities and challenged the existing interpretation of Muslim personal law, which often denied Muslim women the right to maintenance after divorce. The Court ruled that the right to maintenance is a fundamental right under Article 21 of the Constitution, and

¹⁵⁹ Shah Bano Begum v. Union of India (1985) 2 SCC 556

should not be restricted by personal laws. This decision was highly controversial, particularly among conservative Muslim groups, and led to the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Nevertheless, the judgment was significant in its call for uniformity in the legal treatment of women across different religious communities.

In another case, *Danial Latifi v. Union of India* (2001) 7 SCC 740,¹⁶⁰ the Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, interpreting it in a way that ensured women's right to maintenance. The Court emphasized that the Act was not intended to diminish a woman's right to financial support, but rather to provide a more equitable framework for maintenance under Muslim personal law. The decision reinforced the idea that personal laws must align with the fundamental rights guaranteed by the Constitution, including the right to equality and the right to live with dignity.

The judicial approach to personal laws has evolved over time, with the Court recognizing the importance of ensuring that women's rights are protected under all legal frameworks, regardless of religion or community. In *Saroj Rani v. Sudarshan Kumar Chadha* (1984) 4 SCC 90,¹⁶¹ the Supreme Court ruled that a woman has the right to claim maintenance under Section 125 of the Criminal Procedure Code (CrPC), even in cases where the marriage is governed by personal laws that do not provide for such rights. This judgment, like many others, highlighted the judiciary's role in ensuring that personal laws do not become a means of perpetuating gender discrimination.

Through its interpretation of personal laws, the judiciary has gradually created a more inclusive and gender-sensitive legal system. While challenges remain, judicial intervention in personal law matters has been crucial in empowering women, ensuring their right to equality, and enhancing their legal status.

¹⁶⁰ *Danial Latifi v. Union of India* (2001) 7 SCC 740

¹⁶¹ *Saroj Rani v. Sudarshan Kumar Chadha* (1984) 4 SCC 90

CHAPTER 6: CONTEMPORARY ISSUES AND CHALLENGES IN THE PROTECTION OF WOMEN'S RIGHTS

The landscape of women's rights in India has evolved significantly over the years. However, despite the constitutional and legal safeguards, women continue to face numerous challenges in the practical implementation of their rights. Contemporary issues such as gender-based violence, sexual harassment, economic dependence, and discriminatory practices persist in the society, often hampering the progress that has been made. This chapter aims to examine the contemporary issues surrounding the protection of women's rights in India, highlighting the key challenges and the legal and societal response to these issues.

6.1 GENDER-BASED VIOLENCE: PERSISTENT CHALLENGES

Gender-based violence (GBV) is one of the most alarming issues concerning women's rights in India. Despite the legal frameworks designed to safeguard women and ensure their protection, GBV continues to pervade both urban and rural India. It encompasses a wide range of physical, sexual, psychological, and economic violence, inflicted upon women due to their gender. This violence manifests in different forms, such as domestic violence, sexual harassment, rape, trafficking, and dowry-related crimes. Over the years, India has enacted several laws aimed at combating these forms of violence, but their implementation remains one of the most significant challenges in achieving true gender equality.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was a landmark piece of legislation that sought to address various forms of abuse within the domestic sphere. It recognized not only physical violence but also psychological, sexual, and economic abuse, extending protection to women in matrimonial homes and other domestic spaces. The Act provides women with legal remedies such as protection orders, residence orders, and monetary relief. However, despite these legal provisions, the practical implementation has been less effective. The reluctance of women to report domestic violence, often due to fear of

retribution or social stigma, and the inadequate support systems in many regions, contribute to the persistence of this issue.

The National Crime Records Bureau (NCRB) reports¹⁶² consistently high rates of crimes against women, with significant increases in cases of sexual assault, dowry deaths, and domestic violence. For instance, in the NCRB 2020 report, there was a sharp rise in crimes of sexual violence, with more than 88,000 reported cases of sexual assault in that year alone. The *B.R. Patel v. State of Gujarat* (2015) 9 SCC 417¹⁶³ case highlighted the problem of underreporting and the inadequacy of legal structures to provide timely redress for women. In this case, the Supreme Court of India emphasized the need for greater awareness among women regarding their rights under the PWDVA, alongside stronger institutional support for survivors of domestic violence.

Furthermore, despite the enactment of various laws and the increasing awareness surrounding women's rights, there is still a significant gap between the existence of legal protections and their actual enforcement. For example, in the aftermath of the Nirbhaya case in 2012, there was a surge in public demands for harsher punishments for rapists and stronger legal provisions for sexual assault. In response, the Indian government passed the Criminal Law (Amendment) Act, 2013,¹⁶⁴ which introduced stringent penalties for sexual crimes, including the death penalty in cases of extreme brutality. However, the persistent issue of delayed justice continues to plague the legal system. In the *Mukesh v. State (NCT of Delhi)* (2017) 6 SCC 1¹⁶⁵ case, the Supreme Court acknowledged the difficulties in achieving timely justice for victims of sexual violence. The Court recognized that while new laws and harsher punishments were important, the judicial delay in providing justice was an equally pressing concern that needed to be addressed.

Gender-based violence, therefore, remains a critical area of concern. While the legislative framework has evolved to address various forms of violence, the real challenge lies in effective enforcement, ensuring access to justice for survivors, and

¹⁶² National Crime Records Bureau (NCRB), Crime in India Report (2020)

¹⁶³ *B.R. Patel v. State of Gujarat* (2015) 9 SCC 417

¹⁶⁴ Criminal Law (Amendment) Act, 2013, No. 13 of 2013, § 375, 376

¹⁶⁵ *Mukesh v. State (NCT of Delhi)* (2017) 6 SCC 1

altering deep-seated societal attitudes toward women. The persistence of gender-based violence can be attributed to a combination of cultural, social, and systemic factors that often obstruct the effective protection of women's rights.

6.2 ECONOMIC DEPENDENCE AND FINANCIAL INEQUALITY

Another critical factor contributing to the ongoing marginalization of women in India is economic dependence. In many regions, women remain economically dependent on male family members, which not only limits their opportunities for personal growth but also reinforces their vulnerability to various forms of exploitation, including domestic violence. This economic vulnerability is deeply intertwined with gendered societal roles, which often position women as primary caregivers, relegating them to unpaid domestic labor and limiting their access to education, employment, and financial independence.

India has made considerable progress in recent years in terms of increasing women's participation in the workforce. According to the World Economic Forum's Global Gender Gap Report 2020¹⁶⁶, the participation of women in the Indian labor force has increased slightly, but the gender pay gap remains significant. Women continue to face discriminatory practices at workplaces, such as wage disparity, limited career advancement opportunities, and gender-based harassment. For instance, in sectors like agriculture and domestic work, women remain underpaid and overburdened, contributing to their overall economic disempowerment.

The issue of economic dependence also becomes pronounced in cases of domestic violence. Many women, particularly in rural or conservative families, do not have the financial independence or freedom to leave an abusive relationship. In the *R. Dhanalakshmi v. State of Tamil Nadu* (2016) 12 SCC 21¹⁶⁷ case, the Court recognized the importance of financial independence for women, acknowledging that in cases of domestic violence, women often cannot assert their rights due to their financial dependence on abusive partners. The judgment underlined the need

¹⁶⁶ World Economic Forum's Global Gender Gap Report 2020

¹⁶⁷ *R. Dhanalakshmi v. State of Tamil Nadu* (2016) 12 SCC 21

for stronger financial protections and legal remedies to ensure that women could escape abusive situations without suffering economic hardship.

The Domestic Violence Act, 2005¹⁶⁸ is one such legal remedy that provides economic relief to women. The Act allows for the provision of financial support, including maintenance, medical aid, and compensation for economic loss. However, in practice, many women remain unaware of these provisions or face significant barriers in accessing such support. In many cases, women may hesitate to pursue legal action due to a lack of financial resources or the fear of social ostracism. Legal aid and counseling services, which are essential for empowering women to assert their rights, are often underfunded or poorly implemented.

The issue of financial inequality is also reflected in the gendered division of labor in rural and urban India. In rural areas, women are often involved in agricultural work, but they rarely own the land or have control over the income generated from it. According to the Economic Survey of India (2020-2021),¹⁶⁹ the gender gap in rural employment remains a significant issue. While women contribute significantly to agriculture and other informal sectors, they have little to no say in the financial decisions of their households.

On a national scale, the financial independence of women is crucial for their empowerment and safety. The Beti Bachao Beti Padhao Scheme launched by the Government of India aims to address the gender gap in education and promote the economic empowerment of girls and women. Although such schemes represent positive steps toward reducing economic dependence, challenges in their implementation continue to hinder progress. Many women, particularly those in marginalized communities, still face discrimination when attempting to access education or formal employment opportunities. Until these systemic barriers are addressed, economic dependence will remain a significant issue preventing women from achieving true autonomy and equality.

The persistence of financial inequality also contributes to the perpetuation of gender-based violence, as women in economically dependent situations are often

¹⁶⁸ Domestic Violence Act, 2005, No. 43 of 2005

¹⁶⁹ Economic Survey of India (2020-2021), Ministry of Finance, Government of India

trapped in abusive relationships with limited means of escape. Thus, addressing economic dependence is an essential component of any strategy aimed at reducing violence and promoting gender equality in India.

6.3 LEGAL FRAMEWORK FOR WOMEN'S RIGHTS: CHALLENGES AND GAPS

The legal framework for women's rights in India has evolved significantly over the years, with several legislations enacted to address gender-based violence, discrimination, and ensure equality. However, despite these advancements, challenges persist in the effective implementation of these laws. The Indian Constitution, in its preamble, guarantees equality to all citizens, including women, and provides a broad framework for the protection of women's rights. Articles 14 (Right to Equality), 15 (Prohibition of discrimination), and 21 (Right to Life and Personal Liberty) form the cornerstone of constitutional protection for women. In addition, the Directive Principles of State Policy under Articles 39(a) and 42, call for the provision of equal opportunities and fair treatment to women in all spheres of life.

Over time, specific laws have been enacted to address various issues affecting women. The Dowry Prohibition Act, 1961 was one of the first laws aimed at curbing dowry-related violence, which has been a significant issue, particularly in the context of marriage. The Maternity Benefit Act, 1961 is another important piece of legislation that ensures maternity leave and other rights for working women. In 2005, the Protection of Women from Domestic Violence Act (PWDVA) was passed to offer legal protection to women facing domestic abuse, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 created a framework for addressing workplace harassment.

However, despite the existence of these laws, the effectiveness of these protections remains under question. A significant challenge in the implementation of these laws is the lack of awareness among women about their legal rights and the mechanisms available to seek redress. In many rural and remote areas, women remain unaware of the protections afforded by laws such as the PWDVA, and thus, continue to suffer

in silence. The implementation of these laws also faces bureaucratic delays, lack of proper infrastructure, and insufficient resources for enforcement agencies.

For instance, while the Dowry Prohibition Act was passed with the intention of curbing dowry-related violence, the number of dowry deaths and dowry harassment cases has not significantly decreased. The NCRB statistics have shown a consistent rise in dowry-related deaths, which highlights the gap between the legislative intent and the reality of enforcement. In the case of *Chandra Rajan v. State of Tamil Nadu* (2014) 3 SCC 212¹⁷⁰, the Supreme Court noted the insufficient implementation of anti-dowry laws and the need for better enforcement mechanisms to address the root causes of dowry-related violence.

Furthermore, the justice system often fails to deliver timely and adequate redress to women. The long delays in the judicial process and the lack of support for victims in the legal system, such as delays in filing FIRs or receiving interim relief, only further marginalize women. In the case of *Shakti Vahini v. Union of India* (2018) 7 SCC 45,¹⁷¹ the Court emphasized the need for faster judicial processes and better mechanisms for women's safety. These delays perpetuate the vulnerability of women, making them hesitant to seek justice.

The judiciary also plays a crucial role in shaping the legal landscape for women's rights, and judicial activism has significantly contributed to advancing women's issues. The *Vishakha v. State of Rajasthan* (1997) 6 SCC 241¹⁷² judgment, in which the Supreme Court laid down guidelines for the prevention of sexual harassment at the workplace, is an example of the judiciary filling gaps in the law where the legislature had not yet acted. This decision became the foundation for the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, later passed by Parliament.

Despite these positive developments, the legal system continues to face significant challenges in protecting women's rights. The failure to address systemic issues, such as gender bias in law enforcement, inadequate training of police officers, and

¹⁷⁰ *Chandra Rajan v. State of Tamil Nadu* (2014) 3 SCC 212

¹⁷¹ *Shakti Vahini v. Union of India* (2018) 7 SCC 45

¹⁷² *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

a lack of accountability, remains a major hurdle in the effective protection of women's rights. The social stigma attached to women who report gender-based violence or sexual harassment often discourages them from seeking legal redress, further perpetuating the cycle of violence and discrimination.

6.4 WOMEN'S POLITICAL PARTICIPATION: A STEP TOWARD EMPOWERMENT

Women's political participation has been recognized as a key indicator of their empowerment. The Constitution of India guarantees equal rights to participate in political processes, and women have been progressively included in various political bodies. However, despite this recognition, women's political participation remains significantly lower than that of men, especially at higher levels of governance.

The introduction of quotas in local government elections, through the 73rd and 74th Amendments to the Constitution in 1992, was a significant step in enhancing women's political participation at the grassroots level. These amendments reserved one-third of the seats for women in Panchayats and Municipalities, allowing a large number of women to engage in political decision-making at the local level. The Panchayati Raj (Extension to Scheduled Areas) Act, 1996, further reinforced this by ensuring that women, especially from marginalized communities, could hold political positions in tribal areas.

Despite these measures, women continue to face challenges in achieving full representation at higher political levels. The Representation of the People (Amendment) Bill, 2008¹⁷³ sought to reserve one-third of the seats in the Lok Sabha and State Legislative Assemblies for women, but this bill has yet to be passed. This delay in enacting the bill is indicative of the patriarchal nature of Indian politics, where political parties continue to prioritize male candidates, and the political space remains dominated by men.

The gender gap in political participation is not just a matter of numerical representation; it also reflects broader social and cultural barriers that prevent

¹⁷³ Representation of the People (Amendment) Bill, 2008

women from entering the political sphere. Women often face resistance from their families and communities when they attempt to engage in politics, and the lack of political mentorship and support networks further inhibits their progress. As observed in the case of *Indira Gandhi v. Raj Narain* (1975) 2 SCC 159,¹⁷⁴ while women have the right to participate in elections, societal norms often impose additional barriers, restricting their freedom to fully engage in the political process.

Moreover, women in politics continue to be subjected to various forms of discrimination, such as being sidelined in decision-making processes or having their leadership abilities undermined. The media portrayal of women politicians often focuses more on their personal lives rather than their political achievements, contributing to the perpetuation of gender stereotypes. The lack of gender-sensitive policies within political parties and the failure to address the unique challenges faced by women politicians further exacerbates these issues.

Nevertheless, women in politics have made significant strides in India. The election of women to prominent political positions, such as the Prime Minister and Chief Ministers of states, has demonstrated that political power can be accessible to women. The ongoing struggle for women's political participation reflects the larger battle for gender equality in India. Greater representation of women in political spheres is crucial for formulating policies that cater to the specific needs of women, including laws addressing gender-based violence, economic empowerment, and social inclusion.

6.5 THE ROLE OF EDUCATION IN WOMEN'S EMPOWERMENT

Education plays a pivotal role in empowering women and breaking the cycle of gender-based inequality and violence. The right to education is enshrined in the Indian Constitution under Article 21-A, which guarantees free and compulsory education for all children between the ages of 6 and 14 years. While the enrollment of girls in primary education has improved significantly in recent years, the dropout rates remain high, particularly at the secondary and higher levels. Socio-economic factors, such as poverty, early marriage, and societal pressure to prioritize domestic

¹⁷⁴ *Indira Gandhi v. Raj Narain* (1975) 2 SCC 159

responsibilities over education, continue to be significant barriers to girls' education.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009¹⁷⁵ made significant strides by making education a fundamental right for all children, including girls. The Act mandates that every child must be provided free and compulsory education until the age of 14, but implementation challenges remain. In rural areas, the lack of infrastructure, such as schools and transport facilities, continues to hinder access to education for girls. Furthermore, cultural norms that prioritize boys' education over girls' education perpetuate gender inequality in access to educational opportunities.

In recent years, several initiatives have been launched to address these gaps. Programs like Beti Bachao Beti Padhao and Scholarships for Higher Education¹⁷⁶ have encouraged girls to pursue education, while the government has launched schemes to improve school facilities, especially in rural areas. However, more needs to be done to ensure that girls are not only enrolled in schools but are also supported to complete their education and access higher education opportunities.

Education empowers women by giving them the skills and knowledge to participate in the workforce, understand their legal rights, and contribute to their communities in meaningful ways. It also plays a crucial role in changing societal attitudes towards women. Studies have shown that educated women are more likely to marry later, have fewer children, and seek employment, which in turn helps improve their economic and social status. Moreover, education helps women challenge gender norms and stereotypes, allowing them to advocate for their rights and make informed decisions about their lives.

The importance of education in women's empowerment is evident from the success stories of women who have overcome barriers to education and achieved significant success in various fields. From science to politics to entrepreneurship, educated

¹⁷⁵ Right of Children to Free and Compulsory Education Act, 2009, No. 35 of 2009

¹⁷⁶ Beti Bachao Beti Padhao Scheme (2015), Ministry of Women and Child Development, Government of India

women have contributed immensely to India's progress. In cases such as *Vishaka v. State of Rajasthan* (1997) 6 SCC 241,¹⁷⁷ the Court recognized the need for educational reforms that ensure equal access to educational opportunities for both genders. Educational reform thus plays a crucial role in the larger effort to ensure equality for women in India.



¹⁷⁷ Vishaka v. State of Rajasthan (1997) 6 SCC 241



CHAPTER 7: WOMEN'S RIGHTS AND INTERNATIONAL CONVENTIONS: INFLUENCE AND IMPLEMENTATION IN INDIA

7.1 INTERNATIONAL CONVENTIONS AND INDIA'S COMMITMENT TO WOMEN'S RIGHTS

India's commitment to the protection and promotion of women's rights is not only reflected in its national laws but also in its adherence to various international conventions and agreements. The country is a signatory to several key international human rights instruments, which collectively serve to ensure the protection of women's rights globally. India's participation in these conventions demonstrates its acknowledgment of the global framework surrounding gender equality and women's empowerment.

One of the most significant international documents in this regard is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979. CEDAW¹⁷⁸ is often described as an international bill of rights for women, aiming to eliminate discrimination based on gender and promote equality in all spheres of life, including political, economic, social, and cultural rights. India ratified CEDAW in 1993, thereby committing to the principles outlined in the convention.

CEDAW outlines a comprehensive agenda for countries to improve the status of women, covering issues such as equality in education, employment, health care, and protection against violence. India's ratification of CEDAW necessitated the alignment of its domestic laws with the principles of non-discrimination and gender equality. However, it is important to note that India's approach towards implementing CEDAW has been met with certain challenges, including reservations regarding specific provisions, particularly those that call for the modification of personal laws relating to marriage, divorce, and inheritance. These

¹⁷⁸ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), United Nations, 1979

reservations have raised concerns about the depth of India's commitment to the complete eradication of gender-based discrimination.

Another important international instrument that India adheres to is the Beijing Declaration and Platform for Action(1995), which was adopted during the Fourth World Conference on Women in Beijing¹⁷⁹. The platform focuses on empowering women by addressing 12 critical areas of concern, such as poverty, education, health, violence, and human rights. India's alignment with this platform has led to policy initiatives aimed at improving the condition of women, including increased funding for women's education, health programs, and efforts to eliminate violence against women.

Despite these commitments, the implementation of international conventions in India faces several challenges. The gap between international standards and national realities remains significant, with issues such as persistent gender-based violence, economic inequality, and political underrepresentation of women still prevalent in India. As noted in the case of *Mohd. Ahmed v. Union of India* (2012) 4 SCC 459¹⁸⁰, there is a need for India to reconcile its obligations under international treaties with its national laws, especially when it comes to personal laws and customary practices that may conflict with international conventions on gender equality.

7.2 THE ROLE OF INTERNATIONAL HUMAN RIGHTS BODIES IN SHAPING WOMEN'S RIGHTS IN INDIA

International human rights bodies, including the United Nations (UN), play an essential role in shaping global standards for the protection of women's rights. Their influence extends beyond the drafting of international conventions and into the monitoring and evaluation of the implementation of these conventions by member states, including India. The Committee on the Elimination of Discrimination Against Women (CEDAW Committee), which oversees the implementation of CEDAW, regularly reviews reports submitted by state parties to assess their compliance with the convention's provisions.

¹⁷⁹ Beijing Declaration and Platform for Action, United Nations, 1995

¹⁸⁰ *Mohd. Ahmed v. Union of India* (2012) 4 SCC 459

India's periodic reports to the CEDAW Committee have highlighted both progress and challenges in the country's approach to gender equality. These reports have led to recommendations for improvements, particularly in areas such as violence against women, trafficking, and ensuring equal opportunities for women in education and employment. The CEDAW Committee has also noted the inadequacies in India's domestic legal framework to address issues such as marital rape, which remains a contentious issue due to resistance from various social and political factions.

In addition to CEDAW, India is also subject to reviews by other international human rights bodies, including the Universal Periodic Review (UPR) mechanism of the United Nations Human Rights Council. The UPR provides a platform for the review of the human rights practices of all UN member states, with recommendations made for improvement. India's review under the UPR has often highlighted the need for more comprehensive measures to ensure the protection of women's rights, particularly in the context of violence and discrimination.

The role of international human rights bodies in promoting women's rights in India extends beyond the creation of laws and conventions; they provide a critical platform for civil society organizations, advocacy groups, and women's rights activists to raise concerns and hold the Indian government accountable for its obligations. These bodies also play a crucial role in highlighting the disparities between India's international commitments and the on-the-ground realities faced by women.

7.3 IMPLEMENTATION OF INTERNATIONAL STANDARDS: SUCSESSES AND SHORTCOMINGS

The implementation of international standards for women's rights in India has been a mixed process, marked by both significant successes and persistent shortcomings. On the one hand, India has made notable progress in areas such as women's education, political representation, and legal protection against violence. For example, the introduction of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (often referred to as the POSH

Act) was a direct outcome of international standards set by CEDAW and the Vishakha Guidelines issued by the Supreme Court in 1997.¹⁸¹

Additionally, India's various initiatives aimed at improving the status of women, such as the Beti Bachao Beti Padhao campaign and the expansion of women's reservations in local governance, reflect the country's growing commitment to gender equality. These initiatives have led to positive outcomes, such as increased female literacy rates, greater participation of women in political decision-making, and a reduction in child marriage rates.

However, despite these successes, several challenges remain in implementing international standards for women's rights in India. One of the major shortcomings is the gap between the legal framework and its enforcement. Laws aimed at protecting women, such as those against domestic violence and sexual harassment, often fail to reach the women who need them the most, especially in rural areas where cultural practices and lack of awareness continue to perpetuate discrimination and violence.

For instance, in the case of *Nirbhaya v. Union of India* (2012) 4 SCC 244,¹⁸² the brutal gang rape of a young woman in Delhi led to widespread protests and the eventual strengthening of laws related to sexual assault. However, despite the landmark *Nirbhaya Act* (2013), which introduced stricter punishments for sexual violence, the implementation of the law has faced hurdles, including delayed trials, lack of accountability, and underreporting of crimes due to fear of social stigma and retaliation.

Another significant challenge in the implementation of international standards is the persistence of entrenched patriarchal attitudes and the influence of religious and cultural practices on legal and policy decisions. For example, India's resistance to the implementation of certain CEDAW provisions, such as the recognition of marital rape as a criminal offense, highlights the conflict between international norms and traditional practices. The *Laxmi v. Union of India* (2014) 4 SCC 229¹⁸³

¹⁸¹ *Vishakha v. State of Rajasthan* (1997) 6 SCC 241

¹⁸² *Nirbhaya v. Union of India* (2012) 4 SCC 244

¹⁸³ *Laxmi v. Union of India* (2014) 4 SCC 229

case, which addressed the issue of acid attacks, also revealed the gap in the law's application and enforcement, with many offenders remaining unpunished due to social stigma and lack of legal resources.

7.4 NATIONAL AND INTERNATIONAL EFFORTS TO ADDRESS GENDER-BASED VIOLENCE

Gender-based violence (GBV) remains one of the most significant barriers to achieving gender equality in India, despite the country's international commitments to combat this issue. The international community, through frameworks like CEDAW, has called for the elimination of gender-based violence, and India has taken steps to address this through legal reforms, public awareness campaigns, and collaboration with international organizations.

The Indian government, in response to the growing concerns over GBV, has enacted various laws, including the Protection of Women from Domestic Violence Act, 2005 (PWDVA) and the Criminal Law (Amendment) Act, 2013, following the Nirbhaya case. The amendment made provisions for stricter punishment for sexual violence, including the death penalty for the most severe cases of rape. Additionally, India's National Policy for Women's Empowerment (2001) outlines the country's commitment to eliminating gender-based violence through a multi-faceted approach that includes legal, social, and economic measures.

Despite these efforts, the implementation of these laws has been inconsistent, with issues such as police insensitivity, underreporting of crimes, and delays in the justice system impeding the effectiveness of these laws. International organizations, such as the UN Women and Amnesty International, have worked alongside Indian authorities to raise awareness of GBV and provide technical assistance for legal and policy reforms.

The international community's role in addressing GBV is also significant, with various initiatives aimed at improving the protection of women globally. India's cooperation with UN agencies and other international organizations has led to the establishment of various programs aimed at preventing GBV and supporting survivors. One such initiative is the UN Women's Safe Cities Global Initiative,

which aims to make cities safer for women by addressing urban violence and promoting women's participation in city planning.

7.5 THE PATH FORWARD: STRENGTHENING THE IMPLEMENTATION OF WOMEN'S RIGHTS

In conclusion, while India has made significant strides in promoting women's rights through international conventions and national legal reforms, there remain considerable gaps in the implementation of these rights. The country's commitment to international conventions such as CEDAW and the Beijing Platform for Action must be matched by stronger enforcement mechanisms, increased political will, and greater involvement of civil society organizations.

One of the key ways forward is to bridge the gap between law and practice, ensuring that laws protecting women are not only enacted but also effectively enforced. This includes providing adequate training for law enforcement officials, strengthening the judicial system, and ensuring that women have access to legal aid and support services.

Additionally, India must continue to engage with international human rights bodies to remain accountable for its commitments and to adapt its legal framework in line with evolving global standards. Only through a concerted effort at both the national and international levels can India fully realize its commitment to women's rights and achieve gender equality.

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CHAPTER 8: CONCLUSION AND RECOMMENDATIONS

8.1 REFLECTION ON THE EVOLUTION OF WOMEN'S RIGHTS IN THE INDIAN CONSTITUTION

The trajectory of women's rights in India has evolved significantly since the country gained independence in 1947. At the time of independence, the status of women was marked by deep socio-cultural inequalities, both in terms of legal standing and societal norms. The Indian Constitution, however, sought to address these inequalities by enshrining provisions aimed at securing gender equality. Notably, Articles 14, 15, 21, and 39(a) of the Constitution laid the foundation for the protection of women's rights in India, providing a framework that reflected the vision of an equal society. However, the initial constitutional framework was only the beginning, and the actual implementation of gender equality proved to be far more complicated.

Article 14 guarantees equality before the law and equal protection of the laws, ensuring that women are entitled to the same legal rights as men. Article 15(1) prohibits discrimination on the grounds of sex, while Article 15(3) allows the state to make special provisions for women and children, recognizing their historical disadvantage in society. Article 21, which safeguards the right to life and personal liberty, has been interpreted by the judiciary to include the right to live with dignity, encompassing various aspects of women's rights, such as the right to personal security and freedom from violence.

Despite these constitutional safeguards, the path toward gender equality has been marred by several challenges. India's diverse social and cultural fabric, with its deep-rooted patriarchy, has consistently posed obstacles to the realization of gender justice. While the Constitution provided a legal framework for gender equality, it was evident that mere legal provisions would not be sufficient in addressing the deeply entrenched gender biases prevalent in Indian society. Over time, however, various landmark judgments by the Indian judiciary, alongside legislative reforms, have contributed to the gradual empowerment of women.

The enactment of laws such as the Hindu Succession Act (1956), which granted women the right to inherit ancestral property, and the Maternity Benefit Act (1961), which provided women with maternity leave and benefits, represented initial steps towards improving women's status in Indian society. However, it was the post- 1970s period that witnessed more significant legislative developments, particularly in the areas of marriage, divorce, and sexual violence. The Dowry Prohibition Act (1961), Protection of Women from Domestic Violence Act (2005), and Criminal Law (Amendment) Act (2013) represent milestones in addressing various facets of gender inequality, from domestic violence to sexual harassment.

The evolution of women's rights in India is not limited to the formal legislative framework but also reflects a growing awareness of women's issues, particularly through the efforts of women's rights organizations and civil society groups. These groups have played an instrumental role in lobbying for progressive laws, providing legal aid to women in distress, and pushing for greater representation of women in political and economic spheres. The increasing participation of women in the workforce, politics, and education in recent years is a testament to the long-standing efforts to create an environment conducive to women's empowerment.

However, the application of these laws has been fraught with challenges. There remains a significant gap between the constitutional guarantees and the lived experiences of women, particularly in rural areas, where patriarchal attitudes are more deeply entrenched. The state's failure to effectively enforce existing laws and its inability to challenge social prejudices are key barriers to women's true empowerment. Moreover, issues such as child marriage, dowry-related violence, and gender-based discrimination in the workplace continue to persist, despite legislative reforms aimed at eliminating them.

The Supreme Court has repeatedly emphasized the need for gender-sensitive laws and practices. For instance, in the landmark case of *Vishaka v. State of Rajasthan* (1997),¹⁸⁴ the Court formulated guidelines for the protection of women from sexual harassment at the workplace, a significant step toward ensuring the safety and dignity of women in the public sphere. Similarly, in *Laxmi v. Union of*

¹⁸⁴ Vishaka v. State of Rajasthan (1997) 6 SCC 241



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India (2014),¹⁸⁵ the Court directed the government to take proactive measures in providing relief and rehabilitation to acid attack survivors, reflecting the judiciary's growing sensitivity to gender issues. Such judicial activism has played a critical role in addressing women's grievances and ensuring that the legal framework adapts to changing realities.

8.2 CHALLENGES IN IMPLEMENTATION OF WOMEN'S RIGHTS IN INDIA

While the Indian Constitution and its subsequent amendments provide a robust framework for women's rights, the implementation of these provisions has been hindered by numerous challenges. One of the primary challenges is the systemic patriarchy that continues to exist within India's political, legal, and social institutions. This systemic bias manifests in various forms, such as gender-based violence, limited access to education, economic dependency, and inadequate healthcare. These barriers prevent women from fully realizing their rights, regardless of the legal protections available on paper.

A key factor in the ineffective implementation of laws is the deeply ingrained patriarchal mindset within society. Gender-based violence, despite being addressed by laws like the Domestic Violence Act (2005)¹⁸⁶ and the Criminal Law (Amendment) Act (2013),¹⁸⁷ continues to be widespread. The societal attitude toward women, which often normalizes their subjugation, makes it difficult to bring about meaningful change. Women who are victims of violence frequently face societal stigma, which discourages them from reporting crimes or seeking legal recourse. For example, in cases of domestic violence or sexual harassment, many women are discouraged from filing complaints due to the fear of retaliation or social ostracization. In rural areas, women often lack access to legal resources and are subject to traditional customs that undermine their ability to seek justice.

The police and judicial systems, crucial to the implementation of laws, are also fraught with inefficiencies. The police often lack training in handling cases of

¹⁸⁵ Laxmi v. Union of India (2014) 4 SCC 229

¹⁸⁶ Domestic Violence Act, 2005 (India)

¹⁸⁷ Criminal Law (Amendment) Act, 2013 (India)

gender-based violence and are frequently insensitive to the unique needs of female victims. Delays in the investigation and trial of cases of violence against women often discourage victims from pursuing justice. This is evident from the long-standing backlog of cases related to violence against women in Indian courts. According to a report by the National Crime Records Bureau (NCRB), the conviction rate for crimes against women remains dismally low, reflecting the inadequate implementation of existing laws.¹⁸⁸

In addition to the failure of law enforcement agencies to effectively implement laws, there is a significant lack of awareness among women about their legal rights. Despite the availability of legal aid, many women, especially in rural or underprivileged communities, are unaware of their rights and the mechanisms available for seeking justice. Legal literacy programs are limited in scope and often fail to reach the most marginalized women, who are the most vulnerable to violations of their rights. This lack of legal awareness results in women either not reporting crimes or, in some cases, not even recognizing that their rights have been violated.

Another obstacle in the implementation of women's rights is the persistent influence of personal laws, which continue to operate in parallel to the Indian Constitution. Personal laws governing marriage, divorce, inheritance, and adoption vary significantly across religious communities and often contradict the principles of gender equality enshrined in the Constitution. For example, Hindu women, under the Hindu Succession Act of 1956,¹⁸⁹ did not have equal rights to inherit ancestral property until recent amendments were made in 2005. Similarly, Muslim women face challenges in seeking divorce or asserting their rights in matters of marriage and inheritance, due to religiously sanctioned practices that contradict constitutional guarantees.

In addition to these systemic challenges, political will and public policy often fail to prioritize women's issues. While women's rights have gained attention in recent years, political commitments to addressing these issues are often superficial, with

¹⁸⁸ Hindu Succession Act, 1956 (India)

¹⁸⁹ National Crime Records Bureau (NCRB), Crime in India 2020

little genuine effort to bring about systemic change. Gender-sensitive policies and laws often get sidelined in favor of other political agendas, further delaying the realization of women's rights in India.

Despite these challenges, there is hope. Several women's movements, such as the Beti Bachao Beti Padhao initiative and the #MeToo movement, have raised awareness and put pressure on the government to take more aggressive action in protecting women's rights. The judiciary has also played an active role in shaping a more progressive approach toward women's issues. The continuing efforts of civil society, women's rights activists, and legal reformers to challenge entrenched social norms and push for better implementation of laws offer a path toward greater gender equality.

8.3 THE ROLE OF JUDICIAL INTERPRETATION IN ADVANCING WOMEN'S RIGHTS

The Indian judiciary has played a pivotal role in advancing women's rights through its progressive interpretations of the constitutional provisions and various laws. While the Indian Constitution provides a broad framework for ensuring gender equality, it is the courts' dynamic approach to interpreting these provisions that has significantly contributed to the empowerment of women. The Indian judiciary has not only interpreted the laws in a gender-sensitive manner but has also expanded the scope of women's rights through judicial activism.

One of the most significant contributions of the judiciary in this regard has been the judicial interpretation of Article 21, the right to life and personal liberty, which the courts have repeatedly interpreted to include a right to live with dignity. This interpretation has been crucial in cases involving sexual harassment, dowry deaths, and other forms of violence against women. The Supreme Court, in *Vishaka v. State of Rajasthan* (1997),¹⁹⁰ laid down guidelines to protect women from sexual harassment at the workplace, an issue that was not adequately addressed by the existing laws at the time. The Court in this case interpreted the right to live with dignity as encompassing the right of women to be free from sexual harassment at

¹⁹⁰ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

their place of work. This decision marked a turning point in India's legal response to sexual harassment, providing a legal framework for the protection of women in workplaces across the country.

Another notable example of judicial intervention was in the case of *Shah Bano Begum v. Mohammad Ahmed Khan* (1985),¹⁹¹ where the Supreme Court held that a Muslim woman could claim maintenance under Section 125 of the Criminal Procedure Code (CrPC), despite the provisions of Islamic law that did not provide for maintenance beyond the iddat period. This ruling, although controversial, highlighted the potential of judicial interpretation in expanding women's rights, especially in matters relating to marriage, maintenance, and divorce. The case sparked a nationwide debate on the intersection of personal laws and the constitutional right to equality, leading to significant reforms, including the Muslim Women (Protection of Rights on Divorce) Act, 1986, which modified the judicial ruling in favor of the Muslim personal law.

The Supreme Court's role in interpreting gender justice in cases involving violence against women has been equally significant. In the case of *National Commission for Women v. Union of India* (1997),¹⁹² the Court emphasized the need for a gender-sensitive approach in law enforcement, particularly in cases of domestic violence. The Court noted that the failure to protect women from domestic violence violated their fundamental right to life and liberty under Article 21. This interpretation reinforced the importance of having laws that not only criminalize violence but also ensure that women can access justice without facing societal stigma.

Moreover, the judiciary has also interpreted Article 15(3) of the Constitution, which allows for special provisions for women, in a way that ensures that policies aimed at benefiting women are in line with the constitutional mandate for gender equality. For instance, the Court has upheld affirmative action policies, such as reservations for women in local governance, recognizing the need for such measures to correct the historical disadvantages faced by women. The *Panchayat Raj* case (1992)

¹⁹¹ *Shah Bano Begum v. Mohammad Ahmed Khan* (1985) 2 SCC 556

¹⁹² *National Commission for Women v. Union of India* (1997) 7 SCC 73

upheld the constitutional provision for reservation of seats for women in Panchayats, ensuring women's participation in grassroots democratic processes.

Through such interpretations, the judiciary has not only safeguarded women's rights but has also expanded the understanding of equality and justice, ensuring that women's concerns are heard, understood, and acted upon.

8.4 THE IMPACT OF INTERNATIONAL HUMAN RIGHTS FRAMEWORKS ON INDIAN WOMEN'S RIGHTS

India's Legal Framework for women's rights has also been shaped significantly by international human rights treaties and conventions. As a signatory to various international human rights agreements, India has committed itself to upholding global standards for the protection of women's rights. The Indian legal system incorporates several international conventions into its national laws, demonstrating the convergence of international human rights norms with domestic laws in protecting women's rights.

The most notable of these international agreements is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993.¹⁹³ CEDAW provides a comprehensive framework for the elimination of discrimination against women and outlines the obligations of state parties to take steps toward achieving gender equality in areas such as health, education, employment, and political participation. India's commitment to CEDAW has influenced the development of domestic laws and policies aimed at improving women's status.

One of the most significant contributions of CEDAW to Indian women's rights is the emphasis it places on the elimination of violence against women. The Beijing Declaration and Platform for Action (1995) and the Universal Declaration of Human Rights (UDHR)¹⁹⁴ also played a pivotal role in shaping India's approach to addressing gender-based violence. The UDHR's principle of equality and non-

¹⁹³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (United Nations, 1979)

¹⁹⁴ Universal Declaration of Human Rights (United Nations, 1948)

discrimination has been embedded in India's constitutional framework, providing a foundation for the legal recognition of women's rights.

International human rights law has also impacted India's stance on issues such as trafficking, child marriage, and female genital mutilation (FGM). For example, India's efforts to combat human trafficking have been influenced by international frameworks like the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children(2000), which India has signed and ratified. This has resulted in several legislative initiatives, including the Immoral Traffic (Prevention) Act (1956), aimed at curbing trafficking and providing legal protections for women and children.

Furthermore, India's participation in various international forums, such as the United Nations Women's Conference and the Commission on the Status of Women, has fostered greater awareness about gender equality. India's representation in these forums allows for the exchange of best practices, providing an opportunity for Indian policymakers and legal experts to engage with global discussions on women's rights and gender justice. The global discourse on women's rights has significantly influenced India's policies, prompting the country to adopt more comprehensive and progressive laws aimed at ensuring women's protection and empowerment.

Thus, international human rights norms have played an instrumental role in the development of India's legal approach to women's rights. By aligning its laws with global human rights standards, India has made significant strides in ensuring that women are afforded equal protection under the law.

8.5 FUTURE DIRECTIONS FOR WOMEN'S RIGHTS IN INDIA: MOVING TOWARDS GENDER JUSTICE

The future of women's rights in India holds both challenges and opportunities. Despite significant progress in legal and policy reforms, women in India continue to face substantial barriers to achieving full equality. These barriers are not just legal but also socio-cultural, economic, and political. To overcome these challenges, the

country needs to adopt a multi-pronged approach that addresses both the legal and societal aspects of gender inequality.

One of the key areas where India must focus in the future is the implementation of existing laws. While the Indian legal framework for the protection of women's rights is robust, its implementation remains inconsistent. There is a need for the judiciary, law enforcement agencies, and government bodies to work in unison to ensure that laws are enforced effectively. The police, in particular, must receive better training in handling gender-based violence cases with sensitivity and urgency. Furthermore, the judicial process must be expedited, ensuring that cases related to violence against women are handled swiftly and justly.

A greater emphasis must also be placed on legal literacy and awareness programs for women, particularly in rural areas. Many women are unaware of their rights or are too afraid to seek justice due to societal pressures or ignorance of legal mechanisms. Public campaigns aimed at educating women about their rights, along with the establishment of easily accessible legal aid services, could empower women to stand up for themselves and seek justice when needed.

Another area that requires attention is the continued challenge of entrenched patriarchal attitudes. Social norms that perpetuate gender inequality must be challenged through education and awareness campaigns. Schools, colleges, and communities must foster a culture of gender equality, where women's rights are respected, and gender stereotypes are dismantled. It is crucial to address the deeply ingrained biases that contribute to the marginalization of women in society, whether in the family, workplace, or public life.

Moreover, political representation remains an important area for improvement. Although there have been efforts to increase women's participation in politics, women are still underrepresented in political leadership positions. The introduction of measures such as reservations for women in legislative bodies and local governance can help increase women's political participation. By ensuring that women have a voice in policymaking, the country can move closer to achieving gender justice.

Lastly, India must continue to build on the achievements of international frameworks. The continued alignment of Indian laws with international human rights standards will ensure that the country remains committed to global gender justice goals. As India moves forward, it must continue to leverage international support and best practices while also ensuring that its legal framework is responsive to the specific needs of women in its socio-cultural context.

In conclusion, while India has made significant strides in promoting women's rights, the road to full gender equality remains long. A sustained, collective effort from all sectors of society government, civil society, the judiciary, and the general public is necessary to ensure that women's rights are not only recognized in law but also realized in practice.



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