

## ANALYSIS OF RECOGNITION OF RIGHTS OF WOMEN IN INDIAN

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### Abstract

This abstract will examine the recognition of rights of women in India. It will analyze the legal and cultural factors that have influenced the treatment and status of women in Indian society. It will also examine the progress that has been made in recent years towards improving the rights and equality of women in India, as well as the challenges that still remain. The study will focus on specific issues such as education, employment, property rights, domestic violence, and political participation. The analysis will draw on a variety of sources including laws, statistics, and personal accounts. The aim of this abstract is to provide a comprehensive overview of the recognition of rights of women in India, highlighting both the progress and the obstacles that have been encountered in this regard.

**Keywords:** *Women Rights; Right to Equality; Sexual Discrimination; Constitution Law.*

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### I. INTRODUCTION

India has adopted the guiding principles of international law and has brought forth within its Constitution, the fundamental rights and duties governing society. It has adopted a twofold structure of fundamental rights of citizens in general and women in specific.<sup>1</sup> Part III of the Indian

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<sup>1</sup> "Legacy of Colonialism: Law and Women's Rights in India." Wash. & Lee L. Rev. 64 (2007): 1315.

Constitution attaches paramount importance to the fundamental rights and freedoms. The Constitution guarantees equality before law and assures equal protection of laws to all citizens irrespective of their caste, creed, religion, place of birth and sex. <sup>2</sup>

## **II. RIGHTS OF WOMEN UNDER INDIAN CONSTITUTION**

The plain reading of the Constitution is suggestive of the fact that it does not only devise measures to weed out inequality otherwise rooted in historical conditions but also provides for preventing the perpetuation of inequality, so that it does not pass on from one generation to the other in the form of legacy. It not only embodies in it the concept of gender parity but also expressly forbids discrimination based on sex.<sup>3</sup> While guaranteeing equality of status and opportunity to women, the Constitution under Article 15(3) provides for affirmative action in their favor. The right to life placed under Article 21 of the Constitution, constitutes a superstructure meant to protect, directly or indirectly any negation of the right to life. Few other constitutional provisions are:

- Equality before law for women (Article 14).
- The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15(1)).
- Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16).
- The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)).
- Equal pay for both men and women (Article 39(d)).

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<sup>2</sup> Agnes, Flavia. "Law and gender inequality: The politics of women's rights in India." (2001).

<sup>3</sup> Hill, B. Jessie. "The constitutional right to make medical treatment decisions: a tale of two doctrines." *Tex. L. Rev.* 86 (2007): 277.

- To promote justice, on the basis of equal opportunity and to provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39A).
- The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42).
- The State to promote with special care the educational and economic interest of the weaker sections of the society and to protect them from social injustice and all forms of exploitation (Article 46).
- The State to raise the level of nutrition and the standard of living of its people (Article 47).
- To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A)(e))
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Caste and Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D (3)).
- Not less than one-third of the total number of offices of chairpersons in the Panchayats to be reserved for women (Article 243D (4)).
- Not less than one-third (including the number of seats reserved for women belonging to Scheduled Caste and Scheduled Tribes) of the total number of seats to be filled by direct election in every municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a municipality (Article 243 T (3)).

- Reservation of offices of chairpersons in municipalities for the scheduled caste, scheduled tribes and women in such a manner as the legislature of the State may by law provide (Article 243 T (4)).

### **III. JUDICIARY RECOGNIZING WOMEN RIGHTS**

Though a plethora of legislations exists, due to ineffective enforcement, women are exploited. The socio-politico structure of society has found ways to circumvent the provisions of various legislations and block attempts against women's empowerment. Due to the failure of the legislations to protect women, the judiciary came forward to protect the interests of women. Judicial interventions have ensured that all procedural shackles are removed. The judiciary has encouraged the widest possible coverage of the legislations by liberal interpretations. The judiciary has shifted from a doctrine approach to the pragmatic approach, which is conducive to protecting all interests in the society. The courts have shown great enthusiasm in granting the constitutional provisions for all women. The judiciary by its landmark judgments has filled up the gap created by the legislative machinery. It has actually, in many instances, extended a helping hand to women, when the legislature has denied them the same. In extending support, the Indian judiciary has sought help from the Indian Constitution, International Declarations and Conventions. In the *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>4</sup>, the Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the muster roll (daily wagers) female employees of the Delhi Municipal Corporation. The court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian law. In *Chairman, Railway Board v. Chandrima Dass*<sup>5</sup>, the apex

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<sup>4</sup> AIR 2000 SC 1274

<sup>5</sup> AIR 2000 SC 988

court awarded compensation of 10 lakhs to a foreigner, who was a victim of rape by Railway employees, under Article 21 of the Indian Constitution. In *Githa Hariharan v. Reserve Bank of India*<sup>6</sup>, court interpreted section 6(a) of the Hindu Minority and Guardianship Act, 1956 and section 19(b) of the Guardians and Wards Act, 1890, which provide that mother is the natural guardian of minor child after father, in such a way that father and mother both get equal status as natural guardians of a minor. In *Mohammed Ahmed Khan v. Shah Bano*, AIR 1985 SC 945, the Supreme Court granted right of maintenance under section 125 of Criminal Procedure Code to a divorced married woman notwithstanding the Muslim personal laws which restricts it to iddat period only. In *Government of Andhra Pradesh v. P.B. Vijay Kumar*, AIR 1995 SC 1648, the apex court held that the issue of reservation for women in State services was upheld under Article 15(3) of the Indian Constitution. In *Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*, AIR 1992 SC 1695, the court struck down discriminatory rules of education department of government of Uttar Pradesh. In *Vishakha v. State of Rajasthan*<sup>7</sup>, the Supreme Court took a serious note of the increasing menace of sexual harassment at workplace. Considering the inadequacy of legislation on the issue, the court even assumed the role of legislature and defined sexual harassment and laid down instruction for the employers. Further in *Apparel Export Promotion Council v. A.K. Chopra*<sup>8</sup>, the apex court found all facets of gender equality including prevention of sexual harassment in the fundamental rights granted by the Indian Constitution. In *C.B. Muthamma v. Union of India*<sup>9</sup>, a service rule whereby marriage was a disability for appointment to foreign services was declared unconstitutional. In *Sobha Rani v. Madhukar*<sup>10</sup>, apex court held

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<sup>6</sup> AIR 1999 SC 1149

<sup>7</sup> AIR 1997 SC 301

<sup>8</sup> AIR 1999 SC 625

<sup>9</sup> AIR 1979 SC 1868

<sup>10</sup> AIR 1988 SC 121

dowry demand as enough to amount to cruelty. Prathibha Rani v. Suraj Kumar<sup>11</sup>, court upheld women's Right to stridhan. In Gaurav Jain v. Union of India<sup>12</sup>, the Supreme Court laid down guidelines including the necessity of counseling the women to retrieve from prostitution and rehabilitate them. In ABC v. The State (NCT of Delhi)<sup>13</sup>, Supreme Court has given permission to unmarried women to mention her name as legal guardian and held that there is no need to mention name of the child's fathers in passport or any other relevant documents. In Indira Sharma v. K.V. Sharma<sup>14</sup>, the court accorded protection to women in live-in relationships under the Domestic Violence Act, 2005 stating that where the nature of relationship is such that the person is not married but are living together have a right to be protected.

#### **IV. CONCLUSION**

In India we have different views regarding women and their position in society. In early times, on one hand, it was believed that where women are honored, gods feel delighted, while on the other hand, in the times of Manu, she was considered a non-independent and a weak human being. With the rise of some consciousness amongst society and participation of politically conscious women during struggle for Independence, a new impetus was given to the socio-economic battles and legal struggle.

The reported rise in crimes against women reflects the constant fight for dignity and equal rights amongst women. The picture depicts a sad state that too after affirmed constitutional safeguards.

The women participation in workforce has necessitated a debate over the adequacy of the

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<sup>11</sup> AIR 1985 SC 628

<sup>12</sup> AIR 1997 SC 3012

<sup>13</sup> AIR 2015 SC 2569

<sup>14</sup> AIR 2014 SC 309

protective measures adopted by Indian parliament through various legislations, keeping in mind Constitutional safeguards. The legislative measures so adopted, from time to time, with a view to provide equal rights to women at workplace, have not produced the desired results either due to lacunae in the legislative provisions or due to some deficiency in the enforcement machinery. Any form of discrimination hampers the growth and prosperity of society and the family, and renders more difficult the development of full potentials of women in the service of their nation's and humanity. Role of Indian judiciary in realizing rights of women is commendable and is dealt briefly in the earlier part of the module. Law commission in its various reports has also contributed to a great deal to protect women from the injustice and mitigate their miseries and sufferings. Having giving due regards to the developments, received worldwide, towards women empowerment, a lot of efforts is still required. The whole existing situation calls for correcting social attitudes and outlook and demands futuristic thoughts. Enforcement of legally justified basic rights to women has been a cause of concern that requires special attention.

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