

# 5

## Role of Judiciary in Women Empowerment in India

**Dr. Pankaj Kumar\***

Assistant Professor, Department of Psychology, G.D. College, Begusarai (Lalit Narayan Mithila University, Darbhanga, Bihar)

\*Corresponding Author: [pankajkumarsah2015@gmail.com](mailto:pankajkumarsah2015@gmail.com)

### Abstract

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favour of women. Empowerment may be described as a process which helps people to assert their control over the factors which affect their lives. Empowerment of women means developing them as more aware individuals, who are politically active, economically productive and independent and are able to make intelligent discussion in matters that affect them. Present article discusses about various initiatives taken by Government of India for empowering women by analysing position of India in Gender Inequality Index and Global Gender Gap Index of United Nations. Article concludes with the note that due recognition must be given to women and society should come forward to ensure equal status for women in all spheres of life. Globalisation is a process of increasing interdependence, interconnectedness and integration of economies and societies to such an extent that an event in one part of the globe affects people in other parts of world. Increasing levels of international interconnectedness has affected the social, economic, and political conditions for women in India. The study attempts to understand the indicators of women empowerment and the impact of globalisation on the women of India. This is done by critically analysing the impact of globalisation on various indicators that define Gender Empowerment Measure (GEM), Gender Development Index (GDI) and Gender Inequality Index (GII). The researcher collected data from reports of Government and Non-Government organisations such as United Nations Development Programme (UNDP) India, Ministry of Women and Child Development India, Census of India, Election Commission of India, Registrar General of India (RGI). The study concludes by suggesting various policies for ensuring women's empowerment in the present era of globalisation.

**Keywords:** Gender Equality, Fundamental rights, Safeguarding Women's, Bodily Autonomy, Cultural Barriers, Contemporary Challenges, Opposition, Victimization, Interconnectedness, Derogatory.

## Introduction

The pursuit of gender equality stands a cornerstone of a just and progressive society. India, a vibrant democracy with a rich history of social reform movements, has made significant strides in advancing women's rights. Yet, the path to full realization of these rights remains marred by deep-rooted patriarchal attitudes, discriminatory practices, and a persistent gap between the in theory its implementation on the ground. Amidst these complexities, the Indian judiciary has emerged as a vital force in championing women's rights and upholding the values enshrined in the Constitution. The Indian Constitution, adopted in 1950, envisioned a nation where all citizens, regardless of gender, would enjoy equal rights opportunities. It enhance fundamental rights such as the right to equality (Article 14), the right against discrimination on grounds of sex (Article 15), the right to life and personal liberty (Article 21), and various provisions designed to empower women and eliminate social inequalities. However, it is the judiciary, with its power of judicial review that has breathed life into these constitutional guarantees, translating them into tangible advancements for women. The Supreme Court of India, along with various High Courts, has played a transformative role in expanding women's rights through landmark judgments and progressive interpretations of the Constitution. These judgments have struck down discriminatory laws, challenged practical norms, and upheld women's agency in various spheres life.

## The Position of Women in India in Different Periods

The position of women in India has varied significantly over time, from a high status with freedom in the early Vedic period to a decline during the later Vedic and medieval eras marked by restrictions like child marriage and the purdah system. In modern India, women have gained legal equality and hold significant positions in various fields, though social challenges remain.

### Ancient India

**Early Vedic Period (1500-500 BC):** Women enjoyed a high status with freedom to pursue education, participate in religious ceremonies, and choose their husbands. They were respected members of society.

**Later Vedic and Epic Periods (500 BC onwards):** The status of women began to decline. Restrictions on education and participation in public life emerged, and practices like child marriage and Sati became more prevalent over time.

### Medieval India

- **Under Muslim and Rajput Rule:** The situation worsened, with women facing stricter social limitations.
- **Key Restrictions:** The purdah system (seclusion), child marriage, and the prohibition of widow remarriage became more common, contributing to a further decline in their freedom and status.

### Modern India

- **Colonial Era:** The 18th and 19th centuries were particularly difficult, with practices like Sati being a significant issue. However, English education played a role in strengthening women, which helped gradually end some brutal practices.

- **Post-Independence:** The Indian constitution granted women equal rights, and significant progress has been made.
- **Contemporary Era:** Today, Indian women are found in all sectors, including politics, business, and sports. However, challenges like the gender pay gap and barriers to education still exist.

### **Constitutional Rights and Safeguards to Women - Concept of Protective Discrimination**

The constitution of India not only granted equal status to women par with men, but also empowers the state to adopt measures of positive discrimination in favour of women [8] for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Constitutional framers also empowered the state to make special laws, policies, plans and programmes with in a democratic polity for advancement of women in all spheres. The framers of constitution aimed to provide justice, liberty and equality irrespective of gender, it can be witnessed in Preamble, Fundamental Rights, Directive Principles of state policy, Fundamental duties and in other provisions. The preamble is the key to open the mind of the makers. Constitutional framers aimed to provide justice, liberty and equality to people irrespective of gender, status, religion, creed and cast etc. by this one can understand that framers would like to establish a society with gender equality, which directly or indirectly tries to uphold the women empowerment.

### **Safeguarding Reproductive Rights and Health**

The Indian Constitution, while guaranteeing fundamental rights like equality and non-discrimination, remains relatively silent on the specific issue of reproductive rights. This has necessitated a crucial role for the Indian judiciary in interpreting existing legal frameworks and the Constitution itself to safeguard women's reproductive rights and health. This section explores how key judicial pronouncements have shaped the landscape for women's reproductive autonomy and well-being, while acknowledging the ongoing challenges and complexities.

### **Judicial Activism and Expanding Rights**

The Indian judiciary has adopted a progressive approach in interpreting the Constitution to expand women's reproductive rights. A landmark example is the *Maneka Gandhi v. Union of India* judgment. This case established the right to life (Article 21) as encompassing a woman's right to make reproductive choices. This paved the way for the Medical Termination of Pregnancy Act (MTP Act), 1971, legalizing abortion under specific conditions.

Further, the *Puttaswamy v. Union of India* judgment recognized the right to privacy as a fundamental right This has significant implications for reproductive rights, implying a woman's right to make informed decisions about her body and reproductive health without undue interference

### **Challenges and Unresolved Issues**

#### **Despite these Advancements, Significant Challenges Persist**

- **Accessibility of Safe Abortion Services:** While the MTP Act exists, access to safe and legal abortion services remains uneven, particularly for women in rural areas and

those from marginalized communities. The judiciary can play a role in advocating for improved implementation and addressing barriers like lack of awareness, social stigma, and limited healthcare facilities.

- **Unmarried Women and Abortion Rights:** The MTP Act primarily focuses on married women. There's ongoing debate about extending these rights to unmarried women, a crucial step towards ensuring equal access to safe abortion services.

**New Reproductive Technologies** Rapid advancements in reproductive technologies like surrogacy, egg donation, and assisted reproductive technologies raise new legal and ethical questions. The judiciary may need to grapple with issues like regulations, access for single women or same-sex couples, and potential exploitation of women.

The Indian judiciary has made significant strides in safeguarding reproductive rights and health for women.

However, continued engagement is necessary to address ongoing challenges. Here are some key areas for focus:

**Expanding Access** Advocating for improved implementation of the MTP Act and ensuring wider availability of safe abortion services, especially in rural and underserved areas.

- **Protecting Bodily Autonomy:** Upholding the right to privacy and ensuring women's decision-making power regarding their bodies and reproductive choices.
- **Addressing New Challenges:** Providing legal clarity on emerging issues related to reproductive technologies, ensuring equitable access for all women, and preventing potential exploitation.

The role of the Indian judiciary in safeguarding reproductive rights and health for women has been one of balancing individual autonomy with existing legal frameworks and societal considerations. Continued progressive interpretations and addressing existing gaps will be crucial in ensuring women have full control over their bodies and reproductive choices.

### **Recommendations for Enhancing Judicial Mechanisms**

Recommendations for Enhancing Judicial Mechanisms in Advancing Women's Rights under the Indian Constitution:

- **Sensitization and Training:** Judiciary personnel, including judges, lawyers, and court staff, should undergo regular sensitization and training programs on gender equality, women's rights, and intersectionality. This will enhance their understanding of gender issues and ensure fair and impartial adjudication of causes related to women's rights.
- **Specialized Courts and Fast-track Mechanisms:** Establishing specialized courts or designated benches within existing courts to handle cases of gender-based violence and discrimination can expedite legal proceedings and ensure prompt justice for women. Additionally, implementing fast-track mechanisms for women's rights cases can help reduce backlog and alleviate delays in dispensing justice.
- **Legal Aid and Support Services:** Enhancing access to legal aid and support services, particularly for marginalized women, is essential for ensuring effective representation and empowerment. Establishing legal aid clinics, helplines, and support centers

staffed with trained professionals can provide women with guidance, counseling, and assistance throughout the legal process.

- **Strengthening Enforcement Mechanisms:** Strengthening enforcement mechanisms to ensure compliance with court orders and judgments is crucial for effective protection of women's rights. This includes holding authorities accountable for implementing laws and policies related to gender equality, as well as monitoring and reporting on progress in addressing gender-based violations.
- **Community Engagement and Awareness:** Promoting community engagement and awareness-raising initiatives on women's rights and legal remedies is vital for empowering women to assert their rights and seek redressal for violations. Conducting outreach programs, workshops, and campaigns in collaboration with civil society organizations can help disseminate information and foster a culture of respect for women's rights.
- **Research and Data Collection:** Conducting research and data collection on gender-based violence and discrimination can inform evidence-based policymaking and judicial decision-making. Collecting disaggregated data on women's experiences with the legal system, including barriers to access and outcomes of legal proceedings can help identify gaps and inform targeted interventions to enhance judicial mechanisms

By implementing these recommendations, the judiciary can strengthen its role in advancing women's rights under the Indian Constitution and contribute to fostering a more equitable and just society for all.

### **Role of Judiciary in Empowering Women**

The judiciary in India serves not only as an interpreter of law but also as a protector and promoter of justice, equality, and human rights. Among its many roles, one of the most transformative has been its contribution to the empowerment of women. Despite the existence of numerous laws and constitutional provisions safeguarding women's rights, their true realization has often depended on judicial interpretation and enforcement. Through its judgments, directions, and activism, the judiciary has played a vital role in dismantling gender discrimination, upholding women's dignity, and ensuring their participation in every sphere of life.

- **Constitutional Foundation for Women's Empowerment**

The Constitution of India provides a robust foundation for gender equality and women's empowerment. Articles 14, 15, and 16 guarantee equality before the law, prohibit discrimination on grounds of sex, and ensure equal opportunity in employment. Article 21 ensures the right to life and personal liberty, which the judiciary has interpreted to include the right to dignity, privacy, and bodily autonomy.

The Directive Principles of State Policy (Articles 39, 42, and 46) further instruct the State to ensure equal pay for equal work, humane working conditions, and protection of women's health and interests. However, these provisions often gain real meaning only through judicial enforcement. The judiciary thus acts as a guardian of these constitutional ideals, converting constitutional promises into enforceable realities.

- **Judiciary as a Protector of Women's Rights**

The judiciary has consistently intervened to protect women from violence, discrimination, and exploitation. It has ensured strict implementation of protective legislations such as the Dowry Prohibition Act (1961), Protection of Women from Domestic Violence Act (2005), and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013). In *Vishaka v. State of Rajasthan* (1997), the Supreme Court laid down the famous Vishaka Guidelines to prevent sexual harassment at the workplace, declaring such conduct as a violation of women's fundamental rights to equality and dignity. This landmark judgment became the foundation for the 2013 Act. Similarly, in *Lillu @ Rajesh and Anr. v. State of Haryana* (2013), the Court banned the intrusive "two-finger test" on rape survivors, upholding women's privacy and dignity.

- **Judicial Activism and Expansion of Women's Rights**

Judicial activism has been one of the most powerful tools for women's empowerment in India. When legislative or executive action has fallen short, courts have stepped in to fill the void through progressive interpretations of the Constitution.

In *Mary Roy v. State of Kerala* (1986), the Supreme Court granted equal inheritance rights to Syrian Christian women, thereby breaking centuries of patriarchal tradition. In *Shayara Bano*

- *Union of India* (2017), the Court declared the practice of instant triple talaq unconstitutional, recognizing it as arbitrary and discriminatory. Similarly, in *Joseph Shine v. Union of India* (2018), the Court struck down Section 497 of the IPC (the adultery law), calling it patriarchal and violative of women's autonomy and dignity.

Through such judgments, the judiciary has redefined gender justice, transforming women from passive recipients of law to active holders of constitutional rights.

- **Upholding Dignity, Privacy, and Bodily Autonomy**

In modern times, the judiciary has expanded the scope of women's rights to include autonomy, privacy, and reproductive freedom. In *Suchita Srivastava v. Chandigarh Administration* (2009), the Supreme Court held that a woman's right to make reproductive choices is a fundamental right under Article 21. Later, in *Justice K.S. Puttaswamy v. Union of India* (2017), the Court's recognition of the right to privacy strengthened women's control over their bodies and personal decisions. The judiciary has also upheld the right to live with dignity. In *State of Maharashtra v. Madhukar Narayan Mardikar* (1991), the Court held that even a sex worker has a right to privacy and dignity, ensuring that social status cannot be grounds for denial of human rights.

- **Promoting Equality in Employment and Public Life**

The judiciary has been instrumental in ensuring women's participation and equality in workplaces and public institutions. In *Air India v. Nergesh Meerza* (1981), discriminatory employment conditions for air hostesses were struck down. Similarly, in *Charu Khurana v. Union of India* (2015), the Court declared that denying women membership in professional associations (such as the Cine Costume Make-up Artists Association) was unconstitutional,

promoting equality in the professional sphere. These judgments have widened employment opportunities for women and challenged entrenched gender stereotypes in the workplace.

- **Facilitating Access to Justice**

The judiciary has also emphasized gender-sensitive justice delivery mechanisms. Family courts, fast-track courts, and women's commissions have been established to handle cases involving women with greater empathy and efficiency. Legal aid services have been expanded to ensure that women, especially from marginalized communities, can access justice without economic barriers. Additionally, the Supreme Court and High Courts have encouraged gender sensitization programs for judges, police, and legal professionals to ensure that women are treated with respect and fairness during legal proceedings.

- **Addressing Social and Cultural Barriers**

Beyond legal rights, the judiciary has challenged patriarchal practices and cultural traditions that perpetuate inequality. In *Githa Hariharan v. Reserve Bank of India* (1999), the Court interpreted the word "after" in the Hindu Minority and Guardianship Act (1956) to mean "in the absence of," thereby granting mothers equal guardianship rights with fathers. Similarly, in *Danial Latifi v. Union of India* (2001), the Court interpreted the Muslim Women (Protection of Rights on Divorce) Act (1986) in a manner that ensured fair financial protection for divorced Muslim women. These cases demonstrate the judiciary's effort to harmonize personal laws with constitutional principles of equality and justice.

- **Recent Developments and Contemporary Challenges**

In recent years, the judiciary has continued to play an active role in addressing new dimensions of women's rights—such as cybercrime, online harassment, and reproductive autonomy. However, despite progressive judgments, challenges remain in the implementation of laws and in changing societal mindsets. The judiciary's pronouncements, though powerful, must be complemented by effective law enforcement, education, and public awareness.

## **Conclusion**

The judiciary has emerged as a powerful instrument of women's empowerment in India. Through landmark decisions, constitutional interpretations, and judicial activism, it has advanced the cause of gender equality, dignity, and justice. From protecting women against violence to recognizing their reproductive autonomy and workplace equality, the judiciary has consistently upheld the spirit of the Constitution. However, true empowerment requires more than judicial pronouncements—it demands a collective effort involving the legislature, executive, and civil society. The judiciary has lit the path, but lasting change will come only when laws, institutions, and societal attitudes align to make gender equality a lived reality.

## **References**

1. Bhowmik, Sharit K. (2001), "Worker Cooperatives and Empowerment of the Marginalised, in Debal K.SinghRoy (ed) Social Development and the Empowerment of Marginalized Groups", Sage Publications, New Delhi, India.
2. Biju, M.R. (2006), "Politics of Women's Reservation in India, in M.R.Biju (ed) Women Empowerment", Mittal Publications, New Delhi, India.
3. Constitution of India-DD.Bas

4. S.P. Sathe : Judicial Activism in India ; Oxford University Press;  
<http://www.indiacelebrating.com/social-issues/women-empowerment/> Author: Namit Srivatsva
5. <https://www.iaspaper.net/women-empowerment-in-india/> Author: Prof. V.P Gupta.
6. <http://www.yourarticlelibrary.com/essay/essay-on-women-empowerment-in-india/31317> Author: Puja Mondal
7. <http://www.legalservicesindia.com/article/1862/Judicial-Activism-and-WomenEmpowerment-In-India.html> Author: Mohan Raj  
<http://www.imrfjournals.in/pdf/MATHS/HRIRJ-NEW-JOURNALS/HRIRJ-31/75.pdf>  
Author: Anita Fabiyola
8. <http://ijlljs.in/wp-content/uploads/2015/08/7-Research-PaperLEGISLATIVE-ANDJUDICIAL-PERSPECTIVE-OF-WOMEN-EMPOWERMENT.pdf> Author: Dr. Saroj Chhabra
9. <http://ijcrt.org/papers/IJCRT1704303.pdf> Women Empowerment in India and Judicial Activism Author: R.GATTAIAH
10. Available at : <http://www.azquotes.com/quote/1059987>
11. Dr. K.C. Jena, "Heirship of Women under Indian Personal Laws. A comparative study", Ph.D. Thesis (1998). Available at: <http://www.socialresearchfoundation.com/upoadreserchpapers/1/44/1506261215321st%20sapna%20yadav.pdf>
12. It means where the women are respected, the God will be pleased.
13. viz. Ancient, Medieval, British and Independent period.
14. Puja Mondal, Status of Women in Vedic and Post-Vedic Period - Available at : <http://www.yourarticle.com>.

