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EQUALITY: EXPLORING TRANSFORMING LAW AND WOMEN'S RIGHTS

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I. ABSTRACT

Equality is one of the fundamental rights that everyone requires to survive in a society, it is that principle that every individual craves to achieve, it is a basic need of a person in the modern world whether it is any human being either male or female and everyone requires equality. This paper focuses especially on transforming the law to support women's rights. The first and second part of the article describes Gandhi's views on women's rights, Views of Indian laws, and United Nations views on the rights of women. The third and fourth part of the article describes the role of the judiciary in preserving women's rights and also describes how barrier could be breakdown in order to get access to social justice for women. The last chapter describes the strategies of the government for improving the condition of women.

II. KEYWORDS

Women's rights, Equality, Modern world, United Nations, Indian laws, Breaking barriers, Judiciary, Condition of women.

III. INTRODUCTION:

Gandhi Ji: "Women are the noblest of God's creation, supreme in their sphere of activities."²

Women have always been part of severe discrimination, whether it is a time of pre-independence or post-independence. Throughout history, women have faced challenges in their fight, for gender equality. Unfortunately, they have often been. Not given the recognition they truly deserve. When we examine the standing struggle of women for their rights, we find instances where they were denied the right to vote or

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² Status of Women in Modern India, <https://www.yourarticlelibrary.com/women/status-of-women-in-modern-india/47637> (last visited September 25, 2023).

engage in affairs. Additionally, women were deprived of their rights. Subjected to unfair treatment, in employment. In the contemporary world, women also have to fight a lot for their rights, she has to overcome the challenge of gender inequality, the gender pay gap. This article includes national and international perspectives on preventing or recognizing women's rights.

The United Nations is actively working towards achieving gender equality and eradicating all forms of discrimination faced by women. However, it is disheartening to see that women's rights are still being violated across the globe and that there have been instances where their rights were not given importance. To truly achieve equality, it is crucial to understand how women face discrimination. This understanding will help us develop measures to combat prejudice. Although the UN has made progress in safeguarding women's rights gaps still need to be addressed and new forms of discrimination continue to emerge. Women are impacted by factors such, as age, religion, health, marital status, education, disabilities, and socioeconomic circumstances. These interlocking forms must be considered when developing measures and methods to combat bias against women.³

Access to justice is a basic human right, and peace and prosperity are crucial for a country's growth and development. In a welfare state like India, the state's job is to offer impartial justice administration. A strong legal system, an open and realistic judicial/remedial process, and constitutional rights are required for access to justice. Many laws originated from old customary practices or the colonial era, resulting in gender discrimination. Women who have been abused face difficulty in obtaining justice because the law and society create barriers for them. Focusing only on legislation, legal services, and adjudication will be ineffective in changing women's subordinated situation in law and society. Understanding women's rights legislation, judicial interpretation, other legal issues, and obstacles to removal is important.⁴

³ Women's Rights Are Human Rights, <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf> (last visited September 25, 2023).

⁴ Access To Justice for Women in India, <https://articles.manupatra.com/article-details/Access-to-Justice-for-Women-in-India> (last visited September 25, 2023).

IV. INDIAN LAWS OR INDIAN CONSTITUTION VIEWS ON WOMEN'S RIGHTS:

The Constitution of India recognizes women's rights through fundamental rights, directive principle of state policies, IPC, Maternity Benefit Acts 1961, Dowry Prohibition Act, Protection of Women from Sexual Harassment Act, etc.

A. THE CONSTITUTION OF INDIA AND THE DIRECTIVE PRINCIPLES OF STATE POLICIES

- Article 14: The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.⁵
- Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.⁶
- Article 16: 1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.⁷
- Article 39: The State shall, in particular, direct its policy towards securing –
(a) that the citizens, men, and women equally, have the right to an adequate means of livelihood;

(d) that there is equal pay for equal work for both men and women.
- 39A. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. art. 15, cl.3.

⁷ INDIA CONST. art. 16, cl. 1, 3.

that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.⁸

- Article 42: The State shall make provision for securing just and humane conditions of work and for maternity relief.⁹
- Article 243: Women are guaranteed seats in gram panchayats under Article 243 of the Indian constitution. Women 's social conditions in village communities have changed as a result of this right to participate in district-level arbitration.¹⁰

B. THE INDIAN PENAL CODE:

Sexual harassment, forcibly undressing a woman, voyeurism, and stalking are all actions that the law considers as crimes, against women. These acts are offenses under Section 354A Section 354B, Section 354C, and Section 354D. Additionally, protection is provided to women through Section 498A of the IPC in cases of violence or abuse. This protection covers forms of mistreatment such, as abuse, emotional harm, economic exploitation, and sexual misconduct.

C. DOWRY PROHIBITION ACT 1961:

The Dowry Prohibition Act 1961 is an Indian law that prohibits either party in a marriage from giving or receiving any type of dowry, including property, goods, or money. The statute was passed to abolish the harmful habit of dowry and violence against married women who demand dowry and dowry killings. It went into effect on July 1, 1961, and is not bailable or compoundable. The culprit must demonstrate their innocence and refuse to receive a dowry, a rule known as strict liability. Cruelty to a woman by her husband or in-laws is now punishable by up to three years in prison and a fine under the Act. If horrors and harassment are confirmed, and the victim dies unnaturally within seven years of her marriage, the

⁸ INDIA CONST. art. 39, amended by the Constitution (forty second) amendment act, 1976.

⁹ INDIA CONSTI. art. 42.

¹⁰ Ibid.

court presumes that she was pushed to suicide by her husband and his relatives, resulting in a ten-year prison sentence and a fine.¹¹

D. MATERNITY BENEFIT ACT 1961:

The Maternity Benefit Act of 1961 is an Indian law that guarantees women's work while pregnant and provides maternity benefits. This applies to companies with more than ten employees and government facilities used for acrobatic horse acts. The 2017 Maternity Amendment Bill further changed the law. The Act applies to factories, mines, and plantations, and certain plants and groups. It ensures that workers are well cared for and that their health is maintained, as employees are critical to business growth.¹²

V. UNITED NATIONS' VIEWS ON WOMEN'S RIGHTS:

The United Nations has always been dedicated to women's rights and has always shown its concern or respect for human rights irrespective of race, gender, religion, etc. To advocate for gender equality and women empowerment, a commission was established on the status of women. In 1948, the Universal Declaration of Human Rights was established which ensured that all humans are equal, should be treated with dignity, and must ensure all rights. 1975 was recognized as International Women's Day because of a feminist movement that occurred during 1970. In the year 1975, the first World Conference of Women occurred. A decade was dedicated to women from 1976- 1985 when women's rights were defended and advocated on a large scale.¹³

The UN Women's He-For-She campaign is a solidarity movement for gender equality. The Campaign enabled men and boys to work together to make the world an equitable place through the idea or means of collective vision or shared vision. In addition, the

¹¹ Dowry prohibition Act, <https://www.legalserviceindia.com/legal/article-11450-dowry-prohibition-act.html> (last visited September 25, 2023).

¹² Maternity Benefit Act, 1961, Applicability, Eligibility and Provision, <https://www.studyiq.com/articles/maternity-benefit-act-1961/#:~:text=Maternity%20Benefit%20Act%2C%201961%20Provision,-The%20Maternity%20Benefit&text=A%20woman%20is%20enti> (last visited September 25, 2023).

¹³ Gender Equality- The United Nations, <https://www.un.org/en/global-issues/gender-equality#:~:text=The%20United%20Nations%20and%20women&text=Among%20the%20purposes%20of%20the,%2C%20language%2C%20or%20religi> (last visited September 25, 2023).

Secretary General of the UN, Antonio Guterres, relied on the importance of gender equality, especially focusing on the inequalities that hindered women's power or potential. This campaign promoted women's rights or their participation in the political process and empowered them in the United Nations Peacekeeping.¹⁴

A UN intergovernmental organization, The Human Rights Council, which consists of 47 states, holds its views strongly on issues related to women's rights and gender equality. It has passed resolutions urging governments to perform their responsibilities and has addressed infractions and emergencies. The Council established the Universal Periodic Review program to evaluate states' adherence to women's rights. The resolution of 1325 addressed women's issues in the United Nations Security Council, where participation in the matter of preventing conflict and resolution was asked. Women's rights are advocated in larger terms in a variety of fields through the commission established on the status of women.¹⁵

VI. JUDICIARY'S ROLE IN PRESERVING WOMEN'S RIGHTS

With time, the Indian Judiciary has evolved and recognized women's rights as a part of human rights. In the recent year 2022, a landmark judgment was given by the judiciary, which somehow shows the evolving condition of humans. Recently, the Women's Reservation Bill was passed on the 19th of September in Lok Sabha for reserving 33% of seats for women in the parliament and state legislative assemblies. Let us look at the landmark cases on women's rights.

- a) **Budhadev Karmarkar vs State of West Bengal:** This is an epic case of 2022 because it recognized prostitution or sex work as a profession. In 2022, the lawsuit Budhadev Karmarkar vs. the State of West Bengal challenged Section 8 of the West Bengal Prevention of Immoral Trafficking Act, 1950, which made prostitution illegal. The court held that sex workers must be protected and

¹⁴ Women- UNIS Vienna, <https://unis.unvienna.org/unis/en/topics/women.html> (last visited September 26, 2023).

¹⁵ All About Women's Rights, <https://blog.iplayers.in/all-about-womens-rights/> (last visited September 26, 2023).

rehabilitated and that state governments must offer necessities such as healthcare, education, and vocational training.¹⁶

- b) **State of Jharkhand vs Shailendra Kumar:** this case is famously known for the two-finger test case where the Court prohibited the use of two-finger tests in rape cases as it is against the dignity of a woman or this test does not give any scientific justification in support of rape charges. Since 2013, the two-finger test has violated the privacy and integrity of rape victims. The "two-finger" technique for detecting rape has been criticized by the court, citing potential victim guilt and humiliation. The WHO regarded virginity testing as unscientific after the Verma Committee advocated its abolition. Forensic investigations require medical examinations.¹⁷
- c) **Vineeta Sharma vs Rakesh Sharma:** this case determines women's rights in coparcenaries by birth. The Supreme Court declared that shared Hindu family property is an unrestricted heritage, with the ability to split absolute and granted by birth. The court overturned Phulvati vs. Prakash's judgment, ruling that coparcenary rights pass from father to living daughter rather than from "a living coparcener to a loving daughter." Section 6's effects are retroactive, guaranteeing equal rights to girls born after November 9, 2005.¹⁸
- d) **X vs Principal Secretary, Health and Family Welfare Govt. of NCT Delhi:** In this case, the Court granted the right to abortion to an unmarried woman. The Supreme Court found that the Delhi High Court's interpretation of the Medical Termination of Pregnancy Rules was limited, issuing an interim order enabling

¹⁶ Budhadev Karmarkar Vs. State of West Bengal, Landmark Case For Securing The Rights Of Sex Workers, <https://corpbiz.io/learning/budhadev-karmarkar-vs-state-of-west-bengal-landmark-case-for-securing-the-rights-of-sex-workers/> (last visited September 26, 2023).

¹⁷ State of Jharkhand vs. Shailendra Kumar Rai, v <https://teamattorneylex.in/2023/04/17/state-of-jharkhand-v-shailendra-kumar-rai-2022-scc-online-sc-1494/#:~:text=The%20Supreme%20Court's%20ruling%20in,be%20considered%20guilt> (last visited September 26, 2023).

¹⁸ Vineeta Sharma vs. Rakesh Sharma: A Case Analysis, <https://www.legalserviceindia.com/legal/article-4710-vineeta-sharma-v-rakesh-sharma-an-case-analysis.html> (last visited September 26, 2023).

abortions subject to medical board judgments and respecting the reproductive autonomy rights of unmarried and LGBT couples.¹⁹

- e) **Shayara Bano vs Union of India:** In this case, the Court made an epic decision regarding triple talaq by declaring it illegal and void because it violated the fundamental rights of a Muslim woman. The Indian Supreme Court declared that the talaq-e-biddat rite, which involves the arbitrary severance of marital bonds without reconciliation, is illegal under Articles 14 and 25 of the Constitution because it is not a fundamental practice of Islam and contradicts essential Islamic and Shariah principles.²⁰

VII. BREAKING DOWN THE BARRIERS TO WOMEN'S ACCESS TO SOCIAL JUSTICE:

Denial of social justice to a woman can be based on various factors such as cultural factors, social factors, political factors, physical factors, etc. Women have always been considered weak in terms of breaking the barrier, they are always tempted or asked to settle for less. Some key points or hurdles create a lack of access to social justice for women.

- Gender discrimination
- Inequalities in income
- Lack of education
- Conservative norms
- Patriarchal society
- Mental, physical, and sexual abuse
- Restricted limitations,
- Intersectionality

¹⁹ Case Comment: X Versus the Principal Secretary, Health and Family Welfare Department, Govt. of NCT OF Delhi & AN, <https://ilrjs.com/wp-content/uploads/2023/05/70.-Aditi-Shree.pdf> (last visited September 26, 2023).

²⁰ Shayra Bano case on Triple Talaq, <https://blog.finology.in/Legal-news/shayara-bano-case#:~:text=The%20Shayara%20Bano%20case%20was,2>. (Last visited September 26, 2023).

- Geographical isolation etc.

Women are not a homogeneous group, and personal characteristics and contextual factors frequently combine to deepen their exclusion and marginalization. These factors led to exclusion from society or marginalization of a particular group. Women who are socially, economically, culturally, and politically marginalized are less likely to disclose such violations to authorities for fear of being humiliated, stigmatized, arrested, deported, tortured, or subjected to other types of violence. Intersectionality is a fundamental concept for comprehending the scope of Article 2's general duties of state parties. Discrimination based on gender and sex is intricately linked to other issues affecting women, such as race, ethnicity, religion or belief, health, position, age, class, caste, sexual orientation, and gender identity. States parties must legally recognize and ban such overlapping forms of discrimination and their compounded harmful impact on women. Women and girls, such as women of minority groups, rural women, bisexuals, women suffering from sexual problems, etc. are all vulnerable as their rights have been violated for many years. These vulnerable populations suffered the most as they lacked justice, inequality, illiteracy, unpaid work, and gender bias.²¹

VIII. STRATEGIES OF GOVERNMENT FOR IMPROVING WOMEN CONDITIONS:

Women were once regarded as goddesses in India, but their standing has decreased due to biological, political, economic, and religious factors. India became a welfare state after independence, delivering justice, but women continue to experience discrimination, harassment, and sexual abuse "Where women are honored, their divinity blossoms" Manu Smriti.²² Injustice cannot exist for a long time in a democracy.

²¹ A Practitioner's Toolkit on Women's Access to Justice Programming, https://www.unodc.org/pdf/criminal_justice/WA2I_Consolidated.pdf (last visited September 28, 2023).

²² Women's Access to Justice in India, <https://www.legalbites.in/categories/law-library/women-child-rights/womens-access-to-justice-in-india-946718#:~:text=x-The%20article%20%E2%80%9CWomen's%20Access%20to%20Justice%20in%2> (last visited September 28, 2023).

The government of India did a lot to improve the condition of women. The government established the following things:

- **The Maternity Benefit Amendment Act**, provides maternity relief to women during their menstruation so that they can contribute effectively to work. The Maternity Benefit Act, of 1961, provides maternity benefits to women in employment for their absence from work to care for their newborn child. This applies to establishments with more than 10 employees. The Act protects motherhood dignity, enables working women to provide proper care, and helps women with their finances.²³
- **National Commission for Women (1992)**: it is a legislative body that was established in January 1992 and deals with Constitutional and legal protections for women. It helps in creating or examining legislation that is required for women, it has improved legislation such as IPC 1860, the dowry Prohibition Act, etc, in order to improve or remove child marriage.²⁴
- **NIRBHAYA FUND**: it is a fund which was established after the Nirbhaya gang rape case in 2012, which entirely shocked the nation. The main purpose behind this fund is to provide security and safety to women. The fund is helpful in creating awareness regarding gender-based violence, it helps in creating or promoting economic equality and opportunities for women, this fund comes under the Ministry of Women and Child Development.²⁵
- **Schemes like Beti Bachao and, Beti Padhao**: On 22 January 2015, this scheme was launched by Prime Minister Narendra Modi. This scheme was brought in order to combat the decreasing child sex ratio and to promote the welfare and education of girls in the nation. The main aim of this scheme was to save the girl children, educate them, empower them, and make them understand gender equality. This scheme leads to teaching skill development, self self-

²³ The Maternity Benefit Act, 1961, <https://unacademy.com/content/bpsc/study-material/labor-and-social-welfare/study-on-maternity-benefit-act-1961/> (last visited September 28, 2023).

²⁴ Ibid.

²⁵ Nirbhaya Scheme, <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1743231> (last visited September 28, 2023).

defense to the girl child. This scheme has shown significant progress in uplifting the status of girl children.²⁶

- **Women's Reservation Bill:** this bill was recently passed in the new parliament on 19 September 2023, which determines women's participation or representation in politics by reserving 33% of the seats for women in the parliament and in the legislative assemblies. It took 27 years span to take such steps for women because all the efforts from 1996 to 2010 failed. The current bill still faces so much opposition as it does not include reservations for OBCs. And census has not taken place so it will be difficult to reserve seats without the census, even if the bill gets assent from the president but still its implementation will still not be so frequent, it will be implemented in 2030. But it is a landmark step that has been taken after the year's pause.

IX. CONCLUSION

Women have been abused or ill-treated since the Mahabharata, making it necessary to educate males about women's empowerment, since our Indian Constitution also believes in equal footing for both men and women. Apart from several atrocities, women in India have been empowered throughout history. For example, in the British era, Peary Charan was the first to establish a free school for girls in Calcutta followed by Savitribai Phule, India's first woman educator. In addition, Raja Ram Mohan Roy's contribution to eliminating the evil practice of sati Partha from society cannot be overlooked.

Women like Sarojini Naidu, Gunjan Saxena, and many more in post-independence India made significant contributions to the advancement of women's rights. Women in modern India have various rights and acts, such as the right to privacy, the right against dowry, and domestic abuse, and so on. Acts such as the Indecent Representation of Women (Prohibition) Act of 1971 and the Equal Pay Act are designed to protect women in society. Recently, a women's reservation bill was

²⁶ Beti Bachao, Beti Padhao: Caring for the Girl Child, https://www.pmindia.gov.in/en/government_tr_rec/beti-bachao-beti-padhao-caring-for-the-girl-child/ (last visited 28, 2023).

enacted on September 19, 2023, indicating that the scope of women's rights is expanding in the legislative arena as well. The current evolution in NDA tests, which led to women taking the exam, is a significant step forward for women's rights. These are tiny actions that can lead to the abolition of women's stereotypes. To progress as a nation, a country must treat its women fairly or equally. Because women and children are the true sustainers of society. Women have survived a long war to establish their existence in society, and they still have a long battle to gain equality in society since society never recognizes a woman as the primary leader, which is why women have to go far for their rights.