



## **EMPOWERING WOMEN THROUGH JUDICIAL ACTION: AN ANALYSIS OF COURT-LED LEGAL REFORMS IN INDIA**

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### **Abstract**

*This paper explores the significant role of the Indian judiciary in promoting women's empowerment and ensuring gender justice in a patriarchal society. Despite a comprehensive legal framework aimed at safeguarding women's rights, enforcement remains weak. Through judicial activism and transformative interpretations of the Constitution, the judiciary has addressed legislative gaps and systemic discrimination. Landmark judgments such as *Vishaka v. State of Rajasthan*, *Air India v. Nargesh Meerza*, and *Shah Bano v. Mohammed Ahmed Khan* exemplify the courts' intervention in areas including workplace safety, personal liberty, maintenance rights, and employment equality. The judiciary has often acted where the legislature failed to respond effectively. However, challenges such as judicial bias and limited application to personal laws persist. This study highlights the judiciary's dual role as a protector and promoter of women's rights and argues for institutional sensitization to ensure consistent and inclusive justice for all women.*

**Keywords:** Constitutional Interpretation, Judicial Activism, Gender, Harassment, Women.

### **Introduction**

The Indian Constitution empowers the judiciary not only to interpret laws, but also to defend the rights of women and marginalized communities. Judicial authority, anchored in the oath to uphold constitutional morality, permits judges to shape legal norms responsive to social and economic change a role affirmed in *Ravichandra Iyer v. A. M. Bhattacharjee*. Indeed, while Parliament is entrusted with structural lawmaking under Article 15(3), courts have bridged critical gaps through pragmatic interpretation. This paper scrutinizes judicial strategies in advancing women's rights, with a focus on- workplace equality and anti-discrimination, protection against sexual harassment, reform in personal and inheritance laws, criminal justice outcomes in cases of

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sexual violence. By analyzing landmark Supreme Court rulings and constitutional reasoning, the paper highlights how the judiciary has both driven progress and identified areas needing systemic improvement.

## **Overview**

The spirit of the Constitution permits the judiciary to exercise the power of interpretation, to safeguard the interests of the people, primarily that of the fair sex and the have-nots of the Indian Democratic Republic. The third Schedule of the Constitution of India imposes a moral/spiritual but constitutional obligation, inter-alia upon higher judiciary to discharge the function assigned, without any fear or favors besides defending the Constitution and the laws, through the oath of the office administered as per the constitutional provisions. This signifies the importance to be paid to the constitutionally imbibed moral and prudent responsibilities, inter-alia, of the higher judiciary of the state.<sup>1</sup>

So, in administration of justice judges play a very significant role. A Judge is an eyewitness to a real-life drama- how the script written by the legislature is played by real-life characters. The parties while critically evaluating the laws may tend to have a partisan look; a judge can make a correct and realistic evaluation of the laws and find out authoritatively the difficulties in implementation of or lacunas in legislation. In spite of this role judiciary also has the power to go beyond the statute and to exercise the discretionary power to provide justice.<sup>2</sup> In *c. Ravichandra Iyer v. Justice A.M. Bhattacharjee*<sup>3</sup>, the Court held that the role of the judge is not merely to interpret the law but also to lay new norms of law and to mold the law to suit the changing social and economic scenario to make the ideals enshrined in the constitution meaningful and a reality. The society demands active judicial roles which formally were considered exceptional but now a routine. According to Justice V.R. Krishna Iyer, "case-laws, creative, imaginative and gender-friendly, have its logic and limitation. Judges cannot make law but only interpret it and decide specific cases and controversies within defined bounds although in that process they do make law interstitially.

Landmark decisions delivered by the Indian Judiciary, in particular during the last two decades, bear testimony to the fact that judges cannot be accused of gender injustice. They have shown the requisite sensitivity expected of them. However, all that can be said is that such sensitivity is individual and needs to be institutionalized. The purpose of this meeting is to share the experiences, have an exchange of views and to learn and devise by our experiences a model of gender-justice-sensitization.<sup>4</sup>

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<sup>1</sup> Art 124(6) and Art 219 of the Indian Constitution. Art. 124(6) and Art 219 of the Constitution provides categorically that every person appointed to be judge of the Supreme court or to be judge of the High Court shall make and subscribe before the President or the governor as the case may be on the oath or affirmation on compliance to the for the third schedule of the constitution.

<sup>2</sup><http://www.legalserviceindia.com/article/article/judicial-activism-in-the-area-of-women-empowerment-1154-1.html>

<sup>3</sup> AIR 1995 SCC (5)457

<sup>4</sup> Lecture delivered on the occasion of the release of the book by Justice R.C. Lahoti "Search for a Vision Statement on Women Empowerment vis. -vis Legislation and Judicial Decisions" prepared by the Indian Trust for Innovation and Social Change and published by the National Commission for Women.

### **Judicial Initiative towards Empowerment of Women:**

Though plethora of legislation exists, due to ineffective enforcement, women are exploited by the male dominated society. Male dominated society has found ways to circumvent the provisions of the Act and act as a blockade against women empowerment. Due to the failure of the legislations to protect women, judiciary has come forward to protect women. Judiciary has made immense contribution to strike the balance between discrimination caused to the working women and availing them of justice against such discrimination.

In *Air India v. Nargesh Merz*<sup>5</sup> the Air India and Indian Airlines Regulation were challenged as violative of Art.14. Regulation 46 provided that an air Hostess was to retire from service upon attaining the age of 35 years or on marriage if it took place within four years of her joining service or on first pregnancy, whichever occurred earlier. Regulation 47 empowered the Managing Director, at a time beyond the age of retirement, up to the age of 45 years, if an Air Hostess on her first pregnancy, as unconstitutional, as void and violative of Art. 14. The court explain that the Regulation did not prohibit marriage after four years of joining service and if an Air Hostess after having fulfilled the first condition become pregnant, there was no reason why pregnancy should stand in the way of her continuing in service. After utilizing her service for four years, to terminate her service if she becomes pregnant. court said, amounted to interfere with and divert the ordinary course of human nature. It was held not only a callous and cruel act but an open insult to Indian Womanhood. Court also said that it was not only manifestly unreasonable and arbitrary but contained the equality of unfairness and exhibited naked despotism and was, therefore, clearly violative of Art. 14.

One of the great evils of the modern society is the sexual harassment caused to the women particularly working women by their male counterpart and other members of the society. In India there was no adequate law to combat the evil of sexual harassment causing to the working women in work places. In a Public Interest Litigation filed before the Supreme Court, the Court has emphasized the need for an effective legislation in India to curb sexual harassment of working women. In *Vishaka V. State of Rajasthan*<sup>6</sup> Vishaka, a non-governmental organization working for gender equality, had filed a writ petition seeking the upholding of the fundamental rights of working women under Art. 21 of the Constitution. The reason of filing of petition was the gang rape of a saathin (a social worker involved in women's development programmers) of Rajasthan in 1992. The assault was an act of revenge as the Saathin had intervened to prevent a child marriage. The Supreme Court provided a landmark judgment on the area of sexual harassment against women. As in this particular aspect there is no law or enactment by the legislature that is why here the judiciary applied its activist power and provides some guidelines. Some of the guidelines are as follows-

1. Duty of Employer or other responsible persons in work places and other institution to women employees to prevent the commission of acts of sexual harassment.
2. Court also defines sexual harassment includes: such unwelcome sexually determined behavior as:
  - a. Physical contact and advances,
  - b. A demand or request for sexual favors,
  - c. Sexual colored remarks:

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<sup>5</sup> AIR 1981 SC 1829

<sup>6</sup> AIR 1997 SC 3011

- d. Showing pornography;
  - e. Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.
3. Court also provides guideline to all employers public or private for taking preventive steps.
  4. Types of criminal proceeding is required for this offence that is also suggested by the Court.
  5. Disciplinary action should be taken against the offender.
  6. Complaint Mechanism is also suggested by the court.
  7. Complaint committee is required.
  8. There is a need of worker's initiative.
  9. There is a need for awareness among the female employee about their rights.
  10. Central/State government are required to enact the specific law in this regard.
  11. These guidelines will not be prejudicing any rights available under the protection of Human Rights Acts, 1993.

In the instant case, Supreme Court referred to the Convention on the Elimination of All Form of Discrimination Against women (CEDAW) and also the violative of gender equality under Article 14 and Article 15 and right to life and personal liberty of women under Article 21 of the Constitution. The Court has followed its own decision in *Apparel Export Promotion Council v. A.K. Chopra*<sup>7</sup> and held that punishment of removal of a male employee from service after he has been guilty of sexual harassment of a female employee at the work place is proper and reasonable as it forms a gender discrimination against woman and is incompatible with the dignity and honor of a female and needs to be eliminated.

In cases relating to public employment, the quarts have quashed the discriminatory provisions that gave advantage to men and imposed disabilities on women. In *Maya Devi v. State of Maharashtra*<sup>8</sup> where the requirement of husbands consent for wife's application for public employment was stuck down as an anachronistic obstacle to women's equality and economic justice.

Since Article 15(3) itself hints substantive approach, its application for giving special educational facilities, for giving representation in local bodies and for protection in places of work has substantive dimension. Upholding a service rule that preferred women in recruitment to public employment to the extent of 30%, of posts, the Supreme Court stated in *Government of A.P. v. P.B. Vijay Kumar*<sup>9</sup> to say that under Article 15(3) job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this article. Making special provision for women in respect of employment or posts under the state is an integral part of Article 15(3). At this junction, it is also noteworthy to mention the case of *Association Banks Officers Association v. State Bank of India*, wherein the Apex Court held that women workers are in no way inferior to their male counterparts, and hence there should be no discrimination on the ground of sex against women. In *Air India Cabin crew Association v. Yashawini Merchant*<sup>10</sup>, the Supreme Court has held that the twin Article 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favors. The Constitution does not prohibit the employer to consider sex while making the employment decisions where this is done pursuant to

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<sup>7</sup> AIR 1999 SC 625

<sup>8</sup> 1986(1) SCR 743 97

<sup>9</sup> AIR 1995 SC 1648

<sup>10</sup> AIR 2004 SC 187

a properly or legally chartered affirmative action plan. The subordinate position of Christian women, who was denied equal right in the matter of divorce against her husband, was brought to the limelight by way of anti-subordination interpretation in *ammine E.J. v. Union of India*<sup>11</sup> referring to the life of Christian wife being compelled to live as wife against her wish the high Court of Kerala observed, it will be humiliating and oppressed life without freedom to remarry and enjoy life in the normal course. It will be a life without freedom to uphold the dignity of the individual in all the respects; the Court quashed the impugned provision as violative to the article 14, 15, and 21.

In *Mackinnon Mackenzie and co. Ltd v. Audrey D' Costa*<sup>12</sup>, the Court observed that there was discrimination in the payment of wages to lady stenographers and such discrimination was being perpetuated under the garb of settlement between the employees and employer. The Court finally not only made it mandatory to pay equal remuneration to lady stenographers as their male counterparts but also observed that the ground of financial incapability of the management cannot be a ground to seek exemption from the equal remuneration Act 1976.

Interpretation of the guardianship law in the light of Article 15 by Supreme Court in *Geetha Hariharan v. Reserve Bank of India*<sup>13</sup>, held that under certain circumstances, even when the father is alive mother can act as a natural guardian. The term "after" used in sec 6(a) has been interpreted as "in absence of" instead of "after the life-time".

In protecting the women, the Indian Judiciary has removed all the procedural shackles and has completely revolutionized constitutional litigations. The judiciary has encouraged widest possible coverage of the legislations by liberal interpreting the terms. The judiciary has shifted from doctrine approach to the pragmatic approach, which was conducive to all interest in the society. The courts have shown greater enthusiasm in granting the constitutional provisions for all women. The judiciary by its landmark judgments had filled up the gap created by the Legislative machinery. The judiciary had extended helping hands to women. When the legislature had denied it. The higher judiciary has shown concern for women's right in recent times; it also had been greatly influenced by the international declaration and covenants on women's rights. The vibrant judiciary has recently exalted the dignity of women by its golden judgments. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>14</sup>, the Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation. In this case, the Court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian Law.

The most shameful thing is that even after good legislations the crimes against women are regularly increasing. Many instances showed the practice of crime against women such as rape, molestation, sexual harassment in work place etc. and in this matters the judiciary has played an important role and provides justice to the victims. In *Chairman, Railway Board v. Chandrima Doss*<sup>15</sup>, the Supreme Court awarded compensation of 10 lakhs to an alien woman under Article 21 of the constitution, who has been victim of rape. In a recent case *State of U.P. v. Chhotey Lal*<sup>16</sup>, highlighting the difference between "will" and "consent", the court said that a nod for sexual relations obtained by a man on the false pretext would not amount to a "legal or valid" consent to

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<sup>11</sup> 99 AIR, 1995 ker252

<sup>12</sup> AIR, 1987 SC 1281

<sup>13</sup> AIR 1999 SC 1149

<sup>14</sup> AIR 2000 SC 1247

<sup>15</sup> AIR 2000 SC 988

<sup>16</sup> 2011 (2) SCC 550



save him from punishment for rape. Even if there were mutual consent, if the consent is based on a false pretext made by the man then the consent would stand as null and void and the intercourse be termed as Rape. In *State of Panjab v. Gurmit Singh*<sup>17</sup> the Supreme Court held that rape was held to be violative of the right of privacy. In *Shobha Rani v. Madhukar*<sup>18</sup>, the Supreme Court held that dowry demand was held enough to amount to cruelty. In *Domestic working Women's Forum v. Union of India*<sup>19</sup>, the Supreme Court suggested the formulation of a segment for awarding compensation to rape victims at the time of convicting the person found guilty of rape. The Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking in to account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape. In *Gourav Jain v. Union of India*<sup>20</sup>, the Supreme Court laid down guidelines including the necessity of counselling, cajoling, and coercing the women to retrieve from prostitution and rehabilitate them.

Despite of much legislation to interfere into the personal laws, the higher courts have shown a lot of sensitiveness to the issues touching upon the condition of women in the family matters. There are various cases which shows that the activism of the courts is limited to the codified personal laws and that is mostly the Hindu laws, which means only a few female populations is benefited. So, judiciary always emphasis on the gender equality as the prime consideration in interpreting statute conferring property rights of women. In *Pratap Singh v. Union of India*<sup>21</sup>, The Supreme Court repelled the challenge made to sec 14(1) of the Hindu Succession Act, which provided that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as a full owner and not as a limited owner. The challenge to the validity of sec. 14 (1) was on the ground that the said section favored Hindu women, on the ground of sex, to the prejudice of the male members of the Hindu community. The Supreme Court held they Section 14(1) was enacted to remedy to some extent the plight of Hindu women and that there was hardly any justification for the men belonging to the Hindu Community to raise any objection to the beneficent provisions contained in section 14(1) on the ground of hostile discrimination, since the said section was protected by the express provisions contained in section 15(3) of the Constitution and was a special provision enacted for benefit of Hindu women. The ambit and scope of section 14(1) of the Hindu Succession Act was considered by the Supreme Court and its beneficial effect in further empowering women was taken due note in various other cases. In *Mary Roy's case*, where the Supreme Court held that the Indian Succession Act will apply to the Christians of Kerala after the integration of states. Christian women, the court said, cannot be given a lesser share in inheritance under the old state law. The Supreme Court in *Pratibha Rani v. Suraj Kumar*<sup>22</sup> observed that ordinarily, that husband has no right or interest in Stridhan with the sale exception that in time of extreme distress, as in famine, illness or like, the husband can utilize it but he is morally bound to restore it or its value when he is able to do so.

By employing the traditional rules of construction, the courts defeated gender justice in adjusting challenges to bigamous marriages. In *Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh*<sup>23</sup>

<sup>17</sup> *AIR 1996 SC 1393*

<sup>18</sup> *AIR 1988SC 121*

<sup>19</sup> *(1995) 1 SCC 14*

<sup>20</sup> *AIR 1997 SC 3012*

<sup>21</sup> *AIR 1985 SC 1695*

<sup>22</sup> *AIR 1985 SC 628: 1985 Sec 25(SC)*

<sup>23</sup> *AIR 1971 SC 1153*

and *Gopal Lal v. State of Rajasthan*<sup>24</sup>, the court said that marriage celebrated without proper ceremonies and in due form cannot be recognized as marriage to sustain conviction for bigamy.

Maintenance is an issue on which the court has made a liberal approach promoting women's right to equal justice. In *Mohammed Ahmed Khan v. Shah Bano*<sup>25</sup>, the Supreme Court granted equal right of maintenance under Section 125 of Cr. P.C. 1973 to divorced married women notwithstanding the personal law. The Supreme Court also held that "large segments of society which have been traditionally subjected to unjust treatment, women are one of such segments." Recognizing the importance of the Directive Principle on Uniform Civil Code for promoting equality of women, the court on several occasions exhorted the legislature to initiate necessary steps in realizing the object of the Directive. Besides, the Courts itself tried to evolve, incrementally using constitutional rights and judicial review, some uniformity in matrimonial laws of different communities. The Supreme Court in *Sarla Mudgal. Union of India*<sup>26</sup>, passed direction to the central Government to take a fresh look at Art. 44 of the Constitution which enjoins the state to secure a Uniform Civil Code which, according to the Court imperative for both protection of the oppressed and promotion of national integrity. In this case the Court held that if a husband has converted to Islam to get married again, he will be guilty of bigamy under Hindu Personal Law. When the husband converts to Islam for the purpose of marrying again, he will be committing domestic violence against his wife, which amounts to be an offence punishable under Section 495 of Indian Penal code.

In 2016, the Delhi High Court has ruled that the eldest female member of a family can be its "Karta. A unique position carved out by Hindu customs and ancient texts. Karta denotes managership of a Hindu joint family and is traditionally inherited men"<sup>27</sup>. Recently the Supreme Court held Triple talaq, the controversial Muslim divorce law that allows men to leave their wives immediately by uttering "talaq" thrice as unconstitutional. A constitution bench of five judges said that triple talaq "is not integral to religious practice and violates constitutional morality"<sup>28</sup> (2017)

Though the Judiciary always played an important role in promoting women empowerment still there is certain situation where the judiciary's pro-male biases are highlighted in a number of judgements, including the infamous Mathura Judgement and Bhanwari Devi case. A number of other judgements are there to show the patriarchal attitude taken even by the highest judiciary in cases of rape and sexual assault of women.

T. H. Manorama Devi was raped by the Jawans of the Assam Rifles and was murdered by the army personnel after two days of her arrest. After those twelve Manipuri naked women stormed the Army Headquarter in Imphal holding placards saying "Indian Army Rape Us". Manorama murder was far being an exceptional case in Manipur where rape, abuse, and murder are everyday realities. This abuse of power by security forces have resulted tremendous human rights violation especially with women in the region<sup>29</sup>.

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<sup>24</sup> *AIR 1979 SC 713*

<sup>25</sup> *AIR 1985 SC 945*

<sup>26</sup> (1995) 3 SC 635

<sup>27</sup> <https://m.timesofindia.com/india/Woman-can-be-kartaof-a-family-Delhi-high-court/articleshow/50799462.cms>

<sup>28</sup> <http://www.livelaw.in/breaking-sc-declares-triple-talaq-unconstitutional-by-32-majority>

<sup>29</sup> <http://www.thehindu.com/news/national/manorama-death-brutal-torture-probe-panel/article6596278.ece>

### *Empowering women through judicial action: An analysis of court-led legal reforms in India*

In Assam, on the 22nd May night. 1997, a man from 16 Rajput Regiment went to ambary Sorubhera village in search of militants. The villagers were gathered in the field nearly, meanwhile the Jawans raped Santhali(17 years old girl) and Rangeela (15 years old girl) in front of the villagers. Next day those Army again come to the village and raped Rumani (16 years old girl); a student of class nine and Thingigi, a standard while they were in the way to school. A case was registered at Tamulpur police station but no investigation was carried so far. In this way, violations of human rights of women and girls have been taking place<sup>30</sup>.

### **Conclusion**

India's judiciary has been instrumental in enhancing women's legal rights, utilizing interpretive creativity to fill legislative vacuums. Through transformative judgments from *Air India* to *Vishaka*, *Shah Bano*, and *Triple Talaq* courts have dismantled discriminatory barriers in employment, workplace safety, inheritance, and family law. These interventions demonstrate how constitutional values can be operationalized, even absent explicit legislative action. However, inconsistent judgments such as in *Mathura* and *Bhanwari Devi* reveal the fragility of judicial activism, underscoring the need for standardized gender-sensitivity training and clearer institutional frameworks. Future reforms should pursue two parallel paths: legislative codification of progressive standards and judicial capacity-building. Only then can the judiciary fulfill its constitutional mandate as a fair, fearless arbiter of gender equality and social justice.



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<sup>30</sup> <http://www.cs.uccs.edu/jkalita/assam/human-rights/mass1997cases34-54.html>