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# Judicial Activism and Gender Justice in India

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## ABSTRACT

*Women hold a distinctive place in every society and nation across the globe. Despite their valuable contributions in various fields, they often endure hardships quietly and remain part of a disadvantaged group due to numerous social, cultural, and institutional barriers. In male-dominated societies, women continue to face oppression, suppression, exploitation, and victimization. According to a United Nations report, although women make up half of the world's population and contribute nearly two-thirds of total working hours, they earn only a tenth of the world's income and possess less than one percent of the global property. Discrimination and exploitation against women persist even today. Although many laws have been enacted to safeguard women's rights, weak implementation has allowed ongoing exploitation. In response to these legislative shortcomings, the judiciary, particularly the Supreme Court of India, has actively stepped in to protect women's rights. Through judicial activism, the Court has dismantled procedural hurdles and transformed constitutional litigation. It has adopted a broad and progressive interpretation of legislative provisions to ensure maximum protection for women. The Supreme Court has shown particular commitment to fulfilling its legal and constitutional duties by adapting to evolving social challenges and prioritizing the protection of women's rights.*

**Keywords:** *Judicial Activism, women welfare, Gender Justice, women rights.*

## I. INTRODUCTION

Justice K. Ramaswamy has aptly described the status of women in our country, *Madhukiswar v. State of Bihar*<sup>2</sup> half of the population in India consists of women. "Women have long faced discrimination and continue to endure it quietly. While selflessness and resilience have been considered their virtues, they have still been made to bear injustice, humiliation, inequality, and bias."

The words expressed by Justice K. Ramaswamy remarkably capture the reality of the situation. For centuries, women have faced mistreatment in societies across the world, and India is no

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<sup>2</sup> (1996) 5 SCC 148

different. From birth to death, women remain trapped by various harmful practices such as discrimination, oppression, and violence — whether within the family, at the workplace, or in society at large. Women face discrimination on two fronts: first, because of their gender, and second, as a result of crushing poverty. They lack access to financial resources and rely on men for their livelihood.

In order to eliminate all forms of discrimination against women, the Indian Constitution has laid the foundation for gender equality and gender justice. The Constitution of India not only ensures equality for women but also authorizes the State to implement affirmative actions to address the cumulative social, economic, educational, and political disadvantages that women face. It is appropriate to mention certain constitutional provisions that are relevant in this context:

- a) Equality before law (*Article 14*)
- b) 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(i)*)
- c) The State to make any special provision in favour of women and children (*Article 15(3)*)
- d) The State is required to adopt policies that ensure both men and women have an equal right to adequate means of livelihood (*Article 39(a)*), and to guarantee equal pay for equal work for all (*Article 39(d)*).
- e) The State is required to ensure just and humane working conditions and provide maternity benefits (*Article 42*).
- f) "The State is tasked with promoting the educational and economic well-being of disadvantaged groups and protecting them from social injustice and exploitation (*Article 46*)."
- g) *Article 51(A)(e)* calls for promoting unity and a sense of brotherhood among all people in India, while rejecting practices that undermine the dignity of women.
- h) *Article 243 D(3)* mandates that at least one-third of the total seats filled through direct elections in every Panchayat be reserved for women, including seats for women from Scheduled Castes and Scheduled Tribes. These reserved seats must be allocated by rotation across different constituencies within the Panchayat.
- i) *Article 243 D(4)* stipulates that at least one-third of all Chairperson positions in Panchayats at every level must be reserved for women.

- j) Article 243 T(3) mandates that at least one-third of the total seats to be filled by direct elections in every Municipality, including those reserved for women from Scheduled Castes and Scheduled Tribes, must be reserved for women. These seats are to be allocated by rotation across different constituencies within the Municipality.
- k) Article 243 T(4) authorizes the reservation of Chairperson positions in Municipalities for Scheduled Castes, Scheduled Tribes, and women, based on the laws established by each State legislature.
- l) The reservations provided under Articles 243 D (3), D (4), T (3), and T (4) are intended to politically empower women.

Although numerous laws exist, their ineffective enforcement has allowed women to be exploited in a male-dominated society. With the failure of these laws to safeguard women, the judiciary has stepped in to provide protection. Through judicial activism, the Supreme Court of India has eliminated procedural barriers and completely transformed constitutional litigation. The judiciary has facilitated the broadest possible application of laws by interpreting them liberally. The Supreme Court has taken a proactive role in fulfilling its legal and constitutional duties, ensuring the protection of women's rights in the face of evolving social changes and demands. The following protections have been provided to women by the Supreme Court through judicial activism:

## II. PROTECTION AGAINST DISCRIMINATION IN THE MATTER OF JOB

In **C.B. Muthamma v. Union of India**<sup>3</sup> and **others** the validity of the Indian Foreign Service (Conduct and Discipline) Rules of 1961 was challenged, which required female employees to obtain written permission from the government before getting married and allowed for the possibility that a woman in the service might be asked to resign after marriage. The Supreme Court ruled that this provision was discriminatory towards women and therefore unconstitutional.

In **Air India V Nargesh Meerza**<sup>4</sup>, The Supreme Court struck down the rule that required the termination of an air hostess's employment after her first pregnancy, describing it as arbitrary and inconsistent with the values of a civilized society.

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<sup>3</sup> AIR 1979 SC 1868

<sup>4</sup> AIR 1981 SC 1829

### **A. Protection against discrimination in the matter of remuneration**

In **Mackinnosi company Ltd. v. Ondrey D'Costa**, The Supreme Court ruled that discriminating against female stenographers who perform the same work as their male counterparts violates Article 14 and breaches the Equal Remuneration Act, 1976. The Court ordered that female stenographer be paid the same remuneration as male stenographers for performing similar work.

### **B. Guidelines to prevent sexual harassment of working women**

In a landmark judgment in **Vishaka and others v. State of Rajasthan**,<sup>5</sup>The Supreme Court ruled that sexual harassment of working women at their place of employment constitutes a violation of gender equality, as well as the right to life and liberty, thereby breaching Articles 14, 15, and 21 of the Indian Constitution. The Court further stated that since there was no existing law on sexual harassment in India, international conventions and norms should be considered, and it issued comprehensive guidelines to be followed at all workplaces and institutions. The Court outlined the following guidelines:

1. All employers or persons in charge of workplaces in both the public and private sectors should take necessary actions to prevent sexual harassment. Without limiting the scope of their duties, they should take the following steps:
  - a) There should be an explicit prohibition of sexual harassment, including physical contact and advances, requests for sexual favors, sexually suggestive remarks, displaying pornographic material, or any other unwelcome conduct—whether physical, verbal, or non-verbal—of a sexual nature. Such acts should be recognized, published, and communicated through appropriate channels.
  - b) Government and public sector organizations' rules and regulations on conduct and discipline should include provisions that explicitly ban sexual harassment and specify appropriate penalties for offenders.
  - c) For private employees, the aforementioned prohibitions should be incorporated into the Standing Orders under the Indian Employment (Standing Orders) Act, 1946.
  - d) Suitable working conditions should be ensured in terms of work, rest, health, and hygiene to create an environment at the workplace that is free from hostility towards women. No female employee should have any reasonable grounds to feel disadvantaged in relation to her employment..

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<sup>5</sup> AIR 1997 SC 3011

2. If such conduct constitutes a specific offense under the Indian Penal Code or any other law, the employer must take appropriate action in accordance with the law, including filing a complaint with the relevant authority
3. The Victims of sexual harassment should have the option to request the transfer of the perpetrator or to seek a transfer themselves.

In **Apparel Export Promotion Council v. A.K. Chopra**,<sup>6</sup>This is the first case in which the Supreme Court applied the principles established in the Vishaka v. State of Rajasthan case and upheld the dismissal of a superior officer from the Delhi-based Apparel Export Promotion Council. The officer was found guilty of sexually harassing a subordinate female employee at the workplace, as it violated her fundamental right to life and liberty under Article 21 of the Constitution.

### III. ENTITLEMENT OF WOMEN

#### **Hindu women entitled for sridhana property**

In **Pratibha Rani v. Suraj Kumar**,<sup>7</sup>The Supreme Court ruled that property given to a woman by her parents during her marriage is considered her 'Sridhana' and solely belongs to her. No one can claim a share in this property. This decision significantly strengthened women's property rights.

#### **Christian women entitled for property rights**

In a landmark judgment in **Mary Roy v. State of Kerala**,<sup>8</sup>The Supreme Court ruled that the Travancore Christian Succession Act, 1902 does not apply to intestate succession of property for members of the Indian Christian community in the former State of Travancore. Instead, they are governed by the Indian Succession Act, 1925. As a result, female family members are entitled to an equal share of the property. This landmark judgment revolutionized the inheritance system within the Christian community.

#### **Direction to provide separate lock ups for women suspects in prison**

In **Sheela Barse v. State of Maharashtra**,<sup>9</sup>The Supreme Court instructed jail authorities to select four or five police lock-ups in suitable locations where only female suspects should be held, and these should be guarded by female constables. Female suspects should not be detained in lock-ups where male suspects are held. Additionally, the Court directed that the

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<sup>6</sup> AIR 1999 SC 625

<sup>7</sup> AIR 1985 SC 628

<sup>8</sup> AIR 1986 SC 1011

<sup>9</sup> AIR 1983 SC 378

interrogation of female suspects should only be conducted in the presence of female police officers or constables.

### **Women – Natural guardian in the absence of husband**

In another landmark judgment was given by the Supreme Court in the case of **Gita Hariharan V Reserve Bank of India**,<sup>10</sup>In this case, the Court interpreted Section 6 of the Hindu Minority and Guardianship Act, 1956, and ruled that the mother can serve as the natural guardian of a minor during the father's lifetime, provided the father is not responsible for the child's affairs.

### **Hindu women entitled to equal property rights**

In **Ganduri Koteswaramma and another v. Chakiri Yanadi and another**,<sup>11</sup>The Supreme Court, comprising Justices R.M. Lodha and Jagdish Singh Khehar, ruled that a Hindu woman or girl is entitled to equal property rights alongside her male siblings in cases of intestate succession and any resulting partition.

## **IV. DIRECTION FOR PROTECTION OF WOMEN FROM PROSTITUTION AND REHABILITATION OF THEIR CHILDREN**

In a significant judgment in **Gaurav Jain v. Union of India**,<sup>12</sup>The petitioner, a public-spirited advocate named Gaurav Jain, filed a public interest petition requesting the government to take appropriate action to improve the conditions of prostitutes, fallen women, and their children. The Supreme Court issued several directives to the government and social organizations, urging them to implement measures to prevent women from being involved in various forms of prostitution, to rescue them from reentering red-light areas, and to rehabilitate their children through welfare programs. These measures were aimed at ensuring dignity, livelihood, and socio-economic improvement. The Court issued the following directions:

1. The Court ruled that it is the responsibility of the government and all voluntary non-governmental organizations to take appropriate measures to protect women from prostitution and rehabilitate them, enabling them to live a life with dignity.
2. The Court directed that women in such situations should be given opportunities for education, financial support, and access to markets for goods they produce. If feasible, efforts should be made to arrange their marriages, which would help eliminate the problem of child prostitution and provide them with a legitimate status

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<sup>10</sup> (1999) 2 SCC 228

<sup>11</sup> (2011) 9 SCC 788

<sup>12</sup> AIR 1997 SC 3021

in society. Additionally, they should be provided with housing, legal aid, free counseling, and other necessary services to prevent them from falling back into red-light areas

3. The Court stated that economic empowerment is a key factor in preventing the practice of dedicating young girls to prostitution, such as the traditions of Devadasis, Jogins, or Venkatasins. Citing various measures implemented by different states, the Court directed that the social welfare department should initiate similar rehabilitation programs for these victims to completely eradicate this harmful practice and prevent them from being reintroduced to prostitution.
4. The Court ordered that the rescue and rehabilitation of child prostitutes and children be managed by the Department of Women and Child Development, under the Ministry of Welfare and Human Resources, Government of India. This department will design appropriate schemes for the proper and effective implementation of these measures. The Court also instructed the Ministry of Welfare, Government of India, to establish Juvenile Homes.
5. The Court ordered the formation of a Committee within one month of the judgment to conduct an in-depth study of these issues and develop appropriate schemes that align with the directions provided above.

## **V. RAPE ON WORKING WOMEN – GUIDELINES FOR REHABILITATION AND COMPENSATION**

**In Delhi Domestic Working Women's Forum V. Union of India,**<sup>13</sup> A public interest litigation was filed under Article 32 by the petitioner, the Delhi Domestic Working Women's Forum, to highlight the deplorable condition of domestic workers who were victims of indecent sexual assault by seven army personnel. The incident occurred on the Muri Express train while six women were traveling from Ranchi to Delhi.

The Supreme Court, in an effort to assist rape victims, has established the following broad guidelines:

1. Complainants in sexual assault cases should be provided with legal representation by someone familiar with criminal justice. The victim's advocate should not only explain the legal proceedings, prepare the victim for the case, and assist her in the police station and court, but also guide her on how to access help from other

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<sup>13</sup> (1995) 1 SCC 14

agencies, such as counseling or medical support. Ensuring continuity of assistance is crucial, meaning the same person who supported the complainant at the police station should represent her throughout the case until its conclusion.

2. Legal assistance must be provided at the police station, as the victim of sexual assault is likely to be in a distressed state upon arrival. The guidance and support of a lawyer at this stage, especially during questioning, would be extremely beneficial for her.
3. The police should be obligated to inform the victim of her right to legal representation before any questions are asked, and the police report should include confirmation that the victim was informed of this right.
4. A list of advocates willing to represent victims in such cases should be maintained at the police station for those who do not have a specific lawyer or whose own lawyer is unavailable.
5. The Court shall appoint an advocate upon the police's application at the earliest possible time. However, to ensure that victims are questioned without unnecessary delay, advocates will be authorized to assist at the police station even before court approval is sought or granted.
6. In all rape trials, the victim's anonymity (including not disclosing their name) must be preserved, as much as necessary.
7. Considering the Directive Principles under Article 38(1) of the Constitution, it is essential to establish a Criminal Injuries Compensation Board. Rape victims often suffer significant financial losses, with some being too traumatized to continue working.
8. Compensation for victims will be granted by the Court upon the conviction of the offender and by the Criminal Injuries Compensation Board, regardless of whether a conviction has occurred. The Board will consider factors such as pain, suffering, shock, loss of earnings due to pregnancy, and childbirth expenses if they result from the rape. The Court also instructed the National Commission for Women to develop a scheme within six months and take prompt action for its implementation.

## VI. REGISTRATION OF MARRIAGES

In a landmark judgment in **Seema v. Ashwini Kumar**,<sup>14</sup> The Supreme Court has ruled that all marriages, regardless of religion, must be compulsorily registered. Concerned about the difficulties faced by women seeking their rights in marriage, such as maintenance and child custody, a two-judge bench comprising Justices Arijit Pasayat and S.H. Kapadia directed both the Centre and State Governments to amend the law or create the necessary rules and notify them within three months.

It will –

1. Prevent child marriages.
2. Control bigamy and polygamy.
3. Assist women in asserting their marital rights, such as maintenance and child custody.
4. Allow widows to claim their inheritance rights.
5. Discourage husbands from abandoning their wives.

## VII. PROTECTION OF WOMEN'S RIGHTS UNDER THE CRIMINAL LAWS OF INDIA

In **State of Tamil Nadu v. Karuppu Swamy and others**,<sup>15</sup> The Supreme Court held that in cases involving the offence of outraging a woman's modesty, the victim's testimony should generally be relied upon, provided it inspires the confidence of the Court, even if no additional corroborative evidence is available.

In **Yusuf v. State of Bombay**,<sup>16</sup> In connection with the provisions of Section 497 of the Indian Penal Code — which criminalized adultery by punishing only the male partner while exempting the woman involved — the validity of this provision was challenged on the grounds that it discriminated on the basis of sex and violated the right to equality. The petitioner argued that women could be equally culpable as abettors in such cases, yet only men faced punishment. However, the Supreme Court rejected this argument, ruling that the classification was not solely based on sex and was constitutionally permissible under Article 15(3), which allows for special provisions for women and children. This stance was consistently upheld by the Supreme Court in subsequent judgments in **Sowmutri Vishnu v. Union of India**,<sup>17</sup> and in **Revathi v. Union of India**.<sup>18</sup>

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<sup>14</sup> (2006) 2 SCC 578

<sup>15</sup> (1993) 1 SCC 78

<sup>16</sup> AIR 1954 SC 321

<sup>17</sup> AIR 1985 SC 1618

<sup>18</sup> AIR 1988 SC 835

### Compensation award to rape victims

In the case of **Delhi Domestic Working Women's Forum v. Union of India**,<sup>19</sup> The Supreme Court recommended the creation of a structured scheme for awarding compensation to victims of rape, to be implemented either by the Court at the time of convicting the accused or through a dedicated Criminal Injuries Compensation Board. This Board would be responsible for granting compensation considering the victim's pain, trauma, loss of income due to pregnancy, and expenses related to childbirth if it results from the assault. The Court further suggested that such a Board could be established under the authority of Article 38(1) of the Constitution, which directs the State to promote the welfare of the people and ensure social and economic justice.

Similarly in a landmark judgment in the case of **Bodhisathwa Gautam v. Subhra Chakraborty**,<sup>20</sup> The Supreme Court granted interim relief by ordering a monthly compensation of ₹1000 to be paid to a rape victim, to continue until the trial court delivered its verdict on the rape charges.

## VIII. RESERVATION OF WOMEN IN EMPLOYMENTS

In the case of **State of Andhra Pradesh v. P.V. Vijayakumar**,<sup>21</sup> the Supreme Court has laid down that the State has the power to give priority to women to men in Government services, if the woman is equally capable or qualifies equally with man, but the vacancies are limited and all women and men candidates cannot be appointed, then in such case women can be given priority. This priority is within the ambit of Article 15(3).

## IX. REHABILITATION OF SEX WORKERS

In **Budhadev Karmaskar v. State of West Bengal**,<sup>22</sup> In a case involving the brutal murder of a sex worker, the Supreme Court previously instructed both the Central and State Governments to devise comprehensive schemes aimed at providing technical and vocational training to sex workers and women subjected to sexual abuse across all cities in India. The Court directed that these schemes should clearly specify the agencies responsible for delivering the training, the nature of the training programs, and the methods for rehabilitating and reintegrating these women by facilitating suitable employment opportunities.

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

<sup>20</sup> (1996) 1 SCC 490

<sup>21</sup> AIR 1996 SC 1648

<sup>22</sup> AIR 2011 SC 2636

## X. PROTECTION AGAINST EVE-TEASING

In **Deputy Inspector General of Police v. S. Samuthiram**,<sup>23</sup> In a two-judge bench decision, Justice K.S. Radhakrishnan of the Supreme Court issued several directives in the public interest, emphasizing the need for prompt and effective measures to address the issue of eve-teasing. Recognizing that appropriate legislation might take time, the Court considered it essential to implement immediate preventive actions through these directions.

1. All State Governments and Union Territories were instructed to assign plainclothes female police officers at public places such as bus stands, railway and metro stations, cinema halls, shopping malls, parks, beaches, public transport, places of worship, and other similar locations to keep watch and control incidents of eve-teasing.
2. The Supreme Court directed State Governments and Union Territories to install CCTV cameras at strategic locations, which would serve as a deterrent to potential offenders. Additionally, these cameras would help identify and apprehend those involved in eve-teasing if an incident occurs.
3. The authorities in charge of educational institutions, places of worship, cinema halls, railway stations, and bus stands were directed to take appropriate measures to prevent eve-teasing within their premises. In case of any complaints, they are required to promptly inform the nearest police station or Women's Help Centre.
4. In cases of eve-teasing occurring in public service vehicles, whether by passengers or the vehicle's crew, the crew must, upon receiving a complaint from the victim, take the vehicle to the nearest police station and report the incident. Failure to comply with this directive will result in the cancellation of the vehicle's permit to operate.
5. State Governments and Union Territories are directed to establish Women Helpline in various cities and towns, so as to curb eve-teasing within three months.
6. Appropriate boards warning against the act of eve-teasing should be displayed in all public places, including educational institutions, bus stands, railway stations, cinema theatres, parks, beaches, public service vehicles, and places of worship.

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<sup>23</sup> AIR 2013 SC 14

7. Passersby also have a responsibility to report any incidents of eve-teasing they witness to the nearest police station or Women Helpline, in order to help protect the victims from such crimes.
8. The State Governments and Union Territories of India are directed to take adequate and effective measures by issuing appropriate instructions to relevant authorities, including District Collectors and District Superintendents of Police, to ensure that proper and effective steps are taken to prevent incidents of eve-teasing.

### **Children living in jail with prisoner mother: Directions for safeguarding their welfare**

In **R.D. Upadhyay v. State of Andhra Pradesh**,<sup>24</sup> The Supreme Court, expressing deep concern about the condition of children living with their incarcerated mothers, issued comprehensive directions to safeguard the welfare of these children. The Court emphasized that children's rights regarding food, shelter, medical care, clothing, education, and recreational facilities must be upheld. It also provided specific guidelines for their diet. Furthermore, the Court ruled that before sending a pregnant woman to prison, authorities must ensure that the jail is equipped with the necessary facilities for childbirth, as well as pre-natal and post-natal care for both the mother and the child. Additionally, the Court instructed that a child's birth in prison should not be recorded as occurring in a prison on the birth certificate; instead, the birth should be registered at a local birth registration office.

## **XI. CONCLUSION**

Despite the constitutional safeguards, statutory provisions, and numerous judicial pronouncements aimed at ensuring equality for women, meaningful social change has been slow. It remains evident that laws alone, no matter how well-drafted, are insufficient to tackle the deep-rooted social evil of gender inequality. The solution lies in a concerted and planned effort to accelerate change—both legally and culturally.

While legal provisions provide essential protection, a socially sensitive judiciary plays a crucial role in enforcing these laws and shaping societal attitudes. Judges who understand the nuances of gender inequality can act as a stronger safeguard than the law itself in cases involving crimes against women. Achieving true equality requires a collective awakening and shared responsibility across various sectors of society—be it the State, community organizations, legislators, or the judiciary. This collective responsibility is essential for driving legal reforms and promoting gender justice. It is not enough for one section of society to carry the burden.

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<sup>24</sup> AIR 2006 SC 1946

Only through concerted efforts from all corners can we achieve the goal of a society where both men and women are equally empowered, dignified, and free to pursue opportunities on an equal footing. The future lies in this unified effort to create a society of true equality.

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