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### Indian Judiciary as Guardian for the Protection and Promotion of Women's Rights in the 21<sup>st</sup> Century

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The concept of equality requires fairness, justice, equity. The history which fought battles for development was also the battle of inequality. Inequality that exists between nations, religious inequality, inequality is largely dominated by class, race, sex, ethnicity.

**“We all know that women are half the world and hold up half the sky but where are they when it comes to Equality.”**

The very idea of social justice and the notion of equality are the two important components to have an egalitarian social order. The question of women's rights looms large cutting through all the layers of social stratification. The rights of women gave rise to a movement commonly known as feminist movement. This movement was for the advancement of the social role of women. There were three waves of feminism which made women realise that they need recognition in the society's social structure. The first wave started with a very basic demand for the right to vote, this wave emerged in the 1840s and 1850s this became popular in most of the Western Countries and with these waves the developed country USA granted women voting rights in 1992 through 19th Amendment Act.

New Zealand became the first country to grant voting rights to women and it gave voting rights in 1893. The movement didn't stop with this wave. There were many countries where women fought a long battle for their voting rights. Saudi Arabia granted women voting rights in 2011. The very basic right, right to choose your representative for the country women had to fight a long battle. After 1960 the feminist movement took a much radicalized form. The women wanted empowerment in all walks of life that is social, cultural, political, and economic. Few demands were revolutionary in nature like women were against all sorts of violence and proliferated sisterhood and female solidarity. This measurement was important as it covered nearly all the countries including the third world countries. The most contemporary is the third wave of feminist movement.

It embraced individualism and diversity and has tried to redefine what it meant to be a feminist. It saw emergence of new feminist currents like intersectionality, sex positivity, vegetarian ecofeminism, transfeminism and post-modern feminism. These movements played an important role in shaping the lives of women in the 21st century. Things have not been easy for women, since times immemorial. They struggled for the basic right, fought for it and went against the existing traditions and customs.

“The young women of today, free to study, to speak, to write, to choose their occupation, should remember that every inch of this freedom was bought for them at a great price. It is for them to show their gratitude by helping onward the reforms of their own times, by spreading the light of freedom and of truth still wider. The debt that each generation owes to the past it must pay to the future”.

Attaining equality between men and women and eliminating all forms of discrimination against women is one of the basic and fundamental human right around the globe nevertheless regularly suffer violations of their human right throughout their lives and realising that human rights of women have never been on the priority list. In 1948, the Universal Declaration of Human rights was adopted. It signified equal entitlements of women and men to the rights contained in it, “without discrimination of any kind such as..... sex.....” The declaration has clearly mentioned “all human beings” and everyone which further highlighted and gave a stepping stone to the Universal Declaration of Human Rights that is for everyone, men and women alike.

The Universal Declaration of Human Rights states that motherhood and childhood requires special attention, care and protection. Keeping the basic structure of Universal Declaration of Human rights, the framers of the constitution professed that human beings are born free and have equal right to dignity. As the substructure of a democratic polity, our laws, development policies, plans and programmes have focused for the advancement of women in many spheres. India has ratified various International conventions and human rights instruments committing to secure equal rights of women. Among all ratifications the key ratification was Convention on Elimination of All Sorts of Discrimination Against Women (CEDAW) 1993. One of the classic step made by the framers of the Constitution was that Indian constitution not only grants equality but it also authorises the State to take steps/action towards positive discrimination in favour of females.

### **Constitutional Entitlement**

Fundamental Rights guarantees equality before law and equal protection under the umbrella of law; it prohibits discrimination against any citizens focused mainly on the facts that they don't choose but are granted to them like colour, gender, caste, place of birth. Famous articles that protects the rights of women are:-

- (1) Equality before law (Article 14) this law is gender neutral. This is the heart of all laws and it has been deeply inspired by UDHR, which used the word 'Everyone' for the first time.
- (2) The state not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (Article 15(1))
- (3) The state to make special provision in favour of women and children. (Article 15 (3))
- (4) Equal opportunity to all citizens in matters relating to employment appointment to any office under the state. (Article 16)
- (5) The State to secure its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)) and equal pay for equal work for both men and women (Article 39 (d))
- (6) To promote justice, on the basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities. (Article 39(A))
- (7) The state to make provision for securing just and humane conditions of work and for maternity relief (Article 42)
- (8) The state to promote with special care the educational and economic interest of the weaker section of the people and to protect them from social injustice and all forms of exploitation. (Article 46)
- (9) The state needs to raise the level of nutrition and the standard of living of its people. (Article 47)
- (10) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women. (Article 51(a)(e) )
- (11) Not less than S! (including the number of seats reserved for women belonging to scheduled caste and scheduled tribes) of the total number of seats to be filled by direct election in every panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat. (Article 243(d)(3))
- (12) Not less than 1/3 of the total number of offices of chairperson in the panchayats at each level are reserved for women. (Article 243d(4) )
- (13) Not less than S! (including the number of seats reserved for women belonging to scheduled caste and scheduled tribes) of the total number of seats to be filled by direct election in every municipality reserved for women and such seats to be allotted by rotation to different constituencies in a municipality (Article 243t (3))
- (14) Reservation of offices of chairperson in municipalities for the scheduled caste and scheduled tribes and women in such a manner as the legislature of state may be law. (Article 243(t)(4)).

Our constitution has granted equality for both the sexes, but this equality can be categorised as a formal equality and substantive equality. Formal equality is granted to every citizens, it covers Article 14, Article 15(1) and Article 16(3)(4) which have made special provision for securing the rights of the marginalized section (women, children, scheduled caste and scheduled tribes), this can also be termed as a “positive discrimination”. Though the framers of the Constitution made adequate representation of women but the development of women, empowerment of women, acceptance of women, treating women equal has become a utopian concept but the word equal is often mislead equal does not mean pairing men in all aspects of life coping to become a masculine personality. Equal means respecting women because they are female, they do not choose to be one but they are one. Equality means not segregating them from the norms of the society because they are female. This is where the battle starts ‘Rights of women’; ‘Rights for women’.

In the 21st century, India being a developing country has overpowered many developed countries in the excellence of women. Indian women have reached the great acme of success in almost every field. The contradiction of all this is that ‘Yet no woman is safe’.

Human Rights constitute a basic element of all organised societies globally. Human rights are essential and inalienable rights which are granted to every individual because they are human and human is gender neutral. Under human rights comes a women right which signifies absence and prejudices which makes women inferior to men. The terrible phenomenon of excess mortality and artificially lower survival rate, this is a crude and sharply visible aspect of gender inequality, which often manifests itself in more subtle and less gruesome forms. But despite its crudeness, the artificially higher female mortality rates reflect a very important capability deprivation of women. The low male- female ratio in India indicates that social factors play a major role in determining the birth of a child. This is where the basic rights of women get hindered. In order to protect women’s rights a number of legislation enacted by the Parliament this includes;

- (1) The Dowry Prohibition Act (1961)
- (2) Immoral Traffic (Prevention) Act 1956
- (3) Indecent Representation of Women (Prohibition) Act 1986
- (4) Commission of Sati (Prevention) Act 1987
- (5) Child Marriage Restraint Act 1929
- (6) National Commission for Women Act 1993
- (7) Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994
- (8) Maternity Benefit Act 1961
- (9) Protection of Women from Domestic Violence Act 2005.

The United Nations opines in India human rights of workers and their families are not protected. Their rights are killed, they are tortured, falsely charged and under surveillance because of their legitimate work in upholding human rights and fundamental freedom. Today India is witnessing the highest growing women crime rape tops the slot. The concept of women's human rights owes its success and proliferation of its use to the fact that it is simultaneously prosaic and revolutionary. Indian Judiciary over a long period of decade has acquired a well-entrenched system and with the two organs of the government, has asserted to protect the rights of the women whenever necessary. The Judiciary has reiterated the Human Rights of women by filling the vacuum in Municipal Law by applying wherever necessary, International instruments governing Human Rights. The apex judiciary in India has interpreted a number of basic women human rights. In the 21st century the higher Judiciary has set some remarkable standard of asserting gender equality and human rights of women.

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