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Analysis of Issues Related to the Struggle of Women's Right

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ABSTRACT

This research paper by Adv. Chandra Kant explores the persistent struggle for women's rights and empowerment in India, analyzing the social, legal, economic, and political dimensions of gender inequality. Despite constitutional guarantees of equality and numerous legislative measures such as the Dowry Prohibition Act, Domestic Violence Act, and Equal Remuneration Act, women continue to face severe violations including dowry deaths, domestic abuse, sexual harassment, and gender-based discrimination. The study examines how patriarchal traditions, illiteracy, and socio-economic dependency hinder women's autonomy and participation in public life. It further highlights the legal framework and constitutional provisions such as Articles 14, 15, 16, 21, and 42 that collectively aim to safeguard women's rights and promote substantive equality. A comparative analysis with the United States demonstrates differing judicial interpretations of equality formal in the U.S. and substantive in India while exposing shared challenges of representation and wage disparity. The paper underscores the need for gender-sensitive legal enforcement, education, and institutional reforms to ensure genuine empowerment. It concludes that women's emancipation is not merely a constitutional promise but a societal imperative for justice, equity, and sustainable development, necessitating continuous state and community efforts to dismantle entrenched gender hierarchies.

KEYWORDS

Women's Right, Domestic Abuse, Dowry, Sexual Harassment, Gender.

INTRODUCTION

Women's empowerment refers to the process of releasing women

from the constraints of social, economic, political, caste, and gender discrimination. It means allowing women to make their own decisions and take charge of their own lives. In order to empower women, one must promote equality rather than masculinity. In this regard, there are many different facets of women's empowerment, including:¹

Human rights or personal rights: - A woman should have the freedom to openly express her sensations, imagination, and opinions. Personal empowerment entails speaking with assurance and claiming the authority to determine whether to negotiate.

Social Women Empowerment: - Women's social empowerment relies heavily on societal attitudes that promote gender equality. In a society that promotes gender parity, men and women are held to the same standards in all areas of life.

- **Educational Women Empowerment:** - Facilitating women's participation in development requires equipping them with the information, skills, and self-assurance they lack. As part of this effort, women must be informed of and equipped with the confidence to claim their rights.
- **Economic and Business Empowerment:** - It suggests a higher standard of living through sustainable livelihoods run and owned by women. This entails making them a big portion of the human resource in order to lessen their reliance on their male counterparts financially.
- **Legal Women Empowerment:** - It provides language for a clause that would create a robust legal foundation in favor of women's liberation. The gap between the law's presumptions and reality must be bridged in this case.
- **Political Women Empowerment:** - It indicates a political system that encourages women to play an active role in political decision-making and governance.

The empowerment of women and the advancement of women's rights have been at the center of a breakthrough global movement that has evolved in recent years. Celebrations of International Women's Empowerment Day's importance are also on the rise. Empowering women is essential for the well-being and progress of families, communities, and nations. Women are able to realize their full potential when they live in an environment that is both safe and desirable. Put your skills to use for the group and worry less about yourself while your kids grow up happy and healthy. They play a crucial role in advancing humanity and preserving a robust economic order. Yet, despite these advancements, women

¹ Anonuevo, C.M. (Ed.), 1995 "Women, Education and Empowerment: Pathways towards Autonomy."

and girls continue to face violence and prejudice around the world.

RESEARCH QUESTION

1. Whether Women rights are violated in India?
2. What are the laws governing and ensuring protection of Violation of women's rights?

RESEARCH HYPOTHESIS

- The constitution provides for special protections for women.
- The US and India share a deep and enduring legacy of gender discrimination.

VIOLATIONS OF WOMEN'S RIGHTS

The following are the instances where Indian women's rights are violated²:

Missing of Women and Girls – The phrase "missing women" has been used in many developing nations, and when they are recovered, the population's proportion of women to men is low. Women and girls go missing in numerous Indian states. Trafficking is one of the main factors that contribute to their disappearance. Girls who are trafficked suffer from extreme exploitation and are denied access to food and other essentials. In northern India, where the issue of an unbalanced gender ratio is very evident, the brokers sell the girls from the poor families to the men. In addition, there have been instances where women have vanished from their married residences. Their absence is mostly caused by the frequency of violent and criminal crimes against women both inside the home and outside.

Dowry Deaths - Increases in the number of married women killed in India due to disputes over dowries have been reported. Dowry disputes are on the rise in recent years. A total of about 8,233 newlywed ladies were murdered for their dowries in 2012, as reported by the National Crime Records Bureau. The country views the taking and giving of dowries as crimes. The Dowry Prevention Act's implementation in India has not been done well. It has been found that the majority of states do not require the keeping of records of gifts and receipts, nor do they have dowry prohibition officers.

Domestic Violence – Domestic abuse is pervasive in India, notwithstanding the Protection of Women from Domestic Violence

² Saryal, Sutapa, 2014 "Women's rights in India: Problems and prospects." International Research Journal of Social Sciences

Act of 2005. Abuse within the context of a domestic relationship occurs when a woman is subjected to physical or verbal violence by her husband, father, father-in-law, brother, or other male family member. Abuse can come in many forms, including slander, name-calling, and physical contact. Several factors contribute to domestic violence against women in married households, including women's ignorance and illiteracy, financial hardships, the desire for a male child, problems meeting basic wants and requirements, health problems, and feelings of animosity and resentment.

Sati – The widows used to be positioned within their husbands' cremation pyres as part of the ceremony known as Sati. Raja Ram Mohan Roy, a social reformer, ended this practice. In post colonial India, it is still in use. The Sati Prevention Act, which made the practice of Sati a criminal for which the perpetrators might also get the death penalty, was passed. The law further said that it is forbidden to venerate Sati by building a temple or to treat the deceased as a deity. Nonetheless, some people view this regulation as an infringement on their freedom to practice their faith as they see fit.

Child Marriage – When females get married before they are 18 and when boys get married before they get 21, it's called child marriage. It's commonly held that marrying off a lady too young means she has to give up her youth forever. They have a harder time getting into school, attending, thriving academically, and realizing their full potential as children. The child's emotional, psychological, and social growth suffer as a result. Children of married parents who experience domestic abuse often feel vulnerable and unsafe. Males must be 21 and ladies must be 18 in accordance with the Child Marriage Act of 2006.

Preference for a Male Child – The male child is typically preferred by those who live in rural areas and socioeconomically disadvantaged segments of society. People expect men to make significant contributions to the well-being and standing of the family. The patriarchal nature of Indian society has always encouraged a bias toward having sons. As Indian society transitioned from its matrilineal, pre-feudal condition into one in which agriculture arose as the main recognized occupation of the people under the control of males, a strong preference for having a son emerged.

Female Foeticide and Female Infanticide – Female infanticide refers to the death of a girl child after birth, while female foeticide refers to the killing of a girl child during pregnancy. These practices deprive girls of their most fundamental right, their right to life. There have been groups of people that strongly favor the

boys in the classroom. They held the belief that when they controlled the greater portion of the land, families with male children should be seen with pride. They saw women as burdens who couldn't produce any wealth for their family.

Education – One of the most important factors that will result in the empowerment of women is education. The Indian Constitution's Article 21 guarantees everyone the right to an education, hence the government is required to guarantee free education to everyone. Girls drop out of school at higher grade levels for a variety of reasons, and their retention in school is lower in rural regions than it is for boys. In higher education, parents' inability to pay for college owing to financial difficulties is the main factor that causes students to drop out. Due to the rising cost of schooling and the belief that girls would be married off, parents expect their daughters to care for their younger siblings while they are away at work. They also instruct them on how to handle home tasks.

Forced Evictions and Exclusions – After their husbands pass away, widows in India are forced to leave their marital houses and take care of their individual needs and desires. Together with them, their kids are evicted. Women in general and those who are the heads of homes are less secure than men. There are numerous negative repercussions that a woman is expected to experience when she loses her husband. When people are evicted from their homes, they must deal with all kinds of challenges in order to make ends meet. A single lady who has no family to support or land of her own frequently ends up in an urban slum.

Sexual Harassment at the Workplace – Sexual harassment in the workplace is widely seen as the most detrimental problem preventing people from making progress. In India, women face pay inequality in both the private and public sectors. It's a well-known truth that people living in rural areas have a harder time getting promoted than those living in cities. Women business owners can encounter additional challenges when seeking to get money and resources to establish a business. The psychological effects of sexual harassment on a woman in the workplace are significant. She is compelled to resign from her position, despite the fact that she is financially struggling and needs a job.³

Rape - During the past decade, India has seen an alarming rise in the number of reported cases of rape. Usually, rape happens because of some sort of animosity between the perpetrator and the victim. There were 25,000 rape cases in 2012, according to

³ Duflo, E., 2012 "Women empowerment and economic development." Journal of Economic literature.

the National Crime Records Bureau. Mass rapes are used by the upper castes in India's rural areas, particularly in the north, to exert power and control over the lower castes. After a particularly brutal case of gang rape happened in Delhi in December 2012, the Criminal Law (Amendment) Act 2013 was introduced to make rape more punishable.

Societal Violence against Women - Patriarchal norms permeate most Indian communities and cultures. In such societies, it is difficult for women to stand up for their rights and receive fair treatment. There are few shining examples of gender equality in the world, and they can be found almost nowhere in religious organizations, rural communities, or man-made societies like professional associations. Women's lives are often made more difficult by religious groups' insistence that they adhere to damaging traditions. Due to the pervasiveness of societal violence, women frequently find themselves imprisoned to their houses and cut off from the outside world. They are supposed to limit their interactions with society's citizens.⁴

NEED OF WOMEN EMPOWERMENT

It's important for women's confidence and for society as a whole. Empowering women is a must. Equal participation in government, business, culture, and academia is possible for women. In today's world, women have the freedom to pursue the spiritual, linguistic, professional, and other facets of social integration that most appeal to them. These days, women all over the world are actively working as leaders and surpassing others in many aspects of society, making women's empowerment the most successful method for growth in India. As the entire globe holds its breath and begs for a miraculous recovery from the COVID-19 epidemic on a daily basis, it is the women governors and the country that are motivated by these incredible individuals who are taking the lead and battling alone.

The degree to which women are empowered in India depends on a wide range of criteria, such as the country's geographic location, social class, educational attainment, and age. At the national, local, and state levels, there are initiatives aimed at empowering women. The fact that women still experience discrimination in the majority of these areas including politics, health care, economic opportunities, and education indicates that there is still a big gap between strategy development and community-level implementation.⁵

⁴ 4 Tandon, T., 2016 "Women empowerment: perspectives and views." "The International Journal of Indian Psychology"

⁵ "India: The Legal Framework for Women and Work." 2012

PROTECTION OF WOMEN'S HUMAN RIGHTS BY THE CONSTITUTION

The constitution provides for special protections for women. The founders were aware of the historical and cultural contexts that contributed to women's subordination and disadvantage. They tried a number of different things to help women move forward in our culture. The Constitution of India mandates paid maternity leave for women workers under Article 42, and it is every Indian citizen's fundamental duty to refrain from actions that dishonor women under Article 51-A. The Protection of Human Rights Act, 1993 was passed by the Indian Parliament to ensure that Article 51-A is carried out in a fair and effective manner.⁶

The Indian Parliament has created various legislation over the years to pursue its goal of empowering women. Legislation such as the Equal Pay Act, the Prevention of Immoral Trade in Persons Act, the Dowry Prohibition Act, and the Sati Prevention Act are just a few examples. Furthermore, quotas of 33% for women were mandated in panchayat and Nagarpalika institutions and in leadership posts by the 73rd and 74th Constitution (Amendment) Acts. With these two changes, obstacles to women's political participation at the local level have been removed. Women from Karnataka, Kerala, and Manipur make up the majority of PRI participants.

To encourage women to participate in politics on an even playing field, a bill calling for a 33% seat reservation for women in national and state legislatures was introduced in Parliament. Women in India are afforded additional legal protections thanks to a variety of acts issued by the government, such as the Sati Prevention Act and the Dowry Prohibition Act. The National Commission for Women was established in 1990 in India in order to investigate gender equality in the workplace. The National Coalition for Women has employed them to investigate allegations of discrimination against women. They have pushed for the government to enact stricter rules in areas such as rape, domestic abuse, and the establishment of a separate criminal code for women.⁷

STRATEGIES OF WOMENS EMPOWERMENT IN INDIA

The key reason why Indian women are on the receiving end is that they are still unaware of their basic civic and constitutional rights.

⁶ Chandra, R., 2007, December "Women Empowerment in India-milestones & challenges." In national conference on "What it takes to eradicate poverty", organized by the PACS Programme, New Delhi.

⁷ Hazarika, D., 2011 "Women empowerment in India: A brief discussion." International Journal of Educational Planning & Administration.

The patriarchal system has an impact on many aspects of a woman's life. The majority of them are frequently compelled in such circumstances to embrace cultural behaviors that are harmful to their own and their children's development. Despite having some financial and political independence and awareness of their rights, women still feel powerless to make the fundamental reforms necessary to abolish gender inequality in society.⁸

Women's rights have been championed by the National Commission for Women, which has pushed for stricter punishments for crimes committed against women and a separate criminal code for female offenders. The idea of a separate criminal code for women arose as a means to speed up the delivery of justice to victims and to increase the number of women who are convicted of crimes. Unfortunately, this plan was scrapped since the government did not support it. Multifaceted analysis of the root causes of violence against women is required. The state and society have an obligation to provide victim-survivors with urgent aid so that they can get back to living their lives as normal. The government, civil society, and the family need to work together more closely in order to solve the problem of violence against women. For effective anti discrimination measures to be implemented, the state must take a central role.

The first reform initiative in India was taken by the state, which amended the Hindu Succession Act in 1956 after much discussion and gave women an equal inheritance entitlement. The formal institutions of the state, such as the legal system, police, the medical and health care sectors, etc., as well as the informal networks such as family, friends, neighbors, and local community organizations, must continuously provide extensive unconditional financial as well as emotional support to the women. The vision of a self-sufficient, independent woman making her own life decisions can only be realized via education that will support women in gaining economic independence as well as knowledge and understanding of their rights. Education of women regarding their legal and human rights as guaranteed by the constitution must get special attention.⁹

According to renowned feminist author Martha Nussbaum, giving women the cloak of justice is essential for their development. In India, the next official government agency to help battered women is the police. There are many unreported crimes against women because the police are not equipped to deal with them with the appropriate compassion. To prevent further oppression of women

⁸ Kishwar Madhu, 1999 "Off the beaten Track: Rethinking Gender Justice for Indian Women", OUP, New Delhi

⁹ Menon, Nivedita(ed) 1999 "Gender and Politics in India", OUP, New Delhi.

at their hands, police need to be formally trained and made more gender sensitive. The judiciary, which is in charge of giving the wronged women justice, needs to be made aware of gender issues. Judges and attorneys must be taught about sensitive gender issues in law schools in order for them to be aware of them.¹⁰

CONSTITUTION AND WOMEN'S EMPOWERMENT

The Indian Constitution's Part III, or Fundamental Rights, contains the following articles that aim to advance women's status and give them equal opportunity: According to Article 14- Women are entitled to the same legal protections as males inside the boundaries of India since they are considered equal in the eyes of the law. It means that everyone should be treated equally under similar conditions, regardless of gender. The State ought to treat everyone equally and ought not to engage in any form of discrimination.

Article 15¹¹ deals with prohibition against discrimination - It outlaws discrimination against anyone on the basis of their race, caste, gender, ethnicity, religion, place of birth, or socioeconomic status by the state. All citizens are guaranteed equitable treatment in using government facilities, public transportation, hotels, restaurants, and retail outlets. Nonetheless, the government can make exceptions for the needs of vulnerable populations like women, children, members of scheduled castes and scheduled tribes, and so on.

According to Article 16- All residents, including women, will have equal access to public work opportunities regardless of their gender, races, castes, ethnicities, faiths, or socioeconomic status. There are several exceptions, such as when the government may declare by legislation that a particular job necessitates a resident of the state. The State has the authority to designate some positions for members of underprivileged groups, as well as for members of scheduled castes and scheduled tribes. Positions associated with a particular religion may also be designated for members of that religion.¹²

As per Article 17- The Untouchability (offense) Act of 1955 was passed by the parliament, ending the System of Untouchability. The Untouchability (offense) Amendment Act of 1976 updated this law to make it stricter and to eradicate untouchability from

¹⁰ Agnes, 1999 "Flavia Law and Gender Inequality: The Politics of Women's Rights in India", OUP, New Delhi

¹¹ Constitution of India, 1950, Article 15

¹² Constitution of India, 1950, Article 16

society.¹³

According to Article 19¹⁴ - Every citizen including “Women have the right to vote, to hold public office, to hold peaceful protests without the use of force, to form and join labor unions and other organizations, to leave or enter any state or territory without hindrance, to change their place of residence at will, to engage in any lawful occupation or occupations of their choosing, and to engage in any lawful trade or business.”

Article 21 of India's constitution states that no one can be deprived of life or liberty except through due process of law. Included in this right to life are the rights to personal autonomy and respect.¹⁵

Domestic abuse against women is a violation of Article 21 of the Indian Constitution since it strips victims of their humanity and sense of worth.

Article 21A of the Indian Constitution mandates that all children between the ages of six and fourteen must get an education from the state, at no cost to the family, in a manner that the government may prescribe by legislation.

To ensure that women accused of crimes have access to justice, Article 20 of the Indian Constitution states that no person, regardless of gender, shall be held guilty of any offence unless the offence has been committed, and that no person shall be subject to trial or punishment more than once for the same offence. There should never be a situation where a person is accused of a crime or forced to testify against oneself.

The use of forced labor or human trafficking is against the law in India, as is the trafficking of women and children for sexual exploitation, which is prohibited by Article 23 of the Indian Constitution. With this Article in mind, Parliament passed the “Suppression of Immoral Trafficking in Women and Girls Act, 1956” (now known as the immoral Trafficking (Prevention) Act) to criminalize the actions that lead to human trafficking.

In accordance with the provisions of Article 24 of the Indian Constitution, which states that it is against the law to employ children younger than the age of fourteen in mines, factories, or any other dangerous industries, child labor, and particularly that of girls, need to be abolished. This is especially important in light

¹³ Constitution of India, 1950, Article 17

¹⁴ Constitution of India, 1950, Article 19

¹⁵ Constitution of India, 1950, Article 21

of the fact that child labor disproportionately affects females.

The freedom to freely practice one's religion and to publicly express one's beliefs is guaranteed to all citizens of India, including women, by Article 25 of the Indian Constitution.

LEGAL FRAMEWORK FOR WOMEN EMPOWERMENT

Women make up approximately 32% of India's labor force population. Legal equality for women is guaranteed by the Constitution of India, and there appears to have been some progress made in institutional support for women as a result of the several laws that safeguard women's rights in the workplace. The federal government, individual states, or even individual municipalities could be responsible for enforcing India's labor laws. The following is a list of the Acts in their first, unaltered form:¹⁶

Equal Remuneration Act, 1976 - This rule prohibits gender discrimination in employment, advancement, and training. It can be gotten around by reclassifying skilled and unskilled workers' earnings. Frequently, men are assigned to the skilled, higher wage category while women are assigned to the unskilled, lower wage category, regardless of the nature or level of a work. Equal compensation for equal or similar work is one of the provisions of the Act. There shouldn't be any discrimination in hiring practices or working conditions, unless there are legal limitations on hiring women, such as those related to night shifts or sector-specific requirements.

National Commission for Women Act, 1990- sets up a National Commission for Women to look into the rights women currently have, report back to the Federal Government on any problems they find, investigate any claims of violations of such rights, and fund any legal battles that women may face.

74th Constitutional Amendment Act, 1992 - Women in influential positions in the region have battled for access to clean water and programs to increase literacy rates. When the cost of running the office rises, parties tend to only put forth a small number of women candidates, who are often family members. Notwithstanding progress, women still face significant barriers to full participation in national politics. According to the Amendment, there must be at least a one-third reserve or quota for women in all state and local governing bodies and all public organizations.

The Protection against Sexual Harassment of Women at the

¹⁶ India: The Legal Framework for Women and Work”, 2012

Workplace, 2010 - This legislation would provide clear guidelines for what constitutes sexual harassment in the workplace, and would require businesses with more than 10 employees to establish female-led committees to investigate and resolve sexual harassment claims. Nonetheless, it presents difficulties due to the fact that members are not required to have a legal education or experience. These panels, which could act like Civil Courts in gathering evidence, are conceivable. The employer could be fined or subject to other punishment.

Maternity Benefits Act, 1961 – While the law guarantees new mothers 12 weeks of paid leave, adoptive parents receive no such benefits. While on maternity leave or after returning from it, an employee cannot be terminated or placed on indefinite suspension. A woman employee has the right to take two additional breastfeeding breaks in addition to her regular breaks till her child is 15 months old.

Factories Act, 1948 - Child care facilities for children less than six years old are a legal requirement for businesses with more than 30 women employees under the Child Care and Development Fund Act. Managers rarely consider the number of women working for them or whether or not they provide the required child care facilities, and companies rarely face legal punishment for violating the Factories Act. In fact, there are no documented occurrences where a supervisor or observer went to a business's location specifically to count women working there. The Factories Act can be avoided in several ways: by employing less than 30 women, by using temporary or part-time workers, or by a combination of these strategies.

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 - By regulating the terms of employment, such as the number of hours that can be worked at a time and the security of the workplace, it ensures the health and safety of the workers at beedi and cigar factories. Also, working women must have access to child care services. The central and advisory committees must appoint a minimum of one woman per position under this law.

When more than fifty women are employed on a plantation, the law mandates that the business provide childcare services, even to contract workers. Child care must be provided by the plantation if a female worker has more than 20 children. Working moms get breaks between shifts so they can prepare meals for their families

The Contract Labour (Regulation & Abolition) Act, 1970 – Where there are 20 or more women working regularly on a contract, day care facilities are required to be made available.

Prohibition of Child Marriage Act, 2006 - The “Prohibition of Child Marriage Act of 2006”, a federal law that prohibits child marriage, makes it illegal to bring up the issue of parental consent while dealing with minors. The erroneous impression is given, however, when some marriages are declared invalid while others are declared voidable. Unless and until a court rules otherwise, marriages contracted when one or both parties was a minor can be annulled at will. Any marriage contract involving a minor that is the result of coercion, fraud, deception, inducement, selling, buying, or trafficking is null and void. If the law does not recognize a child's ability to give consent, then all marriages between minors must be ruled null and void because they were likely arranged through illegal means such fraud, human trafficking, or psychological manipulation of the minor.¹⁷

WOMEN RIGHTS IN UNITED STATES OF AMERICA

The US and India share a deep and enduring legacy of gender discrimination. The Constitutions of both nations guarantee equal protection under the law, but while India's Constitution specifically protects women's rights, the US' Constitution simply protects everyone from discrimination. A growing number of American academics, and especially feminists, are examining India to determine if and how the largest democracy, one based on patriarchy, is fulfilling its pledge of equality to women. Despite the obvious societal differences, we can learn a great deal from India's history. The centuries-long marginalisation of women in political life, academic pursuits, and public service has been largely remedied thanks to India's affirmative action and safe discrimination programmes.

U.S. SC justices are firm believers in a paradigm of formal equality that mandates uniform treatment of all individuals in comparable circumstances. In light of this, equal treatment is not required where there are material disparities between men and women, despite formal equality.¹⁸ While the SC of India adheres to formal equality theory, it has more often than not followed the model of substantive equality because the Indian Constitution permits "special" provisions for women and other marginalised groups.

Substantive equality represents an alternative conception of equality, one that is less preoccupied with treating like things equally and more concerned with acknowledging and resolving the disparate effects of men's and women's biological and social constructions.¹⁹ The two methods' stark differences become most

¹⁷ Thukral, Enakshi Ganguly, and Bharti Ali. “Status of children in India Inc.” HAQ Centre for Child Rights, 2005.

¹⁸ Michael M. v. Super. Ct. of Sonoma County, 450 U.S. 464,469 (1981)

¹⁹ Ratna Kapur & Brenda Cossman, “Subversive Sites: Feminist Engagements

apparent at this point. When considering cases involving violence against women, the United States SC has shown itself unwilling to rely on foreign law, particularly the “Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW).²⁰

The SC of India has found that the right to be free from gender violence is an inalienable one, basing its decision on international law and the idea that this is an issue of equity. In the final section, "Part V," we examine how well the rival theories of equality reflect and address the various cultural conditions present in the two countries.

COMPARATIVE UNDERSTANDING OF WOMEN RIGHTS IN INDIA AND USA

It's no secret that both India and the US have a checkered past when it comes to treating women fairly. Until the 19th Amendment was passed in 1920 and the Constitution was adopted in 1950, women were not allowed to vote in either country. In both nations, women are significantly underrepresented in political leadership roles. Although women make up 22.5% of state governments, they only make up 14.4% of Congress.²¹ Women only make up 9% of the Indian Parliament and an even smaller percentage of state governments. No woman has ever been elected president or vice president in the US, but for 15 years, Indira Gandhi led India as prime minister.

Both nations' highest courts have a notably low percentage of female justices. After the first woman was nominated to the U.S. SC in 1981, another woman did so in 1993. 40 years after India's independence, a woman was finally nominated to the country's highest court, the SC. Currently, out of a total of 26 Justices, only one is a woman. “Female judges make up 23.75% of state appeal courts and 22.85% of the state SCs in the US.” Only 2.4% of all justices on India's HCs are women.²²

The American economy is still in bad shape. It was estimated that women earned a median of \$27,338 in 2002, while males made an average of \$43,797. To sum up, after adjusting for inflation, women make 62% as much as men do.²³ A total of 5.2% of top earnings in the US were women in the same year, a significant increase from the 1.2% who were women in 1995. The percentage

With Law In India” (1996)

²⁰ US v. Morrison, 529 U.S. 598 (2000)

²¹ Chairman, Ry. Bd. v. Das (A.I.R. 2000 S.C. 988)

²² Tuan Anh Nguyen v. I.N.S., 533 U.S. 53, 63 (2001)

²³ “Human Development Report 2004: Cultural Liberty in Today's Diverse World” 217 (2004)

of female CEOs in the Fortune 500 and 1000 in 2005 was well below 2%.

Twenty-two, while the economic outlook is bleak for American women, it is much worse for Indian women, who make an average of \$1,442 per year compared to an average for men of \$3,820. This indicates that Indian women make only 38% as much as their male counterparts. India placed 127 out of a total of 177 countries on the international gender-related development index.²⁴ Against the background of these severe gender disparities, we can assess the performance of the judiciary in enforcing the equality guaranteed by the Constitution.

CONCLUSION

The Court's stringent adherence to formal equality theory has helped to undermine American protectionism and the patriarchy that supported it. Formal equality theory has some restrictions, enabling women to be treated equally only in fields where men have historically held the majority position. This is the "comparison paradigm" of equal protection research, according to Stephanie Wildman. To assert their right to equal protection under the law, women need different treatment from males. The approach's emphasis on comparison prevents it from taking into account experiences like pregnancy and sexual assault, which are not shared by males. When creating a formal paradigm of equality, the presumption of a masculine norm cannot be avoided.

*Geduldig v. Aiello*²⁵, which already discussed the problem, serves as an example. The U.S. SC ruled that California's disability insurance programme, which did not cover disabilities related to pregnancy, did not violate the concept of equal protection. However, that approach fails to take into account the potential negative consequences of childbearing on women's ability to hold down a job. A dissenting opinion in *Geduldig* noted that the Equal Employment Opportunity Commission had found that women faced "systematic and pervasive discrimination" in terms of benefits and employment opportunities due solely to their role as parents.

In India, the SC takes a more nuanced approach to equality claims, which is consistent with the Constitution's commitment to employing protective discrimination to further equity. Formal equality theory has been deployed to back up categorizations predicated on sham or real differences between men and women. Many of these examples illustrate how fundamental patriarchal

²⁴ "HDR: Cultural Liberty"

²⁵ 417 U.S. 484 (1974)

standards are used to discourage women from participating in the labour force and the political process. These occurrences lend credence to the stereotype that women are incapable of making decisions regarding their sexuality and are only fit for marriage and parenting. Despite Article 15(3)'s promise of a substantive form of equality, it has occasionally been used to support sexual stereotypes in a manner that is likely to prevent women from completely participating in society.