

## ROLE OF INDIAN JUDICIARY IN WOMEN EMPOWERMENT

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### **ABSTRACT**

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favour of women. 'Empowerment' may be described as a process which helps people to assert their control over the factors which affect their lives. Empowerment of women means developing them as more aware individuals, who are politically active, economically productive and independent and are able to make intelligent discussion in matters that affect them. Present article discusses about various initiatives taken by Government of India for empowering women by analysing position of India in Gender Inequality Index and Global Gender Gap Index of United Nations. Article concludes with the note that due recognition must be given to women and society should come forward to ensure equal status for women in all spheres of life.

Globalisation is a process of increasing interdependence, interconnectedness and integration of economies and societies to such an extent that an event in one part of the globe affects people in other parts of world. Increasing levels of international interconnectedness has affected the social, economic, and political conditions for women in India. The study attempts to understand the indicators of women empowerment and the impact of globalisation on the women of India. This is done by critically analysing the impact of globalisation on various indicators that define Gender Empowerment Measure (GEM), Gender Development Index

(GDI) and Gender Inequality Index (GII). The researcher collected data from reports of Government and Non- Government organisations such as United Nations Development Programme (UNDP) India, Ministry of Women and Child Development India, Census of India, Election Commission of India, Registrar General of India (RGI). The study concludes by suggesting various policies for ensuring women's empowerment in the present era of globalisation.

### **RESEARCH PROBLEMS:**

What is the role of Indian judiciary in women empowerment.

### **HYPOTHESIS:**

The judiciary hasn't been efficient in protecting women's right and empowerment of women.

### **OBJECTIVES:**

- To study about the growth of Women Empowerment .
- To study the various laws for and in favour of Women Empowerment.
- To analyse the role judiciary in protection of women rights in India.

### **CHAPTERIZATION:**

CHAPTER1: INTRODUCTION

CHAPTER2: WHAT IS WOMEN EMPOWERMENT

CHAPTER3: WOMEN EMPOWERMENT IN INDIA

CHAPTER4: CONSTITUTION OF INDIA AND WOMEN EMPOWERMENT

CHAPTER5:LEGISLATIVE INITIATIVES TOWARDS EMPOWERMENT OF WOMEN IN INDIA

CHAPTER6: INTERNATIONAL COMMITMENTS OF INDIA AS TO WOMEN EMPOWERMENT

CHAPTER7: JUDICIAL ACTIVISM AND WOMEN EMPOWERMENT IN INDIA

CHAPTER8: CONCLUSION AND SUGGESTION

**RESEARCH METHODOLOGY:**

The methodology adopted for conducting the proposed research is a Doctrinal Research method. Doctrinal Research in law field indicates arranging, ordering and analysis of the legal framework, legal structure and case laws to search out the new things by extensive surveying of legal literature but without any field work.

**CHAPTER1:****INTRODUCTION**

During the last three decades there has been a sea change in the concept of women's empowerment. A dialogue from A Doll's House written by Henrik Ibsen explains the inner voice of a woman. Helmer tells Nora—"First and foremost, you are a wife and mother." Nora replied—"That I don't believe any more. I believe that first and foremost, I am an individual, just as much as you are." This dialogue carries a forceful message. A woman today expects herself—and rightly so—to be treated as an individual, a living human being, entitled to the same dignity and status, as her male counterparts.

Times have changed and so has the role of women in our society. Modern society has slowly accepted the significant role of women outside of homes, and women are gaining more and more recognition as leaders in both the private sector and public service.

However, despite the resilience and strength women have shown throughout history, there is a continuous need to respect, protect, fulfill, and promote women's rights at home, at work, and in all spheres of society, without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status.

Gender equality refers to the right of men and women to enjoy the same opportunities to achieve their full potential and to pursue happiness, to contribute to nation building, and to share in the fruits of progress and development. All these would be possible with the State and its agents giving due recognition to the status of all persons as free and equal in dignity and rights, regardless of gender. Awareness of and sensitivity to the problem of gender bias

are imperative in the judicial setting, since women look to our Courts for justice and protection in cases of violence, abuse, or discrimination.<sup>3</sup>

Though plethora of legislations national as well as international do exist but due to ineffective enforcement, women are exploited by the male dominated society. All law is not justice; nor is all justice law alone. At times there could be more justice without law and likewise there could be times when strict adherence to, or mindless application of laws, could lead to injustice. The present research paper critically analysis the role of the legislature and judiciary in empowerment of women.

### **KEY WORDS:**

Empowerment, Educational status, Social status, Economic status, Empowering Women, Economic Development.

### **CHAPTER 2:**

#### **WHAT IS WOMEN EMPOWERMENT**

Women empowerment in simple words can be understood as giving power to women to decide for their own lives or inculcating such abilities in them so that they could be able to find their rightful place in the society.

According to the United Nations, women's empowerment mainly has five components:

- Generating women's sense of self-worth;
- Women's right to have and to determine their choices;
- Women's right to have access to equal opportunities and all kinds of resources;
- Women's right to have the power to regulate and control their own lives, within and outside the home; and
- Women's ability to contribute in creating a more just social and economic order.

Thus, women empowerment is nothing but recognition of women's basic human rights and creating an environment where they are treated as equals to men.

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<sup>3</sup>[social-issues/women-empowerment/](#) Author: NamitSrivatsva

### **Why we Need women Empowerment?<sup>4</sup>**

Need for empowerment arose due to centuries of domination and discrimination done by men over women; women are the suppressed lot. They are the target of varied types of violence and discriminatory practices done by men all over the world. India is no different.

India is a complex country. We have, through centuries, developed various types of customs, traditions and practices. These customs and traditions, good as well as bad, have become a part of our society's collective consciousness. We worship female goddesses; we also give great importance to our mothers, daughters, sisters, wives and other female relatives or friends. But at the same time, Indians are also famous for treating their women badly both inside and outside their homes.

Indian society consists of people belonging to almost all kinds of religious beliefs. In every religion women are given a special place and every religion teaches us to treat women with respect and dignity. But somehow the society has so developed that various types of ill practices, both physical and mental, against women have become a norm since ages. For instance, sati pratha, practice of dowry, pardapratha, female infanticide, wife burning, sexual violence, sexual harassment at work place, domestic violence and other varied kinds of discriminatory practices; all such acts consists of physical as well as mental element.

The reasons for such behaviour against women are many but the most important one are the male superiority complex and patriarchal system of society. Though to eliminate these ill practices and discrimination against women various constitutional and legal rights are there but in reality there are a lot to be done. Several self-help groups and NGOs are working in this direction; also women themselves are breaking the societal barriers and achieving great heights in all dimensions: political, social and economic. But society as a whole has still not accepted women as being equal to men and crimes or abuses against women are still on the rise. For that to change, the society's age-old deep-rooted mind set needs to be changed through social conditioning and sensitization programmes.

Therefore, the concept of women empowerment not only focuses on giving women strength and skills to rise above from their miserable situation but at the same time it also stresses on the need to educate men regarding women issues and inculcating a sense of respect and duty

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<sup>4</sup>women-empowerment-in-india- Author: Prof. V.P Gupta.

towards women as equals. In the present write-up we will try to describe and understand the concept of Women Empowerment in India in all its dimensions.

### **CHAPTER 3:**

#### **WOMEN EMPOWERMENT IN INDIA**

##### **HISTORICAL BACKGROUND:**

From ancient to modern period, women's condition-socially, politically and economically- has not remained same and it kept changing with times. In ancient India, women were having equal status with men; in early Vedic period they were very educated and there are references of women sages such as Maitrayi in our ancient texts. But with the coming of famous treatise of Manu i.e. Manusmriti, the status of women was relegated to a subordinate position to men.

All kinds of discriminatory practices started to take from such as child marriage, devadashipratha, nagarvadh system, sati pratha etc. Women's socio-political rights were curtailed and they were made fully dependent upon the male members of family. Their right to education, right to work and right to decide for themselves were taken away.

During medieval period the condition of women got worsened with the advent of Muslim rulers in India; as also during the British period. But the British rule also brought western ideas into the country.<sup>5</sup>

A few enlightened Indians such as Raja Ram Mohun Roy influenced by the modern concept of freedom, liberty, equality and justice started to question the prevailing discriminatory practices against women. Through his unrelenting efforts, the British were forced to abolish the ill-practice of Sati. Similarly several other social reformers such as Ishwar Chandra Vidyasagar, Swami Vivekananda, Acharya Vinoba Bhave etc. worked for the upliftment of women in India. For instance, the Widow Remarriage Act of 1856 was the result of Ishwar Chandra Vidyasagar's movement for improving the conditions of widows.

Indian National Congress supported the first women's delegation which met the Secretary of State to demand women's political rights in 1917. The Child Marriage Restraint Act in 1929

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<sup>5</sup>A Critical Analysis of Gender Equality in India, NailaKabeer, Volume 13, 1st March, 2005.

was passed due to the efforts of Mahhommad Ali Jinna, Mahatma Gandhi called upon the young men to marry the child widows and urged people to boycott child marriages.<sup>6</sup>

During freedom movement, almost all the leaders of the struggle were of the view that women should be given equal status in the free India and all types of discriminatory practices must stop. And for that to happen, it was thought fit to include such provisions in the Constitution of India which would help eliminate age-old exploitative customs and traditions and also such provisions which would help in empowering women socially, economically and politically.

#### **CHAPTER4:**

#### **CONSTITUTION OF INDIA AND WOMEN EMPOWERMENT<sup>7</sup>**

India's Constitution makers and our founding fathers were very determined to provide equal rights to both women and men. The Constitution of India is one of the finest equality documents in the world. It provides provisions to secure equality in general and gender equality in particular. Various articles in the Constitution safeguard women's rights by putting them at par with men socially, politically and economically.

The Preamble, the Fundamental Rights, DPSPs and other constitutional provisions provide several general and special safeguards to secure women's human rights.

#### **Preamble:**

The Preamble to the Constitution of India assures justice, social, economic and political; equality of status and opportunity and dignity to the individual. Thus it treats both men and women equal.

#### **Fundamental Rights:**

The policy of women empowerment is well entrenched in the Fundamental Rights enshrined in our Constitution. For instance:

Article 14 ensures to women the right to equality.

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<sup>6</sup>essay-on-women-empowerment-in-India Author: Puja Mondal

<sup>7</sup>gender-equality-and-rights-a-critical-analysis-of Author: Dr. M. Janaki

Article 15(1) specifically prohibits discrimination on the basis of sex.

Article 15(3) empowers the State to take affirmative actions in favour of women.

Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office.

These rights being fundamental rights are justiciable in court and the Government is obliged to follow the same.

### **Directive Principles of State Policy:**

Directive principles of State Policy also contains important provisions regarding women empowerment and it is the duty of the government to apply these principles while making laws or formulating any policy. Though these are not justiciable in the Court but these are essential for governance nonetheless. Some of them are:

Article 39 (a) provides that the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood.

Article 39 (d) mandates equal pay for equal work for both men and women.

Article 42 provides that the State to make provision for securing just and humane conditions of work and for maternity relief.

### **Fundamental Duties:**

Fundamental duties are enshrined in Part IV-A of the Constitution and are positive duties for the people of India to follow. It also contains a duty related to women's rights:

Article 51 (A) (e) expects from the citizen of the country 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.

### **Other Constitutional Provisions:**

Through 73rd and 74th Constitutional Amendment of 1993, a very important political right has been given to women which is a landmark in the direction of women empowerment in



India. With this amendment women were given 33.33 percent reservation in seats at different levels of elections in local governance i.e. at Panchayat, Block and Municipality elections.

Thus it can be seen that these Constitutional provisions are very empowering for women and the State is duty bound to apply these principles in taking policy decisions as well as in enacting laws.<sup>8</sup>

### **Government Policies and Schemes for Women Empowerment<sup>9</sup>**

Whatever improvement and empowerment women have received is especially due to their own efforts and struggle, though governmental schemes are also there to help them in their endeavour.

In the year 2001, the Government of India launched a National Policy for Empowerment of Women. The specific objectives of the policy are as follows:<sup>10</sup>

- Creation of an environment through positive economic and social policies for full development of women to enable them to realize their full potential.
- Creation of an environment for enjoyments of all human rights and fundamental freedom by women on equal basis with men in all political, economic, social, cultural and civil spheres.
- Providing equal access to participation and decision making of women in social political and economic life of the nation.
- Providing equal access to women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public life etc.
- Strengthening legal systems aimed at elimination of all forms of discrimination against women.
- Changing societal attitudes and community practices by active participation and involvement of both men and women.
- Mainstreaming a gender perspective in the development process.
- Elimination of discrimination and all forms of violence against women and the girl child.

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<sup>8</sup>Author: Anita Fabiyola

<sup>9</sup>LEGISLATIVE-AND-JUDICIAL-PERSPECTIVE-OF-WOMEN-EMPOWERMENT Author:Dr. SarojChabbra

<sup>10</sup>Author: Dr.AnjuTyagi

- Building and strengthening partnerships with civil society, particularly women's organizations.

The Ministry of Women and Child Development is the nodal agency for all matters pertaining to welfare, development and empowerment of women. It has evolved schemes and programmes for their benefit. These schemes are spread across a very wide spectrum such as women's need for shelter, security, safety, legal aid, justice, information, maternal health, food, nutrition etc., as well as their need for economic sustenance through skill development, education and access to credit and marketing.

Various schemes of the Ministry are like Swashakti, Swayamsidha, STEP and Swawlamban enable economic empowerment. Working Women Hostels and Creches provide support services. Swadhar and Short Stay Homes provide protection and rehabilitation to women in difficult circumstances. The Ministry also supports autonomous bodies like National Commission, Central Social Welfare Board and RashtriyaMahilaKosh which work for the welfare and development of women. Economic sustenance of women through skill development, education and access to credit and marketing is also one of the areas where the Ministry has special focus.<sup>11</sup>

## **CHAPTER5:**

### **LEGISLATIVE INITIATIVES TOWARDS EMPOWERMENT OF WOMEN IN INDIA**

In India there are numerous laws aimed at empowerment of women in the areas of personal, labour, service and criminal and social economic matters. The Fundamental Law of the land namely Constitution of India guarantees equality for women. It would be proper to refer some of the most important legislations pertaining to empowerment of women.<sup>12</sup>

#### **1. Constitution of India, 1950:**

The Constitution of India not only guarantees equality to women but also empowers the State to adopt measures to positive discrimination in favour of women. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights,

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<sup>11</sup>womens-empowerment-in-india/ Author: By ReechaUpadhyay

<sup>12</sup>EMPOWERMENT OF WOMEN IN INDIA: A CRITICAL ANALYSIS. Author:MAMTA MOKTA

Fundamental Duties and Directive Principles. Article 14 of the Constitution of India guarantees equality before law.

Article 15 prohibits discrimination on the grounds of sex. Article 16 states about equality of opportunity for all citizens in matters relating to employment. The 73rd and 74th amendments to the Constitution of India provided for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (108th Constitution Amendment) reserving 33 per cent in Parliament and State Legislature is in the pipeline.<sup>13</sup>

## **2. Indian Penal Code, 1860:**

Sections 292, 293 and 294 provide for punishment in sale and exhibit of obscene books objections and for obscene act in public place.

Section 304(b) deals about murder of women in connection with demand of dowry. Sections 312 to 318 deal about punishment for causing miscarriage. Section 354 provides punishment for outraging the modesty of any women, S. 366 deals about kidnapping for marriage against her will. Section 366-A deals about procuration of minor girls for sexual purpose. Section 376 deals about punishment for rape. Section 494 protects women from bigamy. Section 497 deals about protection of married women from adultery. Section 498-A of Indian Penal Code deals about subjecting women to cruelty by her husband or relatives and her husband and S.509 provides punishment for uttering words and gesture or act intended to insult the modesty of a woman.

**3. Code of Criminal Procedure, 1973:** Under S. 125, Code of Criminal Procedure, a woman has got right to maintenance.

**4. Indian Evidence Act, 1872:** Sections 113(a), 113(b) and 114(c) provide for presumptions as to abetment of suicide by a married woman within 7 years of marriage, as dowry death of a woman and as to absence of consent of woman for sexual intercourse.

**5. Hindu Adoption Maintenance Act, 1956:** Section 18-A provides for obligations of husband to maintain his wife. Section 18(2) provides right of wife to live separately and S. 19 provides for maintenance of widow by her father-in-law.

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<sup>13</sup>J.N Pandey, Constitution of India, 51st Edition, 2014

**6. Hindu Succession Act, 1956:** Section 14 of the Act provides for property of female Hindu to be her absolute property. **Section 23** provides right of female legal heirs in the dwelling house.

**7. The Hindu Minority and Guardianship Act, 1956:** Section 6 of the Act provides for mother as a natural guardian for minors below 5 years.

**8. The Hindu Marriage Act, 1955:** Section 13(2) of the Act provides for wife to present a petition for divorce. Section 13(b) provides equal right for wife for getting divorce by mutual consent.

Section 24 of the Act provides for relief for interim maintenance and expenses. Section 25 of the Act provides for right to a wife to seek permanent alimony and maintenance and S. 26 of the Act provides right to claim custody of children.

**9. The Dowry Prohibition Act, 1961:** Under the provisions of this Act demand of dowry either before marriage, during marriage and or after the marriage is an offence.

**10. The Muslim Women (Protection of Right on Divorce) Act, 1986:** Under the provisions of the Act provides for maintenance of women by the relatives after the iddat period.

**11. The Factories Act, 1948:** The provisions of this Act provides for health, safety, welfare, and working hours for women labourer working in factories.<sup>14</sup>

## **CHAPTER 6:**

### **INTERNATIONAL COMMITMENTS OF INDIA AS TO WOMEN**

#### **EMPOWERMENT**

India is a part to various International conventions and treaties which are committed to secure equal rights of women.

One of the most important among them is the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), ratified by India in 1993.

**Other important International instruments for women empowerment are:** The Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action (1995) and the Outcome Document adopted by

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<sup>14</sup>Judicial-Activism-and-Women-Empowerment-In-India.html Author: Mohan Raj

the UNGA Session on Gender Equality and Development & Peace for the 21st century, titled “Further actions and initiatives to implement the Beijing Declaration and the Platform for Action”. All these have been whole-heartedly endorsed by India for appropriate follow up.

These various national and International commitments, laws and policies notwithstanding women’s situation on the ground have still not improved satisfactorily. Varied problems related to women are still subsisting; female infanticide is growing, dowry is still prevalent, domestic violence against women is practised; sexual harassment at workplace and other heinous sex crimes against women are on the rise.

Though, economic and social condition of women has improved in a significant way but the change is especially visible only in metro cities or in urban areas; the situation is not much improved in semi-urban areas and villages. This disparity is due to lack of education and job opportunities and negative mind set of the society which does not approve girls’ education even in 21st century.<sup>15</sup>

## **CHAPTER7:**

### **JUDICIAL ACTIVISM AND WOMEN EMPOWERMENT IN INDIA**

Gender injustice is a problem that is seen all over the world. Whatever the causes may be, it is our duty of humans to protect the human rights of those who are victims. Women have been ill-treated in every society for ages and India is no exception. Indian judiciary feel convinced of the need for women's empowerment-by law and by legal means. The Constitution of India has taken a long leap in the direction of eradicating the lingering effects of such adverse forces so far as women are concerned. Our Constitution makes express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation.<sup>16</sup>

According to analytical jurisprudence a court merely found the law or merely interpreted the law. Judges are applying the discretionary power to provide better justice to women in the new context of the Socio-Economic conditions. Judiciary has played an active role in

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<sup>15</sup>Empowerment\_of\_Women\_in\_India\_A\_Critical\_Analysis Author: Dr. B. Nagaraja

<sup>16</sup>supreme-courts-on-womens-rights

enforcing and strengthening the constitutional goals towards protection/rights of the women of the land.<sup>17</sup>

➤ **Vishaka Vs State of Rajasthan**<sup>18</sup>

Bhanwari Devi, a social worker from Rajasthan, was brutally gang-raped by five men for preventing a child marriage. Determined to seek justice, she decided to go to court. In a shocking decision, the trial court acquitted all five accused. Vishaka, a Group for Women's Education and Research, took up the cause of Bhanwari Devi. It joined forces with four other women's organisations, and filed a petition before the Supreme Court of India on the issue of sexual harassment at the workplace.

On August 13, 1997, the Supreme Court commissioned the Vishaka guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women.

➤ **Mary Roy Vs State of Kerala**<sup>19</sup>

Women from the Syrian Christian community in Kerala were prevented from inheriting property due to patriarchal traditions. This decree was challenged by Mary Roy, a woman's right activist and educator.

After the demise of her father, she filed a case against her elder brother when she was denied equal share in the family's inheritance. Though the plea was rejected by the lower court, the Kerala High Court overruled the previous judgment.

In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

➤ **Laxmi Vs Union Of India**<sup>20</sup>

In 2006, Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013.

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<sup>17</sup>Women Empowerment in India and Judicial Activism Author: R.GATTIAH

<sup>18</sup>(1997) 6 SCC 241As

<sup>19</sup>1986 AIR 1011, 1986 SCR (1) 371

<sup>20</sup>WP (CrI.) No. 129 of 2006

The ruling banned over the counter sale of acid. Dealers can sell the acid only if the buyer provides a valid identity proof and states the need for the purchase. It is mandatory for the dealer to submit the details of the sale within three days to the police. It also made it illegal to sell acid to a person below 18 years.

➤ **Centre for enquiry into Health and Allied themes (CEHAT) Vs Union of India**<sup>21</sup>

With the advent of pre-natal diagnostic techniques that could determine the sex of a fetus, the growing trend of aborting female fetuses was observed. In a bid to curtail female feticide, the government of India issued the PNDT Act in 1996.

The provisions of the PNDT Act, however, were not being effectively implemented by the state and central government.

The Centre for Enquiry into Health and Allied themes filed a petition which led to the Supreme court directing the Central and State governments to enact the provisions of the act immediately, and banned all advertisements relating to pre-natal sex determination techniques.

➤ **ShamimaFarooqui v. Shahid Khan [6 April 2015]**<sup>22</sup>

Supreme Court held that women cannot be treated as beggars and their grace cannot be lowered in rightful claim to maintenance after divorce if the husband has since then retired from his service.

## **CHAPTER 8:**

### **VERIFICATION OF HYPOTHESIS:**

The judiciary has been efficient in protecting women's rights and empowerment of women.

### **CONCLUSION**

Thus road map for women empowerment is there but still we have miles to go on this path of empowerment. We hope that in coming years ahead women empowerment will prove its worth. Women are an integral part of a society. They play an important role in determining the destiny of a nation. It has been rightly said by Swami Vivekanand, "The Best thermometer to the progress of nation is its treatment of women". Therefore, due recognition

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<sup>21</sup>Writ Petition (civil) 301 of 2000

<sup>22</sup>CRIMINAL APPEAL NOS.564-565 OF 2015

becomes all the more important. Every person should come forward to ensure equal status for women in all spheres of life.

### **SUGGESTIONS**

- Building public awareness and support is crucial for the judicial activism to be successful.
- The National Commission for Women and the National Human Rights Commission could be important allies in addressing violations of women's rights.
- Judiciary should be more vigilant in protecting the rights of women
- Judiciary should take stringent decision in punishing the offenders
- Make more positive judgement in favour of women victims.

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