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WOMENS RIGHT TO EQUALITY: COMPARITIVE ANALYSIS BETWEEN INDIA AND U.S.A

AUTHORED BY - MANSI PAHAL

ABSTRACT

Equal rights have revolved around women. Women are exceptional in almost all communities. Women can be denied most of their fundamental rights by an unfair administrative system based on discriminatory or prejudiced attitudes, practices, and concepts that create prejudicial inequalities between men and women. Despite legislation and the judiciary's progressive interpretations, women confront major family and societal disadvantages that emerge in systems. Women are still treated differently in society. Given the feminist movement's rising power, the researchers examined Indian legislation to better understand equality laws meant to address historical and continuing injustice. India is determined to end the centuries-long exclusion of women from politics, education, and work by utilizing affirmative action and protecting discrimination. Thus, its American equivalent is comparable. Women have representational reservations in government, municipal corporations, and public jobs under the Indian constitution. The U.S. Constitution, however, guarantees equal protection without specifying who benefits. Each country's rulings contain distinct equality notions based on its constitution and culture. This research examines "how the different equality guarantees" have been applied by the Indian and U.S. Supreme Courts to women's rights issues.

Keywords: Women's rights, inequality, fundamental rights, discrimination, Constitution, Supreme Court.

CHAPTER-I

1.1 INTRODUCTION

Equality is often proclaimed but rarely examined. “Women's inequality to males, half of humanity's inequality to the other half, with each gathering comprising many variances and disparities, strongly represents the traditional equality model's failure”. In many countries, including the U.S., formal equality is its common-sense meaning. According to Aristotle, equality involves treating likes like and unlike unlike¹. Equality is "treacherously easy"². However, society's role in promoting equality is debated. In many places, programs that give people preferential treatment based on their gender or race are seen as unfair and against the right to equality.

Equality concerns revolve upon women's rights. Thus, India's Constitution demands women's equality before the law, as does the U.S. The U.S. Constitution guarantees equal protection without specifying recipients. “Lawyers, civil society groups, and concerned individuals worldwide have utilized their constitutions to speak out against discriminatory speech and practices, empower people to assert their right to equality, and launch revolutionary countrywide court challenges”. With the feminist movement getting stronger, the researcher chose Indian jurisdiction to investigate equality legislation aimed to correct historic and ongoing injustice. Indian affirmative action and protective discrimination to end decades of women's exclusion from politics, education, and public jobs is remarkable. Thus, its American counterpart is comparable. This research examines how the Supreme Court of India and the U.S. Supreme Court have interpreted and implemented equality guarantees to gender justice concerns. Both Courts' verdicts reflect distinct equality assumptions. The U.S. Supreme Court prioritizes formal equality, which entails treating similarly situated people equally. However, certain rulings show the court's departure from formal equality. According to experts, equality of opportunity is key in the U.S.³.

1.2 STATEMENT OF PROBLEM

Both the Indian and U.S. Constitutions provide a guarantee of equality which acts as a safety valve against gender-discrimination practices. However, to address gender inequality in the

¹ ARISTOTLE, *THE NICOMACHEAN ETHICS OF ARISTOTLE* 20-21 (Penguin Classics 2004).

² Holtmaat, R, *Cedaw and the European Union's Policy in the Field of Combating Gender Discrimination*, 12 MJECL. 399, 421-423 (2005)

³ John Hasnas, *Equal Opportunity, Affirmative Action, and the Anti-Discrimination Principle: The Philosophical Basis for the Legal Prohibition of Discrimination*, 71 FORDHAM L. REV. 423, 429-41 (2002).

context of existing in-equilibrium between men and women, both the Constitutions entail provisions different in nature.

1.3 HYPOTHESIS

There is a stark contrast in the equality jurisprudence reflecting the differences between the U.S. and India's constitutional regimes and in particular the approach of the Apex courts in interpreting gender-injustice matters in both countries.

1.4 RESEARCH OBJECTIVES

The researcher's primary aim is:

1. To develop an in-depth comprehension of how different equality theories help interpret equality laws.
2. To understand and analyse the notion of equality in the context of gender justice with a scope limited to women.
3. To analyse both the jurisdictions' approach to addressing women inequality issues.
 - (a) Thus, the jurisprudence laid down by the U.S. and the Indian Supreme courts is the focal point of this study.

1.5 RESEARCH METHODOLOGY

The researcher has adopted doctrinal methodology to conduct the research and has employed analytical and critical tools of research. Researcher has relied on primary and secondary sources of data which involves collection of data from various online and offline sources like international cases, statutes, regulations and the books written by various recognized and reliable authors and articles available on different legal databases. Finally, the researcher has made use of comparative study by comparing the laws and jurisprudence followed in U.S. and India.

1.6 SCOPE AND LIMITATION OF RESEARCH

Although Equality's notion is a vast ever-progressing concept and indispensable to many other areas of law; Treating all laws, case laws, and doctrines concerning the development of the concept would not be feasible. However, the researcher believes that an overview of constitutional jurisprudence study can guide the same concept in another judicial area. To achieve the above objectives, the researcher shall restrict this work's scope to the study of

Equality Jurisprudence adopted by the U.S. and the Indian Supreme Courts while interpreting constitutional Equality before law limited to women in both countries.

The fundamental limitations to the research resulting from lack of time, resources and money are as under:

- The researcher has done extensive literature survey but the researcher could not study each and every literature with respect to the subject.
- The researcher intends to limit scope to only the fundamental right of equality of women and no other rights such as untouchability, public employment etc.
- This research is therefore limited only to the selected problems posed in this research.

1.7 LITERATURE REVIEW

1. The concepts of equal protection and equality before the law are not interchangeable. When deciding what these phrases signify, we must keep in mind the Constitution's historical and organisational background.

-OECD (Issues in International Taxation Issues Related to Article 14 of the OECD Model Tax Convention) 2000.

2. "Equality before the law" is a principle that originated in English Common Law. There is no static definition of equality; rather, it develops and shifts throughout time. Included are Articles 3 and 39, as well as Articles 39A, 41, and 46, and Articles 15–18.

- Hajek (Frailty and Autonomy among the Oldest Old) 2021.

3. There are a variety of common understandings of the provision requiring legal equality for all. One possible reading of "equality before the law" is that it relates only to the fact that everyone is equally subject to the same set of laws.

-Iwaki, Katsuma (A Novel Hyperspectral Imaging System for Intraoperative Prediction of Cerebral Hyper perfusion Syndrome after Superficial Temporal Artery-Middle Cerebral Artery Anastomosis in Patients with Moyamoya Disease) 2021.

4. Basic concepts of equality include the guarantee of non-discriminatory treatment and access to equal opportunities. Disparities in equality can arise on the basis of race, sex, health, religion, family structure, age, politics, disability, culture, sexual orientation, and philosophical ideas.

-Sofou (The Phenotypic Variability and Natural History of NARS2 Associated Disease) 2021.

5. Emphasize that, to achieve gender equality and women's empowerment by the year 2015 was one of the eight "Millennium Development Goals" established by the UN at its Millennium Summit in 2000. However, in a nation like India, these objectives are a long way from being

realised. Women in India typically do not obtain their fundamental right to dignity, much less consideration for the gender parity issue. In this study, along with related subjects, the underlying patriarchal structure of women's rights in India is studied. The article makes an attempt to address a few of the issues Indian women encounter, such as dowry, female foeticide, being denied inheritance rights, selling and trafficking women, etc. The article's goal is to develop remedies that continuously provide women the same power as men.

- Saryal Sutapa, (*Women's Right in India: Problems and Prospects*) 2014.

6. Discrimination based on gender is prohibited by the Indian Constitution. Additionally, India has ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which calls for not only legal non-discrimination but also equal opportunity and positive state action. The author feels that this book is a manual for ensuring women's safety and establishing gender equality at home, in society, and in the political, social, and business spheres.

-Nisha Aggarwal (*Her Right to Equality: From Promise to Power*) Volume 6, 2021 ed.

7. The author attempts to analyse the issues of opportunities and constraints the women employees in the Information Technology sector in India face, which resulted in women empowerment. The author examines the emergence of Information Technology as a potential employment opportunity for women befitting their work environment and offering, in theory, least gender discrimination. The research report goes on to discuss how, despite this sector's generally successful efforts to be gender-neutral, there is still room for improvement, particularly at the senior level, and this sector needs to take additional care to eradicate problems like "Feminization" and "Glass ceiling" etc.

-Asmita Bhattacharyya, Dr. Bhola Nath Ghosh (*Marginalities in India*) 2012 ed.

8. Gender quotas as a means of redressing the underrepresentation of women in politics and business have come under increased scrutiny as a result of this knowledge. But there are still issues with their effectiveness. The thorough empirical contribution to this discussion is provided by *The Gendered Effects of Electoral Institutions*. The book has value, but Linnea Sandström Lange advises using it in conjunction with other materials. It evaluates the effects of relatively recent policies, but the conclusions that can be reached are constrained by the study's extremely quantitative methodology and the short time span of the research that underlies it.

- [Leslie Schwindt-Bayer and Miki Caul Kittilson](#) (***The Gendered Effects of Electoral Institutions: Political Engagement and Participation***) 2013 ed.

9. The author talks about pertinent provisions in the Indian Constitution as well as global human

rights norms. The analysis examines specific Constitutional provisions in connection to those found in foreign treaties. The current study aims to define human rights and the perspectives of numerous authors from throughout the world.

-Harish Chandra (International Human Rights Regime and India) 2012 ed.

10. The fifth Sustainable Development Goal (SDG) of the UN, titled "Gender Equality," calls for the abolition of all forms of prejudice against women and girls. The necessity for equitable opportunities for leadership at all levels of decision-making in political, economic, and public life is addressed together with all forms of abuse, unpaid and unrecognised caregiving, and domestic work. "Sexuality," "Politics of Difference," and "Care, Work, and Family" are our three core topics of inquiry'.

-Christa Binswanger and Andrea Zimmermann (Transitioning to Gender Equality) 2021 ed.

1.8 TENTATIVE CHAPTERISATION

I. INTRODUCTION –

The Researcher in this chapter shall give a background to the aspects that will be covered in the paper and divide the discussion into two parts as: Formal & substantive equality theories; Brief difference in both countries w.r.t constitutional framework and approach in areas of gender inequalities.

II. RIGHT TO EQUALITY W.R.T. WOMEN IN INDIA –

The Researcher in this chapter shall give an overview of the gender inequalities in the country and provide an analysis of Constitutional Provisions: understanding bare text of Indian Constitution; Substantive inequalities due to Protectionist approach?

III. RIGHT TO EQUALITY W.R.T. WOMEN IN US –

The researcher in this chapter, comparing to the notions of equality discussed in relation to India, shall discuss the Constitutional provisions of U.S. Constitution; Theory of Separate Sphere and False Equivalence.

IV. EVOLVING JURISPRUDENCE: PLUGGING OR WIDENING THE GAP –

Neoliberal appropriation to ideals of equality. Theory of positive grants to substantial model of Equality.

V. CONCLUSION

CHAPTER-II

2.1 THE RIGHT TO EQUALITY W.R.T. WOMEN IN INDIA

Gender equality has always been a transient idea, crushed by society's prejudices, which delighted in restricting women's rights. Gender-neutral legislation has shaped civilization throughout history. Before the 19th century, patriarchal ideas and practices oppressed women. Feminist identity knowledge and recognition of their situation existed. This knowledge did not lead to organized self-defence. The Muktabai, Ahilyabai Holkar, Rani Lakshmbai of Jhansi, and others questioned the establishment. Women throughout the chronicle try to break free from their birth right of oppression.

In India, women are revered as goddesses. However, cultural respect seldom leads to gender equality. Laws and religion in this country are intertwined because the former receives legislative backing from the latter. The Indian Constitution recognizes this developing India and guides national laws and policies. The founder enshrined this crucial right in the constitution. India's Constitution guarantees women's equality. It permits positive discrimination for women to offset their socio-economic, educational and political disadvantages.⁴

India, a growing nation, fights discrimination. The nation has established many laws to promote gender equality. India has a gender gap in parliament and government seats notwithstanding political empowerment. Women in the highest courts will improve justice. The Supreme Court and high courts of India have no female quotas. Suppressing women needs immediate rectification. India's Supreme Court Chief Justice Ramana supports gender equality and court jurisprudence, which is helpful for women's equality.

2.2 Understand Bare Text

This chapter discusses India's gender equality issues. Understanding India's constitutional underpinning for women's substantive equality is crucial to understanding its complexity and dynamics. All around us, women in India have been structurally and historically disadvantaged. The Constitutional Founders contained women-only clauses. There are several equality clauses in the Indian Constitution that try to fix the long-standing imbalance between men and women, which could become a social evil.

⁴ INDIA CONST. art. 14, 15, cl. 3, Art. 16, Art 39, cl. a.

The Indian Supreme Court has viewed women's equality laws from both progressive and myopic views, with the former being preferable. Its constitutional interpretations favour protectionism. The Apex Court respects the Indian Constitution's Part III Articles 14, 15, and 16. As noted in the preceding chapter, Article 15(3)'s unique positive award structure provides women with equality. Article 15(3) mandates "women-friendly" laws. This phrase emphasizes that the state is accountable for eradicating historical and systemic women's discrimination through "protective" and proactive policies. "Without a substantive equality approach in the judicial interpretation of Article 15 (3), there is no assessment of whether the laws "protect" women or create "protectionist" measures to safeguard "good" women's honour and chasity".⁵ It permits new interpretations and reconciliation with western jurisdictions and international accords.

India's Constitution protects vulnerable people who have been denied basic rights. Despite the Constitution's equality provision, impoverished women suffer worse. Equality is woven into the Indian Constitution. Like the U.S. Constitution, Article 14 begins with equal protection of the laws. Article 15(1) prohibits sex discrimination, while Article 15(3) encourages women and children. The High Court and Supreme Court have Writ jurisdiction under Part III of the Constitution.⁶ Thus, Article 15(3) allows the Legislature to defend women. On the same hand, the judiciary has used "Article 15(3) as armour for the benefit of women".⁷ The Constitution's substantive provisions were met through the Domestic Violence Act of 2005 and other laws. Article 16 of Part III outlaws' public employment discrimination, and Article 16(3) adds provisions for the special and economically backward class. Part IV of the Constitution extends substantive equality, although Part III is justiciable.

Legislators must evaluate Articles on women's liberation, maternity aid, equal pay, and national administration in Part IV of the Constitution's Directive Principles of State Policy. The Constitution of India also prohibits "derogatory practices to women's dignity".⁸ It's crucial because society promotes misconceptions and outdated gender norms that hurt women, even in the 21st century, when India considers itself a developed nation. The Constitutional forefathers may have intended more equality. They went beyond equality to obtain it.

⁵ Oishik Sircar, *The Fallacy of equality*, 5 CCDS, 60, 67-68 (2008).

⁶ The High Court has wider powers under Article 226 for writ jurisdiction compared to Supreme Court's power under Article 32.

⁷ Shayara Bano v. Union of India, (2017) 9 SCC 1 (India).

⁸ INDIA CONST. art. 15, cl. a, cl. e.

The U.S. and Indian constitutions differ substantially. This gap arises from sections that recognize that formal equality in India is inadequate due to historical injustices and the social environment of the 21st century. Gender attitudes and rights are impacted by legislation. However, the Supreme Court broadens domestic and international law. In some Indian judgements, Articles 15(3) and 15(4) have been unequivocally construed significantly without denying equality. Courts require such legislation to rectify historical injustices in unequal societies. These laws eliminate inequality.

2.3 Substantive Inequalities Due to a Protectionist Approach?

In this chapter, the researcher exhibits the "fallacy of equality," where judicial interpretation promotes "formal equality" and sustains "substantive inequality" in disadvantageously positioned women's lives despite the constitutional promise of equal protection of the law. Protectionist regimes are often praised for protecting women.⁹ To achieve equality, the system eliminates diversity. India's Constitution ensures equality and non-discrimination.¹⁰ Is it only "Formal Equality" but "Substantial Inequality" for impoverished women? Protectionism may legalize gender norms rather than eliminate injustice. Indian constitutionalism's tough history lends credibility to Articles 14 and 15. Constitutional protections have expanded to safeguard various human rights and overturn regulations that violate equality and non-discrimination. Even these rule of law underpinnings crumble when faced with historical and structural difficulties. The protectionist system can't address this enormous disadvantage for women. Only meaningful interpretation outside the system can repair it.

"By scientific and legal method and rigor, and its portrayal as a unified discipline with an internally consistent logic that is transcendent and distinct from reality, the law claims authority even while it often fails to safeguard individuals' rights". Victims of the law use this delusion to claim their rights. It doesn't imply these ideas should be discarded; it merely requires wiser law-related politics.¹¹

⁹ Oishik Sircar, *supra* note 5.

¹⁰ *Id.*

¹¹ TARUNABH KHAITAN, A THEORY OF DISCRIMINATION LAW, 159–162 (Oxford University Press 2015).

CHAPTER III.

3.1 RIGHT TO EQUALITY W.R.T. WOMEN IN US

Equality and liberty were wartime aims of the fourteenth amendment. The amendment prohibited states and mandated equality. This amendment was the first to use "equal" aspirational in the Constitution. The fourteenth amendment secured liberty and equality, the two centrepieces of the U.S. constitutional system, because both reflected the nation's formative battles. Despite economic changes that have transformed women's lives in industrialized nations, cultural views (particularly about women's labour) and legal precedents nevertheless maintain sexual inequality. Implementing legislation forbidding employment discrimination; maternity rights; child-care centres for working moms; tax exemptions for child-care costs; equal education; and equal job-training possibilities for impoverished women were all agreed upon by the Bill of Rights for Women. Women's political leadership has led to various gender equality and justice measures. Demands for swift approval of the Equal Rights Amendment (ERA) to guarantee sex-equality rights have also caused controversy. Another requested more abortions and contraception. Many jurists and a large section of society believe that a woman's principal job in society is to care for children because practically all women can conceive and birth children.¹² This biological determinism has led to communal attitudes and prejudices that discriminate against women. It underpins the natural theory. Society perpetuates these sex stereotypes.

3.2 The Nascent Separate sphere approach

Political thinkers and judges still deny women complete social justice based on this notion.¹³ This chapter examines the U.S. Supreme Court's new approach following the Fourteenth Amendment. The Court's early jurisprudence was protectionist. The separate sphere or benevolent guardian regime tries to distinguish men and women based on inherent distinctions.¹⁴ Given the premise of natural differences, this approach is short-sighted and regressive and does more harm than good. The doctrine of distinct domain has long hampered women's equality jurisprudence and hindered progress.¹⁵ The Court's early jurisprudence on women's equality was more benign than equalizing.

¹² Brooks v. Canada Safeway Ltd., (1989) 1 S.C.R. 1219, 1243 (1989) (Can).

¹³ Donna M. Eansor, *To Bespeak the Obvious: A Substantive Equality Analysis of Reproduction and Equal Employment*, 6 Notre Dame J.L. Ethics & Pub. Pol'y 417, 418-419 (1992).

¹⁴ Kathleen M. Sullivan, *Constitutionalizing Women's Equality*, 90 Cal. L. Rev. 735, 738-39 (2002).

¹⁵ *Id.*

3.3 Intermediary Test

These decisions sought to end sex-based exams. The court examined how suspects were sex-grouped. It also abandoned its clear sex-based protectionist mentality. In *Craig v. Boren*,¹⁶ the majority concluded that intermediate-level scrutiny should be employed to evaluate whether such classifications fulfil the Equal Protection Clause. Sex-based classifications must complement government purposes to satisfy the Constitution's equality principle. This intermediate test regulates Equal Protection Clause sex classification disputes. Relevant gender categorization must serve government aims. This example challenges gender stereotypes that ignore competence.¹⁷ Gender prejudices drive early decisions.

This judgement expanded the area of scrutiny to more fundamental social concepts, since only a physical nature-based protectionist regime would contradict the Constitution's spirit of equality and be dishonest. Thus, these judgements, which made investigation harder by recognizing the limited significance of gender roles, undoubtedly set the stage for current jurisprudence. Judges may have reconsidered gender roles. Therefore, legal judgements should adjust to these cultural changes and take a different approach when equality issues are brought before the Court, notably those affecting women.¹⁸ *Craig* may encourage progressive actions. The *Craig* verdict showed how society's protectionist worldview with gender roles as norms screwed up the gender equation in the name of equality. The intermediate examination overturned several sex classifications laws in *Craig*.

¹⁶ *Craig v. Boren*, 429 U.S. 190 (1976).

¹⁷ Catharine A. MacKinnon, *Substantive Equality: A Perspective*, 96 MINN. L. REV. 1 (2011).

¹⁸ *Id.*

CHAPTER IV.

4.1 JUDICIAL INTERPRETATION: PLUGGING OR WIDENING THE GAP?

INDIAN SCENARIO

Formal equality theory maintains gender classifications based on substantial societal disparities. The Indian Supreme Court treats equality disputes broadly because the Constitution requires protective discrimination to promote equality.¹⁹ In patriarchal India, Article 15(3) of the Indian constitution establishes protective discrimination instead of formal equality. Article 15(3) states that affirmative action is not a sin to eliminate women's unequal prospects.²⁰ Thus, judges should ensure equality.

The constitutional framers realized that legal equality would not equalize women or proceed in an idealistic direction, so they required substantive measures, positive discrimination, and vulnerable rights. The Supreme Court's judgements are evident in Article 15(3)'s protectionist approach. Thus, the rulings favour the government's affirmative action measures for women's reservations. Authorizations allow substantive equality and protective discrimination. The Supreme Court backed municipal, government, and cooperative seat reservations. These verdicts demonstrate that protective discrimination leads to equality. The Government of Andhra Pradesh v. Vijaya Kumar upheld public sector employment reservations on the substantive equality approach²¹, highlighting Article 15 (3) and its interaction with other constitutional provisions. The Court stressed Article 15(3) as the remedy for inequitable anomalies in this ruling.²² Article 15(3) emphasizes equality, not opportunity. Equal opportunity demands an equal setup. The Indian Constitution's potential to empower women underpins these rulings. Maybe this is why Article 15 says that "sex" has put women down and taken away their basic rights to equality.

India's constitution can reduce women's subjugation. Since any other approach would violate equality, constitutional jurisprudence supports a substantive model based on Article 15(3) read

¹⁹ ARCHANA PARASHAR, WOMEN AND FAMILY LAW IN INDIA: UNIFORM CIVIL CODE AND GENDER EQUALITY, (Thousand Oaks, CA: Sage Publications 1992).

²⁰ INDIRA JAISING, SUPREME BUT NOT INFALLIBLE: ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 288, 306–309 (2000).

²¹ E. P. Royappa v. State of Tamil Nadu A.I.R. 1974 S.C. 555 (strict nexus test abandoned in favour of broader arbitrariness test to determine discriminatory classifications under article 14); Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar, (1959) S.C.R. 279 (classifications valid for purposes of article 14) (India).

²² *Id.*

in conjunction with other provisions. Liberally construing such clauses maximizes potential.²³ According to the court, Article 15(3) is fundamental to reservation provisions and does not contradict Article 16. The Court emphasized that Article 15(3) reserving is a legitimate and constitutional approach to achieve real equality.²⁴ Despite Article 15's clear support for equality, the Court's myopic decisions have promoted inequality. It is no surprise that the constitutional forefathers addressed women's sex-based discrimination and limited freedom of conscience, which remains today.²⁵ The Constitution's guardian must interpret it for justice and equality.

Article 15(3)²⁶ includes job reservations for women under the protectionist system and a positive grant of rights. Article 15 safeguards women-only reservations. Article 16 allows Article 15 reservations. The courts have stressed the harmony of paragraphs 15 and 16 and have not interpreted them as conflicting. Thus, women's reservations are unopposed. Yes, due to Supreme Court constraints, it is not absolute. The court said that such reservations cannot exceed 50%.²⁷ To fulfil its true aim, Article 15(3) should be liberally construed. Feminists argue such protections are necessary for gender equality. Thus, Article 15(3) offers socio-economic equality to women to redress past injustices, lessening the weight of Article 15. (1). Article 15(3) authorizes the state to establish socio-economic equality for women.²⁸ The US Constitution grants women equality but no rights. Thus, the US Supreme Court rigorously interprets equality. It supports the Indian judiciary's defence of women's fundamental rights on theoretical equality and construes constitutional language in their favour to remedy past injustices, making the Constitution an instrument for social change.²⁹ The Constitution's positive rights for women predicted formal equality's decline. The Constituent Assembly's intellectual rigor may acknowledge past injustices. The founders included these clauses under Part III because positive rights are fragile. However, non-protectionist interpretation has separated egalitarian ideals and given gender roles judicial authority.

²³ Pannalal Bansilal Pitti v. State of A.P., (1996) 2 S.C.C. 498, 510 (India).

²⁴ Vijaya Kumar v. State of A.P. A.I.R. 1995 S.C. 1648 (India).

²⁵ The need for Supreme Court's stance in the Kush Kalra Petition allowing women to take admission exam to National Defense Academy (NDA) for 2021 attempt makes it evident for the role of courts in upholding women's basic right to equality.

²⁶ M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 992 (Lexis Nexis 2011).

²⁷ Indira Sawhney v. Union of India A.I.R. 1992 S.C. 477 (India).

²⁸ *Id.*

²⁹ Flavia Agnes, *The debate on triple talaq and Muslim women's rights* is missing out on some crucial facts, SCROLL (May 25, 2016, 10:30 AM) <https://scroll.in/article/808588/the-debate-on-triple-talaq-and-muslim-womens-rights-is-missing-out-on-some-crucial-facts>.

U.S SCENARIO

Formal equality has dominated Western thought since Aristotle. The Declaration of Independence embraces equality. In the American and Indian equal protection concepts, "treating likes alike" is considered equality.³⁰ This view equates equality with sameness. Equality requires similarity. The 1990s saw several notable decisions.

Two courts specifically found that gender-based pre-emptory challenges violate the equality article of the Constitution. In *JE.B. v. Alabama*³¹, the question was whether a jury of women would produce a feminine-biased verdict. Thus, the petitioner's pre-emptory challenge posed the question of whether inclusion or exclusion would hinder the jury's fair trial. The question was whether a female-dominated jury would compromise the state's fair trial goal. This raises the question of whether this female-dominated jury's problem can be resolved. The court's judgment that gender disparities in society may not be conveyed in law was intriguing. It warned that gender inequalities may not be legal. It warned against exploiting sex for prejudice, which violates the equality principle and is unlawful. Thus, pre-emptive ideas must be carefully weighed against the equality requirement. In the concurring opinion, the majority of the Court clearly distinguished between the law and reality. Thus, it shows how jurisprudence will evolve to deal with such difficulties. This judgment also clarifies pre-emptory challenges.

The Court's attitude to women's equality concerns has changed, but it is still far from ideal. The constitutional language provides the formal idea of equality, but the Court simply bases its conclusions on the substantive concept of equality. Given social disparity, this is a big stride. Such logic is primarily applied to pregnancy, and the reproductive rights of women are important in equality jurisprudence.

Due to their ability to get pregnant and legal protection, reproductive rights violations disproportionately damage women. Human rights are essential to gender justice and equality. Based on historic U.S. legal precedent, the Supreme Court forbade states from interfering with this newly recognized "right" to abortion. The Supreme Court's three major abortion opinions have expanded liberty and equality protections for women's abortion rights.³² While

³⁰ Joseph Tussman and Jacobus tenbroek, *The Equal Protection of the Laws*, 37 CAL. L. REV. 341 (1949).

³¹ *JE.B. v. Alabama*, 511 U.S. 127 (1994).

³² *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of South-eastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and *Whole Woman's Health v. Hellerstedt* 579 U.S. 582 (2016).

reaffirming Roe, the U.S. Supreme Court's momentous Casey judgment³³ highlighted the abortion right's dignity and equality. The Court's united opinion relaxed scrutiny. The "undue burden" test determined unlawful limits. Hellerstedt upheld Roe and clarified that an undue burden test is heightened scrutiny that requires courts to meaningfully consider abortion limits. Progressive jurisprudence kept every woman's right to a legal abortion by overturning restrictions that were put in place for political reasons and made it almost impossible for women in Texas to use their reproductive rights.

Despite judgements to end discrimination, the approach has not empowered jurisprudence to equality. Many people cannot get an abortion due to current laws. State authorities were excluded from enforcing these new laws to avoid court scrutiny. Retrogression, a policy or law that restricts a right, is against human rights. The ultra-conservative Supreme Court refused to enjoin S.B. 8.³⁴ The court's procedural ruling revealed its views on abortion rights and gender stereotypes of women as second-class citizens. Thus, non-political gender sensitization of judges is necessary for progressive and equitable justice delivery. This issue undermines equality jurisprudence's efforts to end biological discrimination against women.

³³ *Id.*

³⁴ Alison Durkee, *Pro-Choice Groups Ask Supreme Court for Emergency Halt To Texas Abortion Ban This Week*, FORBES (Aug.30, 2021, 02:57 PM) <https://www.forbes.com/sites/alisondurkee/2021/08/30/pro-choice-groups-ask-supreme-court-for-emergency-halt-to-texas-abortion-ban-this-week/>.

CHAPTER V.

CONCLUSION

So, we analysed the following observations in light of the hypothesis:

- a) Although the U.S. Constitution does not explicitly name women, it guarantees equality to men and women. Since the Post-Fourteenth Amendment, the Constitution has been about formal equality. Court interpretation determines the fate of any constitutional clause. American jurisprudence on the right to equality has moved from formal equality to the substantive model by adding substantive content. So, it backs up the idea that the U.S. hasn't always stuck to its formalistic model of equality and has come up with different ways to think about women's right to equality.
- b) The Indian Constitution guarantees rights. This was a fantastic chance to empower women. Few examples have shown hope for empowerment, but many have failed to go beyond the protectionist system and play the role of benign guardian, reinforcing gender norms (although exceptions do exist).

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