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# CULTURAL RIGHTS: WHY IT IS IMPORTANT FOR WOMEN?

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## **ABSTRACT**

Amidst the recent legal victories and growing public support for eradication of practices pertaining to unequal treatment of women, numerous fundamentalist groups challenged the same on the basis of rights to religious guaranteed under the Constitution of India. The Article explores the possibility that exist for feminist understanding of Part III of the Constitution of India in the light of judicial misinterpretation that has taken place so far. Among other issues, we examine the feminist critique of such value and gender-neutral provisions as they have been interpreted in various judgments. We argue that if these perspectives are understood through a feminist lens, then the outcome would be significantly different. Cultural stigma by creating a divide between the private and public spheres of action. These include stigmas that constrain the practical utility of the existing legal tools. By accounting for these conflicting legal provisions, this Article provides a comprehensive roadmap of the issues and challenges likely to emerge along the path towards an equal and free society within the framework of Constitution of India.

**Keywords:** Constitution of India, Feminism, Precedents, Fundamental Right, Patriarchy.

## **INTRODUCTION**

### **CULTURAL RIGHTS**

Cultural rights refer to a claimed entitlement on the part of identity groups — typically based on religion, ethnicity, language, or nationality — to be able to express and maintain their traditions or practices. Such an entitlement usually implies some form of political or legal recognition. Cultural rights are commonly understood as a universal human right, one that recognizes the fundamental importance of a sense of cultural identity, membership, and shared values to human well-being and flourishing. Cultural rights are an essential part of human rights that recognize the importance of cultural diversity and promote the expression and preservation of different cultures.

These rights are grounded in the principle of cultural freedom, which asserts that individuals and communities have the right to freely practice and develop their cultural traditions, and that this right should be protected by law and upheld by governments. One of the key aspects of cultural rights is the right to participate in cultural life. This includes the right to access and participate in cultural activities and resources, such as museums, cultural festivals, and other cultural events. This right also includes the freedom to express oneself through cultural practices, such as music, dance, and other forms of artistic expression. Another important aspect of cultural rights is the right to enjoy and access cultural heritage. Cultural heritage includes tangible and intangible aspects of culture, such as historical monuments, artifacts, and traditional knowledge. The right to enjoy and access cultural heritage is important because it allows individuals and communities to connect with their cultural roots and history, and to preserve and transmit cultural traditions to future generations. The right to freedom of artistic expression is also an important aspect of cultural rights. This right recognizes the importance of artistic expression as a form of cultural expression, and protects the freedom of artists to express themselves without censorship or other forms of repression. This right is particularly important in societies where artists and other cultural practitioners may face persecution or repression for expressing their views or challenging dominant cultural norms. Finally, the right to use and develop one's own language and cultural practices is an important cultural right. This right recognizes the importance of language as a fundamental aspect of cultural identity, and the need to protect and preserve minority and indigenous languages. The right to use and develop one's own language and cultural practices is also important for promoting cultural diversity and preventing the erosion of traditional cultures and practices.

The protection of cultural rights is important for several reasons:

First, cultural rights help to promote and preserve cultural diversity. Cultural diversity is a valuable asset that enriches societies and promotes social cohesion, tolerance, and understanding. By protecting cultural rights, societies can ensure that all cultures are valued and respected, and that no culture is marginalized or excluded.

Second, cultural rights are essential for the promotion of individual and collective identity. Cultural practices, traditions, and languages are an important part of an individual's sense of self and community, and the protection of cultural rights ensures that individuals and communities are free to express and develop their identities without fear of discrimination or repression.

Third, the protection of cultural rights is important for the promotion of social and economic development. Cultural practices, traditions, and languages are often closely connected to local economies, and the preservation and promotion of these practices can contribute to sustainable development and poverty reduction.

In India, cultural rights refer to the rights of individuals and communities to practice, preserve, and promote their cultural traditions and heritage. These rights are protected under the Indian Constitution and international human rights instruments, which recognize the importance of cultural diversity and the need to protect the cultural rights of all individuals and communities.

India is a diverse country with a rich cultural heritage, and cultural rights are particularly important for minority and indigenous communities who are often at risk of losing their cultural identity due to discrimination and marginalization. Therefore, it is essential to protect and promote cultural diversity and to respect the cultural rights of all individuals and communities in India. One of the main cultural rights in India is the right to freedom of religion, which is enshrined in the Constitution.<sup>1</sup>The Constitution of India guarantees the right to freedom of religion to not only individuals but also religious groups in India. **This is enshrined in Articles 25 to 28.** This right allows individuals to practice and propagate their religion of choice without any interference from the state or society. Additionally, the Constitution recognizes the rights of minorities to establish and administer educational institutions of their choice, which allows them to preserve and promote their cultural traditions.

In <sup>2</sup>**Bijoe Emmanuel v. State of Kerala** three students of Jehovah's sect who only believed and worshipped Jehovah were expelled by the headmistress of their school when refused to sing the National Anthem during the school's morning assembly. According to these students singing the National Anthem was against their religious faith and was disregarded by their religious tenants. They remained silent but did not participate in singing due to their honest belief. The Supreme Court held that the action of expelling these students was in violation of their right to freedom of religion (under Art. 25(1)) and right to speech and expression (under Art. 19(1)(a)). It was stated by the court that there is no provision of law which compels or obliged anyone to sing the National Anthem and it is not disrespectful if not sung.

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<sup>1</sup> [Right to Freedom of Religion \[Articles 25 - 28\]: Indian Polity Notes for UPSC \(byjus.com\)](#)

<sup>2</sup> [Discussion on Bijoe Emmanuel case - iPleaders](#)

Another cultural right in India is the right to language, which is also protected by the Constitution. India is home to numerous languages, and the Constitution recognizes the right of individuals to use and promote their mother tongue. Additionally, the government has established various institutions to promote language education and preserve endangered languages.

The right to cultural expression and participation is another important cultural right in India. This right allows individuals to freely express their cultural identity and participate in cultural activities, including traditional arts and crafts, music, and dance **Bijoe Emmanuel v. State of Kerala**. The government has established various institutions and programs to promote cultural activities and to support traditional artists and artisans.

However, despite these constitutional protections, cultural rights are often violated in India, particularly in relation to minority and indigenous communities. These communities often face discrimination and marginalization, and their cultural practices and traditions are frequently threatened by dominant cultural norms and practices. To address these challenges, it is important for the Indian government to take concrete steps to protect and promote cultural rights. This includes adopting laws and policies that protect cultural diversity and promote cultural expression and participation, particularly for marginalized and minority communities. It also involves investing in the preservation and promotion of India's diverse cultural heritage, including traditional art forms, languages, and customs. Civil society organizations also have an important role to play in promoting and protecting cultural rights in India. These organizations can advocate for the rights of marginalized communities, provide cultural education and awareness, and work to preserve and promote traditional cultural practices and heritage.

In conclusion, cultural rights are an important aspect of human rights in India. It is essential to protect and promote cultural diversity and to respect the cultural rights of all individuals and communities in the country. By recognizing the importance of cultural diversity and promoting the protection and preservation of cultural heritage and practices, India can continue to promote social cohesion, tolerance, and understanding, and ensure that all communities are able to freely express and develop their cultural identities.

## **WHY CULTURAL RIGHTS ARE IMPORTANT FOR WOMENS?**

Cultural rights for women in India are particularly important because women are often disproportionately affected by cultural norms and practices that limit their ability to express and participate in their cultural traditions. Women in India face a range of cultural and social barriers that limit their ability to exercise their cultural rights, including gender-based discrimination, patriarchal norms, and restrictions on mobility and freedom of expression. One of the main cultural rights for women in India is the right to education. Education is essential for women to be able to participate in cultural activities and to preserve and promote their cultural traditions. Education also plays a crucial role in enabling women to challenge and change cultural norms and practices that are harmful to their rights and well-being. However, women in India face numerous barriers to accessing education, including poverty, lack of transportation, and discrimination based on gender and caste. Another important cultural right for women in India is the right to participate in cultural activities and traditions. Women in India have a rich cultural heritage and have contributed significantly to the country's diverse cultural traditions. However, women are often excluded from cultural activities or are expected to perform certain roles and functions that are traditionally associated with their gender. This limits their ability to express themselves and to fully participate in cultural traditions.

The right to freedom of expression and creativity is also an important cultural right for women in India. Women are often restricted in their ability to express themselves through artistic and creative activities due to cultural norms that limit their mobility and freedom of expression. Women who challenge these norms and engage in creative activities may face backlash, harassment, or violence. Additionally, women in India have the right to participate in decision-making processes that affect their cultural traditions and heritage. Women's voices and perspectives are often marginalized or excluded from decision-making processes related to cultural activities and traditions. This limits their ability to shape and influence cultural practices that affect their lives and well-being.

To protect and promote cultural rights for women in India, it is essential to address the root causes of gender-based discrimination and to ensure that women have equal access to education, resources, and opportunities. This includes investing in education and training programs that promote gender equality and women's empowerment, and providing support to women who face discrimination and violence for expressing their cultural identity and participating in cultural

activities. Civil society organizations also play an important role in promoting and protecting cultural rights for women in India. These organizations can provide education and awareness programs to promote women's participation in cultural activities and traditions, and advocate for policies and laws that protect women's rights to cultural expression and participation.

Cultural rights are important for women because they allow them to express their identities, participate in cultural activities, and enjoy cultural heritage without facing discrimination, exclusion, or violence. These rights include the right to access cultural resources, participate in cultural life, and create and disseminate cultural expressions. Cultural rights are crucial for women's empowerment and gender equality. Women's cultural rights are often undermined due to patriarchal attitudes, which lead to discrimination against women based on their gender. Women are frequently excluded from cultural activities, prevented from accessing cultural resources, and subjected to cultural practices that violate their rights. Cultural rights enable women to preserve and celebrate their cultural heritage, which can help to build their sense of identity, self-esteem, and community cohesion. They also provide opportunities for women to express themselves creatively and develop their talents and skills. Cultural rights can help to challenge and transform cultural practices that discriminate against women and promote gender equality.

<sup>3</sup>The **Sabarimala judgment** is a landmark case law of 2017, a PIL was filed under Article 32 by the petitioners challenging the practice followed in Sabarimala temple which did not allow the entry of women from the age group of 10-50 years. A constitutional bench was set up in 2018 which held that the practice was unconstitutional and uplifted the ban on entry of women stating that followers of Ayyappa do not form a separate religious denomination but are Hindus only and, such a ban is not an essential practice of the religion.

<sup>4</sup>**Shayara Bano v. Union of India (2017):** In this case, the Supreme Court of India declared the practice of instant triple talaq (a form of divorce in which a husband could unilaterally divorce his wife by simply saying "talaq" three times) to be unconstitutional. The court held that this practice violated the fundamental rights of Muslim women, including their right to equality and non-discrimination.

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<sup>3</sup> [Freedom of Religion under the Indian Constitution - iPleaders](#)

<sup>4</sup> [Case Brief: Shayara Bano v. Union of India \(lawbhoomi.com\)](#)

<sup>5</sup>**Vishaka v. State of Rajasthan (1997):** In this case, the Supreme Court of India laid down guidelines for preventing sexual harassment of women in the workplace. The court held that employers had a duty to ensure a safe working environment for women and to take action against sexual harassment. This decision has had a significant impact on the legal and social landscape for women in India.

<sup>6</sup>**S.R. Bommai v. Union of India (1994):** In this case, the Supreme Court of India held that secularism is a fundamental feature of the Indian Constitution and that the state should not promote or support any particular religion. This decision has helped to protect the cultural rights of minority groups in India, including women from minority religious communities.

<sup>7</sup>**National Legal Services Authority v. Union of India (2014):** In this case, the Supreme Court of India recognized the rights of transgender persons and held that they are entitled to legal recognition of their gender identity, as well as other rights and protections. This decision has helped to promote the cultural rights of transgender women in India, who may face discrimination and exclusion due to their gender identity.

<sup>8</sup>**Kalyani v. State of Bihar (2016):** In this case, the Supreme Court of India held that the practice of demanding dowry (gifts or money given by the bride's family to the groom's family) is illegal and punishable under the Dowry Prohibition Act. This decision has helped to protect the cultural rights and safety of women who may be at risk of dowry-related violence or harassment.

In conclusion, cultural rights for women in India are essential for promoting gender equality and women's empowerment. It is important to address the cultural and social barriers that limit women's ability to exercise their cultural rights, and to promote policies and programs that support women's participation in cultural activities and traditions. By recognizing and protecting the cultural rights of women, India can promote social cohesion, tolerance, and understanding, and ensure that all individuals and communities are able to freely express and develop their cultural identities.

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<sup>5</sup> [Case analysis : Vishaka & Ors. v State of Rajasthan & Ors. \(\(1997\) 6 SCC 241\) - landmark case on sexual harassment - iPleaders](#)

<sup>6</sup> [SR Bommai vs Union of India Case for UPSC Indian Polity & Governance \(byjus.com\)](#)

<sup>7</sup> [Case Summary: National Legal Service Authority vs. Union of India - LawLex.Org](#)

<sup>8</sup> [r. kalyani | Indian Case Law | Law | CaseMine](#)