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## **RIGHT TO EDUCATION AND ITS IMPACT ON WOMEN'S SOCIO-ECONOMIC STATUS**

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### **ABSTRACT**

This article examines the impact of education on women's socio-economic status, with a particular focus on gender-based disparities in India. It explores how limited access to education affects women's employment opportunities, wages, and vulnerability to workplace discrimination, including gender pay gaps and sexual harassment. Additionally, it discusses the broader implications of education on women's health, access to social security, and economic independence. The article also assesses India's compliance with international human rights obligations and the role of the judiciary, civil society, and non-governmental organizations in advancing women's educational rights. Finally, it suggests practical measures to reduce illiteracy and promote equal educational opportunities for women, thereby fostering greater gender equality and socio-economic development.

**Keywords:** Women's right to education, gender discrimination, equality, socio-economic inequality, women's empowerment, economic independence.

**A. Introduction:**

Dr. B.R. Ambedkar once said, *"I measure the progress of a community by the degree of progress which women have achieved."* This quote emphasizes that the overall advancement of a society is closely linked to the progress of women within it. Educating and empowering women is crucial for achieving holistic development. Education plays a key role in promoting and protecting fundamental human rights and in fostering economic growth. It helps individuals become aware of their civil, political, social, economic, and cultural rights. Without proper education, one cannot fully understand these essential rights and responsibilities.<sup>1</sup> Unfortunately, access to education is often limited for those who need it most, especially vulnerable groups, and individuals from disadvantaged or socio-economically backward backgrounds such as girls and women. Poverty is the biggest barrier to both accessing quality education and economic development. Education is a powerful tool to break the generational cycle of poverty. To achieve sustainable development, it is essential to tackle widespread poverty and address the gender gap in education. Without these steps, true progress will remain out of reach.<sup>2</sup> Educating women has a direct impact on their ability to exercise various rights, including the right to equal employment, healthcare, economic independence, political involvement, and freedom from gender-based and other violence. It also empowers women to make decisions within their families, leading to better family health, improved quality of life, and contributing to the overall advancement of society.

**B. Impact on the enjoyment of women's right to equal employment opportunities:**

Multiple international treaties guarantee women equal employment opportunities, such as Article 23 of the UDHR, Article 7 of the ICESCR, and International Labour Organization Conventions (ILO) No. 100 (Equal Remuneration Convention, 1951)<sup>3</sup>, ILO Convention No. 111 (Discrimination (Employment and Occupation), Convention 1958<sup>4</sup>, and ILO Convention

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<sup>1</sup> Mahapatra, Nibedita. "Role of Education in Promotion and Protection of Human Rights." E-Magazine..., Odisha Review, September 2012, <https://magazines.odisha.gov.in/Orissareview/2012/sep/engpdf/27-31.pdf>. Accessed 19 November 2024.

<sup>2</sup> Singh, Kishor, (United Nations Special Rapporteur on the Right to Education) "Right to Education and Equality of Educational Opportunities." Journal of International Cooperation in Education, CICE Hiroshima University, vol. 16, no. 2, 2014, pp. 5-19.

<sup>3</sup> International Labour Organization (ILO), C100 - Equal Remuneration Convention, 1951, No.100, 29 June 1951, <https://www.refworld.org/legal/agreements/ilo/1951/en/122497> [accessed 23 November 2024]

<sup>4</sup> International Labour Organization (ILO), C111 - Discrimination (Employment and Occupation) Convention, 1958, No.111, 25 June 1958, <https://www.refworld.org/legal/agreements/ilo/1958/en/9383> [accessed 23 November 2024]

No. 183 (Maternity Protection Convention, 2000)<sup>5</sup>. Among these, Article 11 of the CEDAW is particularly significant as it specifically focuses on women's rights, and requires state parties to adopt measures to eliminate discrimination against women in the workplace. These treaties collectively affirm that everyone has the right to work, freely choose their employment, enjoy fair and favorable working conditions, and be protected from unemployment. They also guarantee equal pay for equal work, fair remuneration, protection from discrimination, and the right to form and join trade unions to protect one's interests. However, all of these rights are contingent on having equal access to education. Without the necessary educational qualifications, it is difficult for women to fully access equal employment opportunities. Article 11(1)(b) of CEDAW<sup>6</sup> highlights the right to "same employment opportunities," which includes the right to the education and training required for such opportunities, as well as the right to access jobs for which women are qualified.<sup>7</sup> Similarly, in line with international legal frameworks, India ensures equal pay for equal work and equal employment opportunities for women without discrimination through the Constitution and other legislation, including the Equal Remuneration Act of 1976. The Preamble and specific provisions of the Indian Constitution aim to guarantee fairness and equal opportunities for all individuals, regardless of gender, in economic activities. Article 39(d) highlights the need to ensure equal pay for equal work for both men and women.<sup>8</sup> Article 16 focuses on equal opportunities in public employment for women and receives equal consideration in hiring, promotion, and pay.<sup>9</sup>

## 1. Free choice of profession and employment:

To enjoy the freedom to choose, an individual must be aware of their options and rights. Education plays a vital role in this process, as it provides individuals with the basic knowledge about available resources and the qualifications needed for specific employment opportunities. Gender-based disparities in education and the labor market are deeply interconnected. Differences in enrollment rates, completion rates, academic achievements, and especially the

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<sup>5</sup> International Labour Organization (ILO), C183, Maternity protection at work : revision of the Maternity Protection Convention (Revised), 1952 (no. 103), and Recommendation, 1952 (no. 95). ILO(063)/C6/88th. sess./Rept. 4(2A).

<sup>6</sup> Article 11(1)(b) of CEDAW.

<sup>7</sup> Marsha A. FREEMAN, Christine CHINKIN, Beate RUDOLF (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, Oxford Commentaries on International Law, 2012.

<sup>8</sup> Boddu, Harshith Sai. "EQUAL PAY FOR EQUAL WORK: A STUDY ON GENDER WAGE GAP AND EQUAL REMUNERATION ACT, 1976." Manupatra, 2024. manupatra, <https://articles.manupatra.com/article-details/EQUAL-PAY-FOR-EQUAL-WORK-A-STUDY-ON-GENDER-WAGE-GAP-AND-EQUAL-REMUNERATION-ACT-1976>.

<sup>9</sup> Article 16 of the Constitution of India.

selection of fields of study significantly influence the careers and job choices people make. For instance, the underrepresentation of women in science, technology, engineering, and mathematics (STEM) fields which typically offer higher-paying and more secure employment, prevents many women from pursuing these careers, contributing to a gendered division of labour and occupational segregation.<sup>10</sup> The sexual division of labour is a key factor in explaining job inequality between men and women. Traditionally, men are seen as the primary earners, while women are expected to stay at home, manage household chores, and care for children and the elderly.<sup>11</sup> Article 11(1)(c) of CEDAW addresses the issue of women's access to the job market and affirms their right to choose their profession and occupation. The CEDAW Committee has advocated for initiatives such as education, training, and retraining programs,<sup>12</sup> curriculum reforms to challenge outdated views, and the creation of an environment that supports women's participation in high-level and well-paid roles.<sup>13</sup> Similarly, Article 19(1)(g) of the Indian Constitution guarantees the right to practice any profession or engage in any occupation, trade, or business for all citizens. This right, as part of the right to equality<sup>14</sup>, applies equally to everyone, regardless of gender. However, for women to fully exercise this right, they must recognize that they have the same fundamental rights as men, which can only be realized through proper education that informs them of these rights. Therefore, it is the state's responsibility to implement policies that ensure equal protection for all citizens, guaranteeing both men and women access to an adequate livelihood<sup>15</sup> and equal pay for equal work.<sup>16</sup> To ensure that state under Article 15(3), the Constitution states by taking affirmative action can enact laws and policies for the promotion, protection and welfare of women, however, those policies sometimes prohibit women from making choices of profession or employment. For instance, Section 33A(1)(a), Bombay Police (Amendment) Act, 2005 (BPA) prohibits any kind of dance performance of women dancers in an eating house, permit room or beer bar.<sup>17</sup> This provision was clearly enacted with an objective of protecting women

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<sup>10</sup> "Gender gaps in education and employment." EU Science Hub, [https://joint-research-centre.ec.europa.eu/scientific-activities-z/gender-gaps-education-and-employment\\_en](https://joint-research-centre.ec.europa.eu/scientific-activities-z/gender-gaps-education-and-employment_en). Accessed 21 November 2024.

<sup>11</sup> Bradley H (1989) *A Men's Work, Women's Work: A Sociological History of the Sexual Division of Labour in Employment (Feminist Perspectives)*. Cambridge, UK: Polity Press.

<sup>12</sup> CO Estonia, A/57/38, 26th Session (2002) para 108; CO Czech Republic, A/57/38, Exceptional Session (2002) paras 99–100; CO Mexico, A/57/38, Exceptional Session (2002) para 444; CO Ukraine, A/57/38, 27th Session (2002) paras 293–4.

<sup>13</sup> CO Trinidad and Tobago, A/57/38, 26th Session (2002) paras 151–2.

<sup>14</sup> Article 14 of The Constitution of India.

<sup>15</sup> Article 39(a), Constitution of India.

<sup>16</sup> Article 39(d), Constitution of India.

<sup>17</sup> Section 33A(1)(a), Bombay Police (Amendment) Act, 2005.

and preventing women's exploitation. However, under section 33B of BPA 2005, three-starred or above hotels were exempted from this prohibition and allowed dance activities with the license. This creates a contradiction, as it implies that women can dance if licensed, raising the question of whether this means exploitation is acceptable with a license. Therefore, it can be argued that the real intent behind this provision was to control the employment options for women in smaller hotels and bars, as many of them come from poor families and have limited educational opportunities.

In this case, the Bombay High court held that,

*“..considering that the object of the Legislation is to prevent dances which are obscene, vulgar or immoral and hence derogatory to the dignity of women and to prevent exploitation of women, we find that there is no nexus between the classification and the object of the Act. The Act bans all dancing including the dances which are permitted in the exempted establishments and which are governed by the same rules and conditions of license. If women other than dancers can work in the prohibited establishments and that does not amount to exploitation, we do not see why when women dance to earn their livelihood, it becomes exploitation. Section 33A and consequently Section 33B are void...”*<sup>18</sup>

Although through the judgment the court accepted the fact that women have not chosen this profession voluntarily but have been coerced or deceived by intermediaries or other exploitative factors, and that the element of a free and informed choice in selecting this profession is lacking.<sup>19</sup> This suggests that other exploitative factors may stem from limited educational opportunities. Women, particularly those from socio-economically disadvantaged backgrounds, often from rural areas, are often pushed into occupations where they face a heightened risk of gender-based violence or sexual harassment.

## 2. Gender pay gap:

Equal pay for men and women for the same work is a fundamental principle enshrined in the UDHR.<sup>20</sup> However, gender-based wage inequality remains a pervasive issue worldwide,

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<sup>18</sup> Indian Hotel and Restaurants Association and others v. State of Maharashtra, 2006 (3) BomCR 705.

<sup>19</sup> Gehlot, Deeksha, and Center for Civil Society. “Indian Legal Framework and Women’s Freedom to Work.” www.ccs.in, Center for Civil Society, 2013, <https://ccs.in/sites/default/files/2022-10/Indian%20Legal%20Framework%20and%20Women%E2%80%99s%20Freedom%20to%20Work.pdf>.

<sup>20</sup> UDHR

impacting countries at all stages of development. Furthermore, CEDAW's Article 11(1)(d) specifically guarantees the right to equal pay for equal work for women, requiring states to implement additional measures to address the practical inequalities faced by women in terms of wages. This includes addressing occupational segregation and taking steps to ensure that women can work without discrimination based on their marital status, pregnancy, or maternity.<sup>21</sup> The noticeable wage gap based on gender and ethnicity is also present in the United States, despite being a country often viewed as a symbol of Western civilization. Women earn only 79 cents for every dollar that men make for the same work. This disparity is even more pronounced for women of color, with African-American women earning just 60 cents and Latinas earning only 55 cents for every dollar earned by men.<sup>22</sup>

Similarly, in India, a significant wage disparity exists between men and women, with women earning, according to data by National Sample Survey Office (NSSO)<sup>23</sup> in 2018-19, women earn on average, 28% less than their male counterparts. Although the principle of "equal pay for equal work" is not explicitly stated as a Fundamental Right in the Indian Constitution, it is widely considered to be a constitutional right due to its alignment with the fundamental principles of equality and fairness. This principle is clearly reflected in various articles and directives. Article 14 guarantees the fundamental right to equality<sup>24</sup>, Article 15 prohibits discrimination based on gender,<sup>25</sup> and Article 15(3) recognizes the importance of addressing gender inequalities and promoting equality between men and women in all spheres.<sup>26</sup>

Additionally, Article 39(d) directs the state to implement policies ensuring equal pay for equal work for both men and women<sup>27</sup>. In line with the constitutional principle of fairness and equality, the Equal Remuneration Act, was enacted in 1976, to guarantee fair compensation for workers, regardless of gender, and prohibit gender-based discrimination in employment. Section 4 of the Act imposes an obligation on employers to provide equal pay for equal work without any discrimination, while section 5 mandates that the employer should not discriminate between men and women during recruitment. While the legal framework protects women's

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<sup>21</sup> Marsha A. FREEMAN, Christine CHINKIN, Beate RUDOLF (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, Oxford Commentaries on International Law, 2012.

<sup>22</sup> *Supra* Note 87.

<sup>23</sup> National Sample Survey Office available at <https://www.mospi.gov.in/national-sample-survey-officencsso>

<sup>24</sup> Article 14 of the Constitution of India.

<sup>25</sup> Article 15 of the Constitution of India.

<sup>26</sup> *Supra* Note 93.

<sup>27</sup> Article 39(d) of the Constitution of India.

right to equal pay for equal work, cultural and social biases continue to uphold gender-based wage discrimination. Due to rigid gender roles and occupational segregation, women often work in lower-paying sectors or part-time positions, not because of a lack of competence, but because of societal expectations and family responsibilities. Many women choose professions that allow them to balance work and household duties, which often results in lower pay compared to their male counterparts. In the case of *M/s Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa and others*, the SC of India, interpreting national legislation alongside ILO Convention No. 100, ruled that Ms. D'Costa had received significantly lower pay than her male colleagues performing the same work of equal value. The Court emphasized that the principle of equal remuneration applies not only to persons performing identical jobs but also to those doing different work of equal value. The fact that no men were employed in the same job was deemed irrelevant, and the Court upheld the corrective measures taken to ensure fairness for Ms. D'Costa.<sup>28</sup>

Further, due to the educational discrimination between boys and girls, the literacy rate is low among girls, particularly in rural areas, which significantly impacts women's access to employment and equal pay. As a result, women often work longer hours than men but are paid less, especially in rural areas in unorganized sectors. For example, female farm laborers and workers in sugarcane factories are paid less simply because they are women. There is a prevailing belief that women possess less physical strength or masculine energy and thus do less work. However, in practice, women often perform more labor than their male counterparts. Women from SC and ST categories or tribal background often face intersectional discrimination, being treated unequally and even paid less compared to women from upper class or caste backgrounds. The right to equal pay for equal work also recognizes that the wage disparity of women is not only caused by direct discrimination but due to horizontal employment segregation and the tendency to assign lower wages to women-dominated occupations or professions.<sup>29</sup> In numerous Sessions,<sup>30</sup> The CEDAW Committee has urged States Parties to promote job evaluation measures to speed up the elimination of wage

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<sup>28</sup> *M/s Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa*, (MANU/SC/0446/1987).

<sup>29</sup> ILO, 'Report of the Committee on the Application of Standards' (2007).

<sup>30</sup> CO Denmark, A/57/38, 27th Session (2002) para 326; CO Hungary, A/57/38, Exceptional Session (2002) para 328; CO Luxembourg, A/58/38, 28th Session (2003) para 315; CO Norway, A/58/38, 28th Session (2003) para 430.

discrimination.<sup>31</sup>

### 3. Sexual harassment at work:

Sexual harassment is a global issue, studies show that younger women in their first job or women returning after a long break are often more susceptible to harassment by employers or superiors. Further, lack of education contributes to women's vulnerability, particularly for those working in unorganized sectors. Many of these women are illiterate and come from socio-economically poor family backgrounds. They often work as agricultural farm laborers, sugar factory workers, domestic workers, or construction laborers. Their illiteracy and lack of awareness about their legal rights make them susceptible to sexual harassment by their employers or supervisors.

At the international level, the CEDAW Committee addressed sexual harassment in the workplace in the General Recommendation 19. The committee emphasizes that this is not only a phenomenon of discrimination at work but also of sexual violence against women: 'Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace'<sup>32</sup> Until India ratified CEDAW in 1993, there were no legally binding norms to deal with sexual harassment issues at the workplace. In 1997, in the landmark case of *Vishaka v State of Rajasthan*,<sup>33</sup> the Indian SC relying on India's ratification of CEDAW Convention, ruled that the gang rape of a social worker was prohibited, even though there was no specific law against sexual harassment at workplace in India. The court also held that sexual harassment at the workplace violates a woman's fundamental right to equality and right to life and liberty under Art 14 and 21 of the Constitution of India. Furthermore, the court also established guidelines for both public and private employers, based on the standards outlined in General Recommendation 19.<sup>34</sup> The *Vishkhas's* landmark judgment also led to the creation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act).<sup>35</sup> which provides a legal

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<sup>31</sup> Marsha A. FREEMAN, Christine CHINKIN, Beate RUDOLF (eds.), *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary*, Oxford Commentaries on International Law, 2012.

<sup>32</sup> The CEDAW committee General recommendation No. 19: Violence against women Background, para 17, Eleventh session (1992) A/47/38.

<sup>33</sup> *Vishaka v State of Rajasthan* (1997) AIR 1997 SC 3011 (Supreme Court of India).

<sup>34</sup> *Supra* Note. 118.

<sup>35</sup> The Sexual Harassment of Women at Workplace Act, 2013, came into force 9th December, 2013, vide notification No. S.O. 3606(E), dated 9th December, 2013, see Gazette of India, Extraordinary, Part II, sec. 3(ii). Available at <https://www.indiacode.nic.in/handle/123456789/2104> accessed on 21st November 2024.

framework to address gender-based sexual harassment in the workplace in India, ensuring that women can work in a safe environment with dignity and advance in their careers.

On the international front, EU Directive 2002/73/EC<sup>36</sup> also asserts that sexual harassment and any harassment based on sex violate the principle of equal treatment between women and men. It highlights that such discrimination occurs not only in the workplace but also in relation to access to employment and vocational training, as well as during employment and occupation. The directive defines sexual harassment as any unwanted verbal, non-verbal, or physical conduct of a sexual nature that aims to or results in the violation of a person's dignity, especially when it creates an intimidating, hostile, degrading, humiliating, or offensive environment. Similar to the EU definition, India has adopted a comparable definition in Section 2(n) of POSH Act This section defines “sexual harassment” as any one or more of the following unwelcome actions or behaviors (whether direct or implied): (i) physical contact and advances, (ii) requests or demands for sexual favors, (iii) making sexually colored remarks, or (iv) showing pornography; or any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.”<sup>37</sup>

Following the enactment of the POSH Act Indian courts have delivered several judgments in favor of women, and emphasizing the responsibility of employers to take proactive measures to prevent and address sexual harassment in the workplace.<sup>38</sup> Employers are required to provide a safe working environment free from harassment and ensure the effective constitution and functioning of the Internal Complaints Committee (ICC).<sup>39</sup> The courts have also clarified that the Act applies to government organizations, mandating the government to establish ICC’s in all its offices and workplaces to address such complaints.<sup>40</sup> Notably, the Delhi High Court ruled that sexual harassment does not need to be physical and may include verbal or non-verbal conduct such as unwelcome advances, comments, or gestures.<sup>41</sup> Additionally, in *Madhu v. State of Kerala*, the SC held that sexual harassment cases do not require proof beyond a

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<sup>36</sup> Council Directive (EC) 2002/73 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions [2002] OJ L269/15 art 2(2)

<sup>37</sup> Section 2(n) of POSH Act

<sup>38</sup> *Apparel Export Promotion Council vs. A.K. Chopra*.

<sup>39</sup> *The Internal Complaints Committee of Tata Consultancy Services vs. Tanuja Priya Bhat*.

<sup>40</sup> *Poornima Advani vs. Union of India*, AIRONLINE 2018 DEL 1334.

<sup>41</sup> *Sanchayani Sharma vs. National Insurance Company Ltd.*

reasonable doubt but can be established based on the preponderance of probabilities.<sup>42</sup>

However, it is important to note that most cases under the POSH Act are filed by women from upper-class, upper-caste, and educated backgrounds. Women from socio-economically disadvantaged or marginalized communities, particularly those in rural areas, often remain unaware of their legal rights due to illiteracy. This lack of awareness significantly impacts their lives, as they continue to face issues like unequal pay, exploitation, daily sexual harassment, and limited employment opportunities. Women in these contexts are particularly vulnerable to human rights violations. Therefore, ensuring access to education for every girl is crucial, as education empowers women to claim and enjoy their fundamental human rights.

#### 4. Availability of decent work:

A dignified life with decent standards is possible only when individuals have access to fair and decent work opportunities. Decent employment reflects people's career aspirations and goals, ensuring access to social security, safe working environments, fair wages, and job stability. It also promotes personal growth, and social inclusion, and guarantees equal opportunities and fair treatment for both men and women.<sup>43</sup> However, according to the ILO,<sup>44</sup> in India, 81.8% of women are employed in informal employment, which means, *"all remunerative work (i.e. both self-employment and wage employment) that is not registered, regulated or protected by existing legal or regulatory frameworks, as well as non-remunerative work undertaken in an income-producing enterprise"* as defined by the ILO in the guidelines adopted in the 17th International Conference of Labour Statisticians at the ILO (17th ICLS).<sup>45</sup> This means, these workers are deprived of social benefits safeguarded by national or international laws and worked under vulnerable conditions. The CEDAW Committee has also noted in General Recommendation 16,<sup>46</sup> that a high percentage of women work without payment, social security,

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<sup>42</sup> Madhu vs. State of Kerala, the Supreme Court

<sup>43</sup> "Decent work." International Labour Organization, [https://www.ilo.org/topics/decent-work#\[ilo\\_url\\_NOT\\_FOUND\\_id:3648](https://www.ilo.org/topics/decent-work#[ilo_url_NOT_FOUND_id:3648). Accessed 26 November 2024.

<sup>44</sup> Bureau international du travail, editor. Women and men in the informal economy : a statistical picture. International Labour Office, 2014. Available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_626831.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf) Accessed 26 November 2024.

<sup>45</sup> The 17th International Conference of Labour Statisticians at the ILO (17th ICLS) 24th November to 3rd December 2003. [https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40stat/documents/normativeinstrument/wcms\\_087622.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40stat/documents/normativeinstrument/wcms_087622.pdf)

<sup>46</sup> General recommendation No. 16: Unpaid women workers in rural and urban family enterprises, Tenth session (1991), (A/46/38)

and social benefits in rural and urban family enterprises, usually owned by a male member of the family, and affirmed that this unpaid work constitutes a form of women's exploitation.

The Young Lives<sup>47</sup> study reveals that in India, 59% of 22-year-old women from Andhra Pradesh and Telangana are less likely to secure regular salaried employment compared to men of the same age. This disparity is influenced by three key factors: wealth, location, and education. Limited access to education, low family income, or living in disadvantaged or rural areas often push young women into unpaid or poorly paid work, such as childcare or low-wage self-employment in sectors like farming and agriculture in rural areas.

Informal employment is more prevalent in rural areas compared to urban regions, in India largely because most of the people are engaged in the agricultural sector, where there is no need for any compliance or low entry barriers. This is particularly true for women as their home-based locations and flexible working hours align with their domestic responsibilities. According to the National Sample Survey Office, (NSSO) 2011, approximately 67.9% of workers in rural areas were employed in agriculture, and 79.4% of female workers were engaged in this sector during 2009–10.<sup>48, 49</sup>

The CEDAW Committee, in General Recommendation 16, emphasized the need for state parties to collect data on women's unpaid work in family enterprises and to take necessary measures to ensure fair compensation, social security, and benefits for these women.<sup>50</sup> As a party to the CEDAW convention, India must also take steps to uphold women's right to equality and ensure access to decent work opportunities with adequate social security and benefits. This can be achieved by providing equal educational opportunities for girls and encouraging higher education, enabling them to qualify for high-quality jobs in both the public and private sectors.

### **C. Impact on the enjoyment of women's Right to health:**

Education plays a vital role in creating a significant social impact on women's lives. Educated

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<sup>47</sup> Young Lives, An organization working for social causes, available at <https://www.younglives.org.uk/>.

<sup>48</sup> National Sample Survey Office, 2011. *Employment and Unemployment Situation in India, 2009–10*. New Delhi: Government of India. Pg. 140-141.

<sup>49</sup> Moktan, Anamika. "Decent Work Deficit in India: A Disaggregated Trend over the Three Post-Reform Decades." *World Review of Political Economy*, vol. 7, no. 4, 2016, pp. 486-510. JSTOR, <https://doi.org/10.13169/worlrevipoliecon.7.4.0486>. Accessed 26 Nov. 2024.

<sup>50</sup> *Supra* Note 132.

women are less likely to experience health issues compared to those who are illiterate. Education helps women understand their bodily functions and recognize the changes occurring in their bodies, particularly concerning sexual and reproductive health. Women go through various stages of life childhood, adolescence, reproductive age, menopause, and post-menopause<sup>51</sup> each of which brings physical and physiological changes. The awareness gained through education enables women to better manage these transitions.

Educated women tend to have lower fertility rates, reduced infant mortality rates, and decreased maternal mortality rates. In contrast, illiterate women, due to a lack of awareness, are more likely to face higher maternal and infant mortality rates and have larger families. This can lead to poverty and further health challenges, such as malnutrition in children and anemia in women, often caused by insufficient spacing between pregnancies. These conditions can also negatively impact children's health and education. Women in rural areas face greater risks of conditions such as anemia, malnutrition during pregnancy, and higher maternal mortality rates. These challenges are primarily due to inadequate nutrition and limited access to healthcare services. In India, 24% of women are malnourished which is the highest rate among the developing countries and 54% of women suffer from anemia. Further, India's Maternal Mortality Ratio (MMR) stands at 113, significantly higher than the United Nations SDG target of 70. This accounts for 15% of the maternal deaths worldwide.<sup>52</sup>

At the international level, Article 25 of UDHR, affirms that everyone has an adequate standard of living for their health and well-being for him/her self and for his/her family including access to medical care. It emphasizes that mothers and children are entitled for special care and assistance. Similarly, Article 12 of ICESCR guarantees the right to the highest attainable standard of physical and mental health. It obligates state parties to take necessary steps to reduce infant mortality, improve environmental and industrial hygiene, and prevent and treat diseases, with a specific focus on reproductive health. Article 12 of CEDAW specifically protects women's health rights, requiring state parties to take necessary measures to eliminate discrimination against women in healthcare, ensuring equal access to medical services available to men, including family planning services. State parties are obligated to provide healthcare services to women during pregnancy, childbirth, and the postnatal period, offering

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<sup>51</sup> "Are indian-women-healthy-a-quick-overview." NGO in India for Education, Healthcare, Women Empowerment, Smile Foundation, <https://www.smilefoundationindia.org>. Accessed 29 November 2024.

<sup>52</sup> "Are indian-women-healthy-a-quick-overview." NGO in India for Education, Healthcare, Women Empowerment, Smile Foundation, <https://www.smilefoundationindia.org>. Accessed 29 November 2024.

free services where needed and ensuring adequate nutrition during pregnancy and lactation. Further recognizing the heightened vulnerability of women in rural areas who often lack timely access to healthcare, Article 14(2)(b) of CEDAW emphasizes the right of rural women to adequate healthcare facilities. This includes access to information, counseling, and family planning services. States are required to take appropriate steps to eliminate discrimination against women in healthcare and to ensure the provision of healthcare services, proper nutrition, and sanitation for women in rural communities.

At the regional level, although the right to health is not explicitly provided under the Indian Constitution, it is implied under Article 21 of the Constitution, which guarantees the right to life and personal liberty. In the case of *Bandhua Mukti Morcha v. Union of India*,<sup>53</sup> the SC of India has held that right to health and medical care is a fundamental right and is an integral to the right to life and personal liberty,<sup>54</sup> obligating the state to provide adequate healthcare facilities.<sup>55</sup> Further in the case of *Laxmi Mandal v. Deen Dayal Harinagar Hospital*,<sup>56</sup> The Delhi High Court, on the basis of the principles enshrined under Article 21 of the constitution and international conventions of CEDAW, held that the right to health includes maternal health and access to maternity care and failing to provide adequate care to pregnant women violates their fundamental rights. Thus, the state has an obligation to ensure healthcare services are accessible and available to every citizen of the country.

## 1. The right to food and nutrition:

The right to food is a fundamental human right recognized under international law and Indian jurisprudence. According to the ICESCR, everyone is entitled to regular access to sufficient, nutritionally adequate food for a healthy and active life. In India, the right to food is inferred from Article 21 of the Constitution. In 2001, *PUCL v. Union of India*<sup>57</sup>, the SC of India explicitly established a constitutional human right to food and determined a basic nutritional floor for India's impoverished millions, mandating the implementation of the Mid-Day Meal Scheme for school going children. Further, Article 47 of the Constitution, it has been explicitly directed to states that it is the duty of the state to raise the level of nutrition and the standard of

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<sup>53</sup> *Bandhua Mukti Morcha v. Union of India*, (AIR 1984 SCC 802).

<sup>54</sup> *Consumer Education and Research Centre v. Union of India*, (1995 AIR 922), (1995 SCC (3) 42).

<sup>55</sup> *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996 SCC (4) 37).

<sup>56</sup> *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, Delhi High Court, (W.P. (C) Nos. 8853 and 10700 of 2008), decided on 4 June 2010.

<sup>57</sup> *People'S Union Of Civil Liberties (PUCL) vs Union Of India (Uoi) And Anr*, ((Civil) No. 196/2001)

living and to improve public health. To comply with this in 2013, India has enacted the National Food security Act, 2013 (NFSA Act) to ensure that everyone has access to adequate quantities of quality food at affordable prices to live a life with dignity. Despite robust international and national legal frameworks ensuring the right to food, hunger and malnutrition remain pressing global challenges, disproportionately impacting women and children especially from developing countries. The UN Committee on Economic, Social, and Cultural Rights (ECOSOC)<sup>58</sup> in its General recommendation 12<sup>59</sup> declares that the right to adequate food is realized when every individual has consistent physical and economic capacity and access to sufficient, nutritious food. However, in India, 7.7% of children suffer from malnutrition, with 14 lakh classified as severely malnourished, highlighting significant gaps in fulfilling this fundamental right.<sup>60</sup> Malnutrition among women and girls is a significant issue in rural areas in India which leads to complications during pregnancy and childbirth, affecting both maternal and child health. In 2015–2016, 22.9% of non-pregnant women aged 15–49 years in India, were underweight.<sup>61</sup> The issue of food security is affected by several socio-economic and cultural factors including poverty, conflict, climate change, and systemic inequalities. Women are disproportionately affected due to gender biases and discrimination limiting their access to resources, education, and decision-making power which hinders their ability to secure food for themselves and their families.<sup>62</sup>

## 2. Right to sex education/ reproductive rights :

It is essential that every woman not only has a legal right to access contraception and family planning but also practical access to related healthcare services, as it is a fundamental aspect of women's sexual and reproductive health and autonomy. International frameworks like the UDHR, CEDAW, and ICESCR recognize this as a fundamental human right, which guarantees women's freedom to make decisions about their reproductive health, including whether they

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<sup>58</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5, 22 May 2006, <https://www.refworld.org/policy/polrec/cescr/2006/en/23888> [accessed 22 November 2024]

<sup>59</sup> General Recommendation 12, United Nations Committee on Economic, Social and Cultural Rights (ECOSOC) committees, E/C.12/1999/5 12 May 1999.

<sup>60</sup> Sharma, Yagya. "Over 14 lakh children 'severely malnourished' in India: Govt." Hindustan Times, 29 March 2023, <https://www.hindustantimes.com/india-news/over-14-lakh-children-severely-malnourished-in-india-govt-101680100159342.html>. Accessed 22 November 2024.

<sup>61</sup> Kala, Sadhana. "World Food Day: Right to food and women in India." Times of India, 16 October 2024, <https://timesofindia.indiatimes.com/blogs/methink/world-food-day-right-to-food-and-women-in-india/>. Accessed 22 November 2024.

<sup>62</sup> Ibid

want children or not, the number and spacing of children, free from coercion or discrimination. Education significantly influences women's ability to exercise these rights. Educated women are more aware of contraception methods and services, empowering them to make informed decisions about their bodies. This results in healthier lives for women, their families, and their children. However, in rural areas, women often lack awareness of their rights or face socio-cultural barriers, such as son preference and stigma, which can lead to repeated pregnancies or unsafe abortions, negatively affecting their health and increasing maternal mortality rates.

In India, the right to family planning is inferred from Article 21 which guarantees the right to life, and Article 15 prohibits gender discrimination. Despite these protections, challenges like social stigma, limited healthcare infrastructure, and gender bias continue to restrict women's ability to exercise their rights effectively.

### **3. Premature pregnancy:**

In India, the prevalence of child marriages and rigid socio-cultural norms often lead to girls aged 15 to 18 becoming pregnant. These girls are frequently subjected to sexual violence and unprotected sex, resulting in premature pregnancies. Adolescent pregnancies contribute to higher maternal and neonatal mortality rates, with young mothers facing health risks such as anemia, malnutrition, and obstetric complications. This issue stems from a lack of education and entrenched gender discrimination. To address it, the government of India has enacted the Prohibition of Child Marriage Act 2006<sup>63</sup> prohibiting child marriage and launched initiatives like *Janani Suraksha Yojana (JSY)*<sup>64</sup>(Maternity Safety Scheme) under the National Health Mission, which aims to support maternal health and nutrition. However, stricter enforcement of these laws and improved healthcare access are needed to combat this problem effectively.

### **4. Right to Free and Safe Access to Abortion and Female Feticide:**

The right to reproductive choice ensures that women have the autonomy to decide whether or not to have children. This includes the freedom to choose whether to carry a pregnancy to term or terminate an unwanted pregnancy, as well as the right to select their preferred method of

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<sup>63</sup> The Prohibition of Child Marriage Act 2006 came into force on 1 November 2007. Available at [https://www.indiacode.nic.in/bitstream/123456789/15943/1/the\\_prohibition\\_of\\_child\\_marriage\\_act%2C\\_2006.pdf](https://www.indiacode.nic.in/bitstream/123456789/15943/1/the_prohibition_of_child_marriage_act%2C_2006.pdf)

<sup>64</sup> "Maternal Health » Janani Suraksha Yojana." National Health Mission, <https://nhm.gov.in/index1.php?lang=1&level=3&lid=309&sublinkid=841>. Accessed 1 December 2024.

family planning and contraception.<sup>65</sup> Under the international framework, Article 3 of the UDHR ensures the right to life, liberty, and security of a person, which includes access to healthcare. Article 12 of the ICESCR guarantees the right to the highest attainable standard of physical and mental health. Collectively, these rights emphasize the principle of non-discrimination and implicitly include women's right to access reproductive health services. The CEDAW explicitly protects women's rights to health, including family planning and the enjoyment of sexual and reproductive rights. In General Recommendation 24, The CEDAW Committee highlights that state parties must ensure access to quality healthcare including reproductive services to women. These services must uphold a woman's right to fully informed consent, respect her dignity, maintain confidentiality, and address her specific needs and perspectives. Additionally, states are obliged to protect women from coercive practices such as non-consensual sterilization, mandatory testing for sexually transmitted diseases, or mandatory pregnancy testing as a condition of employment, as these practices violate women's rights to informed consent and dignity.<sup>66</sup>

In Indian society, several factors influence a woman's status within her family. Women's inability to bear children, disabilities, unable to conceive, or having only daughters often face discrimination and marginalization. Conversely, educated women or women with sons receive relatively better treatment, such as improved nutrition and occasional participation in household decision-making, though they are still not treated as equals to male family members. The cultural norm of strong son preference often reduces women to being seen as "childbearing machines," a perception further exacerbated by technology enabling sex determination and sex-selective abortions in mostly rural areas, perpetuating gender biases through modern methods like pre-conception sex selection<sup>67</sup> unwanted girl children often get eliminated before birth, this results in multiple abortions, which has a significant impact on women's bodies. Despite the enactment of the Medical Termination of Pregnancy (MTP)<sup>68</sup> Act in 1971, approximately 4–6 million illegal abortions still occur every year in India. Among these, 6–9% involve

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<sup>65</sup> Shalev, Carmel. "Rights to Sexual and Reproductive Health." the United Nations, <https://www.un.org/womenwatch/daw/csw/shalev.htm>. Accessed 2 December 2024.

<sup>66</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), A/54/38/Rev.1, chap. I, 1999, <https://www.refworld.org/legal/general/cedaw/1999/en/11953> [accessed 02 December 2024]

<sup>67</sup> National Coordination Committee, Jan Swasthya Abhiyan. "Women's Health, Towards the National Health Assembly II Booklet - 3." National Coordination Committee, Jan Swasthya Abhiyan, October 2006, <https://phmindia.org/wp-content/uploads/2018/06/womens-health.pdf>.

<sup>68</sup> The Medical Termination of Pregnancy Act, 1971, No. 34, Acts of Parliament, 1971 (India), available at <https://www.indiacode.nic.in/bitstream/123456789/1593/1/A1971-34.pdf>

adolescent girls, while 16% are carried out by women aged 20–34 years.<sup>69</sup> However, the social acceptance of the MTP act applied differently to married and unmarried women. Abortions for married women are more socially accepted, while unmarried girls face stigma, creating barriers to safe abortion, which undermines the main object of the MTP Act, which is to prioritize women's health. These unsafe abortions have severe consequences on women's health and well-being. As discussed earlier, the right to health is derived from Article 21 of the Indian Constitution, which guarantees women's rights to access safe abortions and use contraception free from coercion or discrimination. Every individual has the fundamental right to make decisions about their own body. Therefore, women must have autonomy over their bodies and reproductive health without facing discrimination based on their gender.

#### **D. Right To Social Security And Protection:**

The right to social security and protection for women is closely linked to education, as most social security schemes and policies cater to individuals employed in the formal sector. In India, women's participation in the labor force is significantly lower than men's. According to ILO 81.8% of women's employment in India is concentrated in the informal economy.<sup>70</sup> Only about 5% of women are employed in the formal sector, which grants access to proper social security and protection. The remaining women are primarily engaged in domestic tasks, childcare, and eldercare, which are typically unpaid and unrecognized by social security systems. Women working in the unorganized sector often lack access to specific social security benefits. While some schemes exist for women in agriculture, construction, and small industry workers, a lack of education and awareness prevents many from utilizing these benefits. Therefore, the CEDAW committee has raised concerns about the ineligibility of women in precarious work for social security<sup>71</sup> and has urged states to ensure that domestic workers (including migrant workers), temporary wage earners, women in informal sectors, and rural and Indigenous women have equitable access to social security protections.<sup>72</sup>

The right to social security and protection has been recognized under various international

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<sup>69</sup> Kapilashrami, Anuj (2005) Women's health: A decade of skewed priorities, NGO Country Report.

<sup>70</sup> Women and Men in the Informal Economy: A Statistical Picture, Third Edition, International Labour Organization, 2018.

[https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_626831.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_626831.pdf)

<sup>71</sup> CO The Philippines, CEDAW/C/PHI/CO/6 (2006) para 25.

<sup>72</sup> CO Costa Rica, A/58/38 (Supp), 26th Session (2003) para 63

treaties, emphasizing principles of non-discrimination, equality, and safeguarding against vulnerabilities. Articles 22 and 25 of the UDHR, recognize the right to social security and an adequate standard of living as fundamental rights. Similarly, Article 9 of the ICESCR guarantees the right to social security, including social insurance, for all individuals without discrimination. Specifically addressing women, ICESCR provides special protection and assistance for mothers during and after childbirth, ensuring access to paid leave or adequate social security benefits. Article 11(1)(e) of CEDAW affirms women's right to social security, encompassing retirement, unemployment, sickness, disability, and maternity benefits. Article 13 obligates states to eliminate economic and social discrimination, ensuring women have equal access to family benefits, loans, and financial services. Additionally, ILO conventions advocate for social and maternity protections, as well as equal remuneration, to guarantee women's equitable access to fundamental rights.

In alignment with these international frameworks, the Indian Constitution recognizes the right to equality<sup>73</sup> and empowers the state to create special provisions for women and children.<sup>74</sup> It directs states to provide adequate means of livelihood, ensure just and humane working conditions, and offer maternity relief to protect women from exploitation.<sup>75</sup> To adhere to the constitutional provisions, international treaty obligations, and the SDG goal- 1.3 which emphasizes to support women and other vulnerable groups by taking measures to implement social protection systems and achieve gender equality under SDG 5. India has implemented several legislative and policy initiatives to support women workers. For those in the organized sector, the Maternity Benefit Act, of 1961<sup>76</sup>(amended in 2017)<sup>77</sup> extended maternity leave from 12 weeks to 26 weeks for the first two children and protects women from dismissal during maternity. Additionally, the Employees' State Insurance Act, of 1948<sup>78</sup> provides coverage for maternity, sickness, disability, and medical benefits. For women in the informal sector, the

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<sup>73</sup> Art. 14 of the Constitution of India.

<sup>74</sup> Art. 15 of the Constitution of India.

<sup>75</sup> Art.42 of the Constitution of India.

<sup>76</sup> Maternity Benefit Act, 1961, India code, Available at [https://www.indiacode.nic.in/bitstream/123456789/17115/1/maternity\\_benefit.pdf](https://www.indiacode.nic.in/bitstream/123456789/17115/1/maternity_benefit.pdf) Accessed 4 December 2024.

<sup>77</sup> The Gazette of India. "Maternity Benefit Amendment Act,2017." Ministry of Labour & Employment, [https://labour.gov.in/sites/default/files/maternity\\_benefit\\_amendment\\_act2017\\_.pdf](https://labour.gov.in/sites/default/files/maternity_benefit_amendment_act2017_.pdf). Accessed 4 December 2024.

<sup>78</sup> EMPLOYEES' STATE INSURANCE ACT, 1948." Ministry of Labour & Employment, [https://labour.gov.in/sites/default/files/theemployeesact1948\\_0.pdf](https://labour.gov.in/sites/default/files/theemployeesact1948_0.pdf). Accessed 4 December 2024.

Unorganized Workers' Social Security Act, of 2008<sup>79</sup> mandates the creation of welfare schemes addressing health, life insurance, disability, maternity benefits, and old-age support. Key programs include the JSY,<sup>80</sup> The Pradhan Mantri Matru Vandana Yojana (PMMVY),<sup>81</sup> which encourage institutional deliveries to reduce complications and improve the sex ratio by discouraging female foeticide. These schemes also provide financial assistance to encourage safe deliveries in public hospitals and compensate for wage loss, enabling women to rest adequately before and after the birth of their first living child. Furthermore, the National Social Assistance Programme (NSAP)<sup>82</sup> offers pensions for the elderly, widows, and individuals with disabilities. Together, these measures aim to enhance the social security and overall well-being of women in both formal and informal employment sectors.

#### **E. Right To Adequate Standard Of Living:**

The right to an adequate standard of living is a fundamental human right recognized under both international and Indian legal frameworks. This comprises access to essential resources such as food, clothing, housing, healthcare, education, and social protection, ensuring women are safeguarded from discrimination and their right to equality is upheld. However, in India, traditional gender roles and cultural norms often restrict women's participation in the labor force or in paid employment outside of household responsibilities. This is particularly evident in rural areas, where women often engage in agricultural labor on family-owned lands. The lack of ownership significantly limits their financial independence and decision-making power within families. In many Indian households, women are often regarded as dependents or property without a voice in family decisions. A stark example of this is the practice of women eating only after the male members of the family have finished their meals, often consuming leftovers. This reflects deeper inequalities, as women in rural India frequently lack access to adequate food and living standards. Due to lack of education, many are unaware of their rights to proper nutrition, healthcare, or other basic services, perpetuating cycles of poverty and gender disparity.

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<sup>79</sup> "Unorganised Workers Social Security Act 2008." Ministry of Labour & Employment, [https://labour.gov.in/sites/default/files/unorganised\\_workers\\_social\\_security\\_act\\_2008.pdf](https://labour.gov.in/sites/default/files/unorganised_workers_social_security_act_2008.pdf). Accessed 4 December 2024.

<sup>80</sup> Supra Note 150.

<sup>81</sup> Pradhan Mantri Matru Vandana Yojana - Home, <https://pmmvy.wcd.gov.in/>. Accessed 4 December 2024.

<sup>82</sup> National Social Assistance Programme (NSAP)|Ministry of Rural Development | GoI, <https://nsap.nic.in/>. Accessed 4 December 2024.

**F. Protection Of The Family:**

Education is one of the most empowering tools for adolescent girls, enabling them to lead healthy and dignified lives.<sup>83</sup> Educated girls are more likely to marry at a later age, reducing the prevalence of child marriage. They tend to have lower fertility rates and fewer children compared to illiterate women. Education equips them with awareness about nutritional requirements, ensuring that their children receive proper care and nourishment. Moreover, being educated empowers women to make informed decisions about family planning, including the number of children they wish to have. It also enables them to actively participate in shaping their children's education and future prospects. These factors collectively contribute to breaking cycles of poverty and gender-based discrimination while fostering gender equality in society.

**G. Cultural Rights:**

In India's patriarchal society, women in some regions are restricted from even considering their cultural rights. These rights are often perceived as a privilege rather than a necessity, and women, viewed as dependents, struggle to claim access to them. For instance, girls are frequently prohibited from playing games or watching movies and television, while male children are encouraged to engage in recreational activities. However, in more modern and progressive contexts, education has become a transformative force. Educated girls and women are increasingly able to play sports, pursue careers in athletics, or explore opportunities in cultural and artistic fields such as acting, painting, and design. Financial independence and education empower women to actively participate in cultural programs and activities, breaking traditional barriers. This certainly highlights the critical role of education in enabling women to understand, access, and exercise their cultural rights. Assessing cultural rights also contributes to women's empowerment and gender equality.

**Conclusion:**

Education is a fundamental right that empowers women, enhances their socio-economic status, and promotes gender equality. Despite legal frameworks and policies, women, especially in rural areas, continue to face barriers to education, limiting their access to employment, fair

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<sup>83</sup> Kadilli, Etleva. "Supporting the Education and Health of Young Mothers in Africa." UNESCO, 21 October 2024, <https://www.unesco.org/en/articles/supporting-education-and-health-young-mothers-africa>. Accessed 5 December 2024.

wages, healthcare, and social security. Ensuring equal educational opportunities is crucial for breaking the cycle of poverty and discrimination. A collective effort from governments, civil society, and international organizations is needed to remove these barriers. Investing in women's education is not just a legal duty but a pathway to social and economic progress for all.

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