

# Womens rights



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Womens Rights, 191960, The effort to secure equal rights for women and to remove gender discrimination from laws, institutions, and behavioral patterns. The womens rights movement began in the nineteenth century with the demand by some women reformers for the right to vote, known as suffrage, and for the same legal rights as men. Though the vote was secured for women by the Nineteenth Amendment to the U. S. Constitution in 1920, most of the gains women have made in achieving legal equality and ending gender discrimination have come since the 1960s. Civil Rights legislation of that era was primarily focused on ensuring that African Americans and other racial minorities secured Equal Protection of the laws.

However, the inclusion of sex as a protected category under the Civil Rights Act of 1964 (42 U. S. C. A. ?§ 2000e et seq.) gave women a powerful legal tool to end Sex Discrimination and to erase cultural stereotypes about females.

The modern womens rights movement began in the 1960s and gained momentum with the development of the scholarly field of Feminist Jurisprudence in the 1970s. The quest for womens rights has led to legal challenges in the areas of employment, domestic relations, reproductive rights, education, and Criminal Law. Although the womens rights movement failed to secure ratification of the Equal Rights Amendment (ERA), the courts have generally been receptive to claims that demand recognition of rights under the equal protection clause of the Fourteenth Amendment. Nineteenth Century Womens Rights MovementThe effort to secure womens rights began at a convention in Seneca Falls, New York, in 1848. A group of women and

men drafted and approved the Declaration of Sentiments, an impassioned demand for equal rights for women, including the right to vote.

The declaration was modeled after the language and structure of the Declaration of Independence of 1776. Many of those gathered at Seneca Falls, including early womens rights leaders susan b. anthony and Elizabeth Cady Stanton, had been active in the abolitionist movement, seeking an end to Slavery. However, these women realized that they were second-class citizens, unable to vote and possessing few legal rights, especially if they were married.

Some leaders, like Lucy Stone, saw parallels between women and slaves: both were expected to be passive, cooperative, and obedient. In addition, the legal status of both slaves and women was unequal to that of white men. After the Civil War ended in 1865, many of these reformers fully committed their energies to gaining womens suffrage. Stanton and Anthony established the National Woman Suffrage Association (NWSA) that sought an amendment to the U. S. Constitution similar to the Fifteenth Amendment, which gave non-white men the right to vote. In 1872, Anthony was prosecuted for attempting to vote in the presidential election. Stone, on the other hand, helped form the American Woman Suffrage Association (AWSA).

AWSA worked for womens suffrage on a state by state basis, seeking amendments to state constitutions. The U. S. Supreme Court was hostile to womens suffrage. In *Minor v. Happersett*, 88 U.

S. 162, 22 L. Ed. 627 (1875), the Court rejected an attempt by a woman to cast a ballot in a Missouri election. The Court stated that the “ Constitution of

the United States does not confer the right of suffrage upon any one.” In addition, the Court said, “ Women were excluded from suffrage in nearly all the States by the express provision of their constitutions and laws.” In essence, the Court relied on past exclusions to justify current exclusions, concluding that because women had never been allowed to vote, they could continue to be excluded. The Campaign to Defeat the ERAAfter a fifty-year struggle, in March 1972 Congress approved the Equal Rights Amendment (ERA), a move that appeared to pave the way for the quick and easy adoption of the amendment by the states.

Under the Constitution, thirty-eight states are required for ratification, and within a year of congressional approval, thirty states had ratified the amendment. At this point, however, a concerted opposition campaign stopped the momentum for the ERA dead in its tracks. The most intense opposition to the ERA came from conservative religious and political organizations, including the right-wing John Birch Society and STOP ERA, a group led by conservative firebrand Phyllis S. Schlafly. Supporters of the ERA had cast it as mainly a tool to improve the economic position of women. Opponents, however, saw the amendment as a means of undermining traditional cultural values, especially those concerned with the family and the role of women in U. S. society.

The U. S. Supreme Courts decision legalizing abortion, *roe v. wade*, 410 U. S. 113, 93 S.

Ct. 705, 35 L. Ed. 2d 147 (1973), also affected the ratification struggle, as the emerging right-to-life movement saw the ERA as an additional legal basis

for a woman's right to an abortion. During the 1970s and early 1980s, fierce lobbying took place in state legislatures that were considering the ERA.

Opponents pointed out that during the U. S. Senate debate on the ERA, a host of amendments that would have restricted the reach of the amendment were defeated.

These included prohibitions against drafting women into the military and allowing women to serve in combat. The defeat of other amendments to the ERA led opponents to claim that women would lose the right to Child Support and certain special privileges and exemptions based in state and federal law. Opponents also warned that the passage of the ERA would lead to unisex public toilet facilities and the Abolition of traditionally gender-based segregated facilities. Finally, many opponents saw the ERA as a means to remove criminal laws dealing with homosexual acts. Although the deadline for ratification was extended for thirty months, ERA supporters were never able to gain the additional states needed for ratification. Further readings Berry, Mary Frances. 1986.

Why ERA Failed: Politics, Women's Rights, and the Amending Process of the Constitution. Bloomington: Indiana Univ. Press. Hoff-Wilson, Joan. 1986.

Rights of Passage: The Past and Future of the ERA. Bloomington: Indiana Univ. Press. Mansbridge, Jane J. 1986. Why We Lost the ERA.

Chicago: Univ. of Chicago Press. The attitude of the Court in *Minor* was foreshadowed three years earlier in the concurring opinion of Justice Joseph P. Bradley in *Bradwell v. Illinois*, 83 U. S.

130, 21 L. Ed. 442 (1872).

Bradley supported the Illinois Supreme Courts denial of Myra Bradwells application to practice law in the state. Bradley articulated the widely held view that the “ natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.” He further concluded that the “ paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.

“ By the late nineteenth century, Lobbying of state legislatures by AWSA and other suffrage supporters began to bear fruit. A few states changed their statutes to permit female suffrage. By 1912, nine states had extended the franchise to include women. In 1918, President woodrow wilson endorsed womens suffrage, and Congress soon adopted a constitutional amendment granting women the right to vote and submitting the amendment to the states for ratification. In 1920, the Nineteenth Amendment was added to the Constitution, immediately doubling the potential electorate.

Domestic Relations in the Nineteenth CenturyThe legal inequality that Lucy Stone and other womens rights leaders argued against was evident in the relationship of Husband and Wife. Under English Common Law, which was adopted by the states after independence, the identity of the wife was merged into that of the husband; he was a legal person but she was not. Upon marriage, he received all her Personal Property, and managed all property owned by her. In return, the husband was obliged to sup port his wife and children.

A married woman, therefore, could not sign a contract without the signature of her husband. In a society that had no government Welfare system, a wife's property could be squandered by a profligate or drunken husband, leaving her without financial means if the husband died or abandoned her. By the 1850s, women's rights supporters convinced many state legislatures to pass Married Women's Separate Property Acts. These acts gave women the legal right to retain ownership and control of property they brought to the marriage. Women also secured the right to have custody of their children after a Divorce. Traditionally, fathers retained custody of their children. This tradition weakened in the nineteenth century, as judges fashioned two doctrines governing Child Custody.

The “best-interest-of-the-child” doctrine balanced the new right of the mother to have custody of the child against the assessment of the needs of the child. The “tender years” doctrine arose after the Civil War, giving mothers a presumptive right to their young children. Reproductive Rights in the Nineteenth Century The fertility rate of white women declined steadily during the nineteenth century. In part this was the result of using Birth Control and Abortion to control family size. By the 1870s, a woman's right to make decisions about reproduction was restricted by federal and state laws. The most famous was the federal Comstock Law of 1873, which criminalized the transmission and receipt of “obscene,” “lewd,” or “lascivious” publications through the U.

S. mail. The law specified that materials designed, adapted, or intended “for preventing conception or producing abortion” were included in the list of banned items. Some states passed laws banning the use of contraceptives.

A womans opportunity to have an abortion was outlawed by the states during the latter part of the nineteenth century. abortions, which increased markedly in the 1850s and 1860s, especially among middle-class white women, had been legal until the fetus “ quickened,” or moved inside the uterus. The American Medical Association (AMA) and religious groups led the successful move to have state legislatures impose criminal penalties on persons performing abortions.

In some states, women who had abortions could also be held criminally liable. The Modern Womens Rights MovementFor many decades of the twentieth century, supporters of womens rights had little success in legislatures or in the courts. Gender inequality meant that women could legally be discriminated against in employment, education, and other important areas of everyday life. The Civil Rights Movement of the 1960s drew the support of many college-educated women, much like the women who supported the abolitionist cause a little more than a hundred years before. Like their predecessors, these civil rights workers realized that discrimination based on race existed side by side with discrimination based on gender. The result was the birth of the modern feminist movement and the quest for womens rights. LegislationTitle VII of the Civil Rights Act of 1964 was a major step forward for womens rights.

Title VII prohibits employment discrimination based on sex, giving women the ability to challenge the actions of employers or potential employers. The Pregnancy Discrimination Act of 1978 (PDA), 42 U. S. C.



A. 29 U.S.C. § 2600e(k), prohibits discrimination against employees on the basis of pregnancy and childbirth with respect to employment and benefits. The Equal Credit Opportunity Act, 15 U.S.C. § 1691, prohibits discrimination in the extension of credit on the basis of sex or marital status.

S. C. A. 29 U.S.C. § 1681, prohibits discrimination in the extension of credit on the basis of sex or marital status.

Title IX of the Education Amendments of 1972, 20 U.S.C. A. §§ 1681–1686, prohibits sex discrimination in educational institutions receiving federal financial assistance, and covers exclusion on the basis of sex from noncontact team sports.

Title IX revolutionized womens collegiate athletics, forcing Colleges and Universities to fund womens athletics at a level comparable to mens athletics. The Equal Rights AmendmentThe Equal Rights Amendment was the central goal of the womens rights movement in the 1970s. Congress passed the ERA and sent it to the states for ratification on March 22, 1972. The operative language of the ERA stated, “ Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” The effect of the amendment would have been limited to the actions of any government or government official, acting in his official capacity. In addition to its symbolic effect, the ERA would have shifted the Burden of Proof in litigation alleging discrimination from the person making the complaint to the public officials who were denying that the discrimination had occurred. Such an effect would have been significant, because the party with the responsibility for carrying the burden of proof must do so successfully or else lose the litigation.

Congress initially required the ERA to be ratified by three-fourths of the states (38 states) seven years from the time Congress sent the amendment to the states. By 1978, 35 of the 38 states had ratified the amendment. Proponents of the ERA secured an extension of the ratification deadline to June 30, 1982. A determined effort by conservative groups opposed to the ERA prevented any additional states from ratifying the amendment by the 1982 deadline. However, some states have amended their constitutions to include an equal rights amendment. Intermediate Judicial Scrutiny Without the Equal Rights Amendment, womens rights supporters faced a more difficult task in convincing the courts to set aside state laws and policies that perpetuated inequality and sex discrimination. The main constitutional tool for litigating womens rights cases has been the Equal Protection Clause of the Fourteenth Amendment. A key issue in equal protection analysis by the courts is what standard of judicial scrutiny to apply to the challenged legislation.

Since the 1970s, the Supreme Court has applied “heightened” or “intermediate” judicial scrutiny to cases involving matters of discrimination based on sex. In 1971, the Supreme Court, in *Reed v. Reed*, 404 U. S.

71, 92 S. Ct. 251, 30 L.

Ed. 2d 225, extended the application of the Equal Protection Clause of the Fourteenth Amendment to gender-based discrimination. Womens rights supporters sought to have the Court include sex as a “suspect classification.” The Suspect Classification doctrine holds that laws classifying people according to race, ethnicity, and religion are inherently suspect and

are subject to the Strict Scrutiny test of Judicial Review. Strict scrutiny forces the state to provide a compelling state interest for the challenged law and demonstrate that the law has been narrowly tailored to achieve its purpose. If a suspect classification is not involved, the Court will apply the Rational Basis Test, which requires the state to provide any reasonable ground for the legislation. Under strict scrutiny, the government has a difficult burden to meet, while under rational basis, most laws will be upheld.

The Supreme Court has refused to make sex a suspect classification, but it did not impose the rational basis test on matters involving sex discrimination. Instead, the Court developed the intermediate or heightened scrutiny test. As articulated in *Craig v.*

*Boren*, 429 U. S. 190, 97 S. Ct.

451, 50 L. Ed. 2d 397 (1976), “classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.” Thus, intermediate scrutiny lies between strict scrutiny and rational basis. The Supreme Court has sustained numerous challenges to gender-based discrimination, thereby mandating equal rights under the law.

It has established the right of equality in laws dealing with survivors benefits (*Weinberger v. Wiesenfeld*, 420 U. S. 636, 95 S.

Ct. 1225, 43 L. Ed. 2d 514 [1975]), *Alimony* (*Orr v.*

*Orr*, 440 U. S. 268, 99 S. Ct. 1102, 59 L. Ed.

2d 306 [1979]), sexbased mortality tables (City of Los Angeles Department of Water and Power v. Manhart, 435 U. S. 702, 98 S. Ct. 1370, 55 L.

Ed. 2d 267 [1978]), and pensions (Arizona Governing Committee v. Norris, 463 U. S.

1073, 103 S. Ct. 3492, 77 L. Ed.

2d 1236 [1983]). Nevertheless, the Court has upheld laws that apply sex-based distinctions. In Michael M. v. Superior Court, 450 U.

S. 464, 101 S. Ct. 1200, 67 L. Ed.

2d 437 (1981), the Court upheld a Statutory Rape law that set different ages of consent for females and males. The Court also upheld, in *roster v. goldberg*, 453 U. S. 57, 101 S. Ct. 2646, 69 L.

Ed. 2d 478 (1981), the Military Selective Service Act (50 U. S. C.

A. App. ?§ 451 et seq.), passed by Congress in 1980, though only men are required to register. The Court has granted women equal rights to attend publicly funded colleges and universities that have traditionally enrolled only men. In *united states v. virginia*, 518 U.

S. 515, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996), the Court ruled that the Virginia Military Institute (VMI), a publicly funded military college, must end its all-male enrollment policy and admit women. According to the Court, the all-male policy violated the Equal Protection Clause of the Fourteenth Amendment. Reproductive RightsThe reproductive rights of women were recognized by the Supreme Court in the 1960s and 1970s, overturning one

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hundred years of legislation that restricted birth control and banned legal abortions.

In the 1980s and 1990s, however, the Court retreated, allowing states to place restrictions on abortion. In *Griswold v. State of Connecticut*, 381 U. S. 479, 85 S. Ct. 1678, 14 L. Ed.

2d 510 (1965), the Court struck down a Connecticut law that made the sale and possession of birth control devices to married couples a misdemeanor.

The law also prohibited anyone from assisting, abetting, or counseling another in the use of birth control devices. In *Griswold*, the Court announced that the Constitution contained a general, independent right of privacy.

Seven years later, in *Eisenstadt v. Baird*, 405 U. S. 438, 92 S.

Ct. 1029, 31 L. Ed. 2d 349 (1972), the Court struck down a Massachusetts law that banned the distribution of birth control devices. In this case, the Court established that the right of privacy is an individual right, not a right enjoyed only by married couples. These two cases paved the way for *Roe v. Wade*, 410 U.

S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), which struck down a Texas law that banned abortions.

Writing for the majority, Justice Harry A. Blackmun concluded that the right to privacy “is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.” More importantly, he stated that the right of privacy is a fundamental right. This meant that the state of Texas had to meet the strict scrutiny test of constitutional review. The Court held that

Texas interest in preventing abortion did not become compelling until that point in pregnancy when the fetus becomes “viable” (capable of “meaningful life outside the mother’s womb”). Beyond the point of viability, the Court held that the state may prohibit abortion, except in cases where it is necessary to preserve the life or health of the mother. The Roe decision provided women with the right to continue or terminate a pregnancy, at least up to the point of viability. However, by the 1980s, a more conservative Supreme Court began upholding state laws that placed restrictions on this right.

In *Webster v. Reproductive Health Services*, 492 U. S. 490, 109 S. Ct.

3040, 106 L. Ed. 2d 410 (1989), the Court upheld a Missouri law that forbids state employees from performing or assisting in abortions, or counseling women to have abortions. It also prohibited the use of state facilities for these purposes and required all doctors who would perform abortions to conduct viability tests on fetuses at or beyond 20 weeks gestation.

Though it appeared that the Court might overturn Roe in *Planned Parenthood v. Casey*, 505 U. S. 833, 112 S. Ct. 2791, 120 L.

Ed. 2d 674 (1992), it reaffirmed the essential holding of Roe that the constitutional right of privacy is broad enough to include a woman’s decision to terminate her pregnancy. Domestic Violence The right of women to be free from Domestic Violence has drawn increasing concern and support since the 1970s. As a result, the issue of spousal abuse, in which most of the victims are women, has led to changes in state and federal law. For example, many states have repealed laws that prevented a wife from filing a marital rape

charge against her husband. In addition, most court systems have attempted to be more consistent in enforcing and prosecuting these toughened domestic violence laws.

For example, a spouse who has been attacked or harassed by a marital partner may obtain an order for protection, which prohibits the aggressor from contacting the victim. The federal violence against women act (VWA), passed in 1994 (108 Stat. 1796, 1902), sought to ensure that orders for protection are given full faith and credit in every state, not just in the state where the order was made. Persons who commit domestic abuse are banned from possessing a firearm and anyone facing a Restraining Order for domestic abuse is prohibited from possessing a firearm. In addition, the law established a federal Cause of Action for gender-motivated violence, which means that victims of gender-motivated violence were allowed to bring a civil suit for damages or equitable relief in federal or state court.

However, the Supreme Court, in *Brzonkala v Morrison*, 529 U. S. 598, 120 S. Ct. 1740, 146 L. Ed.

2d 658 (2000), struck down this section of the act (42 USC section 13981). The Court held that Congress did not have the authority to enact the section under either the Commerce Clause or the Fourteenth Amendment, which had been identified by Congress as the sources for its authority. The VWA provision had nothing to do with interstate commerce or any type of economic enterprise. In addition, the Fourteenth Amendment could not sustain this section of the VWA because the amendment only applies to the actions of state governments, not private persons.

The Court concluded that the suppression of violent crime and the “vindication of its victims” had, in its view, always been the responsibility of state governments.