

## Women's Rights: Legal and Social Barriers

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### Abstract

*Women constitute almost half of the human populations in the world and therefore, important indicator of human progress and civilization. India is no exception to this. But they have been lagging far behind their male counterparts in terms of equal opportunities and equal rights. They have been denied even the basic human rights and have been marginalized depriving them of their rights in the patriarchal Indian society. Even after 69 years of India's independence these women have been living in a condition of abject deprivation. The Constitution of India considers women equal with men and ensures equal rights. But in reality, Indian women are far from realizing their equal status with men. At the same time at the event of violation of her right she rarely approaches to the court for getting justice because the system is too slow and full of loopholes. The crimes against women are also on the rise. With this backdrop the present paper will focus on to what extent women have been able to enjoy their rights guaranteed by our constitution and Indian governments. The aim of this paper is to identify the legal and social barriers on the way of women enjoying their rights and what are the safeguards for them. The methods applied in this study are historical, descriptive and analytical.*

**Keywords:** Barriers, crimes, deprivation, marginalized, rights, violation, women.

### Objectives of the Paper:

- i. To discuss about the various laws, rights, social legislations, special initiatives which has been taken for women's protection and also to know how far these laws are successful in providing protection to women.
- ii. To know the answer of the question whether women rights are easily accessible to women or not.
- iii. To identify the main social and legal barriers for which women are deprived of their rights.
- iv. To find out some measures for the protection of women's rights.

### Introduction:

The celebration of the International Women's Day on 8<sup>th</sup> March every year has become a day of demonstrations for equal opportunity and solidarity. But the question arises what is the use of this celebration in view of the fact that their position in the society has not change much with the change of time. They are still treated as the 'weaker sex' who needs to be protected for entire life- be it by her father, husband or son. Women constitute half of the total population of country but they suffer from many disadvantages as compared to men in terms of literacy rates, labour participation rates and earnings (Singh & Khanna, 2007, p. 123). The Constitution of India came into force in 1949. It contains a number of articles which speaks of women's rights (Saikia, 2008,p.118). Our Constitution not only grants equality to women but also empowers the State to adopt measures of positive discrimination in

favour of women for neutralizing the cumulative socio-economic, educational and political disadvantages faced by them. Even the Preamble to the Constitution of India resolves to secure to all its citizen-“Social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunities, dignity of the individual and the unity of the nation.” Moreover, the Constitution guarantees Fundamental Rights to all Indian citizens. The Constitution also enumerates in the Directive Principles of State Policy the major goals of a welfare state with gender equity as a core objective. Thus Indian women are entitled to these rights just as men are. While the Fundamental Rights are enforceable in the Courts of justice, the State is charged with the duty to apply the Directive Principles in making laws (Lalnehzovi, 2007,p. 30-31). Indian government has taken special efforts to protect the suppressed women group. Fundamental rights among others, ensures equality before the law, equal protection of law, prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantees equal opportunity to all citizens in matters relating to employment through various articles like 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the constitution.

### **Constitutional Privileges:**

- a) Equality before Law: the state shall not deny to any person equality before law or equal protection of laws within the territory of India.(Article 14)
- b) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them {Article 15(i)}
- c) The State to make special provision in favour of women and children {Article 15(3)}
- d) Equality of opportunity for all citizen in matters relating to employment or appointment to any office under the state (Article 16)
- e) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood {Article 39(a)} and equal pay for equal work for both men and women {Article 39(d)}
- f) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities(Article 39 A).
- g) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42).
- h) The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46).
- i) The State to raise the level of nutrition and the standard of living of its people and the improvement of public health (Article 47).
- j) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women {Article 51(A) (e)}.
- k) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat{Article 243 D (3)}.
- l) Not less than one-third of the total number of office of Chairpersons in the Panchayats at each level to be reserved for women {Article 243D(4)}.
- m) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct



election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality {Article 243 T(3)}.

- n) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide {Article 243 T(4)} (Nelasco, 2010, pp. 79-80) The women rights are nationally accepted and constitutionally guaranteed to uplift women through socio-economic and educational opportunities to satisfy the constitutional goal of equality and social justice for historical reasons. Their development over the past decades is being pursued through positive discrimination in their favour in education, employment, governance and other areas. All the organizations, i.e. UN system, national governments, women organizations, women association have been deliberating on eliminating the differences between men and women in context of their rights. But women rights, though granted in theory, their implementation is slow and dilatory (Goel, 2004, p. 49).

### Legal Provisions

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to encounter social discrimination and various forms of violence and atrocities and to provide supportive services especially to working women (Nelasco, 2010, p. 81).

Although women may be victims of any of the crimes such as 'Murder,' 'Robbery,' 'Cheating', etc., the crimes which are directed specifically against women are characterized as 'Crimes Against Women'. These are broadly classified under two categories:

#### (1) The Crimes identified under the Indian Panel Code (IPC)

- a. Rape (Sec.376 IPC)
- b. Kidnapping & Abduction for different purposes ( Sec.363-373 IPC)
- c. Homicide for Dowry, Dowry Deaths or their attempts (Sec.302/ 304- B of IPC)
- d. Torture , both mental and physical (Sec.498-A of IPC)
- e. Molestation (Sec.354 of IPC)
- f. Sexual harassment (Sec. 509 of IPC)
- g. Importation of girls (up to 21 years of age)( Sec.366-B of IPC)

#### (2) The Crimes Identified under the Special Laws

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some Acts which have special provisions to safeguard women and their interests are:

- a. Child Marriage Restraint Act, 1929.
- b. Employees State Insurance Act, 1948
- c. Factories Act, 1948 as amended in 1976.
- d. Plantation Labour Act, 1951
- e. The Family Courts Act, 1954.
- f. Special Marriage Act, 1954.
- g. Hindu Marriage Act, 1955
- h. Hindu Succession Act, 1956
- i. Immoral Traffic (Prevention) Act, 1956
- j. Dowry Prohibition Act, 1961
- k. Maternity Benefits Act, 1961
- l. Contract Labour (Regulation & Abolition) Act, 1970
- m. Medical Termination of Pregnancy Act, 1971

- n. *Equal Remuneration Act, 1976*
- o. *Criminal Law (Amendment) Act, 1983*
- p. *Indecent Representation of Women (Prohibition) Act, 1986.*
- q. *Commission of Sati (Prevention) Act, 1987 (Goel,2004, p. 96).*

**Special Initiatives for Women**

- a. **National Commission for Women:** In January 1992, the Government set up this statutory body with a specific mandate to study and monitor all matters relating to the Constitutional and legal safeguards provided for Women, review the existing legislation to suggest amendments wherever necessary, etc.
- b. **Reservation for Women in local Self- Government:** The 73<sup>rd</sup> Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.
- c. **The National Plan of Action for the Girl Child (1991-2000):** The Plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.
- d. **National Policy For The Empowerment of Women (2001) :** The Department of Women and Child development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this Policy is to bring about the advancement, development and empowerment. Thus a series of acts as mentioned above were promulgated for women’s upliftment (Nelasco,2010,pp. 82-83).

**Table 1: Offences under the Indian Penal Code Protecting Women**

| S. No | Name of the Offence   | Section    | Minimum Punishment | Maximum Punishment                      |
|-------|---|------------|--------------------|---|
| 1.    | Disclosure of the identity of the victim of certain offences, etc.                                | 228-A      | –                  | 2 years and fine                        |
| 2.    | Obscene acts and songs in Public Place  | 294        | –                  | 3 months or fine or both                |
| 3.    | Dowry Death   | 304-B      | 7 years            | Life imprisonment                       |
| 4.    | Causing miscarriage without women’s consent   | 313        | –                  | Life imprisonment or ten years and fine |
| 5.    | Death caused by act done with intent to cause miscarriage<br>As above –if without woman’s consent | 314<br>314 | –<br>–             | 10 years and fine<br>Life imprisonment  |

|     |   |       |                  |  |
|-----|---|-------|------------------|--|
| 6.  | Simple hurt-wife beating  | 323   | –                | One year and also fine upto Rs.10000/- or both |
| 7.  | Grievous hurt-wife beating  | 325   | –                | 7 years and also fine                          |
| 8.  | Wrongful restraint  | 314   | –                | 1 month or fine upto Rs.500/- or both          |
| 9.  | Wrongful confinement  | 342   | –                | One year or fine upto Rs.1000/- or both        |
| 10. | Assault or Criminal force to woman with intent to outrage her modesty           | 354   | –                | 2 years or fine or both                        |
| 11. | Kidnapping  | 363   | –                | 7 years and also fine                          |
| 12. | Kidnapping of a minor for begging   | 363-A | –                | 10 years and also fine                         |
| 13. | Kidnapping or abducting in order to murder                                      | 364   | –                | 10 years and also fine                         |
| 14. | Kidnapping, abducting or inducing woman to compel her marriage                  | 366   | –                | 10 years and also fine                         |
| 15. | Procuration of minor girls  | 366-A | –                | 10 years and also fine                         |
| 16. | Importation of girls from foreign country                                       | 366-B | –                | 10 years and also fine                         |
| 17. | Kidnapping or abducting child of ten years with intent to steal from its person | 369   | –                | 7 years and also fine                          |
| 18. | Buying or disposing of any person as a slave                                    | 370   | –                | 7 years and also fine                          |
| 19. | Selling minor for purpose of prostitution                                       | 372   | –                | 10 years and also fine                         |
| 20. | Buying minor for purpose of prostitution  | 373   | –                | 10 years and also fine                         |
| 21. | Rape  | 376   | 7 years/10 years | For imprisonment of 10 years and also fine     |
| 22. | Sexual intercourse with one's wife living separately                            | 376-A | –                | 2 years and also fine                          |



|     |   |       |   |                           |
|-----|---|-------|---|---------------------------|
| 23. | Intercourse by public servant with woman in his custody                                   | 376-B | – | 5 years and also fine     |
| 24. | Intercourse by Superintendent of Jail remand home etc.                                    | 376-C | – | 5 years and also fine     |
| 25. | Intercourse by any member of the management of a hospital with any woman in that hospital | 376-D | – | 5 years and also fine     |
| 26. | Cohabitation caused by a man deceitfully inducing a belief of lawful marriage             | 493   | – | 10 years and also fine    |
| 27. | Bigamy  | 494   | – | 7 years and also fine     |
| 28. | Bigamy with concealment of former marriage  | 495   | – | 10 years and also fine    |
| 29. | Marriage ceremony fraudulently gone through without lawful marriage                       | 496   | – | 7 years and also fine     |
| 30. | Adultery  | 497   | – | 5 years and also fine     |
| 31. | Enticing or taking away or detaining with criminal intent a married woman                 | 498   | – | 2 years or fine or both   |
| 32. | Subjecting a woman to cruelty   | 498-A | – | 3 years and also fine     |
| 33. | Word, gesture or act intended to insult the modesty of a woman                            | 509   | – | One year, or fine or both |

Source: Agrawal, 1988, pp.25-27

The Indian Penal Code came into force in 1861. Out of these 33 offences shown in the chart, 23 offences existed in the original code but 10 new offences, viz. 228-A, 304-B, 363-A, 366-A, 366-B, 376-A, 376-B, 376-C, 376-D, 498-A, specially protecting the women were added in the due course of time. Thus the number has gone upto 33 offences. These offences were introduced because of the peculiar Indian social conditions and need of the time demanded such acts to be declared as offences (Agrawal, 1988, pp. 25-28)

**Following are the main Social and Legal Barriers in the enjoyment of Women's rights:**

- i. **Control over sexuality, reproduction, and physical security:** Gender subordination is the primary cause of vulnerability of women. Perhaps the cruel aspect of gender subordination is women's lack of control over their bodies. In India, women have little say on the issues like marriage, sex, reproduction etc.

- ii. **Control over labour and income:** Women's autonomy cannot be enhanced without addressing their economic independence but this remains a very distant goal for most women. The prevalent ideology creates an intra-household division of labour and the burden of the household and its substance falls on women as if it were natural.
- iii. **Access to and control over public and private resources:** Public resources mean entire range of services and fundamental rights, guaranteed by the welfare state. The term also encompasses natural resources such as forests, besides education, health-care, credit etc. The dependence of women on natural resources is high. Still they have the least control over management of these resources. Whether it is land, water or forests, those who have the highest stake in the preservation of these natural resources, have the least access to, control over these resources.
- iv. **Control over physical mobility:** A less researched and discussed aspect is women's control over their physical mobility. Does a woman have the autonomy to move freely as an individual? The answer to this tricky question has lots of ifs and buts, but the end result is "No". Control over mobility is a sensitive and important indicator of autonomy. Women's mobility is determined by patriarchal norms and not by choice.
- v. **Access and control over political spaces:** No society can claim to have given its women equal status, unless they wield equal political power at all levels. The entry of women into politics is perhaps, the most decisive factor that can reorder the power-relations between men and women in public arena.
- vi. **Access to law and redressal:** Law is often defined as the encoding of social rules and norms. It reflects the prevailing ideology of a given society or sometimes, the ideology of the dominant social group. The Indian legal system provides empowerment of women, in formal manner. The Constitution of India gave women formal equality. In India the patriarchal ideology is so pervasive that law tends to reinforce biases against women in both subtle and overt ways. This is particularly true in the sphere of civil law, encompassing issues like marriage, inheritance, and family. The law, in this regard, has been reluctant to question gender power relations or intervene in favour of women, as compared to public domain, where legal reform for gender equality has been much easier to achieve (Kaushik, 2007, pp. 41-61).
- vii. **Crime against women:** Violence affects the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the rights of women to participate fully in society. Violence against women takes variety of forms, from domestic violence and dowry deaths to physical assault, rape, kidnapping of minor girls for the purpose of forced prostitution, child marriages, female circumcision, sexual harassment at workplaces, etc. All are violations of the most fundamental human rights (Khanna, 2009, p.87).

#### Discussions:

India is a male dominated patriarchal society where women have always been overpowered by male as because traditionally they have been thought of inferior to men in all respects resulting in denial of their rights even though guaranteed by the Constitution of India. But there have been so many examples right from Rani Laksmi Bai to Indira Gandhi, Kiran Bedi, Pratibha Devi Sing Patil etc. where women have shown their courage and intellectual capacity not inferior to men. Therefore, it requires that we come out of the social taboos and are ready to provide equal opportunity to women starting from education

to any other fields so far dominated by men. They should have all the privileges enjoyed by their male counterparts. Access to justice is the primary need and right of every human being. But, in the case of women this basic right is not easily accessible because of their lack of awareness coupled with lack of knowledge about their rights and the procedure to protect themselves under law. Besides, in some cases, they seem to be unwilling to assert those rights through proper channels. May be, they are afraid to face the consequences resulting from dilatory and uncertain legal proceedings. Therefore, the women should also come forward to realize their rights crossing the boundary of social and legal barriers.

#### **Suggestions:**

1. Women education should be encouraged. This will enable them to demand their due statutory, constitutional, political, social and economic rights.
2. Economic emancipation of women is the need of the hour.
3. Women related organizations, agencies and NGO's should provide institutional and legal support to the women section.
4. Equal share of property rights should be given to women.
5. Employment of women should be encouraged as it will provide them with economic independence.
6. Effective justice needs good laws; improvement in knowing of laws and awareness among the deprived and oppressed.
7. The court process is time consuming and costly. Therefore justice needs to be affordable and fast and court decisions need to be speedily implemented.

#### **Conclusion:**

From the above discussions it can be said that Indian women are being deprived of their basic rights due to a variety of reasons. The prevalent illiteracy among women, the socio-cultural barriers and economic subordination they suffer from, and the unfriendly and insensitive processes of law that have kept most women away from the law and courts are some of the reasons. Most women at the grassroots level find the law and justice system as distant, inaccessible and unaffordable. Moreover, legislation related to women's rights are, often, filled with inconsistencies and loopholes. Therefore, it is not sufficient to frame laws but it is to be ensured that they are accessible to the stakeholders.

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