

LAWS & WOMEN IN INDIA

Seema,
PhD Scholar,
Dept of HDFS, I.C College of Home Science, CCSHAU, Hisar.

ABSTRACT

In this research paper the author has discussed women condition in India and the laws for protection of their rights. The paper has focused on situations of women at home, workplace, after marriage problems and problems faced by girls in general like rape, eve teasing, sexual harassment etc. In India, the central and state governments have passed many Acts for the protection of women rights. Even the Indian constitution has also many articles regarding safety and protection of women against discrimination. In India the position of women has improved since independence. Now Indian women have ventured in almost every field of the work. For their hassle free work environment the government has provided many legislative protection measures.

Key Words: domestic violence, sexual harassment, constitutional & legislative laws.

Introduction

The status of women has undergone a continuous process of up & down throughout history in its modern stages. Women in ancient India were held in high esteem. The position of women in the Vedas & Upanishads was that of a mother (Maata) or goddess (Devi). In the early Vedic age, girls were looked after with care. In the medieval the follows of purdha system, dowry and sati came in to being. It has become a fashion to talk of status of women today, to advance grounds in their favor of bringing them at par with men. The supreme court of India ruled and stressed the need for a uniform civil code, but it could not evolve due to stiff, tooth & nail opposition from almost all quarters of male- dominated social and religious groups, as uniform civil code was about to grant equal status to women with that of men. Inequality against woman and

unkindness towards them had been at many occasions in our Parliament as well as in other sectors came up for discussions at length ended up with achievement of no goals. Many of them found a theoretical solution but their practical effects were almost nil. It is a shame on us that in a democratic country like India lacks infrastructure, support system to implement the laws made by us. In the circumstances even in this 21st century, it is again an exercise over the same issues unless and until we make aware of the people about their special rights, obligation and legal support which are available to them. Some progressive moves on the existing laws and introduction of certain special laws try their maximum input aiming for the development of Indian women. There are certain legal provisions as well as special laws which address the gender issues with practical support and structure. Some of them are mentioned below:-

- The provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements.
- The basic provisions in Articles 14,15,16,19 and 21 help us to identify our rights ensured by the constitutional law.
 - **Article 15** is the prohibition of discrimination on ground of religion race, caste, sex or place of birth.
 - **Article 15 (1)** is against discrimination of citizen on grounds of religion, race, caste, sex, place of birth or any of them. State is prohibited from such discrimination.
 - **Article 15(2)** no citizen on the above grounds, be subject to any disability, responsibility, restriction or condition with regard to their access to public places or the use of government machineries or places dedicated to the use of general public.
 - **Article 15 (3)** says that nothing in this articles shall prevent the state from making any special provision for women and children.

- **Article 16** is with regard to the equality of opportunity in matters of public employment on the above grounds.
- **Articles 21** are an extensive provision of our constitution which addresses many issues from beauty contests to employment of AIDS patients. It includes right to life in various forms.
- **PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.** The Protection of women from domestic violence act 2005 was brought into force by the India government from October 26, 2006. The act was passed by the parliament in August 2005 and assented to by the president on 13 September, 2005.
 - **Section 3** is all about the kinds of abuses like physical, sexual, verbal/emotional and economic abuse.
 - **Sec.7** Duties of Medical facility
 - **Sec.12** Application to Magistrate for getting reliefs for an aggrieved person.
 - **Sec.17** Right to reside in a shared household.
 - **Sec.18** Protection orders.
 - **Sec. 19** Residence orders
 - **Sec. 20** Economic reliefs
 - **Sec. 21** Custody orders
 - **Sec. 22** Compensation orders.
 - **Iyengar (2009)** shows that incidences of domestic violence increase in response to the change in the law, because of male “backlash” or retaliation in response to a relative change in women’s position.

- **Heise et al. (1999)** shows that the performers of domestic violence have often been found to be the males and the victims, their sexual partners. Internationally, one in three women has been beaten, compelled into sex or abused in their lifetime by a member of their own family.
 - **Murthy et al. 2004** viewed that numbers of family members, type of marriage and husband's education besides menstrual problems have significant influence on domestic violence.
 - **INCLEN 2000** found that 40 percent women had experienced at least one form of physical violence in their married life.
 - **Coker et al. 2000** found that higher levels of emotional support can modify the effect of intimate partner violence on health, and suggested that interventions to increase emotional and social support to women victims of violence might reduce the negative consequences to mental and physical health.
- **THE DIVORCE ACT 1869.** With a view to uniformity in practice in the several branches of authority, the Act provides that the procedures of Code of Civil Procedure shall be followed. It is the law relating to the divorce of persons professing Christian religion.
- Sec. 10 Grounds for disbanding of marriage.
 - Sec.10 A disbanding of marriage by mutual consent
 - Sec. 41 Custody of children - unconfirmed allegations of chastity and adulterous behavior by husband amounts to cruelty.
- **DOWRY PROHIBITION ACT, 1961.** Sec 2: Any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage, by the parents of either party to a marriage or by any other person

to the either party to the marriage or to any other person, at or before or anytime after the marriage in connection with the marriage of the said parties.

- **Maintenance of lists of presents to the bride and bridegroom rules, 1985.**
- These rules may be called the dowry prohibition(Maintenance of lists of presents to the bride and bridegroom) Rules,1985
- They shall come into force on the 2 day of October,1985, being the date appointed for the coming into force of the Dowry Prohibition (Amendment) act,1984(63 of 1984).
- **Sec. 3** - Penalty for giving and taking dowry.
- **Sec. 4** – Penalty for demanding dowry
- **Sec. 7** – Abetment of suicide.
- Even if there is no marriage there can be demand of dowry and are not excluded from the purview of Sec 304 B and Sec 498 a of Indian Penal Code.
- **Srinivasan 2007** show that the consensus in the literature on marital transactions in India is that not only has the real value of transfers from brides and their families to grooms and their families risen over the last five decades, but in communities that traditionally paid a bride price, there has been a switch to paying dowries.
- **Ranjan et al. 2007** showed that the percentage of women who were registered in the first trimester was found to be very low i.e. 15.20% according to a study by regarding the utilization and coverage of services in women of reproductive age group.
- **Reshma 2013** showed empirical study of Dowry-related offences. It makes a critical analysis of judicial activisms - a new development in liberating women.

The Socio-educational profile of victims of dowry offences and relate it to the Socio-cultural practice of dowry. It also makes analysis of the laws related to dowry and their effectiveness.

- **Diamond-Smith et al. 2008.** Given that dowry inflation has been linked to the welfare of women in their marital households.

- **Hindu Marriage Act.** The Hindu Marriage Act was established in 1955 as part of the Hindu Code Bills.
 - Three other important acts were also created during this time and they include the Hindu Succession Act (1956), the Hindu Minority and Guardianship act (1956), and the Hindu Adoptions and Maintenance act (1956).
 - All of these acts were put forth under the leadership of Jawaharlal Nehru, and were meant to modernize the then current Hindu legal tradition.
 - The conditions of marriage are specified in section 5 as follows: the act expressively prohibits polygamy by stipulating that a Hindu marriage can be solemnized between two Hindus if neither party has a living spouse at the time of marriage; the age of eligibility is fixed at 21 years of age for bridegrooms and 18 years of age for brides; and finally, the act specifically prevents marriages between prohibited degrees of relationships.
 - Section 6 of the Hindu Marriage Act lays specifies the guardianship for marriage.
 - Section 7 of the Hindu Marriage act recognizes the ceremonies and customs of marriage. Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party.
 - Such rites and rituals include the Saptapadi- the taking of seven steps by the bridegroom and the bride jointly before the sacred fire. The marriage becomes complete and binding when the seventh step is taken.

- **Hindu Widows Remarriage Act, 1856.** Hindu succession Act as well as the marriage laws have not made any special protection or provision to a Hindu woman. In earlier Indian society remarriage of Hindu widow was prohibited by custom. This Act made the remarriage and inheritance of Hindu widows lawful.
 - **Sec.14-** Inheritance from former husband.
- **Registration of Hindu marriages:** For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any of such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu marriage register kept for the purpose.
- **Immoral traffic (prevention) act, 1956.** The Immoral Traffic (Prevention) Act or PITA is a 1986 amendment of legislation passed in 1956 as a result of the signing by India of the United National declaration in 1950 in New York on the suppression of trafficking.
 - The act was then called the *All India Suppression of Immoral Traffic Act (SITA)*, was amended to the current law.
 - The laws were intended as a means of limiting and eventually abolishing prostitution in India by gradually criminalizing various aspects of sex work.
 - The Immoral Traffic (Prevention) Amendment Bill, 2006 amends the Immoral Traffic (Prevention) Act, 1956 to combat trafficking and sexual exploitation for commercial purposes.
 - It penalizes any person visiting a brothel for the purpose of sexual exploitation of trafficked victims.
 - An Act to provide in pursuance of the international convention signed at New York for the prevention of immoral Traffic.
 - **Sec. 3-** Punishment of keeping brothel

- **Sec 5-** Procuring, inducing , or taking person for the sake of prostitution
- **Sec.6-** Detaining a person for prostitution
- **Sec. 9-** Seduction of a person in custody.
- Sexual intercourse with a male and female inside a room will amount to prostitution only if sexual abuse or exploitation is done for a commercial purpose.
- **Tripathi and Arora 2006** children are not adequately protected against commercial sexual exploitation, and their situation is made even worse because children rarely have access to legal counsel that can assist them in making informed decisions about their rights in legal proceedings.
- **Gaur 2001** Section 376 of IPC, which punishes the perpetrators of the crime of rape, defines the age of consent to be below 16 years of age, whereas Section 82 and 83 of the IPC states that nothing is an offence done by a child under 7 years, and further under 12 years, till he has attained sufficient maturity of understanding the nature of the Act and the consequences of his conduct on that occasion.
- In 2007, the Ministry of Women and Child Development reported the presence of over 3 million female sex workers in India, with 35.47 percent of them entering the trade before the age of 18 years.
- April 2011 much new knowledge on sex work in India came from the first major survey, in this was performed by the Center for Advocacy on Stigma and Marginalization (CASAM), which is part of SANGRAM, a major NGO that deals with sex workers.
- In 1992 it was found that 27% of sex workers reported condom use. By 1995 this had risen to 82%, and in 2001 it was 86%.

- In Surat, a study discovered that HIV prevalence among sex workers had increased from 17% in 1992 to 43% in 2000.
 - Mumbai and Kolkata (Calcutta) have the country's largest brothel based sex industry, with over 100,000 sex workers in Mumbai. It is estimated that more than 50% of the sex workers in Mumbai have HIV.
 - **Cunha 2005** shows that between 6,043 cases were registered in Karnataka under the ITPA, a vast majority of them were against individual sex workers and not against brothel owners or keepers.
- **Hindu Women's Right to Property.** There is a law called Hindu Succession Act, 1956, which explains what will happen to the property of a Hindu Male or Female after his or her death. A Hindu male has a share in the family's ancestral property by birth.
- Women do not have a share in ancestral property by birth. They are entitled to get the expense of their food, shelter, clothing, education and marriage out of this property.
 - It was prior to 1956; the female members were entitled only to enjoy the benefits of the property during their life time. Now they have a full right over their property. They can sell it, gift it or Will it away to whomsoever they wish. It is the right of the mother, grandmother, unmarried sisters, widowed sisters, widowed daughters-in-law and deserted sisters to stay in the family house as long as it is there.
 - The jewelers and all presents that have been given to any lady member during her life time are called her STRIDHAN and belong to her. She is the absolute owner of such Stridhan and can do as she wishes to do with it.
- **Muslim women's Property Rights.** Muslim women's Property Rights There is two broad schools of Muslim Law in India-Hannifin & Shia Are there any difference between Sunni and Shia law of Inheritance? Hafiz rules only count those relatives as heirs whose

relation to the deceased person is through a male-son's daughters, son's son and father's mother. Shia includes even those persons as heirs who are related to the deceased through a female e.g. Daughter's son, daughter's daughter.

- A woman has certain rights to property in inheritance, maintenance and Mahr. She is entitled to inherit property as: Daughter Widow Grandmother Mother Son's daughter

■ **Property division: relationship & number of the heir.** Property division: relationship & number of the heir Widow Share in her husband's property Will get 1/8th share (when there are children) Will get 1/4th share (when there are no children) Share of two/more widows Together will get 1/8th share (when there are children) Together will get 1/4th share (when there are no children).

- Daughter Share in father's property Share of half (when has no brother) Half of whatever share the brother gets A man takes double the share of a female Mother Share in son's property Will get 1/3rd share of her son's property (when there are no children) Will get 1/6th share of her son's property (when there are children).
- Grandmother Share in her grandson's property Maternal grandmother will get 1/6th share (only if there is no mother or grandfather) Paternal grandmother gets a share of the total property (only if there is no mother or grandfather).

■ **Christian laws of succession.** Christian laws of succession The Christian succession laws were codified by the Indian Succession Act of 1865, and later by the Indian Succession Act, 1925.

- Widow and Children – Widow/widower will receive 1/3rd of the estate Sons/daughters will share the rest of the estate equally. If there is no lineal descendent, 1/2 of the property shall go to the widow/widower and the other 1/2 will go to those who are kindred (directly related by blood through a lawful marriage) to him/her.

- If has no lineal descendants or kindred, the entire property shall revolve upon the widow/widower. If there is no lineal descendant and the value of the property is less than Rs. 5000/- the property shall devolve upon the widow/widower.
 - Regarding the shares of predeceased, both the boys and girls are entitled to equal share. If a son/daughter has pre-deceased, then his/her children will succeed to the share of the father/mother which would have succeeded to have he/she been alive.
- **Acid Attacks on Women.** Acid attacks, especially on women, have seen an alarming growth in India over the last decade.
- While these attacks can be attributed to various factors such as the social weakness of women in a male-dominated society, the situation is exacerbated by the general neglect of the lawmakers.
 - As acid is inexpensive and easily available, it serves as an ideal weapon for the perpetrators.
 - The Committee opined that the offence should not be clubbed under the provisions of grievous hurt which is punishable with 7 years imprisonment under the IPC.
 - It noted that the offence was addressed in the Criminal Laws Amendment Bill, 2012 which is currently pending in Parliament.
 - The Bill prescribes a punishment of imprisonment for 10 years or life.
- **Sexual Harassment Laws in India.** Sexual harassment and rape are two side of the same coin. Both showcase the power of man to dominate that of women. Both have one victim- 'women'. Both are barbaric in nature; but many people extenuate sexual harassment to rape, just because the victims are not physically harmed.

- Whereas in rape- the victim is ravished like an animal for the fulfillment of desire and lust of another man. Both have the same object to undermine the integrity of the victim, physically as well as mentally.
- **Vishaka's case:** It was 1997 in Vishaka vs. State of Rajasthan and other, that for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behavior whether directly or indirectly as
 - Sexually colored remarks.
 - Physical contact and advances.
 - Showing pornography.
 - A demand or request for sexual favors.
- The Bill on the Sexual Harassment at the Workplace [The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressed) Bill, 2012] got passed by the Lok Sabha on 3rd September, as news sources put it, 'amidst the protests over Coalgate'. India did not have any legislation to deal with sexual harassment at the workplace and in that sense; the bill is a welcome addition.
- **Justice Verma Committee Report.** Verma report in 2013 reported that Committee was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women.
- On December 23, 2012 a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law.
- So as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the

Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramanian, former Solicitor General of India.

- The Committee submitted its report on January 23, 2013. It made recommendations on laws related to rape, sexual harassment, trafficking, and child sexual abuse, medical examination of victims, police, electoral and educational reforms.
- **Rape laws in India.** It is necessary to study the definition of rape as given in the India Penal Code, 1860. As per section.375 of IPC a man is said to commit the offence of rape with a women under the following six circumstances:
 - Sexual intercourse against the victims will,
 - Without the victims consent,
 - With her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt.
 - With her consent, when the men knows that he is not her husband,
 - With her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent,
 - With or without her consent when she is under sixteen years of age.
- Section. 375 therefore requires: a) Sexual intercourse by a man with a woman. b) The sexual intercourse must be under any of the six circumstances given in the section.
- **Attempt to Rape.** Rape is punished under section.376; but the offence under this section is of less gravity than rape. And also because a person who is guilty of

attempting rape cannot be allowed to escape with the lesser penalty of this section.

- Section. 21 (2): An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
- The Supreme Court has laid down the following guidelines for the trial of rape cases:
 - 1) The complaints of sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocates role should not merely be of explaining to the victim the nature of the proceedings, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies- for e.g. psychiatric consultation or medical assistance.
 - 2) Legal assistance should be provided at the police Station since the victim may be in a distressed state. Guidance and support of a lawyer at this stage would be of great help.
 - 3) The police should be under a duty to inform the victim of her right to a counsel before being interrogated.
 - 4) A list of lawyers willing to act in these cases should be kept at the police station.
 - 5) Advocates shall be appointed by the Court on an application by the police at the earliest but in order that the victim is not questioned without one the Advocate shall be authorized to act at the police Station before leave of the Court is sought or obtained.
 - 6) In all rape trials anonymity of the victim must be maintained.

7) It is necessary to setup Criminal Injuries Compensation Board with regard to the Directive Principles contained under Article 38(1) of Constitution of India. As some victims also incurs substantial losses.

Lake 2008 reported that the crime of rape is a major problem in India. More than 20,000 rapes were, and it is estimated that only one in 69 cases even gets reported.

■ **Criminal Law Amendment Act, 1983.** The Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC several new sections have been introduction therein- Sections 376(A), 376(B), 376(C), and 376(D) of the IPC.

- Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.
- Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.
- Section.376 C punishes sexual intercourse by superintendent of jail, remand house, etc.
- Section.376 D punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.
- These new sections have been introduced with a view to stop sexual abuse of woman in custody care and control by various persons which thought not amounting to rape were never the less considered highly reprehensible.

■ **Maternity Laws.** International Labour Organization adopted a convention in 1919 concerning the employment of women before and after child birth and gave the following conclusions:

- Women employee should have a right to a maternity leave with wages for 12 weeks. Should be provided half an hour break twice a day.

- **Maternity benefit act, 1961**
- 1961 Restrictions no women shall work during the 6 weeks immediately following the day of her delivery no employer shall employ a women during the 6 weeks immediately following the day of her delivery no women should be allowed to do any work: Which is arduous in nature Which involves long hours of standing that would interfere with her normal pregnancy.
- Right to Payment of Maternity Benefit is be given to a women only if she has worked for 80days in12 months immediately preceding the date of her expected delivery. The minimum period entitled to maternity benefit is 12 weeks.
- Payment of medical bonus every women entitled to maternity benefit shall also be entitled to receive medical bonus of `250 Leave Of Miscarriage on termination of pregnancy, a women should be entitled for a leave of 2 weeks.
- **Chaudhari 1993** reported that the Indian women's movement had actively engaged with the concerns of women as workers and their reproductive rights (with a family planning language) during pre-independence period.
- **Swaminathan 2010** reported that the debates resonate with current perspectives that often support maternal roles but not necessarily in tandem with women's rights as workers. Courts too continue to give contradictory verdicts when women litigate against discrimination at the workplace.
- **Wilson 2006** show that the rush of married women into the workforce runs against traditional thinking that women must choose between family and career. Many observers condemned working mothers as selfish, unnatural and even dangerous to their children and society.

■ **Abortion in India**

- As per India's abortion laws only qualified doctors, under stipulated conditions, can perform abortion on a woman in an approved clinic or hospital.
- The India abortion laws fall under the Medical Termination of Pregnancy (MTP) Act, which was enacted by the Indian Parliament in the year 1971.
- The MTP act came into effect from April I, 1972 and was once amended in 1975.
- The Medical Termination of Pregnancy act of India clearly states the conditions under which a pregnancy can be ended or aborted, the persons who are qualified to conduct the abortion and the place of implementation.
- **Sex- Selective Abortion.** Giving or taking prenatal test including ultrasound scanning solely to determine the sex of the fetus was criminalized by India law in 1994.
- In 2002 the penalties were stiffened: up to three years in jail and a Rs. 10,000 fine for the first offense and five years imprisonment and Rs.50, 000 for the second.
- According to the consortium on National Consensus for Medical Abortion in India, every year an average of about 11 million abortions take place annually and around 20,000 woman die every year due to abortion related complications.
- Since decades India has seen a decrease in the sex ratio 2011, but since the last two of the decades there has been in slight increase in the sex ratio. Since the last five decades the sex ratio has been moving around 930 of females to that of 1000 of males.
- In the Population Census of 2011 it was revealed that the population ratio in India 2011 is 940 females per 1000 of males.
- The major cause of the decrease of the female birth ratio in India is considered to be the violent treatments meted out to the girl child at the time of the birth. The

sex ratio of India was almost normal during the phase of the years of independence, but thereafter it started showing gradual signs of decrease.

- One of the states which is showing a decreasing trend in the population of women 2011 and is a cause of concern is Haryana. The main cause of this gender bias is inadequate education.
- The state of Haryana has the lowest rate of sex ratio in India and the figure shows a number of 877 of females to that of 1000 of males.
- There are also states such as Pondicherry and Kerala where the number of women is more than the number of men.
- Kerala houses a number of 1084 females to that of 1000 males.
- On 8, April 2002 Drug Controller of India approved the use of medical abortion.
- Given the current situation in India, where abortion-related mortality and morbidity are high, medical abortion offers great potential for improving the access to abortion and safety, as it does not require extensive infrastructure and is non-invasive.
- In 2003 government introduced a further amendment to MTP Rules which has rationalized the criteria for physical standards of abortion facilities -- fixing different criteria as appropriate for conducting first-trimester and second-trimester abortions.
- **Ganatra et al. 2000** showed that unmarried adolescents and women undergoing sex selective abortion are the groups most likely to attempt second trimester abortion.

- **Johnston et al. 2001** showed that abortion services from unregistered providers range from completely safe provided by trained medical doctors in appropriate facilities to life threatening provided by a range of providers in various settings.

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