



WOMEN RIGHTS IN INDIA: A STUDY OF CONSTITUTIONAL AND LEGAL PROVISIONS

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ABSTRACT

Women's rights or women's human rights in the world scenario developed tremendously during post war period with the establishment of the United Nations Organization (UNO) in 1945. The Preamble of the United Nations Charter, adopted in 1945, reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The Charter recognises that one purpose of the United Nations is "to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". Indian Constitution has undeniably envisaged detailed provisions to protect the rights of women. The Preamble, the Fundamental Rights, the Directive Principles of State Policy and Fundamental duties have clearly revealed the provisions of restoring human rights of women in India. Besides, many laws have been made to protect the rights of women. In the present paper, an attempt has been made to study the various Constitutional and legal provisions relating to women in India.



KEYWORDS: *Women Rights, Human Rights, Constitution, Domestic Violence etc.*

INTRODUCTION

Indian Constitution has undeniably envisaged detailed provisions to protect the rights of women. The Preamble, the Fundamental Rights, the Directive Principles of State Policy and Fundamental duties have clearly revealed the provisions of restoring human rights of women in India. Besides, many laws have been made to protect the rights of women

CONSTITUTIONAL PROVISIONS RELATING TO WOMEN IN INDIA

Article 15(1) mandates that State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(3) provides the State to make any special provision in favour of women and children. Article 16 mentions equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Art 21 imbibes the principle of natural justice and fairness and confers on every person the fundamental right to life and liberty. The Constitution prohibits traffic in human being and other forms of forced labour.¹ A collective reading of these fundamental rights provides the basis for legal equality of women in India.

¹ The Constitution of India, Article 23.

Apart from these rights, the Directive Principles of State Policy, which embodies the goals of a Welfare State, also contain certain specific items affecting women's rights.

Some of the Directive Principles of State Policy in the Constitution contain provisions for the protection and promotion of the rights of women. It provides (a) that the citizen men and women have the right to an adequate means of livelihood.² (b) that there is equal pay for equal work for both men and women.³ (c) that the health and strength of workers, men and women are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength.⁴ Article 42 states that the State to make provision for securing just and humane conditions of work and for maternity relief. Article 44 provides that the state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. The constitution also provides that it will be the duty of every citizen of India to renounce practices derogatory to the dignity of women under.⁵

The 73rd and 74th Amendments to the constitution which were effected in 1992 provide for reservation of seats to women in elections in the Panchayats and the Municipalities. Under Article 243 (D) of the constitution not less than one third of the total number of seats to be filled in direct election in every Panchayat shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a panchayat and not less than one third of total number of offices of Chairpersons in the panchayat at each level shall be reserved for women. Similar provision has been made in Article 243 (T) for reservation of seats to women in the direct elections to every Municipality. Thus there is a reservation of 33% seats for women in local bodies.⁶

Thus it can be seen from the above discussion that Constitutional provisions are very affirmative for the protection and promotion of women's rights, and the State is duty bound to apply these principles in taking policy decisions as well as in enacting laws.

LAWS RELATING TO WOMEN IN INDIA

The constitutional provisions alone are not sufficient to eliminate the discrimination against women and give them equal rights and opportunities. The Constitution of India embodies and upholds the equal rights of women and the Indian legislation has been framed along the same lines. The inclusion of the principle of equality before the law in the Constitution paved the way for the passing of diverse laws and measures for the improvement of the status of women in the following years. Numerous laws have been enacted since independence with the aim to give women equal rights and opportunities with men in all spheres of life and to protect women from any discrimination. In the following paragraphs some of the important legislations relating to women are discussed:

The Factories Act, 1948

Under Factories Act, 1948, women are given special safeguards and protection. The Act prohibits women working on or near machinery in motion.⁷ No women shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the women to risk of injury from any moving part either of that machine or of any adjacent machinery.⁸

² The Constitution of India, Article 39(a).

³ The Constitution of India, Article 39(d).

⁴ The Constitution of India, Article 39(e).

⁵ The Constitution of India, Article 51 (A) (e).

⁶ Dr. V.K. Anand, Human Rights, Allahabad Law Agency, Haryana, 2008, p-202

⁷ The Factories Act, 1948, Section 22

⁸ The Factories Act, 1948, Section 22 (2)

The Special Marriage Act, 1954

This is an Act of the Parliament enacted to provide a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of differences of religion. The Act allows all communities to get their marriages registered.

The Hindu Marriage Act, 1955

Hindu marriages are governed by the Hindu Marriage Act 1955. Hindu Marriage which was considered to be a religious duty and a sacrament has undergone a change and it has lost its religious sanctity under the Hindu Marriage Act, 1955, which came into force on 18th May, 1955. The Act is exhaustive. It is a historic social legislation and provides conditions for a valid Hindu Marriage.⁹ Section 5 of the Hindu Marriage Act lays down the conditions for a valid marriage.

The Immoral Traffic (Prevention) Act, 1956

This Act is enacted to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the prevention of immoral traffic. The Act was amended in 1978 and in 1986 to make it more effective and stringent. In this Act, 'Brothel' is defined as including any house, room, conveyance or place, or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.¹⁰ 'Child' is defined under the Act as a person who has not completed the age of sixteen years.¹¹

Maternity Benefit Act, 1961

Article 42 of the Constitution of India, 1950 imposes obligation upon the State to make provision for securing just and humane conditions of work and for maternity relief. In view of this constitutional obligation the Parliament has passed the Maternity Benefit Act, 1961. This is an Act to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits.

Dowry Prohibition Act, 1961

Dowry is a social evil and much of the violence against women is related to dowry. The Dowry Prohibition Act, 1961 enacted to check the evil practice of dowry in Indian society. Section 2 of the Act defines dowry as any property or valuable security given or agreed to be given either directly or indirectly- (a) by one party to a marriage to the other; or (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person, at or before "or any time after the marriage"¹², "in connection with the marriage of the said parties, but does not include"¹³ dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

The Medical termination of Pregnancy Act, 1971

This is an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. Under Section 3 of this Act pregnancies may be terminated by registered medical practitioners under certain circumstances like (a) where the length of the pregnancy does not exceed twelve weeks¹⁴, or (b) where the length

⁹ Tripathi, S. C. (2010). *Women and criminal law*. Allahabad: Central Law Publications, p-181

¹⁰ The Immoral Traffic prevention Act, 1956, Section 2 (a)

¹¹ The Immoral Traffic prevention Act, 1956, Section 2 (aa)

¹² Substituted by Amendment Act 43 of 1986, S.2, for "or after the marriage" (w.e.f.19-11-1986)

¹³ Substituted by Amendment Act 63 of 1984, S.2, for "as consideration for the marriage of the said parties, but does not include" (w.e.f.2-10-1985)

¹⁴ The Medical Termination of Pregnancy Act, 1971, Section 3 (2) (a).

of the pregnancy exceeds twelve weeks but does not exceeds twenty weeks, if not less than two registered medical practitioners are of opinion formed in good faith that¹⁵⁻

- i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical and mental health;¹⁶
- ii) there is substantial risk if the child was born, it would suffer from such physical and mental abnormalities as to be seriously handicapped.¹⁷

The Equal Remuneration Act, 1976

This Act provides equal wages for equal work. It provides for the payment of equal wages to both men and women workers for the same work or work of similar nature. The Act further prohibits discrimination against women in the matter of recruitment.

The Family courts Act, 1984

An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs. Under Section 3 of the Act, family courts can be established in any town or city where the population exceeds one million or in any other area of a State as the State Government may deem it necessary to establish family courts. Under Section 7 of the Act, the Family Court has the power to reconcile or settle disputes relating to family matters such as nullity of marriage, declaration as to the validity of marriage, with respect to properties of the parties or either of them, with regard to legitimacy of children, guardianship and custody of the minor, the maintenance of wife etc.

The Indecent Representation of Women Act, 1986

This Act aims to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner. Section 3 of the Act prohibits advertisement containing indecent representation of woman through advertisements, paintings, writings, publications etc.

The National Commission for Women Act, 1990

The National Commission for Women Act was enacted to constitute a National commission for Women in India. The important functions of the Commission are-a) to investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws¹⁸, b) to present reports to the Central Government upon the working of those safeguards¹⁹, c) to make recommendations for the effective implementation of those safeguards for improving the conditions of women²⁰, d) to review from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations²¹, e) to take up the cases of violation of the provisions of the constitution and of other laws relating to women with the appropriate authorities²², f) fund litigation involving issues affecting a large body of women²³, etc.

¹⁵ The Medical Termination of Pregnancy Act, 1971, Section 3 (2) (b).

¹⁶ The Medical Termination of Pregnancy Act, 1971, Section 3 (2) (i).

¹⁷ The Medical Termination of Pregnancy Act, 1971, Section 3 (2) (ii).

¹⁸ The National Commission for Women Act, 1990, Chapter (iii), Section (1) (a).

¹⁹ The National Commission for Women Act, 1990, Chapter (iii), Section (1) (b).

²⁰ The National Commission for Women Act, 1990, Chapter (iii), Section (1) (c).

²¹ The National Commission for Women Act, 1990, Chapter (iii), Section (1) (d).

²² The National Commission for Women Act, 1990, Chapter (iii), Section (1) (e).

²³ The National Commission for Women Act, 1990, Chapter (iii), Section (1) (f).

The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

This Act was further amended by Act 14 of 2003 and renamed the Act as The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection). It is an act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and other incidental and connected matters.

Domestic Violence Act, 2005

The Domestic Violence Act, 2005 was passed by the Parliament in August 2005 and assented to by the President of India on 13th September, 2005 and came into force on 26th October, 2006. The passing of domestic violence act may be considered as an important step in addressing the issue of domestic violence. This Act not only gave a formal definition of domestic violence but also provides provisions for protection of women against domestic violence as a whole. This Act is extremely progressive in nature as it has provisions to protect women who face violence not only from husband but also from brothers, father, sons or any person with whom the victim is living.

Section 3 of the Act defines Domestic Violence to include “any act omission or commission or conduct” of the man in question in relation to the aggrieved woman in case it attracts any of the four clauses: a) Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. b) Harasses, harms injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security. c) Has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) (b); or d) Otherwise injures or causes harm, whether physical or mental, to the scope and width of the new offence relating to Domestic Violence.

Physical violence includes any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force. Sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. Verbal and emotional abuse includes insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child. Economic abuse includes deprivation of any economic or financial resources to which aggrieved person is entitled under any law or custom including property, disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or the other property in which the aggrieved person has an interest or is entitled to use by virtue of domestic relationship.

Under section 4 information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by any person who has reason to believe that|| such an act has been or is being committed.

A police officer, protection officer, service provider or magistrate who receives a message of domestic violence shall inform the aggrieved person of her right to make an application for obtaining a relief by way of a protection order. Further, the Act provides the rights for free legal services under the Legal Services Authorities Act, 1987, and right to file a complaint under Section 498-A of the Indian Penal Code.²⁴

The aggrieved person shall be provided shelter home²⁵, and medical facilities²⁶, if needed. Under section 17 every aggrieved woman has the right to reside in shared household. Section 18 grants

²⁴ The Protection of Women from Domestic Violence Act, 2005, Section 5.

²⁵ The Protection of Women from Domestic Violence Act, 2005, Section 6.

protection order by magistrate to the aggrieved person. A victim is also entitled to interim monetary relief under an order of the magistrate concerned.²⁷ The Act also prescribes penalty for breach of protection order by respondent. Violation of the protection order by the respondent will entail the imprisonment of one year or a fine of rupees twenty thousand or both.²⁸

Thus we can say that the protection of Women from Domestic Violence Act is an important Act which addressed almost all aspects of violence against women within the family and provides protective mechanisms for the entire women folk.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Sexual harassment of women at workplace is definitely a violation of the rights of women. It constitutes a gross violation of women's right to equality and dignity. The Act was enacted with an objective to protect women against sexual harassment at workplace and to put in place a redressal mechanism to handle complaints.

"Sexual Harassment", according to the Act, includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: - (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.²⁹ To deal with the complaints, every employer requires to constitute an Internal Complaints Committee" at each office or branch of an organisation.³⁰ Further in the absence of an Internal Complaints Committee (due to having less than ten workers or if the complaint is against the employer himself), a Local Complaints Committee shall be constituted by a District Officer in the district concerned for the redressal of complaints of sexual harassment at work place.³¹ During the pendency of the enquiry, the Internal Complaints Committee or Local Complaints Committee may recommend the employer to a) transfer the aggrieved woman or the respondent to any other workplace, b) grant leave to the aggrieved woman up to a period of three months, or c) grant such other relief to the aggrieved woman as may be prescribed.³²

Thus Sexual Harassment of Women at Workplace Act is a very progressive step for the protection of women from such types of crimes in India.

Besides, the Indian Penal Code and the Criminal Procedure Code envisage several provisions for the protection and promotion of the rights of women. In the following paragraphs we will highlight some of the important Sections of the Indian Penal Code and the Criminal Procedure Code which aim to protect and safeguards the interest of women.

Besides, the **Indian Penal code**, in general, does not make any distinction on the basis of sex. It is uniformly applicable to all. The Indian Penal Code was enacted in the year 1860 and came into force in 1861. Looking to the social conditions and norms prevailing in the Indian society, the Penal Code has provided special provisions which afford protection to women who could be a victim of the offences relating to her sex.

²⁶ The Protection of Women from Domestic Violence Act, 2005, Section 7.

²⁷ The Protection of Women from Domestic Violence Act, 2005, Section 20.

²⁸ The Protection of Women from Domestic Violence Act, 2005, Section 31.

²⁹ The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal), Act, 2013, Chapter 1, Section 2 (n).

³⁰ The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal), Act, 2013,Chapter 2, Section 4 (1).

³¹ The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal), Act, 2013,Chapter 3, Section 6 (1).

³² The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal), Act, 2013,Chapter 5, Section 12.

Like the Indian Penal Code, the **Criminal procedure Code** has also provided some provisions in favour of women. These special provisions protect the weaker lot of the society. These protective provisions have been made in view of the special social and cultural background of women in India and keeping in view the constitutional protective measures.

Thus, the equality of men and women and non-discrimination on the basis of gender constitutes one of the vital human rights concerns in India.. Several measures have been taken in India in this regard including the rights granted under the Constitution, Criminal laws, and other Social Welfare Legislations etc.. The Government of India has enacted laws, made policies from time to time for all round development of women's personality and to provide them equal opportunity, dignity and human rights in all aspects of their life. Indian judiciary is also playing a vital role in protecting women's rights. Further, India has ratified various Conventions and human rights instruments committed to secure equal rights for women. Key among them is the Convention on the Elimination of Discrimination against Women (1993).