



## WOMEN IN INDIAN LEGISLATION

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### ABSTRACT

Women constitute approximately half the entire population of our country. The growth and development of a culture and a society as well as of a nation largely depends upon the equal participation of both male and female in the process of development. The women in India have been enjoying equal status with man as per statutory provision made in the Constitution of India. Still, they are not free from the age-old prejudices of the society. They are yet to achieve their equal rights at par with their male counterparts.

It is worth noting that even today a woman is more concerned about building a home rather than her individual career; her priority remains caretaking and growth of the family she resides in. When married she confines her thought to the betterment of her family and devotes all her energy towards the betterment and harmony of the family. Even if she wishes to go behind her career, the society blames her and does not provide her the comfort to do so. Although there are many constitutional provisions that are meant to support and uplift women, they are failing in their duties. In spite of being in the twenty-first century the society has the same patriarchal mind set towards women. The condition of women in India is worsening in spite of the efforts made by the judiciary to protect them. Due to prolonged trials in courts women victims don't get justice in right time. Poor implementation of policies leaves majority of women in a vulnerable condition. Thus, the theme; Women in Indian

Legislation continues to be a topic of discussion in the country.

**KEY WORDS** – Statutory provision, Constitution, Judiciary

### INTRODUCTION

Discrimination against women in India isn't a recent phenomenon since it had been clearly found within the age-old religious and cultural practices. Notwithstanding the very fact that down the ages women are given with certain traditional values and respect in Indian society that has certainly paved the way for bringing out some women personalities, yet the status and condition of women have been subservient to men. Women are ill-treated within the male society since time out of mind for the sake of tradition, culture and religion. Hence, they're bereft of the reasonable standard of living, access to work and education. In many regions' child marriage exists as custom. They have been denied fundamental rights. In spite of the laws of protection by Indian Constitution, women's fear of violence remains at peak which in turn gives birth to continual inhibition of women and restraint of their equality with men. Therefore, there arises a requirement to look in to the problems associated with women and their challenges within the backdrop of Indian Constitution

### THE LIFE CYCLE OF VIOLENCE AGAINST WOMEN IN INDIA

Pre –birth: Sex-selective abortions;

Infancy: Female infanticide, neglect, health care, nutrition;

Childhood: Child abuse, malnutrition, female genital mutilation in some Cultures;



Reproductive age: Honour killing, dowry killing, intimate partner violence, homicide, sex trafficking;

Adolescence: Forced prostitution, forced trafficking, forced early marriage, rape, psychological abuse;

Elderly: elder/ widow abuse;

Living in a country which is the world's largest democracy, a sovereign, socialist republic with a comprehensive charter of rights enshrined in its constitution, a signatory to most treaties for struggle against colonialism, imperialism and racism is a matter of great pride for all of us. However, underneath this impressive veneer and national pride about our old civilization lies a history of systematic violation of basic civil, democratic, and human rights of a large section of our feminine population. Ironically in a country where womanhood has been put on the pedestal of worship, incidents of wife battering increasing number of cases year after year of molestation of women, rape, eve-teasing, abduction and bride burning are a sad reflection on the equality before the law of the land. Women find no security be it home, where they are ill- treated by husbands and other in laws, or the streets and workplace where they are vulnerable and fall prey anti- socials, moneylenders and men colleagues, bosses and are subjected to innumerable indignities perhaps in higher frequency than in most of the civilized societies the world over. The general perception today is that the crime against women has increased to such a great extent that women cannot move freely and participate in the community. The women in general are not given basic rights even though the constitution of India considers them equally legal and competent citizens of the country with that of men.

### CONSTITUTIONAL PROTECTIONS

Women are said to be the cradle of human progress and civilization. They have a significant and crucial role to play in the society. They are an integral part of each family. So, they ought to be secured and respected in the society. In short their part in forming the family and shaping the community cannot be diminished or thought little of. The expression "Women's Rights" is maybe better alluded to as "the human rights of women" to underline the all-inclusiveness and unbreakable quality of every human right and their full application to ladies & people.

If we look into the Constitution of India, we shall find that there are a number of references ensuring equal rights and opportunities to women irrespective of caste, colour and races. The following few excerpts will help us to understand the constitutional provisions to safeguard the rights of women

- i. 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).
- ii. 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).
- iii. The State to make special provision in favour of women and children {Article 15(3)}.
- iv. Equality of opportunity for all citizen in matters relating to employment or appointment to any office under the state (Article 16).
- v. 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).

vi. 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).

vii. The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42).

viii. 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).

Legislation relating to women before independence included Prevention of Sati, Widow Remarriage Act, Female Infanticide Prevention Act, The Special Marriage Act of 1873, The Age of Consent Bill 1891 and the Hindu Women's Right to Property, 1937

Post-Independence, there was a sudden increase in enactment of laws since. The laws included criminal, civil and social as well as revamping to certain old laws to safeguard and improve the status of women. It happened because of the provisions in our constitution that stresses on equality for all in all spheres, further more special protection to women and children as part of State Policy.

- (i) Special Marriage Act, 1954
- (ii) The Hindu Marriage Act, 1955
- (iii) Hindu Minority and Guardianship Act, 1956
- (iv) The Hindu Succession Act, 1956

(v) The Immoral Traffic (Prevention) Act, 1956

(vi) Dowry Prohibition Act, 1961

(vii) The Maternity Benefit Act 1961

(viii) The Equal Remuneration Act, 1976

National Commission for Women, a statutory body was organized in January 1992 by the government with a precise commission to examine, analyse and supervise all matters regarding the constitutional and legal protection for women, re-examine the active legal legislation to propose modification (if necessary), etc. Other initiatives taken was 1/3 of the total seats should be reserved for women in all elected offices in local bodies whether in rural or urban areas. Moreover, various Women specific legislative measures have also been taken for the protection of women's rights.; The Christian Marriage Act, 1872; The Indian Succession Act, 1925; The Child Marriage Restraint Act, 1929; The Payments of Wages Act, 1936; The Muslim Personal Law (Shariat) Application Act, 1937; The Special Marriage Act, 1954; The Indian Divorce Act, 1969; The Medical Termination of Pregnancy Act, 1971; The Commission of Sati (Prevention) Act, 1987; National Commission for Women Act, 1990;

### JUDICIAL INTERVENTION

In spite of the fact that plenty of enactments exists, because of inadequate requirement, women are misused by the male ruled society. Male ruled society has discovered approaches to bypass the arrangements of the Act and go about as a barricade against women empowerment. Due to the failure of the legislations to protect women, judiciary has come forward to protect women. In protecting the women, the Indian Judiciary has removed all the procedural shackles and has completely revolutionized constitutional



litigations. The Courts have shown more noteworthy energy in conceding the sacred arrangements for all women. The judiciary by its milestone decisions had topped off the hole made by the legislative apparatus; it has stretched out assistance to women when the legislature had denied it. But our judicial intervention isn't only a sack of aces, yet a pack of cons as well.

It has been observed that the justice delivery system in India is very slow and so goes the saying: "Justice delayed is justice denied" that has been applicable to the women who have been the victims of injustice of various natures in the male dominated Indian society and have to wait for years and years seeking justice. Access to justice, generally contemplates inexpensive, fair and speedy justice. However, the present situation is that the number of pending cases in courts runs into crore. Some drawbacks of our judiciary are;

- I. It almost takes 6-10 months to bring the case for trial;
- II. Long pending cases, result in almost 4-5 years for judgment;
- III. Judiciary judges the case primarily on the investigation report and evidence filed. Many complaints are not investigated or filed within the required time period and therefore dropped;
- IV. Most cases of women victims are tried out in open courts;
- V. Cross examination of victim is more humiliating than the crime itself;
- VI. Due to prolong trails, most witness go hostile;

Most women at the grass root level find the law and justice system as distant, inaccessible and unaffordable. As the rest of the world watches in helpless silence and impotent

anger, the offender escapes through many of the loopholes in the criminal justice system. A question arises if law empower woman to get justice. She can fight in the courtroom and still be a loser. Had the laws succeeded, there would have been no child marriage, female foeticide or female infanticide, no dowry deaths and no rapes. Perhaps India may have more laws than any other country to empower women, but the way the female species is treated right from the time she is born, nay, even before being born- to the last stages of life, speaks volumes for the stark fact that laws are more observed in their breach than in their observance.

#### CONCLUSION

It is a matter of great concern that in number of communities" women has been denied to equality and freedom, even though the constitution of India directs the strict assertion of equality of sex, and is firmly celebrated in the Constitution of India as Fundamental Right. Now the issue remains that whether women are celebrating their rights like dignity, justice, freedom, protection, etc. and how far has Constitutional mandate of equality and social justice been successful. There has been observed a great lapse within the functioning of these rights. Indian society has been unsuccessful in providing the women their basic constitutional rights, on the grounds that the common masses at large and the justice system in particular have been so cruel in attitude and behaviour. Effective justice needs good laws; improvement in knowing of laws and awareness among the deprived and oppressed; no use of having good laws if they are not implemented properly; justice needs to be affordable and fast and court decisions need to be speedily implemented. In fact, these challenges, actually, tell the tale of the



present condition of judiciary. The issue of corruption in courts is not specifically mentioned but it is a major bottleneck for our justice delivery system. The court process is time consuming and costly, legal literacy is the domain of lawyers and a literate person is, often, legally illiterate. Implementation of laws is a serious weakness of Indian justice delivery system. Even if the court decides, still the case gets into a complex maze of appeals. Apart from all these, we should have more strict punishments like those in foreign countries, that is the only way to protect the rights and modesty of women in our Country.

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