



## DIFFERENT RIGHTS AND REMEDIES PROVIDED TO WOMEN IN MODERN INDIAN LEGAL SYSTEM

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### Introduction

In Ancient Indian society the position of women was on par with that of men in the society. We are well aware of the name of many female scholars of Vedic period such as Gargi, Apala, Lopamudra. We are well aware of debate between Gargi and Yagyavalkya. In ancient Vedic period widow women could also marry the younger brother of her deceased husband.<sup>1</sup> But we see that with the passage of time the position of women in India deteriorated. With the increasing role of currency, trade and commerce male members of the society gained domination over the female members and the role of females became limited in doing only household chores and other activities within their home.

With the onset of foreign aggression in India in medieval India the status of women saw a further fall because at this time many social rudiments became more prevalent such as Purdah System, Sati System etc. became more prevalent. Even though the English rulers after being forced by Indian Social reformers brought a few legislations to protect the interest of the woman but lack of execution mechanism brought no fruit.

Here in this article we will discuss the various laws and legislations that were adopted and

enacted by legislature of India after Independence for protecting rights of women and various remedies provided to them for the redressal of their grievances.

### Rights Provided to women under Constitution of India

Constitution in any country is the mother of all the laws and enactments of that country. All the laws and enactments derive their authority from the Constitution of that country. The framers of the Constitution of India were well aware of the conditions of women in India so they took proper care in ensuring the rights of women by insertions of many provisions for their protection in many parts of the Indian Constitution such as in Part III (related to Fundamental Rights), Part IV( Related to Directive Principle of State Policy), Part IV-A (Related to Fundamental Duties) and Part IX, IX-A( Related to The Panchayats and The Municipalities respectively ) etc.

Few of the rights and remedies provided to women under Indian Constitution are as follows-

#### 1. Rights and remedies provided in preamble

of the constitution which the constitution maker sought to achieve. Preamble of Indian Constitution clearly tells us that the Constitution was made by "We the People". Here the phrase "We the People" clearly depict that there was equal participation of both men and women in making the Constitution. Preamble of Indian Constitution also provides the equality of opportunity and status, freedom of thought,

<sup>1</sup> Dr. Binay Karna, Sanjeev Kumar, et.al., Lucent's General Knowledge 8 (Lucent Publication, New Bypass Road, Ashochak, Patna, 6<sup>th</sup>/2015)



belief, faith and worship, social, political and economic justice to the people of India irrespective of their race, caste, sex, place of birth or religion.<sup>2</sup>

## **2. Rights and remedies provided under fundamental rights**

Constitution Fundamental Rights are Contained in Part III from ranging from article 12- 35. The inherent feature of these fundamental right is that the person, whose fundamental rights have been abridged can directly approach to Supreme Court or High Court. Article 15(3) specially enables the parliament to make special provision for women and children.<sup>3</sup> Article 21 provides right to life and personal liberty to each and every individual. Here right to life does not only mean a mere animal existence but a humane and dignified life.<sup>4</sup> Further article 23 provides protection from human trafficking which protects women from the menace of prostitution and other types of work which are hazardous to their health.<sup>5</sup>

## **3. Rights and remedies provided in Directive Principle of State Policy**

Part IV of Indian Constitution from article 36-51 contains Directive Principles of State Policy. Even though directive principles of state policies are not enforceable in court of law but they provide a guideline as to which direction the government has to work when the ample resources will be available in this regard. Article 39 provides that state will make such policies which will ensure that both men and women have equal right to adequate means of livelihood.<sup>6</sup> Moreover

article 42 is specifically related to women. It states that state shall make provisions for securing just and human condition of work and for maternity relief<sup>7</sup>. Article 39(e) of part IV further states that state will make such policies by which the strength of the worker both men and women are not abused.<sup>8</sup>

Rights and remedies provided under fundamental duties Part IV- A of the Indian Constitution comprises the Fundamental Duties which ought to be followed by every Indian citizen though these duties are also non justiciable which means their non compliance does not import any punishment. Fundamental duties were not the part of original constitution but initially they were added by 42<sup>nd</sup> constitutional amendment. Article 51-A(e) specifically says that it shall be the duty of every citizen of India to abandon all those practices which are in derogation to the dignity of women.<sup>9</sup>

## **4. Rights And remedies provided under provisions related to local bodies**

Part IX and IX-A are related to Panchayats and municipalities. These provisions were inserted in the Indian Constitution by 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Act. Article 243D (3) provides that one third of the total number of seats available in every panchayat would be reserved for women. Further Article 243T(3) provides that one third of total number of seats available in every municipality would be reserved for women.

<sup>2</sup> Constitution of India

<sup>3</sup> Constitution of India

<sup>4</sup> Maneka Gandhi v. Union of India (AIR 1978 SC 597)

<sup>5</sup> Constitution of India

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> Constitution of India

<sup>9</sup> Ibid



**Rights and remedies available under substantive and procedural law**

Substantive laws determines the rights and remedies of each individual. These are the laws which govern the duties to be acted upon by individual. Indian Penal Code, Transfer of Property Act, Indian Contract Act are few of the examples of substantive law.

Whereas procedural laws are those laws which provide a mechanism to enforce the rights and remedies available to individuals in court of law. Basically these laws are guiding principles for the courts in their functioning. Code of Criminal Procedure, Code of Civil Procedure and Indian Evidence Act are few examples of procedural law in India.

We shall see the various rights and remedies provided to women under substantive and procedural laws in India.

**Rights and remedies available to women under Indian Penal Code**

There are various rights and remedies provided to women under the code. Few of them are as follows-

- i. Section 100 of the code specifically provides women the right of private defence which can extend up to causing the death of assailant. Section 100 states that where an assault with intent to cause rape is being committed and where an act is of throwing acid is being committed and that act is causing the apprehension of grievous hurt then the right to exercise of private defence of women extends to causing death of the

assailant.<sup>10</sup>

- ii. Similarly, section 313 of the code provides that whoever commits miscarriage of a woman without her consent then he or she shall be punished with imprisonment for life or with imprisonment of either description which may extend up to 10 years and shall also be liable to fine.<sup>11</sup>
- iii. The most heinous crime that a woman can face in present day scenario is that of rape. Section 376(1) states that if any person commits rape of a woman then he shall be punished with rigorous imprisonment which shall not be less than 10 years but which may extend up to imprisonment for life, and shall also be liable to fine.<sup>12</sup>

Besides above there are many other offences against women and punishment against women is mentioned under the code such as assault to outrage modesty of woman(section 354), sexual harassment(section 354A), acid attack (section 326A, 326B) etc.

**Rights and remedies provided to women under Code of Criminal Procedure**

Right and remedies given to women under this act are as follows-

- i. Section 46 of the code provides that if a female is to be arrested then female police officer should be their to arrest her and if there is absence of any female police officer for doing so

<sup>10</sup> The Indian penal code(45 of 1860)

<sup>11</sup> Indian Penal Code

<sup>12</sup> *ibid*



then a male police officer will not touch the body of any female for making her arrest. Further section 46(4) provides that arrest of a woman can not be made after sunset and before sunrise.

- ii. Proviso of the section 47 states that if a place is occupied by the female who as per her custom does not appear in public then the police officer shall give notice to female that she is at liberty to withdraw herself and police officer shall provide her all reasonable facility to withdraw and then break open the place or apartment in search of the person to be arrested.<sup>13</sup>
- iii. Section 164-A further provides certain safeguards regarding medical examination of a rape victim. It says that medical examination of rape victim should be done after receiving her consent.<sup>14</sup>
- iv. Section 125 of the code lays down the provision for maintenance of wife. It says wife shall also include a divorced wife who has not still remarried and if any person having sufficient means fails to maintain his wife without sufficient cause even after the order of magistrate then such due payment of fine can be levied on that person as fine and that person can also be sent to jail for whole or any part of unpaid sum of maintenance.<sup>15</sup>

### Rights and remedies provided under Indian Evidence Act

Rights and remedies regarding protection of interest of women in this act are as follows-

- i. Section 113A of the Act says that where the woman has committed suicide within seven years from the date of her marriage and the woman was subjected to the cruelty by her husband or the relatives of husband, the court shall presume that such suicide of woman was abetted by her husband or the relatives of her husband.<sup>16</sup>
- ii. Section 113B further provides the presumption in case of dowry death. It says that where a question arises as to whether a person has committed dowry death or not and it is proved that soon before the death of woman she was subjected to cruelty or harassment in demand of dowry then court shall presume that dowry death was caused by such person. Here the burden of proof lies on the accused person to prove contrary.<sup>17</sup>
- iii. Section 114A of the act further provides that in cases of rape where it is proved that sexual intercourse was done by accused then the court shall presume that there was no consent of victim in having sexual intercourse with accused and the burden to prove that there was consent of victim lies on the accused.

<sup>13</sup> Indian Penal Code

<sup>14</sup> ibid

<sup>15</sup> ibid

<sup>16</sup> Indian Evidence Act 1872

<sup>17</sup> ibid



### Remedies available to women under personal laws.

India is the country of unity with diversity. In India people belonging to different religion resides so special laws are made while taking into consideration of people of different community. These laws are called personal laws. They specifically govern the issues like marriage, divorce, succession etc. We will here mainly focus on personal laws governing Hindu, Muslim and Christian community and different rights and remedies available to women under the personal laws of these communities.

### Remedies available to women under Hindu Law

Following are the rights provided to women under hindu law-

- i. Section 9 in the Hindu Marriage Act talks about restitution of conjugal rights of both the spouses. It says that where any of the spouse refuses to live with other then other party may file a suit for restitution of his or her conjugal right in districts court.<sup>18</sup>
- ii. Section 10 of the Act also facilitates the wife to file a petition for judicial separation in cases her husband is guilty of rape, sodomy, bestiality or she was subjected to persistent cruelty by her husband which causes apprehension in her mind that living together with him was harmful for her.<sup>19</sup>

iii. Section 14 (1) of Hindu Succession Act 1956 provides that Any woman who is having any property she would have absolute interest in it and not a limited interest. Here absolute right over property to alienate the property in any manner.<sup>20</sup>

iv. In 2005 the parliament has amended the Hindu Succession Act has conferred the daughter same right as that of son in the coparcenary property.<sup>21</sup>

### Rights and remedies available to women under Muslim Law

In Muslim community Quran is the first, original and authentic source of law. Which is the direct revelation of messages of God through prophet. Besides Quran there are many other sources of Muslim Law such as Ahadis, Ijma, Qiyas, custom, judicial decision, legislation and equity. Here will see the various rights and remedies available to women under Muslim law.

- i. Section 2(7) of the Dissolution of Muslim Marriage Act 1939 provides that under Muslim Law if a woman is married by her father or her any other guardian before she attained the age of fifteen year. Then on attaining the age of fifteen year and before she attains the age of eighteen year she can repudiate her marriage provided marriage has not been consummated<sup>22</sup>. In Muslim Law this

<sup>18</sup> The Hindu Marriage Act, 1955 (25 of 1955)

<sup>19</sup>ibid

<sup>20</sup> The Hindu Succession Act, 1956(30 of 1956)

<sup>21</sup> Available at: <https://evaw-global-database.unwomen.org/en/countries/asia/india/2005/t>

he-hindu-succession-amendment-act-2005(Visited on 26/09/2021

<sup>22</sup> Dissolution of Muslim Marriage Act, 1939



option of repudiation of marriage by a Muslim women is called option of puberty. In old Muslim Law if a woman could have availed of benefit of option of puberty in very special circumstances<sup>23</sup>

- ii. Muslim women are also having the right to receive dower at the time of their marriage from bridegroom. Here dower is given as a token of respect and dower is payable by bridegroom as a debt on non payment of which bride can use to bridegroom for recovery of sum of dower.<sup>24</sup>
- iii. Section 2 of Dissolution of Muslim Marriage Act, 1939 confers the women nine grounds to dissolve her marriage. Few grounds are such as failure of husband to maintain her wife, if husband gets imprisoned for 7 years or for more than 7 year, if husband is impotent etc.<sup>25</sup>
- iv. The Muslim Women(Protection of Rights on Marriage) Act, 2019 provides the women of Muslim community substantial relief from the menace of triple talaq(talaq-e-biddat). Section 3 renders the triple talaq given by a husband to his wife either by words spoken or written or through electronic means or in any other manner void and illegal. Section 4 further says that such husband would be liable for imprisonment

which can extend up to 3 years or with fine or with both<sup>26</sup>

### Conclusion

Besides the Rights and remedies as provided above there are many more legislation which protect the interest of woman. For example Protection of Women From Domestic Violence Act 2005 protects the women from the cruelty committed on her within the premise of his own house, Dowry Prohibition Act 1961, protects the women from cruelty committed on her by her husband in demand of dowry and many more legal remedies are provided to women through different legislation.

But despite the various efforts made by the executive, legislature and judiciary of our country we can clearly see that the status of women is not that much satisfactory. As per the data provided by National Sample Survey Organisation in 2011 conducted on the workers between the age group of 25-29 the women constitute nearly one third of total work force in works related to farmers, farming labourers and service providers but there contribution in professional and managerial posts are merely 15% of total workforce<sup>27</sup>. Political representation of women in the country is not up to the mark.

Thus we can see that the women will only be able to avail of their different rights and remedies when proper and grass root implementation of different enactment and regulation related to women would be done. Mind set of society also need a change in this

<sup>23</sup> Aquil Ahmad, Mohammadan Law 121(Central Law Agency, 30D/1, Moti Lal Nehru Road, Allahabad, 26<sup>th</sup> end., 2016)

<sup>24</sup> Hamira Bibi v. Zubaida Bibi, ILR (1916) 38 All 581

<sup>25</sup> Dissolution of Muslim Marriage Act, 1939

<sup>26</sup> The Muslim Women (Protection of Rights on Marriage) Act, 2019(20 of 2019)

<sup>27</sup> available at: <https://www.drishitias.com/daily-updates/daily-news-editorials/contemporary-issues-relating-to-indian-women> (visited on 29-09- 2021)



regard only then the efforts at executive, legislature and judiciary will bring its fruit.

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