

# Women's Right As Human Rights: Constitutional And Legal Provision

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*Abstract: Human rights are those rights which are compulsorily obtainable by every individual as he/she is a member of human family. The constitution of India also guarantees the equality of rights of men and women. However, in the sphere of women's human rights in India, there exists a wide gulf between theory and practice. Indian society is a male dominated society where men are always assumed to be superior to society. The women in India very often have to face discrimination, injustice and dishonour. Though women in India have been given more rights as compared to men, even then the condition of women in India is miserable.*

## I. INTRODUCTION

Women are the inherent part of our society and cannot be neglected due to their less power and authority. They are created as a companion for men and men have to make her walk with them in the course of life. The basic unit of society is a woman. As woman makes a family, family makes a home and homes make a society. So we should never think that a society would come into existence without the contribution of women. The role of a woman in our society has changed drastically through the sands of time. If this world be considered as a grand stage and our life as a drama then human beings are the actor and actress of this drama. In this drama, women are performing the multiple roles and they are the main cast of this drama. A woman is playing multiple roles as a mother, a wife, a sister and also an employee of the organization. Women role in society over the times have grown manifold so as her responsibilities. In 21<sup>st</sup> century, women have more responsibilities and commitments than every towards their homes as well as in their place of work.

## II. WOMEN RIGHTS

Women can be said as the God's complete creation. She is the symbol of independence, love, caring, gentleness and intensity, both in live and in hate. Women are emotionally

stronger than man. Undoubtedly women endure much more pain than men do. No man do go through even half the pain a woman goes through during labour. Women have not been treated nicely by men all throughout time. They have been denied their rights, their opportunities. It is very common and entertainment.

## III. WHAT ARE WOMEN'S RIGHTS?

Women's rights are not different from those of men. Entitlements and freedoms claimed for women and girls of all ages in any society are known as women rights. In simple, issues commonly associated with notions of women's rights include, though are not limited to, the right to bodily integrity and autonomy, to vote, to hold public office, to work, to fair wages or equal pay, to own property, to education, to enter into legal contracts and to have marital, parental and religious rights. Most importantly, the natural rights are inalienable and the right to life with dignity is fundamental to the very existence of life which at no point of time should be taken out of the women's life.

#### IV. WHY WOMEN'S RIGHTS?

Although, the concept of human rights premised upon the principle of equality, liberty and justice, its application in a world which defines "human rights" as "men's rights", women's rights are predictably sidelined. Most countries in world including India, laws are essentially made to serve to protect social and familial structures rather than women as individuals who are institutionally forced into a subordinate gender role and identity. Throughout their life women have been subjected to violation of their human rights with such violation often taking the form of gender based violence and discrimination. Very few governments in world exhibit more than token commitment to women's equality and freedom as basic human right.

#### V. WOMEN'S RIGHTS MOVEMENT

The women's rights movement of the mid-nineteenth century unified women around a number of issues that were seen as fundamental rights for all citizens; they included: the right to own property, access to higher education, reproductive rights and suffrage. World War I and II encouraged women to do their patriotic duty by entering the workforce to support the war effort. Many women assumed they would leave the working world when men returned from service and many did. In the four decades since, the women's movement has tackled many issues that are considered discriminatory toward women including: sexism in advertising and the media, economic inequality issues that affect families and violence against women. The women's rights movement rose during the nineteenth century in Europe and America in response to great inequalities between the legal statuses of women and men. First proposed as a federal amendment in 1868, women's suffrage floundered for many years before the passage of the Nineteenth Amendment gave women the right to vote in 1920. The women's rights movement reformed during the 1960s as the women's liberation movement. The period would mark the revitalisation of feminism.

#### VI. WOMEN RIGHTS AS HUMAN RIGHTS

Women's rights are violated in variety of way. However, many violations of women's human rights are distinctly connected to being female-that is women are discriminated against and abused on the basis of gender. Women also experience sexual abuse in situations where their other human rights are being violated, as political prisoners or members of persecuted ethnic group. Why women rights should be viewed and promoted as human rights has certain logic. The concept of human rights is one of the few moral visions ascribed to internationally. Promotion of this is a widely accepted goal and thus provides a useful framework for seeking redress of gender abuse. Further, it is one of the few concepts about the lives of people globally. The Universal Declaration of Human Rights adopted in 1948 symbolises this world vision and defines human rights broadly.

#### VII. ROLE OF UNITED NATIONS

UN support for the rights of women began with the Organisation's founding Charter. Among the purposes of the UN declared in Article 1 of its Charter 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. The landmark Declaration, adopted by the General Assembly on 10 December 1948, reaffirms that "All human beings are born free equal in dignity and rights and that "everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction and kind such as role as race, colour, sex, language, religion, birth or other status. In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is often described as an International Bill of Rights for Women.

#### VIII. UNITED NATIONS AND HUMAN RIGHTS OF WOMEN

Though constituting half the populations of the world and often euphemistically referred to as the 'Better half of men' women, in fact had the worst deal at the hands of the society. They were physically and sexually abused and exploited, denied a say in the governance, denied equal wage and were always treated as an appendage of man.

Western women had started agitating for their emancipation in the late ninetieth century, which resulted in a series of international conventions. After the Second World War three UN bodies resumed working for human rights of women, i.e., The General Assembly, the ECOSOC and the secretariat. These three bodies jointly with the special commission on the status of women (1946) introduced the problem of women's rights into their programmes of activity. The UN efforts to promote the principle of equal rights of men and women were initially directed towards securing equality of men and women in law. UN Charter and the Universal Declaration of Human Rights ensure freedom of women from social, sexual and religious discrimination in a variety of ways.

#### IX. LEGAL PROVISIONS OF WOMEN RIGHTS

Although there are various acts for protection of women, but harassments continue. Often, women go to the police station unaccompanied by a lawyer to get their statement recorded, and they stand the risk of being misquoted or their statement being tampered with. Under section 164 of the Criminal Procedure Code, a woman who has been raped can record her statement before the District Magistrate when the case is under trial, and no one else needs to be present. According to the guidelines issued by the Delhi Police, a woman has the privilege of lodging a complaint via email or registered post. According to a Supreme Court ruling, a woman cannot be arrested after sunset and before sunrise. There are many cases of women being harassed by the police at wee hours, but all this can be avoided if women exercise the

right of being present in the police station only during daytime. Women cannot be called to the police station for interrogation under Section 160 of the Criminal Procedure Code. This law provides Indian women with the right of not being physically present at the police station for interrogation. Under no circumstances can the identity of a rape victim be revealed. Neither police nor media can disclose name of the victim in public. Section 228-A of the Indian Penal Code makes the disclosure of a victim's identity a punishable offense. A case of rape cannot be dismissed even if the doctor says rape had not taken place. A victim of rape needs to be medically examined as per section 164 A of the Criminal Procedure Code, and only the report can act as proof. It is the duty of every employer to form a Sexual Harassment Complaints Committee within the organization for redressal of such complaints. According to a guideline issued by the Supreme Court, it is mandatory for all firms, public and private, to set up these committees to resolve matters of sexual harassment.

## X. RIGHTS AND PRIVILEGES OF WOMEN

The principle of gender equality is enshrined in the India constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic policy, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

## XI. CONSTITUTIONAL PROVISIONS

The constitutional of India 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, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

*Article 14:* Equality before law for women.

*Article 15 (i):* 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(3):* The State to make any special provision in favour of women children.

*Article 16:* Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

*Article 39 (a):* The State to direct its policy towards securing for men and women equality the right to an adequate means of live hood.

*Article 39 (d):* Equal pay for equal work for both men and women.

*Article 39 (A):* 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 42:* The State to make provision for securing just and humane conditions of work and maternity relief.

*Article 46:* 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 47:* The State to raise the level of nutrition and the standard of living of its people.

*Article 51(A):* 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 243 D (3):* 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 (4):* Not less than one-third of the total number of offices of Chairpersons in the Panchayat at each level to be reserved for women.

*Article 243 T (3):* 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 Municipality.

*Article 242 T (4):* 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.

## LEGAL PROVISIONS

To uphold the Constitutional mandate, the State has enacted various legislative measure intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

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 'crime against women'. These are broadly classified under two categories:

*The Crimes Identified Under the Indian Penal Code: (IPC)*

- ✓ Rape (sec. 376IPC)
- ✓ Kidnapping & Abduction for different purpose (Sec. 363-373)
- ✓ Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)

- ✓ Torture, both mental and physical (Sec. 498-A IPC)
- ✓ Molestation (Sec. 354 IPC)
- ✓ Sexual Harassment (Sec. 509 IPC)
- ✓ Importation of girls (up to 21 Years of age)  
*The Crimes identified under the Special Laws (SLL)*  
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 interest are:
  - ✓ The Commission and wards Act, 1860
  - ✓ The Indian Penal Code, 1860
  - ✓ The Christian Marriage Act, 1872
  - ✓ The Indian Evidence Act, 1872
  - ✓ The Married women's property Act, 1874
  - ✓ The Workmen's Compensation Act, 1923
  - ✓ The legal Practitioners (Women) Act, 1923
  - ✓ 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 Factories Act, 1948
  - ✓ The Minimum Wages Act, 1948
  - ✓ The Employee's State Insurance Act, 1948
  - ✓ The Plantation Labour Act, 1951
  - ✓ The Cinematograph Act, 1952
  - ✓ The Special Marriage Act, 1954
  - ✓ The Hindu Marriage Act, 1955
  - ✓ The Hindu Adoptions and Maintenance Act, 1956
  - ✓ The Hindu Minority and Guardianship Act, 1956
  - ✓ The Hindu Succession Act, 1956
  - ✓ The immoral Traffic (Prevention ) Act, 1956
  - ✓ The Maternity Benefit Act, 1961
  - ✓ The Dowry Prohibition Act, 1961
  - ✓ The Beedi and Cigar Workers (conditions of employment) Act, 1966
  - ✓ The foreign Marriage Act, 1969
  - ✓ The Indian Divorce Act, 1969
  - ✓ The Medical termination of Pregnancy Act, 1971
  - ✓ Code of criminal Procedure, 1973
  - ✓ The Bonded Labour System (Abolition) Act, 1976
  - ✓ The Equal Remuneration Act, 1976
  - ✓ The Contract Labour (Regulation Abolition) Act, 1979
  - ✓ The Inter- State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
  - ✓ The Family Courts Act, 1984
  - ✓ Juvenile Justice Act, 1986
  - ✓ The Indecent Representation of Women (Prohibition) Act, 1986
  - ✓ The Child Labour (Prohibition and Regulation) Act, 1986
  - ✓ The National Commission For women Act, 1990
  - ✓ The Infant Milk Substitutes, Feeding Bottles and infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
  - ✓ The Pre-Natal Diagnostic Technique (Regulation and the Prevention of misuse) Act, 1994

## XII. NEW SEXUAL VIOLENCE LEGISLATION

On 19 March 2013, the Indian Parliament passed a new law with the goal of more effectively protecting women from sexual violence in India. It came in the form of the Criminal Law (Amendment) Act, 2013, which further amends the Indian Penal Code, the Code of Criminal Procedure of 1973, the Indian Evidence Act of 1872, and the Protection of Children from Sexual Offences Act, 2012. The law makes stalking, voyeurism, acid attacks, and forcibly disrobing a woman explicit crime for the first time, provides capital punishment for rapes leading to death, and raises punishment to 20 years from 10 years the minimum sentence for gang rape and rape committed by a police officer. The new law doesn't address marital rape, committed by the armed forces or rape against me.

## XIII. CONCLUSION

The historical journey for women's human rights indicates that only when women are literate, when they can articulate their view of life in public and before audiences, when they can organize and demand equality, when girls are educated and socialized to think of themselves as citizens as well as wives and mother and when men take more responsibilities for the care of children and the home, only then women will be considered as equal and dignified citizens of the society and will be able to enjoy their human rights completely.

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