

# Protection of Women Rights in India-The Legal Way

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## Abstract:

Women amounting to half of the human race worldwide have been treated unequally with men due to existing age-old socio-cultural trends in society which have lowered women's status below that of men, amounting to dependence of women on men, thereby resulting into numerous types of human rights violations of women. Michelle Obama an American attorney and author the First Lady of United States of America from 2009 to 2017 once quoted that "No country in this world can ever flourish if it stifles the potential of its women and deprives of itself the contributions of half of its citizens".<sup>1</sup> So that the women seek their human and fundamental rights many attempts have been made by various countries to treat them equally with men in a progressive society. Various countries have been signatories of many International Covenants, Conventions and treaties promising the protection of women globally. Countries like India at their national level also have enacted various legislation to serve the purpose, thereby promoting gender equality and assuring the protection of women's rights by having access to justice in violation of their rights.

**Keywords: Women, Human Rights, protection, discrimination, Constitution, legislations.**

## Introduction:

A famous Ethiopian proverb depicting the importance of a woman reads as "A home without a woman is like a barn without cattle".<sup>2</sup> Imagining the existence of a society without women is like having a house but without a roof. The importance of women in any society is undeniable. Susan B. Anthony an American social reformer and women's rights activist of the 19th century once quoted that "A true Republic would be in which men have their rights and nothing more and women have their rights and nothing less".<sup>3</sup> Like every human being on this planet, even women do have human rights which some of them are not even aware of, as a result their rights are being abused in several ways. Thus their rights need to be protected so that they are not placed in the vulnerable sections of the society. In India mostly women hesitate to approach the police or courts for enforcing their rights for various reasons. However, to be aware of the existing laws is crucial to women as it assists them in recognising the limits of the law and negotiating for the protection of their rights in the background of the law. Such awareness would help women know the remedies available to them if anyone abuses their rights.

Through ages India has witnessed violation of women's fundamental rights through physical, mental emotional and sexual violence. This has resulted in their discrimination right from the olden days and is continuing till date. However, in the current situation, Indian legislation and the judiciary have stepped forward to play an innovative role in giving life to female welfare legislation to strengthen women's socioeconomic and political status. All legislative and executive initiatives aimed at ensuring gender justice have been regularly and unanimously upheld by the courts. Courts have repeatedly struck down laws that tend to discriminate against women. Currently, judicial decisions display a high degree of judicial statesmanship in the vast majority of cases. The problem, however, is structural and will not be resolved until the executive completely implements the legislative and judicial norms.

## Indian Legal Provisions for protection of Women Rights

In compliance with International norms recognising women's human rights, India has made a range of attempts through various constitutional and legal provisions to strengthen women's equal status and provide better treatment in society. The principle of gender equality is enshrined

in the Indian Constitution in its various parts including the Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State policy. In addition to the guarantee of equality for women our Constitution also provides and empowers the State to adopt measures of positive discrimination in favour of women for their empowerment and upliftment. It is also worth mentioning that India has ratified a host of international conventions and human rights instruments to ensure women's equality. The millennia-old social pattern of women being treated unequally to men was finally reversed in the twentieth century, when the Universal Declaration of Human Rights (UDHR) declared, primarily in Articles 2 and 7, that every person, without exception, must be treated equally before the law. Following that, many countries that consented to the UDHR including India, committed themselves and framed various legislation to protect human rights, particularly women. The UDHR, 1948 may be considered as the first step towards a more egalitarian society. Later on, India also ratified to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993 and this can be considered one of the most significant steps towards gender neutrality.

### Constitutional Privileges for women

Specific provisions in the Indian constitution enhancing the scope of gender equality are listed below

- (i) Equal protection by the law for all persons including women **(Article 14)**.<sup>4</sup>
- (ii) The State shall not discriminate against any person solely because of religion, race, caste, gender, or place of birth, or any combination of these factors. **(Article 15 (1))**.<sup>5</sup>
- (iii) The States shall have the authority to make any special provision favouring women and children. **(Article 15 (3))**.<sup>6</sup>
- (iv) All citizens are afforded equal opportunity, in the matters relating to employment or appointment to any office under the State. **(Article 16)**.<sup>7</sup>
- (v) Untouchability of any form is abolished, and also imposing any disability arising from untouchability. **(Article 17)**.<sup>8</sup>
- (vi) "No person shall be deprived of his life or personal liberty except according to procedure established by law". **(Article 21)**.<sup>9</sup>
- (vii) The State should focus its policies on ensuring that men and women alike have access to adequate means of subsistence. **(Article 39(a))**.<sup>10</sup>  
and both men and women should receive equal pay for equal work **(Article 39(d))**.<sup>11</sup>
- (vi) To ensure that no citizen's right to justice is violated due to economic or other disabilities by promoting equal justice and providing free legal aid through effective legislation or programmes, or in any other way. **(Article 39 A)**.<sup>12</sup>
- (vii) The State must make provision to secure just and humane conditions of work and maternity relief for women. **(Article 42)**.<sup>13</sup>
- (viii) The State shall make every effort to secure for the citizens a uniform civil code throughout the territory of India. **(Article 44)**.<sup>14</sup>
- (ix) The state should promote the educational and economic interests of the poorer sections of the population with special attention and protect them from social inequality and other forms of exploitation. **(Article 46)**.<sup>15</sup>
- (x) The State should strive to raise the level of nutrition and the standard of living of its people. **(Article 47)**.<sup>16</sup>
- (xi) To foster peace and a spirit of mutual brotherhood among all Indians and condemn practices that are derogatory to women's dignity. **(Article 51(A) (e))**.<sup>17</sup>
- (xii) 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 elections 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))**.<sup>18</sup>
- (xiii) Not less than one third of the total number of offices of Chairpersons in the Panchayats at

each level to be reserved for women (**Article 243 D (4)**)<sup>19</sup>

(xiv) 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 a Municipality (**Article 243 T (3)**)<sup>20</sup>

(xv) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the State Legislature may by law provide (**Article 243 T (4)**).<sup>21</sup>

### **Legislations enabling protection of women's rights**

India has enacted numerous legislative initiatives to ensure equal rights, fight social injustice on women, various forms of violence and atrocities, and provide support services, especially to women, to uphold the Constitutional mandate.

Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating', etc, the crimes directed specifically against women are characterized as 'Crime against Women'.

These are broadly classified under two categories,

**(1) The Crimes Identified Under the Indian Penal Code (IPC):** Various provisions of the Indian Penal Code awards for punishment in cases of crimes against women are Rape (Sec. 376 IPC), Kidnapping & Abduction for different purposes (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), Importation of girls (Sec.366 B) and Sexual Harassment (Sec. 509 IPC) etc.<sup>22</sup>

**(2) The Crimes identified under the Special Laws:** While not all laws are gender specific, those that have a major effect on women have been revised and updated regularly to keep up with changing needs. The following acts include special provisions to protect women and their interests:

- (i) The Employees State Insurance Act, 1948
- (ii) The Plantation Labour Act, 1951
- (iii) The Family Courts Act, 1954
- (iv) The Special Marriage Act, 1954
- (v) The Hindu Marriage Act, 1955
- (vi) The Hindu Succession Act, 1956 with amendment in 2005
- (vii) Immoral Traffic (Prevention) Act, 1956
- (viii) The Maternity Benefit Act, 1961 (Amended in 1995)
- (ix) Dowry Prohibition Act, 1961
- (x) The Medical Termination of Pregnancy Act, 1971
- (xi) The Contract Labour (Regulation and Abolition) Act, 1976
- (xii) The Equal Remuneration Act, 1976
- (xiii) The Prohibition of Child Marriage Act, 2006
- (xiv) The Criminal Law (Amendment) Act, 1983
- (xv) The Factories (Amendment) Act, 1986
- (xvi) Indecent Representation of Women (Prohibition) Act, 1986
- (xvii) Commission of Sati (Prevention) Act, 1987
- (xviii) The Protection of Women from Domestic Violence Act, 2005.

Additionally there are also many legislations intended for the protection of women's rights which are

- (xix) The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1996
- (xx) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- (xxi) Muslim Women (Protection of Rights of Marriage) Act, 2019.

**Special Initiatives for Women :** Also Special initiatives for Women are taken up the Indian Government for upliftment of women which are as follows

**National Commission for Women**<sup>23</sup>: In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and

legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

### **Reservation for Women in Local Self –Government <sup>24</sup>:**

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

### **The National Plan of Action for the Girl Child (1991-2000) <sup>25</sup>**

The Action plans to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

### **National Policy for the Empowerment of Women, 2001 <sup>26</sup>**

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a "National Policy for the Empowerment of Women" in 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

### **Landmark judgements depicting India's thoughts on enabling women rights protection :**

The Judiciary in India time and again have played a significant role in women human rights protection for the promotion of gender neutrality thereby attempting to curb the atrocities imparted on women in India.

In *Tuka Ram And Anr v. State Of Maharashtra, 1979*,<sup>27</sup> popularly known as the Mathura rape case eventually led to amendments in Indian rape law via The Criminal Law (Second Amendment) Act 1983 (No. 46) .

In *Air India v. Nargesh Meerza, 1981*,<sup>28</sup> The Supreme Court struck down the provision forcing air hostesses to retire when they reach 35 years of age, marry within the first four years of service, or in case of first pregnancy as arbitrary and unfair and explicitly violating article 14 of the Indian Constitution thereby supporting women's equality.

*Mohammad Ahmed Khan v. Shah Bano Begum, 1985*<sup>29</sup> popularly known as the Shah Bano case, After obtaining triple talaq from her husband, a penurious Muslim woman filed a petition for maintenance under section 125 of the Code of Criminal Procedure. The Supreme Court ruled that under section 125 of the Code of Criminal Procedure. Muslim women have the right to obtain maintenance from their husbands.

*N Mary Roy v. State of Kerala, 1986*,<sup>30</sup> the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

In *Sarla Mudgal v. Union of India 1995*,<sup>31</sup>: This case highlighted the exploitation women face in the name of personal laws. Hence, the Supreme Court directed the Union government to implement uniform civil code to remove the women from the age old shackles of personal laws.

*Vishaka v. State of Rajasthan, 1997*,<sup>32</sup> In this landmark ruling, the Supreme Court ruled that sexual harassment at work is a gross violation of Articles 15 and 21 of the Constitution. It outlined detailed guidelines for preventing sexual harassment of working women in their workplaces. As a result in 2013 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed by the parliament of India

In *Chairman Railway Board vs. Chandrima Das, 2000*,<sup>33</sup> : In this case the victim a Bangladeshi national was awarded a compensation of Rs.10 lakhs by the Supreme Court for being gang raped in Yatrini was of railways. It rightly held that the fundamental right under Article.21 is available to non-citizens also and thus the reach of the particular right is very wide.

*Laxmi v. Union of India, 2014*<sup>34</sup>: Laxmi, an acid attack survivor, filed a petition in 2006, demanding that the selling of acid be regulated and that the victim be properly compensated. In 2013, the Supreme Court placed strict restrictions on the selling of acid, in response to a spike in the number of cases involving acid attacks against women.

*Centre for enquiry into Health and Allied themes (CEHAT) v. Union of India, 2001*<sup>35</sup>: In India

female foeticide was rampant on account of pre-natal diagnostic techniques determining the sex of a foetus and curtail female foeticide, the Government of India had enacted the PNDT Act in 1996. However due to the failure of the State and the Central government in implementation of the provisions of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1996, the Centre for Enquiry into Health and Allied Themes filed a petition, which culminated in the Supreme Court making it mandatory for the Central and State governments to immediately enforce the provisions of the PNDT Act, 1996, as well as restricting all advertising relating to prenatal sex determination techniques.

***Shamima Farooqui v. Shahid Khan, 2015***<sup>36</sup>: The Supreme Court ruled that women cannot be treated like beggars. Their status cannot be degraded in their legitimate claim to maintenance after divorce even if the husband has retired from his service.

In ***Prakash v Phulvati 2016***<sup>37</sup>: it was held that a daughter could be eligible to be a co-sharer only if the daughter and the father were alive as of September 9 2005 (the date of the amendment of The Hindu Succession Act, 1956).

In ***Vineeta Sharma v Rakesh Sharma (2020)***<sup>38</sup>: the court held that daughters would have equal coparcenary rights in Hindu Undivided Family property (HUF) by virtue of their birth and could not be excluded from inheritance, irrespective of whether they were born before the 2005 amendment to the Hindu Succession Act, 1956 thereby reversing the marked discrimination in determining the rights of a son and daughter in claiming inheritance before the 2005 amendment.

In ***Shayra Bano v. Union of India, 2017***,<sup>39</sup>: The court declared that the practice of instant triple talaq (*talaq-e-bidat*) is against the basic tenets of the Quran. Talaq-e-bidat is a practise which gives a man the right to divorce his wife by uttering 'talaq' three times in one sitting, without his wife's consent. The court directed the Centre to pass a legislation in this regard, which led to the Muslim Women (Protection of Rights of Marriage) Act, 2019. As per this Act any Muslim husband who seeks a divorce from his wife by pronouncing triple talaq shall be punished with imprisonment which may extend up to three years and fine.

In ***Joseph Shine v Union of India (2018)***,<sup>40</sup>: The court declared Sec.497 of the Indian Penal Code as unconstitutional. The Court placed its reliance on the right to privacy flowing from Article 21. The then Chief Justice Deepak Misra rightly observed that Section 497 treated a man as the sole master.

In ***Indian Young Lawyers Association v. State of Kerala, 2019***<sup>41</sup> popularly known as the ***Sabrimala case***: While rendering its decision, the court also deviated from its normal hesitancy in issuing judgments in matters of faith. Despite a centuries-old tradition barring menstruating women from entering the Sabarimala Temple, the court held that devotion cannot be subjected to gender discrimination. It allowed women of all ages to join.

The Supreme Court also held in ***The Secretary, Ministry of Defence v Babita Puniya & Ors, 2020***<sup>42</sup>: All female army officers are eligible for permanent commissions, enabling them to hold commanding positions and When it comes to promotions, rank, benefits, and pensions, female officers are now on par with their male counterparts, bolstering their place in the defence sector, which used to follow strict gender norms.

### Conclusion:

These rulings have steadily chipped away at some of the antiquated traditions and norms that have kept women on the sidelines for far too long, paving the way for the executive and legislative branches to protect women's rights in our country. While the decisions mentioned above indicate that progress that has been made in protecting women's rights, the growing number of cases of violence against women and their continued abuse in different arenas can be contributed to the inference that there is still a disconnect between the formulation of laws and their implementation on the ground. As the importance of women's rights in the public and private sphere continues to grow, the law must continue to evolve, accommodate their aspirations and desires, and protect them from all types of abuses. However, the liberation and

progress for women does not imply animosity towards men. Despite this, in an era of liberation, the struggle for perfect equality of sexes continues.

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