



## Women's Rights are Human Rights and provisions under Indian Constitution

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One of the core principles of human rights discourse and United Nations values is the principle of Gender equality. A fundamental principle of the United Nations Charter adopted by world leaders in 1945 is "equal rights of men and women", and protecting and promoting women's human right is the responsibility of all States. At the United

Nation's Fourth World Conference on Women in Beijing on September 5, 1995, the then first lady of the United States Hillary Clinton used the term "Women's Rights are Human Rights". Her speech in effect made a forceful argument that it is no longer acceptable to discuss women's rights as separate from human rights. And rightly so, there cannot be any distinction between men and women as far as human rights are concerned.

In case of India, founding fathers of our nation were very determined to provide equal human rights protection to both women and men. The Constitution of India is one of the finest "equality documents" in the world. It provides provisions to secure equality in general and gender equality in particular. Various articles in the Constitution safeguard women's rights by putting them at par with men socially, politically and economically. The Preamble, the Fundamental Rights, DPSPs and other constitutional provisions provide several general and special safeguards to secure women's human rights.

But the question arises whether these protections are sufficient; whether we have achieved any significant level of gender equality in our society. At the same time, it is also important to study the role of the Supreme Court in checking human rights violations of women and in upholding constitutional provisions regarding the same.

This paper attempts to analyse the said constitutional provisions and the role of the Supreme Court in securing women's rights as human rights.

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### **Introduction**

Nature created women different from men with a definite purpose. Balance is stillness and stagnation; imbalance is motion and progress. Nature designed life and action by means of the imbalance brought about in the traits of men and women. In the process, women find themselves at the receiving end. They ended up as the weaker half of society by their very nature and are naturally handicapped in a world of men, by men, for men. In a world where strength commands charity and weakness receives cruelty, a woman is at a great disadvantage. She has suffered all types of cruelty and humiliation all along centuries with patience and in silence. This part of woman is symbolised, in tradition by calling her as the Mother Earth who bears all sufferings. The cardinal principle of the survival of the fittest applies to the weak, natural attributes of woman which renders her less fit for survival than man. She must live at his mercy and on his charity, silently bearing all his atrocities unless and until society in an enlightened mood comes to her rescue.

Human Rights are the minimum rights given by the constitution and other laws in India and these are compulsorily accessible by every human being as a member of human society. But it has been observed that there is a violation of these rights in case of women and the crimes against women in India are increasing at a very high speed.

### **Women rights and Constitutional of India:**

Equal rights have been granted to the men and women by the Constitution of India. But in present scenario, it has been observed that there is a wide bay between theory and practice. In India the women have always been considered inferior to men. Though the provisions of the articles contained in the constitution mandates equality and non-discrimination on the grounds of sex but women is always discriminated and dishonored in Indian society. Although the Government of India has taken to improve the status of women in India but the constitutional dream of gender equality is miles away from becoming a reality.

Lots of provisions have been introduced through constitution to ensure dignity and self respect to the women at large. Dr. B. R. Ambedkar, author of Indian constitution, makes sure that constitution of India safeguards the social and legal rights of women. Mentioned below are some of the provisions made in favour of Indian women, in constitution of India:



**Article 14-** Article 14 of constitution of India ensures equality before the law or the equal protection of the laws within the territory of India. This is a very important provision which provides equal legal protection to women against any women based crime. This provision also paves way for the introduction of various laws and acts to ensure protection and enforcement of legal rights of women in India.

**Article 15-** Article 15 of constitution of India ensures that no one should create any sort of discrimination only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India. At the time of Independence there was lots of discrimination in India against women which gradually abolished after introduction of article 15. As per article 15(3) of the constitution state has the authority to make any special provision for women and children.

**Article 16-** Article 16 of constitution of India ensures equal employment opportunity to every citizen of India. As per article 16 there should not be any discrimination in respect of employment opportunity under the State only on grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them. Now we can see women are doing really good work in politics and in corporate sector. Presently they are holding responsible positions in Government and Government run institutions.

**Article 39-** Article 39 of constitution of India ensures the benefit of the directive principles of state policy to the women. Directive principles of state policy mean **guiding principles** for the framing of laws by the government at state level. Article 39(a) of directive principles of state policy ensures and directs a state to apply policies which focus on men and women have an equal right of adequate means of livelihood and article 39(c) ensures equal pay for equal work for both men and women.

**Article 42-** Article 42 of constitution of India casts a duty on every employer to ensure just and humane conditions of work and for maternity relief. In reality the position and treatment of women in corporate offices is really bad and in fact they are exploited by their seniors and bosses. In this scenario the provisions of article 42 are very important and now it is duty of employer to provide good working conditions to all the employees.

**Article 243-** Article 243 of constitution of India ensures reservation of seats in gram panchayat for women. This opportunity of being a part of local level arbitration process has improved the social conditions of women in village areas.

**Women rights and Legal/Parliamentary Provisions:**



After Independence there was need to introduce some statutory laws to ensure safety and protection of women. Keeping in view this requirement, just like constitutional provisions, various parliamentary steps have also been taken by the law of India in order to ensure dignified life to the Indian Women. Parliamentary steps means and includes the enactment of various laws and statutory acts to protect the interest of women and to stop the crime against women. These acts have proved really useful towards progress and safety of women in society. For example:

- 1) Dowry Prohibition Act, 1961
- 2) The Protection of Women From Domestic Violence Act, 2005
- 3) The Commission of Sati (Prevention) Act, 1987
- 4) The Immoral Traffic Prevention Act, 1956
- 5) Civil Procedure Code, 1973
- 6) Indian Penal Code, 1960
- 7) Hindu Marriage Act, 1955
- 8) Child Marriage Restraint Act, 1929
- 9) The Medical Termination of Pregnancy Act, 1971
- 10) National Commission of Women Act, 1990
- 11) The Minimum Wages Act, 1948

#### **12) Violation of Human and Women's Rights in India:**

- 13) India is the world's most populous democracy, has been facing significant human rights problems despite making commitments to tackle some of the most prevalent abuses. The country has a prosperous civil society, free media, and an independent judiciary. But established insulting practices, corruption, and lack of accountability for perpetrators promote human rights violations.
- 14) The Indian government's inability to protect women and children from rape and sexual violence undermines its commitment to uphold the rights of all Indians, Human Rights Watch said its *World Report 2014*. During 2013 the authorities also failed to enforce laws that protect vulnerable communities including Dalits, religious minorities, and tribal groups. Government efforts to increase mass surveillance raised concerns over rights to privacy and free speech.
- 15) "International attention to sexual attacks in India led to a new law, but should have spurred the government towards systemic changes to make real progress on this issue," said Meenakshi Ganguly, South Asia director at Human Rights Watch. "The



government has also failed to keep its promises of reforms to create a responsive police force, and to repeal laws that protect the armed forces from prosecution.”

16) It has been frequently said these days that been the sufferers from ancient times. Not only in earlier times but even now days also, women in India are enjoying the rights equal to men. But in reality, the women in India have are facing problem of discrimination, injustice and dishonour etc.

### **Major Crimes violating Women Rights:**

- 1. Adultery -** Adultery is a very serious crime against women in India and affects married women by and large. In simple words adultery means having voluntary sexual relationship with a married person other than the spouse. The offence of adultery is dealt with by section 497 of the Indian penal Code, 1860, which says adultery means sexual intercourse of a man with a married woman without the consent of her husband when such sexual intercourse does not amount to rape. However we may find different meaning of adultery in different laws in different countries. Initially only men were punished under the law of adultery in India but now men and women both are equally responsible for committing the crime of adultery. As per section 497, the offender shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as a partner in crime.
- 2. Child marriage -** Child marriage is a very awful offence against child as it does not only harms the future of child but also damage social values. Further the doctors have also revealed that child marriage is a very big reason for bad health condition for girl child. Child marriage restricts the social development along with reduction in the educational and employment opportunities in the global market. It was like a burden on society to practice this unwritten custom. The major step was taken by the Law Commission of India by fixing the minimum age for marriage which is 18 years for girls and 21 years for boys. Another major step was mandatory primary education and moreover for girls provision for free education provided by the Government of India.
- 3. Female feticides -**Female feticide means identifying and killing of female fetus before they take birth. This is the most brutal way of killing women. The custom of female feticide is practiced by the society form ancient times and it is really shameful to note that even today, when we considers ourselves educated and civilized, this custom is practiced in a big manner. Government has taken so many steps to spread awareness among people about the consequences of this crime. Many awareness programs are



conducted by the Government to spread the awareness about the physical, mental and social effect of this practice. Punishment of 3 years imprisonment and Rs. 10,000 fine has been prescribed by Pre conception and Pre Natal Diagnostic Techniques (Prohibition of Sex selection) Act, 1994, for the offence of Female feticides.

In a recently development Maharashtra government has recommend to the centre that the crime of female feticide should be treated as murder. To ensure this amendment in Pre conception and Pre Natal Diagnostic Techniques (Prohibition of Sex selection) Act, 1994, would become necessary. This provision will bring this crime within the category of murder under section 302 of the Indian Penal Code.

4. **Trafficking and Prostitution** -Trafficking means import and export of humans for sex business. It is indeed very sad to learn that in India, where women are recognized as Devi and prayed by all Indian's as Devi Shakti, they are also treated as a source of earning by unethical means. Prostitution is one of the biggest problems in this world which is damaging the women in many ways. In general, the term prostitution means offer of sexual services for earning money. Prostitution is a problem which exists across the world. There are quite a few laws in India in order to prevent the crime of prostitution like Suppression of Immoral Traffic in Women and Girl Act 1956 and Immoral Traffic (Prevention) Act 1956. There are few commissions are made by state Government to save women and specially girls to protect them from this practice.
5. **Domestic Violence**- Domestic violence has become a very serious problem for women. In general the term Domestic violence means mental, physical, emotional and economical harassment of a woman by family members. For the purpose of domestic violence family includes spouse, his mother, father, brother, sister, his relatives and sometimes even friends. We call ourselves educated and talk too much about morality, ethics and civilization and expect others to be good to create a dream world but forget that without giving due respect to the women, a nation's growth is impossible. Now in India domestic violence is recognized as a criminal offence under section 498A of Indian Penal Code, 1860. Domestic violence means cruelty by husband towards women. Cruelty can be done by physically, mentally, economically or emotionally. An act called Domestic violence Act, 2005 was introduced to handle the cases of Domestic violence in India. This act is a very noteworthy attempt in India to recognize domestic violence as a punishable offence. Before the introduction of this act two kinds of remedies were available to a women affected by Domestic violence. These two



remedies were divorce through civil courts and application of section 498A through criminal courts.

6. **Eve teasing** - It is a general perception that eve teasing is not a big crime like rape or murder and may be because of that we don't take it seriously. But from a women's point of view eve teasing is also a very big crime as this activity does make her feel uncomfortable most of the times. Eve teasing usually involves teasing women, passing comments on women and making vulgar signs (eshare). A woman has to face this kind of irritating behavior and deal with this on daily basis. She can't even fight back due to fear of disrespect by others as everyone will blame her and say that you must have done something to invite them. In case of eve teasing girl should not remain silent and raise her voice. She should inform her family members and simultaneously file a complaint in the nearest police station. In this case family should also support the women instead of locking her at home.
7. **Acid throwing**- Recently the issue of acid throwing on girls has also become a big issue. There are few types of acids and all are very dangerous for human flesh and burn. This acid attack sometimes is so dangerous that even bones and eyes are also got damaged due to acid. Few victims are forced to leave their education or occupation due to the results of acid throwing. Now a days this has become very easy for people to get these acids and the cases of acid throwing has become very regular in daily life.  
It is quite sad that despite of so many cases of acid attacks on women, we do not have a dedicated and specific law to deal with such cases. The National Commission for Women is asked for a well defined law to deal with such casualties. The NCW has introduced a draft of the Prevention of Offences (by Acids) Act, 2008, which is with now with the Union Ministry of Women and Child Development for the purpose of vetting and final recommendations. Once the Union Ministry of Women and Child Development approved the Bill, it will be sent to the law ministry to be tabled in Parliament. After the approval in Parliament it will become applicable as law.
8. **Fraudulent Marriage**- Before going into the details of Fraudulent Marriage let me explain the general meaning of fraud in relation to crime against women. Fraud means hiding something or giving false impression about something which a person knows that knowing the fact may harm his prospective marriage. The scope of fraudulent marriage has increased in the recent past as in India parents of a girl are very fond of NRI son in law. Parents want to settle their daughter with any rich NRI. Parents of



brides don't inquire too much about the NRI groom as they are happy that their daughter is going to marry a rich person who will fulfill her all demands and she will live a luxurious life in abroad. There blind faith on NRI's may invite problems like false commitments, false details, second marriage and infertility. This is not necessary that fraudulent marriages only took place in case of NRI's even Indian grooms also do the same for money or for boy child or for any other reason.

9. **Exploitation at work place-** Though we all accept the truth that in today's world women has come out of her image of house wife and proved herself as a better administrator then a man. In all sectors women are working hard and getting awards and rewards for that. She has crossed all the boundaries and shut the mouth of all those peoples who has ever questioned her working caliber.

Vishaka case of sexual harassment at workplace is a case of landmark judgement by Supreme Court of India. Not because it was attack on working women's fundamental right to work without fear and prejudice. Not because it is a saga of immense torture of a naïve working woman. Not because a woman showed exemplary courage to fight against the male ego our immoral society. It is a landmark case because first time ever it was officially recognized at such a high level of need for laws for sexual harassment and laying down of guidelines of sexual harassment of working woman

10. **Rape, murder -** Rape is another very serious crime against women and this crime is increasing day by day like anything. Reporting of rape and abduction cases has become very common in print and electronic media which is indeed a very sad affair for all of us. Increasing rape cases are enough to prove that our moral values are still very low and we still to learn how to respect the dignity of women at large. In simple terms the word 'Rape' means sexual intercourse or sexual penetration, by another person without the consent of the other person or victim. Provisions related to rape are given in section 375 and 376 of the Indian Penal Code, 1860. Section 375 explains the pre-condition which are necessary to prove the offence of rape whereas section 376 provides punishment for the offence of rape. As per section 376, whoever commits the offence of rape shall be punished with imprisonment of either for a term which shall not be less than seven years but which may be **for life** or for a term which may extend to ten years and shall also be liable to fine.

11. **Dowry-** The system of dowry is another social evil which dragging women back from 100 of years as this evil has a very long history especially in India. There are ample





legal provisions in India to provide relief to women in case of dowry based domestic violence cases. Civil law of India has prohibited the payment of dowry in the year 1961. Further Indian Penal Code, 1860 has introduced Sections 304B and 498A, which allows women to file complaint and seek restoration of her rights from serious harassment by the husband's family.

### **Conclusion:**

We would like to say that Indian women has covered a long way to prove that she is capable of doing anything and equal partner in the growth and prosperity of the nation. Women are the pillars of the society and without them the imagination of the society is impossible. Now it is the right time for all of us to understand the power of women. There is one saying that behind every successful man there is a woman. This saying is enough to prove that man and women both are necessary element of society. Women plays different role in her life which is not an easy task. During her life she acts as daughter, wife, sister and mother at different stages of life. So we must give them due care and respect and understand their efforts towards welfare of the society at large. Through this article we tried our best to cover all the constitutional, judiciary and legislative rights of women against the crimes which they are facing from quite some time now. We hope this article will help us to understand that rights of women are very necessary and Indian law is strong enough to protect her from any kind of harassment and torture.

### **Suggestions:**

Protection of human rights has got a wide recognition in the present day world of human rights revolution. Human rights jurisprudence gets power only. if the concept of social justice is promoted according to the socio economic development of the state .The change in the administration of a state from Laissez faire to welfare system, and inclusion of the declaration of rights in the constitutions of most of the countries after the Second World War. increased the responsibility of the states in protecting the human rights of the people. But when it comes to enforcing these rights against the state for its violations the principle and procedure seems to be inadequate.

Violence against women and girls is rooted in gender-based discrimination and social norms and gender stereotypes that perpetuate such violence. Given the devastating effect violence has on women, efforts have mainly focused on responses and services for survivors. However, the best way to end violence against women and girls is to prevent it from happening in the first place by addressing its root and structural causes.



Prevention should start early in life, by educating and working with young boys and girls promoting respectful relationships and gender equality. Working with youth is a “best bet” for faster, sustained progress on preventing and eradicating gender-based violence. While public policies and interventions often overlook this stage of life, it is a critical time when values and norms around gender equality are forged.

Prevention entails supporting the implementation of the agreed conclusions of the 57th Session of the Commission on the Status of Women (CSW) that placed a strong focus on prevention through the promotion of gender equality, women’s empowerment and their enjoyment of human rights. It also means making the home and public spaces safer for women and girls, ensuring women’s economic autonomy and security, and increasing women’s participation and decision-making powers—in the home and relationships, as well as in public life and politics. Working with men and boys helps accelerate progress in preventing and ending violence against women and girls. They can begin to challenge the deeply rooted inequalities and social norms that perpetuate men’s control and power over women and reinforce tolerance for violence against women and girls.

Awareness raising and community mobilization, including through media and social media, is another important component of an effective prevention strategy.

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