

# CONSTITUTIONAL AND LEGAL PROVISIONS FOR WOMEN IN INDIA

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## **Introduction:**

Indian society is a male dominated society where men are always assumed to be superior to women in the society. The women in India very often face discrimination, injustice and dishonour. Women in India are deprived of their fundamental right to dignity also; leave alone the question of gender equality. Most women aren't aware of their rights in India and other times their legal rights are not protected as they should be. In spite of the fact that the women's contribution to the country's development is equal to that of male counterpart, they experience a number of limitations that restrain them from comprehending their potential for expansion.

The principle of gender equality is enshrined in the Indian 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 special measures in favour of women. However, in the sphere of women rights in India, there exists a wide gulf between theory and practice.

The women rights in India can be classified into two categories, namely constitutional rights and legal rights. The constitutional rights are those which are provided in the various provisions of the Constitution. The legal rights, on the other hand, are those which are provided in the various laws (acts) of the Parliament and the State Legislatures.

## **Objective of the study:**

The main objective of this study is to present an outline of the constitutional and the legal provisions to protect women rights in India.

## **Methodology:**

The present study is based on the secondary data collected from various books, journals and websites. The author acknowledged gratitude to authors of different articles which have been referred.

## **Constitutional Provisions for women:**

Lots of provisions have been introduced through constitution to ensure dignity and self respect to the women. Dr. B. R. Ambedkar, author of Indian Constitution, told that constitution of India should safeguard the social and legal rights of women. Articles 14, 15(1), 15(3), 16, 39(a), 39(d), 42, 51(A) (e) and 243 of the Constitution are made in favour of women in Constitution of India.

1. **Article 14:** Article 14 of Constitution of India ensures equality before the law. 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.

2. **Article 15:** Article 15(1) of Indian Constitution 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. As per article 15(3) of the Constitution, the State has the authority to make any special provision in favour of women and children.

3. **Article 16:** Article 16 of Constitution of India ensures equal employment opportunity to every citizen of India and 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.

4. **Article 39:** Article 39(a) of Directive principles of State policy ensures and directs a State to apply policies which secures men and women to have an equal right to an adequate means of livelihood and article 39(d) ensures equal pay for equal work for both men and women.
5. **Article 42:** Article 42 of Constitution of India directs every employer to make provision for securing just and humane conditions of work and for maternity relief.
6. **Article 51(A)(e):** Article 51(A)(e) states that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
7. **Article 243:** Article 243 of Constitution of India ensures reservation of seats (not less than one-third) in Panchayats and Municipalities for women.

### Legal Provisions for women:

Women are not safe, whether it is in their houses, public places or at workplaces. Crimes against women occur every minute in India. The crimes which are directed specifically against women are characterized as 'Crimes against Women'. In order to maintain the Constitutional mandate, the State has enacted many legislative measures 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.

Legal Provisions are broadly classified under two categories, namely

- (1) The crimes under the Indian Penal Code (IPC)
- (2) The crimes under the Special Laws (SLL)

#### I. The Crimes under the Indian Penal Code (IPC):

- Rape – Sec. 376 IPC
- Kidnapping & Abduction for different purposes – Sec. 363-373
- Homicide for Dowry, Dowry Deaths or their attempts – Sec. 304-B IPC
- Harassment (mental or physical) of woman (by husband or his relatives) – Sec. 498-A IPC
- Molestation – Sec. 354 & 509 IPC

#### II. The Crimes under the Special Laws:

The provisions of law affecting women significantly have been reviewed periodically and amendments are being made to keep pace with the emerging requirements. The following legislations include rights and safeguards for women:

- **The Employees' State Insurance Act, 1948:** It provides medical benefits to all employees of factories and establishments, earning less than Rs.21000/- per month. All employees are to be insured, with contribution from both employer and employee. Both the insured person and her dependents shall be entitled to periodical payments for illness (sickness benefit), pregnancy, miscarriage, disablements, death due to employment injury, medical treatment for illness and payment for death of an insured person towards funeral expenses.
- **The Factories Act, 1948:** This Act deals with working hours, leaves, wages, health, safety and welfare of the workers. **Sec 19** provides separate latrines and urinals for women workers, **Sec 42** provides separate washing facilities, **Sec 48** provides crèche where more than 30 women workers are working, **Sec 66** states that no woman has to work between 7 PM and 6 AM unless State Govt specially makes rules for certain factories where the raw material may be damaged, hence night work may be relaxed.
- **The Special Marriage Act, 1954:** In a country like India with diverse religions and castes, when people from different faiths and castes chose to get married, they do it under the Special Marriage Act. The three main objectives of this act are
  - Provide a special form of marriage in certain cases
  - Provide for registration of certain marriages

- Provide divorce
- **The Hindu Marriage Act, 1955:** It lists four conditions of marriage namely, the two partners should be monogamous, of sound mind, of marriageable age and not close relations. Saptapadi, tali, Kankan, bandhanam etc. are all recognized as essential to this marriage.
- **Dowry Prohibition Act, 1961:** Dowry system, giving and taking of dowry, is a norm in India. This system has taken strong roots because women after marriage move in with their spouse and in-laws. According to this Dowry Prohibition Act, taking or giving dowry at the time of the marriage by the bride or the bridegroom and their family is to be penalized.
- **The Maternity Benefit Act, 1961 (Amended in 2017) :** It states that a woman employee who has worked in an organization for a period of at least 80 days during the 12 months preceding the date of her expected delivery is entitled to receive maternity benefits, which includes paid maternity leave, nursing breaks, medical allowance etc.
- **Indian Divorce Act, 1969:** The Indian Divorce Act deals with dissolution of marriage, nullity of marriage, judicial separation and restitution of conjugal rights. Family Courts are established to file, hear and dispose such cases.
- **The Medical Termination of Pregnancy Act, 1971:** The aim of this Act is to reduce the occurrence of illegal abortions and consequent maternal mortality and morbidity. It clearly states the conditions under which a pregnancy can be ended or aborted and specifies the persons qualified to conduct the same.
- **The Equal Remuneration Act, 1976:** This Act prevents discrimination in terms of remuneration. It states that equal payment should be given to men and women workers.
- **The Family Courts Act, 1984:** It empowers special courts (family courts) to deal speedily with marriage and family disputes such as divorce, legitimacy, guardianship, maintenance, adoption and succession. Women judges are preferred; no lawyers are allowed; hearings can be held in private if either party asks. A stipulation under the Act is that the presiding officers should be committed to the concept of family.
- **Immoral Traffic (Prevention) Act, 1986:** It is the amended version of 'Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)'. Here a girl child is defined as one below 21 years of age. Prostitution is not banned, what is banned is commercializing it. Penalties exist for keeping a brothel, living on the earnings of a prostitute, procuring or inducing a woman for prostitution, any prostitution in public places, any soliciting in public places and custodial seduction.
- **Indecent Representation of Women (Prohibition) Act, 1986:** This Act prohibits indecent representation of women through advertisements, publications, writings, paintings, figures or in any other manner.
- **Commission of Sati (Prevention) Act, 1987:** It seeks to prevent Sati practice or the voluntary or forced burning or burying alive of widows and to prohibit glorification of this action through the observance of any ceremony, the participation in any procession, the creation of a financial trust, the construction of a temple or any actions to commemorate or honour the memory of a widow who committed Sati.
- **National Commission for Women Act, 1990:** This Act aims to improve the status of women and works for their economic empowerment. National Commission for Women (NCW) was established in 1992 under the provision of this Act. The objective of NCW is to represent the rights of women in India and to provide a voice for their issues and concerns.
- **Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 2003:** This Act is an amended version of 'Pre-Natal Diagnostic Techniques (PNDT) Act, 1994'. It not only prohibits determination and disclosure of the sex of the foetus but also bans advertisements related to pre-conception and pre-natal determination of sex. It thus prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female foeticide.

- **The Hindu Succession (Amendment) Act, 2005:** It is an amendment to 'The Hindu Succession Act, 1956'. It recognizes the right of daughter to inherit parental property equally with son.
- **The Protection of Women from Domestic Violence Act, 2005:** This Act is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind – physical, sexual, mental, verbal, economic or emotional.
- **The Prohibition of Child Marriage Act, 2006:** The objective of this Act is to prohibit solemnization of child marriage. This Act defines child marriage as a marriage where the bride or the groom is underage, that is, the bride (female) is under 18 years of age or the groom (male) is younger than 21 years of age.
- **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:** This provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment. Sexual harassment at workplace also includes – the use of language with sexual overtones, invasion of private space by a male colleague, hovering too close for comfort, subtle touches and innuendos.

### Special Initiatives for Women:

Though constitutional provisions and acts are made for woman empowerment and development, special measures to look after this purpose are necessary. Therefore the following initiatives are taken in this regard:

**National Plan of Action for the Girl Child:** This is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

- **Government Schemes for Girl Child in India:** The Ministries of Government of India have introduced various schemes to offer financial incentives to girl children to enable parents to provide proper education and have enough savings for marriage. The following are the schemes announced by the Government of India for the advantage of the parents:
  - **Sukanya Samridhi Yojana (SSY):** Sukanya Samridhi Yojana account is a saving scheme for the benefit of the girl child. It is a part of 'Beti Bachao, Beti Padhao' campaign which was started by the Government of India. It helps to save the future of a girl child, encourage parents to build a fund to meet the expenditure for education and marriage of their girl child. An amount of Rs.250/- is required to open the account. This account pays an interest of 9.1% for each financial year. The age of the girl child should not be more than 10 years. After completion of 21 years, the account can be closed.
  - **Balika Samridhi Yojana (BSY):** The Balika Samridhi Yojana, meant to be specifically for the upliftment of girls, is a small saving deposit scheme launched by Government of India in August 1997 to change the attitude of the community towards female child at birth and to retain and enroll girl children in schools and assist a girl to take up income generating activities. It is being implemented in both urban and rural areas. Newborn babies or infants are included in this scheme. The maximum age limit is 10 years as per the rules. Each girl gets entitled to Rs.500/- post birth and also receives a scholarship for successfully completed years of schooling. The amount of scholarship can be deposited in an interest-bearing account and the maximum possible rate of interest is ensured. No premature withdrawal is allowed and it matures when the girl turns eighteen years of age.

- **National Policy for the Empowerment of Women:** The Government of India had adopted the 'National Policy for the Empowerment of Women' in 2001 with the objective to bring about the advancement, development and empowerment of women and to eliminate all forms of discrimination against women. Later, in 2010, to promote all-round development of women, the Government of India has set up 'National Mission for Empowerment of Women' with the objective of convergence of schemes/programmes of different Ministries/Departments of Government of India as well as State Governments and Union Territories.

### Conclusion:

Constitutional provisions enforce equality, Laws stress on improvement and special initiatives are for development of women. There are a number of Non Governmental Organizations (NGOs) working for the awareness and empowerment of women. Increased representation of women within the police and the judicial system as well as mainstreaming gender within the judiciary can improve their responsiveness to gender issues and make it easier for women to seek assistance or report their cases.

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