



# WOMEN RIGHTS IN INDIAN CONTEXT: CONCURRENCE WITH INTERNATIONAL CONVENTION

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## ABSTRACT

*Women plays varied role in society such as grandmother, a mother, a wife, a sister, a girl- overall the important key or a safeguard of a family. Women are one of the pillars of the society and it would be very difficult to imagine a society without the presence of women. However from the dawn of civilization, a woman is treated as a weaker section of the society and suffers or victimize of crimes ranging from rape, molestation, domestic violence, eve-teasing, to murder, etc. They face a lot of social inequalities. Most of the times women are not aware of their rights and even if they aware their legal rights are not protected as they should be.*

*This paper deals with the status of women's rights in Indian context and International conventions/treaties on women rights. This paper contextualizes the UN efforts for ensuring women's rights, the process how the rights of women institutionalized & the remedies for the violations.*

Keywords- Women rights, Victimize, Violence, Inequalities, Discrimination, Prohibition

## **I. INTRODUCTION**

India is a complex and secular country. Indeed plethora of traditions, practices and customs, either good or bad and have become a part of our daily life and crystallized into the society's collective consciousness.

Since the dawn of civilization women has been witnessing discrimination in all fields ranging from religion, social, cultural, economic, and political, which operates against women is not only evident within the minority section but also within the majority section. Women have always been treated as the second grade citizens and looked down as being weak both mentally and physically. Majority hailed that the condition of women has ameliorated within the contemporary legal arena. But there is high time to gauge the reality of these claims.

There are several laws which supported the women's rights and have given a bundle of rights under different Indian legislations. These rights are emerged from various international conventions of which India is signatory. During 19<sup>th</sup> century different movements (equal status for women with men in political, economic & social spheres, legal protection of women against discrimination, etc.) were important steps for contributing towards the integration of the holistic concept of women's rights.

Women's rights which are related to the human rights occupies an important position attracted the attention of both the national and international communities and legislation. Women's right connotes the idea that women being a human being must be entitled to all the rights which are necessary for the full development of their personality and dignity. They should be also provided with certain other rights because of the biological variations between both sexes.

## II. STATUS OF WOMEN: *Ancient to Modern*

Since the period women has been subjected to many changes. The history of women has been eventful from the equal status with men to the promotion of equal rights by many reformers through the degradation in medieval period.

Many historians argued that women enjoyed an equal status with men in ancient India. It is said that at that time women were educated and hence they were free to take an important decisions of life and choose their life partner. In ancient India a woman was respected and given huge importance in society. Women were enjoyed a status of respect and reverence.

As the time passed, in all the spheres of life, women's position underwent changes. In Vedic period, women lost their political rights. Child marriages were also come into existence. As a source of misery daughter has been described.<sup>1</sup> Through the passage of time as the Vedic ideals of unity and equality went downwards, the position of women gradually deteriorated and yet up to the medieval period it went down considerably. At this period woman was considered to be the inferior to the man. As the Muslim rule begins in India, the status of woman started decline. There were many factors (purdah system, sati, child marriage, restriction on widow marriage) arose out of this which had been responsible for the injustice meted out to women.

The position of women in modern age gradually on the way of changes and considerably it has changed. Status of women in modern India is equal to the men with respect to social, economic, education, political and legal sphere. No longer is existence of sati, child marriage, etc. there in the modern society. In this period, women have the right to education, inherit their own property as well as right to participate in public life. With respect to the economy, she is too much independent today and can seek employment freely anywhere and remains a free individual. In all several factors like-women's education, reform movements, women's participation in politics, she enjoys all the

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<sup>1</sup>AitareyaBrahmana

equal position with man. In today's India many social legislations are responsible for the changes in the day-to-day life.

Even though women's status is gradually on changing but still in India there is a reasonable percentage of females are unaware of their all the rights provided and protected by several laws. Even though woman is strongest in papers, but in practice she is the weakest. In India after independence the Constitution of India guarantees equality before the law to all the women in all matters of life and also a right to go before the court if all the given rights are violated.

### III. WOMEN'S RIGHTS: NATIONAL AND INTERNATIONAL RESPECTIVE

Women's rights related issues took an important place in the realm of human rights. The very idea for protection of women's rights can be found in the writings of Mary Wollstonecraft, John Stuart Mill and many others who had argued that the status of women must be uplifted and their rights must be recognized. After the establishment of United Nation in 1945, the legal recognition of women's rights got a boost and more specifically it got a space after the establishment of a United Nation Commission for the same. The equal rights of women together with their counterparts recognizes by the United Nation. The United Nation also adopted a number of conventions and declarations and also held conferences, to promote and protect the rights and status of women in society, at international level.

Besides all these international instruments adopted by the United Nation for the protection of women's rights, India has also recognized equality between the men and women in the preamble of Constitution of India and has also recognized the same in Part-III<sup>2</sup>, Part-IV<sup>3</sup> and under other several Articles of Constitution of India. To legalizing the rights of women, the government of India also enacted various legislations and to deal with the cases and violation of the rights of women as also to promote and protect their rights, various commission for the women has also been established.

#### A. NATIONAL PERSPECTIVE

India got independent on 15th August 1947 and adopted the Constitution of India on 26th November 1949 which came into force from 26th January 1950. The Indian Constitution is written Constitution regarded as the fundamental law of the land. Besides this various other national instruments has been also adopted by the government of India for the protection of women's rights. Somehow all the legislations which have been passed by the Indian government also promote the legal status of women.

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<sup>2</sup> Fundamental Rights

<sup>3</sup> Directive Principles of State Policy

## COSTITUTION OF INDIA

The preamble of Constitution of India sets various objectives and one of its important objectives is to secure the equal status and opportunity.<sup>4</sup>The Constitution of India in its Part-III depicts the fundamental rights<sup>5</sup> which are applicable to all the Indian citizens equally irrespective of sex. **When two adults consensually choose each other as life partners, it is a manifestation of their choice recognized under Article 19 & 21 of the Constitution.**<sup>6</sup>

Article 15 talks about no discrimination against any citizen of India on the ground of religion, sex, caste, race, place of birth, etc. Further, it states that State can make special provision for women and children. Thus, though this Article establishes gender equality but also allows States to make discriminations for the upliftment of women in favor.

The Constitution of India specifically mentions for all its citizens equality of opportunity with regards to employment or appointment. It also specifies that State has no right to discriminate or declare its citizens ineligible on the grounds of religion, race, caste, sex, descent, place of birth and residence.<sup>7</sup>

Besides the fundamental rights, the Indian Constitution also in its Part-IV provides the Directive Principles of State Policy through which it can be considered as the positive attitude of all the States towards their citizens. According to Article 39, the State shall direct its policy to secure that all men and women should have equal right to an adequate means of livelihood [Article 39(a)]. Both should have equal control and ownership of the material resources of the community which are to be distributed as best to subserve the common good[Article 39(b)]. There is also provision for equal pay for equal work [Article 39(d)]. The State has duty to make provisions for securing just and humane conditions of work and for maternity relief [Article 42].

Further, all the citizens are duty bound to renounce the practices derogatory to the dignity of women [Article 51 A (e)]. The historic steps towards the upliftment of women are the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments. Under Part-IX of the Constitution of India; Article 243 D (3) states that in every panchayat not less than one-third (including the number of seats reserved for women belonging to the scheduled castes & scheduled tribes) of the total number of seats to be filled by direct election and shall be reserved for women which may allotted by rotation of different constituencies in a panchayat. Under Article 243 T of Constitution of India, similar provision of one-third reservation for women is provided in case of municipalities.

Besides all these Constitutional provisions, the Supreme Court of India (in several judgment it act as an Apex Court) has widen the scope of different Articles and also protected the women's rights. In a case, the

<sup>4</sup> The Constitution of India recognizes the equal status and opportunity of all its citizens both men & women.

<sup>5</sup> Article 12-35 of the Constitution of India

<sup>6</sup> Shakti vahini vs. union of India & others, AIR 2018(right to choose life partner is a fundamental right)

<sup>7</sup> Article 16 of the Constitution of India

Apex Court in its verdict held that women's reproductive rights is a dimension of 'Personal Liberty' under Article 21 of the Constitution and also women can use this rights for procreation or abstaining from it<sup>8</sup>.

The legislature of India has passed several legislations or Acts which provide time-to-time protection to women against violations of these rights. There are some legislations which came before the adoption of the Constitution of India, such as; the Child marriage Restraint Act, 1929 which provides that the marriageable age for boys is 21 and for girl is 18 and if any person will contravene this provision would be liable to be punished.

## **HEALTH LAWS**

### **Medical Termination of Pregnancy Act, 1971**

- Termination of such pregnancies by registered medical practitioners on humanitarian & medical ground.
- Detailed elaboration of when, where and who can abort a fetus

### **The Pre-natal Diagnostic Techniques(Regulation & Prevention of Misuse) Act, 1994**

- Prohibition of sex selection before or after the conception.
- Prevention of misuse of techniques for sex determination leading to female feticide.
- The Act protects the rights of fetes.

### **The Surrogacy (Regulation) Bill, 2016**

- Regulate surrogacy services in the country.
- Provide ethical surrogacy to the needy infertile Indian couples.
- Prohibit commercial surrogacy.
- Prohibit potential exploitation of surrogate mothers.
- An insurance coverage of reasonable & adequate amount shall be ensured in favor of surrogate mother.

## **INDUSTRIAL LAWS**

### **The Factories Act, 1948**

- Crèches facility to the working women in every factory if there is more than 30 women worker.
- Facility of separate latrines, urinals and clean washing.

<sup>8</sup> Suchita Srivastava & Anr. Vs. Chandigarh Administration, (2009) 9 SCC 1

**The Maternity Benefit Act, 1961**

- Provision for the employment of women in certain establishment for certain period before and after the birth of child.
- Provision for maternity benefits and certain other benefits.

**Equal Remuneration Act, 1976**

- Widen the scope of equality between men and women for any establishment.
- Equal remuneration for equal work.

On sexual harassment of working women at work place, there were no any codified law earlier. The Supreme Court of India issued certain guidelines which are to be followed until the proper legislation is made in this regard. It is the duty of the employer to stop and prevent such kind of act or occurrences<sup>9</sup>. It is important to mention that on 3<sup>rd</sup> September 2012, the Lok Sabha has passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2010.

**PERSONAL LAWS****The Hindu Marriage Act, 1955**

- It introduced and allowed the monogamy.
- Equal rights to both men and women in respect of marriage and divorce.

**The Hindu Adoption and Maintenance Act, 1956**

- It provides for maintenance to women by their husbands.

**The Hindu Succession Act, 1956**

- This Act has been amended in 2005.
- Hindu girl, daughter and female has full right on the property and same share as the Hindu son have.
- Women's full right of ownership over the property.

**Muslim law and marriage**

Muslim do not have any codified law which govern marriage. However, it is not a contract. The wife has full right over the dower. In practice under Muslim law, women have limited rights.

**Dissolution of Muslim Marriage Act, 1939**

It provides that a Muslim wife has right to seek the dissolution of marriage.

<sup>9</sup> Vishakha vs. State of Rajasthan, AIR 1997

### **Muslim Women(Protection of Rights on Divorce) Act, 1986**

- Protection of the rights of Muslim women who have been divorced or obtained divorce from their husbands.
- Muslim women is entitled to get maintenance from her husband throughout the entire life, or she remarriages.
- Her right is not limited to the Iddat period.

### **SOCIAL LAWS**

#### **The Immoral Traffic(Prevention) Act, 1956**

- It protects and prevents the trafficking in women and girls for the prostitution & commercial sexual exploitation.

#### **The Indecent Representation of Women (Prohibition) Act, 1986**

- The Act provides that if any person will represent or depict the women in any kind of indecent manner, he will be punished.

#### **Commission of Sati (Prevention) Act, 1987**

- It prevents the women from the barbaric custom of Indian society of burning widow alive along with her deceased husband immediately after his death.

### **REMEDIAL MEASURES:**

Women in India suffer a lot of social inequalities ranging from gender specific abortions, mistreatment by their spouses, to eve-teasing. Though Indian Women have been given more rights as compared to men, but their condition is still miserable. Various fundamental rights has been provided to the women, but today, it seems that there is a wide space between theory and practice. It has been found that each & every right of women is being violated in one or another way. The crimes against women are increasing at a very fast pace. Violation in relation to right to education, health, equal opportunity, employment, protection of gender discrimination, etc. are even though seems today.

The Constitution of India and various other laws has provided several rights in respect of women, but for the protection of violation of these rights, there are also many other laws came into existence;

### **THE DOWRY PROHIBITION ACT, 1961**

It was passed to prohibit taking as well giving of dowry & it will be considered as punishment.

## **THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005**

It protects the women from violence within their homes and provides right to women for securing house.

## **THE NATIONAL COMMISSION FOR WOMEN ACT, 1990**

It is for the constitution of national commission for women. It states that it is the function of the commission to examine & investigate all the matters related to safeguard of women.

## **INDIAN PENAL CODE, 1860**

This penal code contains different punishments for the different offences. Though it is applicable to both men and women. But there is certain specific provisions regarding offences against women and also required punishment for the same, such as;

- ❖ Dowry Death (Section 304-B)
- ❖ Causing Miscarriage (Section 312 & 313)
- ❖ Assaulting a woman with intend to outrage her modesty (Section 354)
- ❖ Kidnapping, abducting or inducing a woman to compel her marriage or illicit intercourse (Section 366)
- ❖ Rape & Punishment for rape (Section 375 & 376)
- ❖ Cohabitation or sexual intercourse caused by a man inducing a belief of lawful marriage (Section 493)
- ❖ Criminal Elopement (Section 498)
- ❖ Cruelty to Married Woman (Section 498-A)
- ❖ Uttering any word, or making any sound or gesture, or exhibiting any object, intending to insult the modesty of a woman or intruding upon the privacy of a woman (Section 509)

## **INDIAN EVIDENCE ACT, 1872**

In order to make Section 498-A of Indian Penal Code, 1860 more effective, Section 113-A and B has been introduced under this Act.

- ❖ Presumption as to abetment of suicide by a married women (Section 113-A)
- ❖ Presumption as to dowry death (Section 113-B)

Under both the situation of suicide and dowry death, the Court itself presume that it has been committed by the husband or his relatives.

## **CODE OF CRIMINAL PROCEEDURE, 1973**

Section 125 of this Act states that a man has to give maintenance to his wife, children (legitimate or illegitimate), father & mother, if all are not able to maintain themselves.



Besides all these several measures, the Government of India has also adopted some other measure through its Five Year Plan Programs to promote rights of women at socio-economic level; establish an equal status; develop the women's personality in result of which in the development process, they can participate.

## **B. INTERNATIONAL PRESPECTIVE**

In the year of 1945, establishment of United Nations is an important milestone for the protection and promotion of women's rights. There are several initiatives taken by the UN of which India is also a part for the upholding the women's rights.

**COMMISSIONS:** In 1946, a commission for the status of women has been established under the Economic & Social Council Resolution II (India was one of the 15<sup>th</sup> original member) to prepare recommendations and reports on promoting political, social, economic, civil and educational rights.

### **CONVENTIONS AND DECLARATIONS ON WOMEN'S RIGHTS**

Besides the establishment of Commission on the Status of Women, several conventions and declarations have been adopted by the UN.

#### **❖ UNIVERSAL DECLARATION ON HUMAN RIGHTS, 1948**

The Preamble affirms faith in fundamental human rights and in the equal rights to both men and women irrespective of sex.

#### **❖ CONVENTION ON THE POLITICAL RIGHTS OF WOMEN, 1952**

It was adopted by the General Assembly in 1952 and came into existence in 1954 which recognizes the equality between sexes with respect to right to vote, elect & hold the public offices.

#### **❖ CONVENTION ON THE NATIONALITY OF MARRIED WOMEN, 1957**

It recognizes the right to nationality of a woman irrespective of marriage.

#### **❖ CONVENTION ON THE CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE & REGISTRATION OF MARRIAGE, 1962**

It stated that marriage should be entered into full and free consent and competency with respect to the age should be there & must be registered. It recognizes the very essential right of women- right to choose their own life partner without any kind of fees.

**❖ DECLARATION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 1967**

It states that discrimination against women is unjust and an offence against human dignity & also it recognized equality of men and women in all spheres of life.

**❖ DECLARATION ON THE PROTECTION OF WOMEN & CHILDREN IN EMERGENCY AND ARMED CONFLICT, 1974**

It prohibits any attack or bombing on civilian particularly on women and children and it also prohibits inhuman treatment towards women.

**❖ CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION (CEDAW), 1979**

It is often regarded as International Bill of Human Rights. It describes discriminations against women & proposes actions to be taken by nations to end the same. It is the 1<sup>st</sup> Human Rights Treaty to affirm the reproductive rights of women.

**➤ OPTIONAL PROTOCOL TO THE CEDAW, 2000**

It proclaims that signatory state parties recognize the competence of the committee for the elimination by ratifying this protocol, to receive complaints from individuals or groups. It also mentioned procedures for the communication and enquiry.

Besides these conventions and declarations, many conferences has been organized within the auspices of the United Nations; all the conferences have a common aim, i.e. to eliminate the discrimination and promote the equal status of women;

- World Conference of the International Women's Year in Mexico City, 1975
- United Nations Decade for Women, 1976-1985(The 2<sup>nd</sup> World Conference on Women, Copenhagen,1980 & World Conference to Review and Appraisal the Achievements of the United Nations Decade for Women, Nairobi, 1985)
- 4<sup>th</sup> World Conference on Women, Beijing, 1995
- Review & Appraisal of the Beijing for Action, Beijing+5, 2000.

**IV. CONCURRENCE OF NATIONAL LAWS WITH INTERNATIONAL INSTRUMENTS**

No.	Rights	UDHR	Indian Constitution
1.	All are equal before the law	Article 7	Article 14
2.	Equal opportunity in matters of public employment	Article 21(2)	Article 16
3.	Personal liberty	Article 9	Article 21
4.	Right to work, to free choice of employment, to just & favorable condition of work	Article 23	Article 41
5.	Equal pay for equal work	Article 23(2)	Article 39(d)
6.	Right to just & favorable remuneration	Article 23(3)	Article 43
7.	Right to education & free education in elementary stages	Article 26(1)	Article 41 & 45

No.	Rights	ICESCR	Indian Constitution
1.	Equal pay for equal work	Article 7(a)(i)	Article 39(d)
2.	Right to work, to education & to public assistance in certain cases	Article 6(1)	Article 41
3.	Right to just & humane conditions of work and maternity relief	Article 7(b)&10(2)	Article 43

No.	Rights	ICCPR	Indian Constitution
1.	Prohibition of traffic in human beings and forced labor	Article 8(3)	Article 23
2.	Right to equality	Article 14(1)	Article 14

3.	Equal opportunity in employment	Article 25(c)	Article 16(1)
4.	Prohibition of discrimination on ground of religion, sex, caste, race or place of birth	Article 26	Article 15

Women should be aware about their rights. Indian legislation as well as International instruments have been devoted several rights to women.

