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## **GENDER JUSTICE AND WOMEN EMPOWERMENT: A LEGAL PERSPECTIVE**

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**Abstract:** *Empowerment provides greater access to knowledge and resources, more independence in decision making, considerable ability to plan lives, more control over the circumstances which influence lives, and freedom from customs, beliefs and practices. Thus, women empowerment is a process in which women challenge the existing norms and culture, to effectively promote their wellbeing. In India, women Empowerment is the buzzword today. The Indian Constitution guarantees that there shall be no discrimination on the grounds of gender. There are various legal provisions for women safety and empowerment in the Indian Constitution but the irony is, half of the population is unaware of their legal rights. In this paper, we will discuss the important legal provisions for women empowerment in India.*

**Keywords:** *Women Empowerment, Legal Provisions, Indian Constitution, Women rights, Indian Penal Code. Introduction*

### **Introduction**

Women enjoyed equal status with men in all aspects of life in ancient India. Rigvedic verses suggest that women married at a mature age and were probably free to select their husbands. Women enjoyed equal status and rights during the early Vedic period. However, in approximately 500 CE., the status of women began to decline, and the Islamic invasion of Babur and the Mughal empire and Christianity later worsened women's freedom and rights. Although reform movements such as Jainism allowed women to be admitted to religious orders, by and large women in India faced confinement and restrictions. The practise of child marriages is believed to have started around the 16<sup>th</sup> century.

The Bhakti movements tried to restore women's status and questioned certain forms of oppression. Traditions such as Sati, Jauhar, and Devadasi among some communities have been banned and are largely defunct in modern India. However, some instances of these practices are still found in remote parts of India. The purdah is still practised by Indian women in some communities. Child marriage remains common in rural areas, although it is illegal under current Indian law.

During the British Raj, many reformers such as Ram Mohan Roy, Ishwar Chandra Vidyasagar and Jyotirao Phule fought for the betterment of women. In 1917, the first women's delegation met the Secretary of State to demand women's political rights, supported by the Indian National Congress. The All-India Women's Education Conference was held in Pune in 1927, it became a major organisation in the movement for social change. In 1929, the Child Marriage Restraint Act was passed, stipulating fourteen as the minimum age of marriage for a girl. Though Mahatma Gandhi himself married at the age of thirteen, he later urged people to boycott child marriages and called upon young men to marry child widows.

Women in India now participate fully in areas such as education, sports, politics, media, art and culture, service sectors, science and technology, etc. Indira Gandhi, who served as Prime Minister of India for an aggregate period of fifteen years, is the world's longest-serving women Prime Minister.

The Constitution of India not 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 the 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(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

## Legal Perspective

### Indian Penal Code:

1. **Homicide for Dowry, Dowry Deaths or their attempts (Section 302/304-B):** Where the death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in-laws or husband, for or in connection with, any demand of dowry, such death shall be called dowry death. Whoever commits dowry death shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life.

2. **Kidnapping & Abduction for Different Purposes (Section. 363-373):** any person who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
3. **Molestation (Section 354):** Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.
4. **Rape (Section 376):** A rapist, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.
5. **Sexual Harassment (Section 509):** Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such gestures or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.
6. **Torture, both Mental and Physical (Section 498-A):** Husband or relative of husband of a woman subjecting her to cruelty, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

### Special Laws

Although all laws are not gendered 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 interests are:

1. **The Family Courts Act, 1954:** The Court established to conclude upon matters relating to family law like matrimonial reliefs, custody of children, maintenance for wife and children etc is termed as Family Court. The Status of Women Committee in 1975 together with the report of the 59th Law Commission recommended the Central Government establish a separate judicial forum to settle family disputes immediately before the beginning of the trial proceedings. Hence it was decided to establish a family court in India by the Act of 1984. The Family Court shall have the same status as that of a District Court and shall exercise the jurisdiction accordingly and also empowered to initiate suits and proceedings on par with the conditions stipulated by the Act. Where there is any chance for settlement of the dispute between the parties, the Family Court shall postpone the proceedings and

take steps for settlement at the earliest. Under the Act, a party to the dispute cannot claim the service of a legal practitioner as of right, but the Court shall have the power to appoint a legal professional. An aggrieved party may, however, prefer an appeal to the High Court from an order of the Family Court. The High Court shall frame rules in the matters connected therewith, after publishing in the Gazette. The Act also confers power on the Central and State governments to formulate rules as prescribed under the Act.

2. **The Special Marriage Act, 1954:** This Act of the Parliament of India was enacted to provide a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the religion or faith followed by either party. The Act originated from a piece of legislation proposed during the late 19<sup>th</sup> century. The Special Marriage Act, 1954 replaced the old Act III, 1872. The new enactment has 3 major objectives: To provide a special form of marriage in certain cases, to provide for the registration of certain marriages and, to provide for divorce.
3. **The Immoral Traffic (Suppression) Act (SITA) (1956):** This is the primary law dealing with the status of sex workers. According to this law, prostitutes can practise their trade privately but cannot legally solicit customers in public. Organised prostitution (brothels, prostitution rings, pimping, etc.) is illegal. As long as it is done individually and voluntarily, a woman can use her body in exchange for material benefit. In particular, the law forbids a sex worker to carry on her profession within 200 yards of a public place. Unlike as is the case with other professions, sex workers are not protected under normal labour laws, but they possess the right to rescue and rehabilitation if they desire and possess all the rights of other citizens.
4. **The Dowry Prohibition Act 1961:** This Act prohibits the request, payment or acceptance of a dowry "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage. Gifts given without a precondition are not considered dowry, and are legal, per section 3(2). Asking for or giving of dowry can be punished by imprisonment of up to six months, a fine of up to Rs. 15000 or the amount of dowry (whichever is higher), or imprisonment up to 5 years. It replaced several pieces of antidowry legislation that had been enacted by various Indian states.
5. **The Medical Termination of Pregnancy (MTP) Act:** This Act was enacted by the Indian Parliament in the year 1971 to reduce the incidence of illegal abortion and consequent maternal mortality and morbidity. The MTP Act came into effect on 1<sup>st</sup> April 1972 and was amended in the years 1975 and 2002. Pregnancies not exceeding 12 weeks may be terminated based on a single opinion formed in good faith. In case of pregnancies exceeding 12 weeks but less than 20 weeks, termination needs the opinion of two doctors. The Act clearly states the conditions under which a pregnancy can be ended or

aborted, the persons who are qualified to conduct the abortion and the place of implementation. Some of these qualifications are Women whose physical and/or mental health were endangered by the pregnancy; Women facing the birth of a potentially handicapped or malformed child; Rape; Pregnancies in unmarried girls under the age of eighteen with the consent of a guardian; Pregnancies in "lunatics" with the consent of a guardian; Pregnancies that are a result of failure in sterilization.

6. **The Equal Remuneration Act, 1976:** This Act provided for the payment of equal remuneration to men and women workers and the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters, connected therewith or incidental thereto.
7. **The Maternity Benefit Act, 1961 (Amended in 1995):** Section 8 of the Act reads as follows after 2<sup>nd</sup> April 2008: "Payment of medical bonus. (1) Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus of one thousand rupees if no prenatal confinement and post-natal care are provided for by the employer free of charge. (2) The Central Government may before every three years, by notification in the Official Gazette, increase the amount of medical bonus subject to the maximum of twenty thousand rupees.
8. **The Protection of Women from Domestic Violence Act 2005:** This is an Act of the Parliament of India enacted to protect women from domestic violence. Primarily meant to protect the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
9. **The Marriage Laws (Amendment) Bill, 2010:** To amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to make divorce easier on the ground of irretrievable breakdown of marriage was introduced in the parliament in 2012. The Bill replaces the words "not earlier than six months" in Section 13-B with the words "Upon receipt of a petition." It also provides a better safeguard to the wife by inserting section 13D by which the wife may oppose the grant of a decree on the ground that the dissolution of the marriage will resultingly cause financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage. New section 13E provides restriction on decree for divorce affecting children born out of wedlock and states that a court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children



born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

10. **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:** This is a legislative Act in India that seeks to protect women from sexual harassment at their place of work. The Act will ensure that women are protected against sexual harassment at all workplaces, be it in public or private. This will contribute to the realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth. Under the Act, which also covers students in schools and colleges, as well as patients in hospitals, employers and local authorities, will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

Apart from the above mentioned legal and constitutional provisions, the Government of India has set up a few special initiatives for the protection and empowerment of women:

1. **National Commission for Women: NCW** is a statutory body of the Government of India, generally concerned with advising the government on all policy matters affecting women. It was established in January 1992 under the provisions of the Indian Constitution, as defined in the 1990 National Commission for Women Act. The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of their campaigns have included dowry, politics, religion, equal representation for women in jobs, and the exploitation of women for labour. They have also discussed police abuses against women. The commission regularly publishes a monthly newsletter, *Rashtra Mahilain* both Hindi and English.
2. **Reservation for Women in Local Self-Government:** The 73<sup>rd</sup> and 74<sup>th</sup> 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.
3. **The National Plan of Action for the Girl Child** for 1991-2000, is a specially formulated action plan by the Government of India to protect and promote the Girl Child. This plan seeks to prevent female foeticide and infanticide, eliminate gender discrimination, provide safe drinking water and fodder near homes, rehabilitate and protect girls from exploitation, assault and abuse.
4. **National Policy for the Empowerment of Women, 2001:** The Department of Women & Child Development in the Ministry of Human Resource Development has prepared an **NPEW** in the year 2001. The goal of this Policy is to bring

about the advancement, development and empowerment of women. The Policy will be widely disseminated to encourage active participation of all stakeholders for achieving its goals.

## Conclusion

Within the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres. From the Fifth Five Year Plan (1974-78) onwards has been a marked shift in the approach to women's issues from welfare to development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. The NCW was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Act (1993) to the Constitution of India has provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels. 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. The women's movement and a widespread network of non-Government Organisations that have a strong grassroots presence and deep insight into women's concerns have contributed to inspiring initiatives for the empowerment of women. However, there still exists a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the situational reality of the status of women in India, on the other.

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