

Legal Status and Rights of Women in Indian Constitution

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Abstract

Women, a girl, a wife, a mother, a grandmother, overall woman is a key of a family. World can never be complete without a woman. Law is the set of rules enforced to govern the behavior of people. From the beginning of this world women is treated as a weaker section of the society and they are the victims of the crimes like rape, eve teasing, female infanticide, dowry, domestic violence, child marriage and acid throwing. They were only allowed to live beneath the shoes of their husbands and fathers. Laws are being made to secure the lives of the women from the violence of their families and societies, and to provide them with their rights of which they are the owners. This paper covers the aspect of women from past history to the present world. It shows how the law of our country has contributed its best to change the lives of women, to make them live with dignity and respect not as a slave.

Keywords: Legal status, Women rights, Domestic violence, Child marriage, Dowry, Eve teasing.

Introduction

Legally a female is known as a woman after she has passed through her childhood and adolescence, i.e. basically after crossing the teenage a girl is a woman. Government of India has made several laws to provide equal status to women in our country and secure their lives from various violence and crimes. Constitution of India provides fundamental rights and fundamental duties to the citizens of India; each and every citizen of this country is equally entitled of these rights and duties. The Constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the State (Article 15(1)), equality of opportunity (Article 16), and equal pay for equal work (Article 39(d)). In addition, it allows special provisions to be made by the State in favour of women and children (Article 15(3)), renounces practices derogatory to the dignity of women (Article 51(A) (e)), and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief. (Article 42). Rolling back to the history of our country we can find the pathetic condition of the women from the very first era. According to studies, women enjoyed equal status and rights during the ancient and the early Vedic period. However in approximately 500 B.C., the status of women began to decline, and with the Islamic invasion of Babur and the Mughal Empire and Christianity later worsened women's freedom and rights. Indian women's position in society further deteriorated during the medieval period, when child marriages and a ban on remarriage by widows became part of social life in some communities in India. The Muslim conquest in the Indian subcontinent brought purdah to Indian society. Among the Rajputs of Rajasthan, the Jauhar was practiced. In some parts of India, some of Devadasis were sexually exploited. Polygamy was practiced among Hindu Kshatriya rulers for some political reasons. In many Muslim families, women were restricted to Zenana areas of the house. During the British rule many reformers fought for the betterment of the women. Women also contributed in the struggle of the independence of India. Condition of women started improving from the British rule 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 woman Prime Minister. There are many acts and provisions made by the Government of India for the benefits of women.

Legal Status of a Woman in India

Women in India are being provided with the legal security to secure their economic, social and cultural lives. These are few acts which show the efforts made by Indian Government in interest of women's life safeguard. Dowry Prohibition Act 1961, Maternity Benefit Act 1861, Births, Deaths & Marriages Registration Act 1886, Medical Termination of Pregnancy Act 1971, National Commission for Women Act 1990, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1999, Protection of Women from Domestic Violence Act 2005, Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act 2013, Hindu Widows Remarriage Act 1856, Muslim women (protection of rights on divorce) Act 1986, Guardians and Wards Act 1890, Indian Penal Code 1860, Christian Marriages Act 1872, etc.

Women in Family

Family is a cooperative unit based on the common interest and mutual support. A woman is the key role of a family. The support of husband, children and in-laws is must to make a happy family. Earlier woman was just treated as a house keeper. She needs to serve her children, in-laws and her husband. But the scenario has changed now, woman enjoys the equal status in the family and contributes more than her husband as she earns for the family and performs all their responsibilities of the household. Women have now stepped out of the house to live their lives in their own manner. Contribution of woman is more than a man in the present era. The acts for the working women and housewives are, Guardians and Wards Act 1890, Married Woman's Property Act 1872, Indian Succession Act, 1925, Dowry Prohibition Act 1961, Hindu Marriage Act 1955, Muslim Women (protection of rights of divorce) Act 1986.

Women and Education

The education of women in India plays a significant role in improving livings standards in the country. A higher women literacy rate improves the quality of life both at home and outside the home, by encouraging and promoting education of children, especially female children, and in reducing the infant mortality rate. Several studies have shown that a lower level of women literacy rates results in higher levels of fertility and infant mortality, poorer nutrition, lower earning potential and the lack of an ability to make decisions within a household. Women's lower educational level is also shown to adversely affect the health and living conditions of children. A survey that was conducted in India showed results which support the fact that infant mortality rate was inversely related to female literacy rate and educational level. The survey also suggests a correlation between education and economic growth. In India, it was found that there is a large disparity between female literacy rates in different states. For example, while Kerala actually has a female literacy rate of about 86 percent, Bihar and Uttar Pradesh have female literacy rates around 55-60 percent. These values are further correlated with health levels of the Indians, where it was found that Kerala was the state with the lowest infant mortality rate while Bihar and Uttar Pradesh are the states with the lowest life expectancies in India. Furthermore, the disparity of female literacy rates across rural and urban areas is also significant in India. Out of the 24 states in India, 6 of them have female literacy rates of below 60 percent. The rural state Rajasthan has a female literacy rate of less than 12 percent. In India, higher education is defined as the education of an age group between 18 and 24, and is largely funded by the government. Despite women making up 24-50% of higher education enrollment, there is still a gender imbalance within higher education. Only one third of science students and 7% of engineering students are women. In comparison however, over

half the students studying education are women. The number of literate women among the female population of India was between 2-6% from the British Raj onwards to the formation of the Republic of India in 1947. Concerted efforts led to improvement from 15.3% in 1961 to 28.5% in 1981. By 2001 literacy for women had exceeded 50% of the overall female population, though these statistics were still very low compared to world standards and even male literacy within India. Recently the Indian government has launched Saakshar Bharat Mission for Female Literacy. This mission aims to bring down female illiteracy by half of its present level.

Women's Economic, Social and Cultural rights

The movement to assure women's economic, social and cultural rights (ESCR) as a basic human's right is just emerging in India. The movement aims to locate women's right within the larger human rights framework, and by doing so moves away from women's issue only within the framework of violence and reproductive rights. ESCR attempts to look at the broader issues facing women namely poverty, housing, unemployment, education, water, food security, trade, etc. While the human rights movement at ESCR is largely contained at the international policy level, there are emerging social movements around the world. In the Indian context, projects like the, Programme on Women's Economic, Social and Cultural Rights (PWESCR) aims to build the women rights movement in India to create equality in all the sphere of women's lives. Women's economic opportunity in India is a rapidly changing landscape as women are not less than any man in every sector whether it may be organized or unorganized. The exposure is needed for the women in unorganized sector.

Women Reservation

In India women were considered to be kept inside the house for the service of their in-laws, children and husband. Their rights were not secure and they were not given equal opportunity in any of the aspect whether it may be social, economical, political or cultural. Reservation for women started to give exposure to them and to make Indian society feel that women are not less than man in any aspect. In 1993 the constitutional amendment called for random one third village council leader or pradhan position in gram panchayat to be reserved for women. Recent researches on quota system has revealed that it has changed perception on women's abilities, improved women electoral chances, and raised aspirations and educational attainment for adolescent girls. There is a long term plan to extend this reservation to parliament as well as legislative assemblies. For instance some law schools in India have 30% reservation for females. Progressive political opinion in India is strongly in favour of providing preferential treatment to women to create a level playing field for all the citizens. The Women's Reservation Bill was passed by the Rajya Sabha on 9 March 2010 by a majority vote of 186 members in favour and 1 against. As of March 2013, the Lok Sabha has not voted on the bill. Critics say gender cannot be held as a basis for reservation alone other factors should also be considered e.g. economic, social conditions of woman candidate especially when applying reservation for educated women. There also is a growing demand for women reservation in pre-existing reservations like OBC, SC/ST, Physically handicapped etc. Some feminist groups still demand that reservation for women should be at least 50% as they comprise 50% of the population.

State initiatives for women

National Commission for Woman - In January 1992 the Government set up this statutory body to study and monitor all the matters relating to the safeguard of women and reviews the existing legislation to make and suggest amendments wherever necessary. Reservation of women in local self-government - The 73rd constitutional amendment act passed in 1992 ensures one-third of total seats to women in all elected bodies in local bodies whether in rural or urban areas. The national plan of action for the girl child (1991-2000) – this plan action was to ensure survival, existence and development of a girl child

with the ultimate objective of bringing up the better future of girl child. National policy for the empowerment of women (2001) - this policy was aimed to bring advancement, development and empowerment of women. Indian women will never be equal as long as these 9 laws will remain in the books

- The Goa law on polygamy - a hindu man can remarry if his present wife cannot give birth to a male child till the age of 30. And this law is just the tip of the sanctioned sexism across the country.
- Hindu law of inheritance – the property of a woman who dies without a will is handled differently from a man. Even if the deceased woman was ill-treated in her marital home her husband’s mother or father will get her property instead of her own mother and father.
- Parsi’s law of inheritance -Parsis still penalize those who marry outside their community-and it’s allowed. A non-Parsi woman who is either a wife or widow of a Parsi cannot inherit. Their children still can, although those born to a Parsi woman married to a non-Parsi man are not considered part of the community.
- Prohibition of a child marriage act - the law only prevents the marriages of children; it does not render them illegal once actually happen. The married children have right to make their marriage void. A woman can call off her marriage till the age of 20 where as a man can call off his marriage till the age of 23.
- Age of consent - sexual intercourse with a girl without her consent is considered rape. A man can legally have sex with his wife even she is minor and does not give her consent to it. Marital rape is not criminalized in India.
- Rape of a separated wife - The rape of a separated wife carries lesser punishment than the rape of any other woman. Forced sexual intercourse with the former is punishable with two to seven years of imprisonment. Prison sentence for the rape of any other woman ranges from seven years to life.
- Marriageable age - The minimum age for marriage for a boy is 21, but 18 for a girl. This is a legal extension of the patriarchal mindset that believes that a wife should always be younger than the man.
- Hindu Minority and Guardianship Act: Women are still not equal guardians of their children. A father is considered the “natural guardian” of a child, although the custody of offspring under the age of 5 will ordinarily be awarded to the mother.
- No right to marital property - Upon separation or divorce, an Indian woman is the entitled only to maintenance from her husband. She has no right on the assets, such as house or commercial property, bought in her husband’s name during the marriage. So if she leaves him or gets divorced, even years after the marriage, she is potentially without assets. Indian government policies do not consider the work done at home by a woman as having an economic value

Indian scenario of women security

The government of India has made many laws and acts to safeguard and secure the life of a woman in the country. In spite of such laws, rules and regulations the life of women is still not secure completely. Inequality between men and women runs around every sphere of the country whether it may be education, governance or economic opportunities. Some recent statistics on women include:

- One bride was murdered every hour over dowry demands in 2010 (National Crime Records Bureau).
- Almost 45% of Indian girls are married before they turn 18 (International Centre for Research on Women).
- One in five Indian women, many child mothers, dies during pregnancy or child birth (the United Nations).
- Upto 50 million of girls are missing over due to female infanticide and female foeticide.
- 66% of women who have experienced physical violence in their lifetimes are divorced, widowed or deserted.

- 85.3% of women reporting violence claim that their husbands are perpetrators.
- Particularly women and girls from the northeast region in India living in urban centre have reported experiencing social discrimination and marginalization and many times physical violence.

Extent of Misuse

Many women who are actually harassed by their husbands and in-laws files case under 498A. Lots of them live in rural areas, unaware of law or lack of necessary economic and moral support from their natal families. Going by the conviction rate reported by several judges and the Centre for Social Research the proportion of women who have genuine case is 2%. 98% of the women who file 498A cases are from urban background, and are either capable of finding themselves or have enough family support to fall back on. In every instance that one daughter-in-law files a false complaint, at least two women (an innocent sister-in-law and mother-in-law) are arrested and undergo stress, humiliation and harassment in the hands of exploitative police, lawyers, staff and officials in Indian courts before being acquitted several years later. So in every 100 cases 2 women genuinely and 98 women get away with perjury and extortion and many women suffer needlessly. Every year there is a rising number of cases fabricated by wives only to threaten, extort money from and wreak revenges from husbands and their in-laws, in case of marital discord. There are also false cases of sexual harassment, molestation and rape by women employees in order to threaten their males' colleagues of bosses and to extort money from them and to defame them. According to data obtained (using RTI) from the Ministry of Home Affairs, in the year 2005 alone, 58,319 cases were registered under charges of cruelty by husband and relatives (IPC 498A) and resulted in the arrest of 127,560 individuals including 339 children and 4512 adults over the age of 60. Less than 10% of the cases resulted in conviction of the accused. In the same year 15,409 individuals were arrested in Andhra Pradesh, including 417 senior citizens and 14 children. The Supreme Court of India has labeled the misuse of section 498A as "legal terrorism" and stated that "many instances have come to light where complaints are not bona fide and have been filed with an oblique motive. In such cases acquittal of the accused does not wipe out the ignominy suffered during and prior to the trial. Sometimes adverse media coverage adds to the misery. The Delhi High Court recently stated that, "Provisions under Domestic Violence Act should not go the IPC'S section 498A way (anti-dowry law), which, to our view is the most abused provision." The World Health Organization, in its report on India clearly cited Section 498A as one of the major reasons for the "Increasing Abuse of the Elderly in India."

Conclusion

Women - a human being with all the spheres in her which are considered to be the weak part of the society but actually are the strongest one. We see in the history of our country women were ill-treated, were not given any exposure or recognition, but even after such a discrimination there were females like Rani Lakshmi Bai, Razia Sultan and Meera Bai who even after living in such a man, society and culture dominating environment, fought for themselves and their countries. By this I simply mean to say that Government can make laws, rules and policies for our security but we do need to remove all the fear and hesitation and step out ourselves for our recognition. Nothing can help a woman until she helps herself. Instead of sitting in pardah women should remove her pardah and see the world around and her. As we can from past to present there is a drastic change in the lives of women, now women with their household work also contributes in the earning of her family and economy of the country. She lacks nowhere behind the man. Everything has its merits and demerits both, some women make proper utilization of legal securities provided to them, some misuse it and some are still unaware of the legal provisions for women. Things will take time to get in systematic manner as I already mentioned government can make laws but its utilization is in our hand. Women must never be considered the weak part of the society as their household work is more difficult than a man's office work. Men for 8-10

hours a day with a weekly leave but a woman work whole day without any leave. Struggle of a women's life is more than a man. Respect woman respect world. One who abuses a lady is the biggest coward. Women are not weak, they devote themselves to their families but it does not means that they cannot work outside the house, sometimes they proved to be better than in academic or official performances. "Women are the largest untapped reservoir of talent in this world", Hillary Rodham Clinton.

References

- Parashar A. Women and family law reform in India. Uniform Civil Code and gender equality. New Delhi, India, Sage Publications, 1992, 348.
- Agnes, Flavia. Law and Gender Inequality: The Politics of Women's Rights in India. New Delhi, India: Oxford University Press, 1999.
- All India Democratic Women's Association. Gender-Just Laws. Delhi, India: self-published, 2000.
- Berman, Harold J. Law and Revolution: The Formation of the Western Legal Tradition. Cambridge, MA: Harvard University Press, 2002.
- Cook, Rebecca J, Human Rights of Women: National and International Perspectives. Philadelphia: University of Pennsylvania Press, 1994.
- Ali, Ikram. Muslim Women Form Law Board. Times News Network, February 1, 2005
- Dhanda, Amita, Archana Parashar. Engendering Law: Essays in Honors of Lotika Sarkar. Lucknow, India: Eastern Book Company, 1999.
- Women's Empowerment in India: An Analytical Overview; The Asia Foundation.
- Women Security and Legal Safeguards in India: Journal of Business Management & Social Sciences Research (JBM&SSR), ISSN No: 2319-5614, 2013; 2:4.
- Goonesekere Savitri. Violence, Law, and Women's Rights in South Asia. New Delhi, India: Sage Publishers, 2004.
- Imtiaz Ahmad. Divorce and Remarriage among Muslims in India. Delhi, India: Manohar Publishers, 2003.
- Jacobsohn, Gary J. The Wheel of Law: India's Secularism in Comparative Constitutional Context. Princeton, NJ: Princeton University Press, 2003.
- Kapur, Ratna, Brenda Cossman. Subversive Sites: Feminist Engagements with Law in India. New Delhi, India: Sage Publications, 1996.
- Verma B.R. Commentaries on Mohammedan Law (in India, Pakistan, and Bangladesh) 8th ed. Allahabad, India: Law Publishers, 2002.
- The Constitutional Law of India: Dr. JN Pandey Universal's Criminal Manual, 2011.