



## ROLE OF LAW IN AMELIORATING THE CONDITIONS OF WOMEN

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### KEYWORDS

Women conditions, Laws, Substantive Laws, Procedural Laws, Indian Penal Code, Sexual Assault, Kidnapping provisions, Cruelty to women etc.

### ABSTRACT

The provisions of gender equality are defined in the Constitution of India through the Preamble, Part IV Fundamental Rights, Fundamental Duties, and DPSP (Directive Principles of State Policy). It not only provides for providing equality to women but also gives the power to the state for adopting measures and from the Laws, Rules & Regulations in their favor. However, even after the passing of 72 years since the constitution was enacted, women face discrimination from cradle to grave. In this paper, we will outline the provisions of the constitution that provide for equal status of women with men making positive discrimination in favor of women and for women empowerment. Thereafter, we will discuss certain important laws that have played a crucial role in securing the safety and dignity of women and empowering them.

### Research Methodology

The research methodology used is doctrinal in nature. Various sources like books, articles, research papers, databases, bare acts, journals have been carefully studied and judgments of various courts have also been assessed.

### Research Question

Whether the laws for the protection of women have paved a way for women empowerment?

### Introduction

Looking at the history of India, the plight of women can be attributed to the past. In early Vedic periods, women had equal status as enjoyed by their male counterparts. However, gradually the status of women detreated, and women were subjected to various social evils like child marriage, sati, and ban on women remarriage amongst others. Thanks to the efforts made by social reformers in during the British rule, there was some improvement in the conditions of life of women. In the Indian freedom struggle women's role played an important part in it. The constitutional makers recognized these efforts and decided to grant Universal adult franchise to both men and women alike.

The constitution of India was enacted on November, 26th 1949 and came into effect from January 26th 1950. Recognizing the crucial role played by women in freedom struggle, the constitutional makers decided to grant Universal adult franchise to both men and women alike. Constitution made provisions & rights for the protection of women and provided positive discrimination in favor of them. However, even after passing of 72 years since constitution came into being, the situation of women in India remains grim.

It is true that the position of women has improved than the earlier times and now women play a prominent role in various areas like education, sports, politics, media, arts, service sector, science, and technology amongst others.

However, even today we have a long way to go. Women, who are revered as goddesses in the Indian society on one hand, are treated as commodities on the other. They face discrimination from cradle to grave and are they are under the clutches of numerous evils such as discriminations, oppressions and violence, within the family, at the workplaces and in the society. If we look into the root causes of the evils faced by women they can be attributed to lack of education and healthcare, economic dependence, social norms, religious and caste

restrictions and the apathetic attitude of males in the society amongst various others.

In this paper, we will outline the provisions of the constitution that provide for equal status of women with men making positive discrimination in favour of women and for women empowerment. Thereafter, we will discuss, certain important laws that have played a crucial role in securing safety and dignity of women and for empowering them.

### Provisions related to protection of women under the Constitution of India

The constitution being the supreme law of the land have enacted various laws for the save of women. Women have more rights in the Constitution of India than men however; there is a wide gap between ideology and practice. Some of the laws for the protection of women are as follows:<sup>1</sup>

- Art. 14 of the Constitution which promotes equality. It bars discrimination on the basis of sex as one of the grounds.
- Art. 15 of the Constitution of India specifically bars discrimination against any citizen of India on the ground of sex.
- Article 15 (3) promotes the implementation of the Indian Law and the save women and their rights. It specifically lays that special provisions can be made for them.
- Article 16(1) prohibits discrimination in matters of public employment, in which one of the grounds mentioned is sex of an individual.
- Article 21 which guarantees life and liberty to all, also guarantees this right to women.
- Article 23 prohibits trafficking in human beings of which women are often victims.
- Article 39(d) contains the directive principles directing the state to pay equal pay for equal work.
- Article 42 contains one of the directive principles in which State is directed to make provisions for maternity in favor of women.
- Article 51 which talks about fundamental duties lays down that practices which are derogatory to women should be renounced.
- 73rd and 74th Amendment has zmade provisions for 33% reservation of women in Panchayat and Municipalities.

### Protection of Women under I.P.C.<sup>2</sup>

### Miscarriage provisions

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DOI: <https://doi.org/10.53724/lrd/v6n4.06>

Received 25<sup>th</sup> April 2022; Accepted 20<sup>th</sup> May 2022

Available online 30<sup>th</sup> June 2022

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Section 312 to Section 315 of the Indian Penal Code, 1960 deals with various provisions relating to miscarriage and lays down punishments for the same.

#### **Kidnapping provisions:**

Provisions relating to kidnapping, abduction and procurement/importation/ selling of girls are contained in Section 366, 366A, 366B and 372 of the Indian Penal Code

#### **Sexual Assault**

Sexual Assault being one of the most heinous forms of crime is listed through various facets in the Indian Penal Code. Sections 354, 375, 377 and 506 are some of the provisions that protect the rights of these women victims.

#### **Offences within Marriage**

In the pretext of marriage, various offences are committed. Sections 493, 494, 496, 498 are some of the provisions that deal with such offences.

#### **Cruelty to women**

Women are vulnerable to cruelty and therefore provisions have been incorporated in the IPC (Indian Penal Code) in the form of 304B Dowry Death and '498-A' dealing with cruelty specifically amongst various other provisions to safeguard the rights of women.

#### **Legal rights of women enshrined under various Indian legislations**

1. **Industrial Act, 1948** authorizes Provincial Governments to prohibit the employment of women in production processes or activities that are considered hazardous. It also allows for industrial employment of women between 6 a.m. and 7 p.m. Regional governments have been given the power to relax these time limits but no rest can be granted to allow the employment of women between 10pm and 5 am. The law also mandates the provision of industrial kindergarten facilities that employ more than 30 women. Violation of these principles attracts penalties as stipulated in the Act.
2. **The Mines Act 1952** prohibits the employment of women in underground mines and allows for their employment in underground mines only between 6am and 7pm. It also authorizes the Central Govt. to make regulations for the provision of kindergartens and baths etc. for female miners. Violations of these regulations attract penalties as provided for in the Act.
3. **Factories Act, 1948** authorizes State Governments to prohibit the employment of women in manufacturing processes or operations considered dangerous by it. It further restricts<sup>3</sup> employment of women in factories between mornings 6:00 to evening 7:00. State Governments are empowered to relax these time limits but no relaxation can be granted by them to permit employment of women between 10 pm to 5 am. The Act also mandates for providing facility of crèches<sup>4</sup> in factories employing more than 30 women. Violation of these provisions attracts penalties as prescribed in the Act.
4. **Mines Act 1952<sup>5</sup>** prohibits employment of women in underground mines and permits their employment in over-ground mines only between 6am and 7pm. It also authorizes the Central Govt. to make regulations<sup>6</sup> for providing crèches and bathing facilities etc. for women employees of the mine. Violation of these provisions attracts penalties as provided in the Act.
5. **Hindu Succession Act, 1956** grants equal rights<sup>7</sup> to daughters and sons to inherit their parents' property as both daughter and son are included in the class I heir in the Schedule. The Hindu Succession (Amendment) Act 2005 has further eliminated gender disparity in inheritance of ancestral property by making daughters coparceners in the Hindu Joint family.
6. **Maternity Benefit Act, 1961** it gives a woman the right to receive from her employer a maternity leave payment equal to the average wage of up to twelve weeks including a period of 06 weeks up to and including her date of birth and 06 weeks immediately following that day. The law also prohibits the employment of a woman within six weeks following the date of her birth or miscarriage. The law also requires the employer not to give a pregnant woman hard work or involving long standing hours or which may interfere with her pregnancy or normal fetal development. The law also stipulates that a woman should be paid an average maternity leave for a period of Six (06) weeks from the date of her miscarriage. Violations of the provisions of the Act attract penalties. The Maternity Benefit (Amendment) Act of 2017 amended section 5(3) of the Maternity Benefits Act, 1961 to provide women with children under 2 who are still alive for twenty-six weeks. The amendment also enables women who may be sending mothers or have a child under the age of 3 to receive maternity benefits from their employers for a period of 12 weeks.
7. **Dowry Prohibition Act, 1961** penalizes giving or taking dowry<sup>8</sup>; or abetment of giving or taking of dowry or making any direct or indirect demand<sup>9</sup> for dowry. The Dowry is defined<sup>10</sup> as any type of property or valuable security given or agreed to be given either directly or indirectly as a consideration for marriage either at or before or after the marriage.
8. **Equal Remuneration Act, 1976<sup>11</sup>** mandates payment of equal remuneration to men and women for same work or *work of a similar nature*. It also prohibits<sup>12</sup> the employer to make any discrimination between men or women while making recruitment or fixing the service conditions. The Act also penalizes violation of these provisions.
9. **Immoral Traffic (Prevention) Act, 1986** punishes trafficking of persons for prostitution. If the someone keeping a brothel or allowing any premises to be used as a brothel<sup>13</sup>; living of a person above the age of 18 years, wholly or in part, on the income earned through prostitution of any other person<sup>14</sup>; acting as a tout or pimp<sup>15</sup>; procuring, inducing or taking any person for prostitution<sup>16</sup>; visiting or being found in a brothel<sup>17</sup>; prostitution in or in the vicinity of public places<sup>18</sup> etc., are offences under the Act.
10. **Provisions for the women's protection under the Domestic Violence Act, 2005** safeguards women from being subjected to physical, sexual, verbal, emotional and economic abuse at home by any adult male with whom she lives together or had lived together at any place of time in a shared household and with whom she is related. The Act makes provision for protection<sup>19</sup> of the woman who has been subjected to domestic violence; for payment of monetary reliefs<sup>20</sup> and compensation<sup>21</sup> to her; for entitling her to reside in the shared household<sup>22</sup> etc.
11. **The Occupational Sexual Harassment (Prevention and Protection) Act of 2005** protects women from sexual harassment in the workplace. It deals with any woman who is sexually harassed in the workplace, whether or not the woman is employed in the area and whether the alleged abuser is an employee or not place. The law mandates the constitution of the Internal Complaints Committee in all workplaces to address complaints of sexual harassment. The Act also provides for the constitution of the local committee at the District level to deal with complaints of sexual harassment by employers or in cases where the Internal Complaints Committee has not been established. An employer or District Officer upon receipt of a Report from the Internal Appeals Committee or the Local Committee, as the case may be, must comply with the recommendations made in Report.
12. **The Muslim Women (Protection of Rights on Marriage) Act, 2019** if the Muslim husband makes any pronouncement of Talaq upon his wife then it will be void and illegal.<sup>23</sup> Any such pronouncement of Talaq is punishable with imprisonment for a term up-to 03 years and with fine.<sup>24</sup> The Act further entitles a

woman upon whom a Talaq has been pronounced to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.<sup>25</sup>

13. **Protection of Children from Sexual Offences Act, 2012** Child is defined as a person below 18 years of age.<sup>26</sup> The Act restrains media from disclosing identity of a child subjected to a sexual offence under the Act<sup>27</sup> and provides for recording the statement of the child at his/her residence.<sup>28</sup> The Act provides for setting up of special courts to try offences under the Act.<sup>29</sup>
14. **The Protection of Divorce Rights Act, 1986** Muslim Women (Protection of Divorce Rights) protects the rights of divorced Muslim women. The Indian law gives a divorced to Muslim woman the right to provision and maintenance which must be paid by her ex-husband during the Iddat period; to find the value of Mahr; and all the property given to her by her family and friends and her ex-husband, family and friends. The law also provides that in the event of a divorced woman supporting her children on her own, she will be entitled to the maintenance provided by her husband until the children are two years old. The Act also makes provision for maintenance for a divorced woman after the Iddat period if she is unable to support herself.
15. **Juvenile Justice (Care and Protection) Act, 2015** contains provisions to ensure proper care and protection to children in need of such care or protection. It further provides a child friendly procedure of adjudication to deal with children found in conflict with the law. It also contains provisions for their rehabilitation. The Act also makes many provisions for adoption of children in the best interest & welfare of the child. The Act further penalizes certain crimes against children. The Act presumes a child to be an innocent of any mala fide or criminal intent.<sup>30</sup> The bail is to be normally granted<sup>31</sup> to a child found in conflict with law and if child is to be confined, she/he is to be kept in observation home only and not in police lock up or jail. The child is, moreover, not to be tried with any adult person.<sup>32</sup> The child on conviction will not incur disqualification, if any, under any law.<sup>33</sup>
16. **Child Labor (Prohibition and Regulation) Amendment Act, 2016** amends the Child Labour (Prohibition and Regulation Act, 1986 and prohibits working of children in all work places and other processes.<sup>34</sup> The amendment further prohibits working of adolescents in hazardous occupations and processes<sup>35</sup> as specified in the Schedule of the Act. Child is defined as a person who has not attended 14 years of age while adolescent is defined as a person who has completed 14 years of age<sup>36</sup> but has not completed 18 years of age.<sup>37</sup> The Central Government is empowered to add to or delete from the Schedule any occupation or process.<sup>38</sup>
17. The Equal Salary Act, 1976 mandates the payment of equal pay for men and women for the same work or employment. It also prevents the employer from committing any discrimination against men or women while hiring or repairing service conditions. The law also punishes violations of these principles.

#### Role of Judiciary in Women Empowerment

The judiciary being the guardian of the constitution has a pivotal role to play in the protection of rights of women and guaranteeing their proper enforcement.<sup>39</sup> Few cases enumerating the role of judiciary in women empowerment are as follows:

1. **Vishaka v. State of Rajasthan**<sup>40</sup>  
This landmark judgment of the apex court provide the direction and make the guidelines for the protection of sexual harassment of women in the work places and it intended to provide a safe working environment for women.
2. **Laxmi v. Union of India**<sup>41</sup>  
This case related to an acid attack victim, in this case, an

effective step was taken by the Supreme Court of India. Imposed regulations to stop the sale of acid in 2013, thereby it came under the purview of regulation. It also made it illegal to sell acid to a person below 18 years of age.

3. **Centre for Inquiry into Health and Allied Themes v. UOI**:<sup>42</sup>  
This was in the aftermath of the PNDDT Act, 1996. Though the act was enacted it was not being effectively implemented therefore, the Hon'able Supreme Court released the directions to the state and the Central Govt. to enact the provisions immediately and advised to ban all advertisement relating to pre-natal sex determination techniques.
4. **Air India v. Nagesh Mirza**<sup>43</sup>  
This case was related to women's right to equality, the court struck down a clause which related to the clause that a woman would be compulsorily retired either on completing 35 years of age, on marriage within first four years of service, and on the first time pregnancy. The court termed it as arbitrary and illegal and violative of Article 14 of the Constitution.
5. **Sarla Mudgal v. Union of India**<sup>44</sup>  
This case is a landmark case in safeguarding rights of women. It is related to the provisions of bigamy. The court held that a person cannot convert to Islam just to enter into a second marriage and would be held guilty of the offence of Bigamy.
6. **Shayana Bano v Union of India**<sup>45</sup>  
This is a landmark case relating to the practice of instant Triple Talak. The court held that such a pronouncement of Triple Talak was invalid and arbitrary.
7. **The Secretary, Minister of Defence v. Babita Puniya 11(2020)**<sup>46</sup>  
Commission established in the Indian arms forces which was permanent in nature for women. The women became eligible for the same ranks, benefits, pensions as their male counterparts.

#### Conclusion

Though proactive steps have been taken by the government, judiciary, and other bodies for ameliorating the conditions of women which have been effective, still we have miles to go before women achieve the same level of dignity and respect as their male counterparts. There is a need to change the mindset of society and especially the male sections of the society, women are to be empowered through various schemes like Sarva Shiksha Abhiyan, Beti Bachao Beti Padoo, Midday meal scheme, Self-help groups, National Policy for the empowerment of women, Swashakti, Swayamsidha, Step, Swawlamban, working womens hostel, creches, Rashtriya mahila kosh etc. When women feel empowered, they would get strength to stand up for their rights and what they believe in.

Women being an integral part of the nation, without women we cannot imagine to progress of nation because play a pivotal role in the progress of a nation. Swami Vivekananda rightly remarked that "The best thermometer of the progress of a nation is its treatment to women." Therefore, we can say that every person should come forward and contribute to ensure equal status for women in all spheres of their life.

#### Endnotes

- <sup>1</sup> Constitution of India, 1950.
- <sup>2</sup> Indian Penal Code, 1860.
- <sup>3</sup> Sec. 66(b), Factories Act, 1948
- <sup>4</sup> Sec. 48, Ibid.
- <sup>5</sup> Sec. 46, Mines Act 1952.
- <sup>6</sup> Sec. 46, Ibid.
- <sup>7</sup> Sec. 8, read with Schedule, Hindu Succession Act, 1956.
- <sup>8</sup> Sec.3, Dowry Prohibition Act, 1961.
- <sup>9</sup> Sec.4, Ibid.
- <sup>10</sup> Sec.2, Ibid.
- <sup>11</sup> Sec.4, the Equal Remuneration Act, 1976.
- <sup>12</sup> Sec. 05, Ibid.
- <sup>13</sup> Sec. 02, The Immoral Traffic (Prevention) Act, 1986.
- <sup>14</sup> Sec. 04, Ibid.
- <sup>15</sup> Sec. 04(c), Ibid.

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<sup>16</sup> Sec.05, Ibid.  
<sup>17</sup> Sec.5(c), Ibid.  
<sup>18</sup> Sec.7, Ibid.  
<sup>19</sup> Sec.18, Protection of Women from Domestic Violence Act, 2005.  
<sup>20</sup> Sec.20, Ibid.  
<sup>21</sup> Sec. 22, Ibid.  
<sup>22</sup> Sec.17 & 19, Ibid.  
<sup>23</sup> Sec. 3, The Muslim Women (Protection of Rights on Marriage) Act, 2019.  
<sup>24</sup> Sec.4, Ibid.  
<sup>25</sup> Sec.5, Ibid.  
<sup>26</sup> Sec. 2(1)(d), Protection of Children from Sexual Offences Act, 2012.  
<sup>27</sup> Sec. 23 (2), Ibid.  
<sup>28</sup> Sec. 24, Ibid.  
<sup>29</sup> Sec. 28, Ibid.  
<sup>30</sup> Sec.3(1), Juvenile Justice (Care and Protection) Act, 2015.  
<sup>31</sup> Sec.12, Ibid.

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<sup>32</sup> Sec.23, Ibid.  
<sup>33</sup> Sec.24, Ibid.  
<sup>34</sup> Sec. 3(1), Child Labor (Prohibition and Regulation) Amendment Act, 2016.  
<sup>35</sup> Sec.3A, Ibid.  
<sup>36</sup> Sec.2(II), Child Labour (Prohibition and Regulation) Act, 1986  
<sup>37</sup> Sec.2(I), Ibid, as amended 2016  
<sup>38</sup> Sec.4, Child Labor (Prohibition and Regulation) Amendment Act, 2016.  
<sup>39</sup> S. Chetan Bohra (2018) ,Role of Indian Judiciary in Women Empowerment, International journal of pure and applied mathematics, Vol 120 No.5, 1781-1798.  
<sup>40</sup> 1986 AIR 1011, 1986 SCR(1) 371  
<sup>41</sup> WP (Crl.) No. 129 of 2006  
<sup>42</sup> Writ petition (civil) 301 of 2000.  
<sup>43</sup> AIR 1981 SC 1829.  
<sup>44</sup> 1995 SCC (3) 635.  
<sup>45</sup> Writ Petition (C) No. 118 of 2016.  
<sup>46</sup> Civil Appeal Nos. 9367-9369 of 2011

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