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## Protection of Women from Violence under Constitutional Provisions

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**Abstract:** *Women being the most neglected social segments have always remained the prime subject of exploitation. Ignorance and illiteracy deprived women of their fundamental rights and have given them a status of second-class citizens. For centuries women, irrespective of their caste, colour and creed have been discriminated and were given subhuman status. The dominance of the then male centred ideas adversely affects the status of women. The Indian courts have also taken an immensely expansive definition of fundamental right to life under Article 21 of the Constitution as an umbrella provision and have included within it right to everything which would make life meaningful and which prevent it from making it a mere existence, including the right to food, clean air, water, roads, health, and importantly the right to shelter/ housing. The State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence, atrocities and crimes against women to provide support services especially to working women.*

**Keywords:** *Protection, Statutes, Rights, Women*

### 1. INTRODUCTION

Women are one of the identified sections that are vulnerable to discrimination and hence protected from any form of discrimination. Women are also entitled to special protection or special rights through legislations, if needed, towards making up for the historical and social disadvantage suffered by them on the ground of sex alone.

The Supreme Court had lamented upon the women folk in the specific Indian cultural context when it opined:

“Half of the Indian population too are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. *Self-sacrifice and self-denial are their nobility and fortitude* and yet they have been subjected to all inequities, indignities, inequality and discrimination.”<sup>1</sup>

The Supreme Court while upholding the spirit of right to bodily integrity of woman held:

“Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is equally entitled to the protection of law.”<sup>2</sup>

### 2. RIGHTS PROTECTED UNDER THE CONSTITUTION OF INDIA

The Indian Constitution has ensured equal status to all i.e. not only between men and men, women and women but also between men and women.<sup>3</sup>

The constitutionally guaranteed fundamental right to equality before the law<sup>4</sup> and non-discrimination on the ground of sex<sup>5</sup> has received wide judicial interpretations to ensure gender justice to women. In the sphere of right to equality no uniform judicial approach has been followed by the Indian judiciary in analyzing the legal position of women. In the early cases, the courts have employed a differential analysis in classifying between men and women as a group and in upholding legislations that conferred advantageous position to women. Gradually in cases relating to public employment, discriminatory provisions favourable to men etc., the differential approach was disregarded and assured a welcoming step in ensuring gender justice.<sup>6</sup>

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), 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).

The relevant protections for women enshrined in Part III of the Constitution are as follows:

**(i) Article 14-18:** Articles 14 to 18 of the Constitution of India are the guarantees of equality for every citizen of India. Article 14 gives equal protection of the law and treats every citizen equal before law.

**(ii) Article 15:** Article 15 restricts prohibition of discrimination on the grounds of religion, race, caste, sex, and place of birth or any of them:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex and place of birth or any of them.

(2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to:

a) Access to shops, public restaurants, hotels and places of entertainment; or

b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.

(3) Nothing in this Article shall prevent the state from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the state from making any special provision for advancement of any socially or educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes.

**(iii) Article - 21:** Article - 21 of the Constitution of India protects human dignity. It imbibes the principle of national justice and fairness and confers on every person the fundamental right to life and liberty.

**(iv) Article - 23:** Article 23 protects women from traffic in human beings and the prohibition applies not only to state but also to private person, bodies or organizations, and contravention of the prohibition shall be an offence punishable in accordance with law.

#### **Article -39 (e) and (f):**

This article directs the State to protect the health and strength of men and women workers and the tender years of age of children from being abused. And those citizens are not forced by economic necessity to enter avocations unsuited to their age and strength; that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.

**(vi) Article -41:** Article 41 directs the State to make effective provision, within the limits of its economic capacity and development, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement and in other cases of undeserved want.

**(vii) Article - 42:** Article 42 directs the State to make provisions for securing just and human conditions of work and for maternity relief.

**(viii) Article - 44:** It directs the State to take steps for establishing a uniform code throughout the territory of India, a code incorporating equal rights for women and children.

**(ix) Article - 45:** Article 45 directs the State to provide free and compulsory education for children until they complete the age of fourteen years.

### **3. PROTECTIONS UNDER CRIMINAL LAW**

Protections available to the women under criminal laws are as follows:

**(a) Female Foeticide - (Causing miscarriage):** Offences relating to the birth, death, exposure etc. of children are made punishable to protect the female foetuses.<sup>7</sup>

**(b) Female Infanticide:** To protect girl children from Female Infanticide the offences of infanticide are made punishable under IPC. Causing infanticide is offence against life after birth.

**(c) Rape:** Rape is not strictly the offence committed by the family members but there is a possibility of such occurrences within four walls also.

**(d) Kidnapping or Abduction for Different Purposes:** Kidnapping or abducting a woman, to compel her to marry any person, against her will or to force or seduce her to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse.

**(e) Murder:** Murder is the most dangerous offence against the life of any person.

**(f) Immoral Traffic in Human Beings:** Traffic in human beings means selling and buying of men and women like goods and includes immoral traffic in women and children for immoral purposes.<sup>8</sup>

**(g) Indecent Representation of Women:** These are the offences against public morals and decency. The sections of IPC do not expressly include obscenity against women but indirectly these sections protect women from being annoyed and hence aim at preventing obscenity.

**(h) Cruelty and Torture:** The Indian Penal Code prohibits a husband or a relative of a husband of a woman subjecting her to cruelty<sup>9</sup>, and punishment of imprisonment for a term which may extend to three years or fine or both.

**(i) Bigamy:** Women are protected from being exploited by the husbands and it is provided that, whoever marries during the lifetime of husband or wife is guilty of 'bigamy'.

**(j) Mock Marriage:** Mock marriages are strictly prohibited by the penal law which provides that, cohabitation or sexual intercourse caused by a man deceitfully inducing a woman to marry with him is punishable with imprisonment for ten years and fine.

#### **4. PROTECTIONS UNDER SPECIAL LAWS**

There are also special legislations to protect the victims of domestic violence. The following laws are directly or indirectly related to the problem of domestic violence.

**(a) Guardianship And The Wards Act, 1890:**

It says that, where a guardian of the minor is to be appointed or where the questions of custody of the minor is to be decided, the courts take into consideration various factors which may vary in each particular case, the paramount consideration being the welfare of the minor.<sup>10</sup>

**(b) The Child Marriage Restraint Act, 1929 (Amendment in 1978):**

Girls being considered a liability, are often married off by their families at an early age.

**(c) The Hindu Adoptions And Maintenance Act, 1956:**

A Hindu male or female is bound, during her/his lifetime, to maintain his/her minor (under the age of 18 years) children, legitimate/illegitimate or adopted.

**(d) The Hindu Minority And Guardianship Act, 1956:**

It applies to Buddhists, Sikhs and Jains. It applies to minors i.e. any child legitimate or illegitimate, who has not attained the age of 18 years of age.<sup>11</sup> The natural guardian of a boy or an unmarried girl is the father and offer him, the mother. In the case of an illegitimate boy or illegitimate unmarried girl, the natural guardian is the mother, and after her, the father; and in the case of a married girl, it is her husband.

**(e) Immoral Traffic (Prevention) Act, 1956:**

To prevent the practices of selling and buying of minor girls for immoral purposes this act was passed. Traffic in human beings i.e. selling and buying of men and women like goods, for Article 23 of the Constitution of India prohibits such acts, for immoral purposes.

**(f) Medical Termination Of Pregnancy Act, 1971:**

The state has enacted special legislation mainly for the purpose of prevention of the occurrences of miscarriage. If the termination of pregnancy is carried out to get rid of female foetuses and if it is hazardous for a woman's health, is punishable under this Act.

**(g) The Dowry Prohibition Act, 1961, (Amended in 1984):**

Realizing the gravity of the situation, the Govt, of India passed the Dowry Prohibition Act, 1961. This Act prohibits the system of 'Dowry' i.e. a property or valuable security given or agreed to be given either directly or indirectly, by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person at or before (or any time after the marriage) (in connection with the marriage of the said parties but does not include) Dowry Or Mehr in the case of persons to whom the Muslim personal Law (Shariat) applies.

**(h) The Family Courts Act, 1984:**

In cities, where the Family Courts Act, 1984 is implemented, matters relating to maintenance, custody and access come under the jurisdiction of the Family Court.<sup>12</sup> One common legal provision on the issue of maintenance, which is applicable to all communities, is the Criminal Procedure Code. This provision is applicable to both legitimate and illegitimate children.<sup>13</sup>

**(i) Juvenile Justice Act, 1986:**

This Act is enacted for the protection of neglected, uncontrollable and delinquent juveniles. The Act considers 'Cruelty' to juveniles as a special offence. Putting children under begging is another form of child labour and also child abuse, which is considered a serious offence under both IPC and Juvenile Justice Act, 1986, (JJA).

**(j) Indecent Representation of Women (Prohibition) Act, 1986:**

Any person who contravenes the provisions of the Act shall be punishable on first conviction with imprisonment of either description for a term which may extend to 2 years and with fine which may extend to Rs.2000. And in the event of second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with fine not less than Rs. 10,000 but which may extend to Rs. 1,00,000. The legal position thus effectively affirms and promotes the principles of equity and equality of women and takes care of their special needs.<sup>14</sup>

**(k) Pre - natal Diagnostic Techniques Act, 1994:**

It suggests stringent action by law enforcing bodies and to put check on the occurrences of female foeticide. One who contravenes any of the provisions of the Act or rules is made punishable with imprisonment for a term which may extend to three years or with fine which may extend to Rs. 10,000, and on any subsequent conviction with imprisonment which may extend to five years and with fine which may extend to Rs. 50,000.<sup>15</sup>

## **5. PROTECTIONS REGARDING GROUNDS FOR DIVORCE**

Hindus, Muslims, Christians and Parsis are governed by their respective personal laws which list out the grounds for divorce. These are:

**(a) Indian Divorce Act, 1939 (Amendment in 2001):**

Under the Christian Law while seeking divorce previously a woman had to prove adultery along with cruelty but the amendment in the law has removed this bar. The new law also removed the bar of getting divorce confirmed by the High Court.

**(b) The Dissolution Of Marriage Act, 1935:**

Under this Act a Muslim woman can get divorce if her husband treats her cruelly which includes both physical and mental cruelty or if he is leading to infamous life or sells away her property or prevents her from exerting her legal rights over it.

**(c) The Hindu Marriage Act, 1956:**

For the Hindus, it provides for the various grounds on which divorce can be passed on grounds of adultery and cruelty respectively. <sup>16</sup>When the wife is physically or mentally abused by a husband who is of incurably unsound mind or suffering from episodic fits of mental disorder, then this provision provides a clear cut ground of divorce under section 13 of the Act.

## **6. PROTECTION REGARDING THE PROPERTY RIGHTS OF WOMEN**

### **(a) Indian Succession Act, 1925:**

Property rights of Christian are governed by **Indian Succession Act, 1925**. A widowed Christian woman gets 1/3 share of her husband's property.

### **(b) The Hindu Succession Act, 1956:**

Under this Act Hindu women have a right in the ancestral property but their share as against a male member of the family is much less. Coparcenaries consist of all the male members of the family and only coparcener can ask for partition.

### **(c) Domestic Violence Act, 2005:**

Prior to the Domestic Violence Bill 2001 two important events took place. These were the drafting of a Bill by National Commission for Women (NCW) in 1994. This NCW bill was severely criticized by other women's groups. The other was a bill by Lawyers Collective in 1999. The main aim of this bill was that any law that addresses domestic violence must define it in terms of the internationally accepted definition, prevent it, protect the rights of the women to live in the shared households and make provisions for the maintenance of the women.

Despite all the above, the need for protection of the law makers in their anxiety to provide legal protection to the women seem to have gone overboard.

## **7. SUMMARY**

The Constitution of India declared the equality of sex as a guiding principle and thereby acknowledged that a family should basically be an equalitarian unit founded on equal rights and willing choice by both the individuals who form a family. In practice, however, the subordination of women to men and junior to senior pervades family life in all classes and castes in India. At the root of such oppressions against women is the reality that women are taken as 'objects' of both discriminations and violence by men.

Women are the most vulnerable segment of the society. As per an estimate, India is having the largest number of illiterate women in the world. Females are not at par with their male counterparts and remained deprived and under privileged. Women at large experience multiple barriers in going access to employment, housing, food, education and social security and justice is not an exception. The urban woman is somehow able to manage their pace with the mainstream due to availability of better facilities to them, but the rural women are more at disadvantage socially and the reasons for their backwardness are more than one.

These disadvantaged women suffer from a high degree of variety through their castes, social status, economic condition, and geographical location and above all their conservative mindset. The psychological as well as cultural barriers stun the overall development of women. The ideological barriers like, the women should not return to her parental house after marriage ends her relations with parents.

The social and ideological practices, which are often located within the family and the social structures, construct male and female subjects with differential powers to act fully independent beings in relation to others. There is an extreme manifestation of unequal social relations between men and women within the family and the organization of economy, the state legitimizes the inequality and fails to transform the existing social relations based on dependence, oppression and exploitation.

## **REFERENCES**

- [1] *Madhu Kishwar v. State of Bihar*, (1996) 5 S.C.C. 148.
- [2] *State of Maharashtra v. Madhukar Narayan*, (1991) 1 S.C.C. 57.
- [3] Anjani Kant, (1997), *Women and the Law*, A.P.H. Publishing Corporation, New Delhi, p.130
- [4] Constitution of India, Part III, Art. 14 confers the equality before the law or the equal protection of the laws to every person.

- [5] *Ibid.*, Art. 15 (1) prohibits any kind of discrimination on the grounds of religion race, caste, sex or place of birth.
- [6] *AIR v Nergesh Mirza 1987 SC 1829; C.B. Muthamma v. Union of India A.I.R. 1979 S.C. 1868; Ammini E/v. Union of India A.I.R. 1995 Ker 252,268.*
- [7] *sections 312-318 of IPC.*
- [8] *Raj Bahadur v. Legal remembrance. AIR, 1953. Calcutta, 522.*
- [9] *Section 498 -A IPC.*
- [10] *Section 17 of the Guardianship and the Wards Act, 1890 read with section 13 of the Hindu Minority And Guardianship Act.*
- [11] *Sec. 4(a)). Section 6 (a), (b) and (c) of The Hindu Minority and Guardianship Act. 1956.*
- [12] *The Family Courts Act. 1984.*
- [13] *Section 125 of the Criminal Procedure Code.*
- [14] *Section 6 of Indecent Representation Of Women (Prohibition) Act, 1986.*
- [15] *Section 23 of Pre - natal Diagnostic Techniques Act, 1994.*
- [16] *Section 13 of The Hindu Marriage Act, 1956.*