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**ROLE OF LAW IN WOMEN EMPOWERMENT**

**DR. SANGEETA NAGAICH**  
**ASST. PROFESSOR**  
**PUNJABI UNIVERSITY**  
**PATIALA**

**PREETI SHARMA**  
**SR. LECTURER**  
**CHANDIGARH BUSINESS SCHOOL**  
**MOHALI**

**ABSTRACT**

*Women constitute half the population of the society and it is presumed that best creation belong to the women. But it is a harsh reality that women have been ill-treated in every society for ages and India is no exception. From tribal to agricultural to industrial societies to organized states, the division of labour has primarily stemmed from physiological differences between the sexes, leading to the power resting with the men, resulting in the established gender hierarchies. We have been gifted with a history of discrimination; subjugation and suppression. From the cradle to grave, females are under the clutches of numerous evils such as discriminations, oppressions, violence, within the family, at the work places and in the society. In order to ameliorate the condition of women in India, Legislature enacted the large volume of enactments and many of these legislations were enacted in colonial period like: Abolition of Sati Act, 1829; Widow Remarriage Act, 1856; Child Marriage Restraint Act, 1929; Dowry Prohibition Act, 1961; etc. Apart from these laws there are some enactments pertaining to industry or work which contain special provisions for women such as: The Workmen Compensation Act, 1923; Payment of Wages Act, 1936; Factories Act, 1948; Maternity Benefit Act, 1961; Minimum Wages Act, 1948; Employees State Insurance Act 1948 and Pensions Act, 1987; etc. In this paper we are going to put light on such laws those has helped in women empowerment in India.*

**KEYWORDS**

Women, discrimination, women Empowerment, Legislature.

**INTRODUCTION**

It is a harsh reality that women have been ill-treated in every society for ages and India is no exception. The irony lies in fact that in our country where women are worshipped as Shakti, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not robbed of her dignity and pride outside her house but she also faces ill-treatment and other atrocities within the four walls of her house. They are considered as an object of male sexual enjoyment and reproduction of children. They are real downtrodden of the society. They are discriminated at two levels, firstly they suffer because of their gender and secondly due to grinding poverty. Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to do all house hold works, which are not recognized and paid. In modern times many women are coming out to work but has to shoulder the double responsibility; one she has to work where she is employed and secondly she also has to do all the house hold works, moreover, she is last to be considered and first to be fired as she is considered to be less productive than her counterpart. Her general status in the family and in the society has been low and unrecognized. Continuing into the 20th Century, gender imbalances gave rise to Feminist Movements, especially in North America and West Europe. In India, it is believed that women enjoyed an equal status as men in the Vedic Period. The education of women held considerable significance, especially from works of katayana and patanjali. The Upanishads and the Vedas have cited women sages and seers. But the condition declined considerably afterwards. Historical practices such as Sati, Jauhar, Purdah and Devdasis, child marriage, are a few traditions reflective of the gender imbalance in Indian Society. From the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the work places and in the society.

The root cause of all the evils practices faced by the women is (1) illiteracy, (2) economic dependence, (3) caste restrictions, (4) religious prohibition, (5) lack of leadership qualities and (6) apathetic and callous attitude of males in the society. Law plays an important role in setting norms and standards on acceptable and unacceptable acts on the issue of gender and development. You may wonder – we have had many laws on gender issues. However, gender discrimination has not reduced or been eradicated; neither has gender-based violence. What is the relevance of such laws then? Even if standards set by such laws are not fully implemented, and are frequently violated, law remains significant as a standard whose implementation / enforcement can be demanded – individually and by groups. If the law did not exist in the first place, say, prohibiting domestic violence, how could women assert their right to live with dignity and peace in their homes? Apart from providing justice to aggrieved parties, law seeks to protect weaker, marginalized and vulnerable sections of society, including women, in order to bring about social justice and equality.

**STANDARD SET BY THE INDIAN CONSTITUTION**

The Indian constitution is a legal, political and moral document. All our basic rights are written in and guaranteed by the constitution. The Indian constitution being the most important law in India sets certain standards with regard to woman rights. These standards and principles were subsequently elaborated through other laws. Some of the important values stated in the constitution include justice (social, economic, and political), liberty (of thought, expression, belief and worship) and equality (of status and opportunity). These values are intrinsically linked to empowerment of women. The Indian constitution contains a chapter on fundamental rights, which is charter of rights that essentially protect an individual's life and liberty from arbitrary acts of the government, state organs and agencies. Similarly, another chapter titled directive principles of state policy (DPSP's) provides guidelines to the state for its governance in accordance with the principles it incorporates, the fundamental rights and DPSP's together from the backbone of protective laws for women. Relevant provisions in the constitution on women's rights include the following:

- The state shall not deny to any person equality before the law or the equal protection of laws (Article 14) ;
- The state shall not discriminate against any citizen on grounds including that of sex [Article 15(1)];
- The state can make affirmative action in favour of women, including through reservation and special laws [Article 15(3)] ;
- The state shall not discriminate, in matters of public employment, on grounds including that of sex [Article 16(1)];
- The state is duty- bound to protect the life and personal liberty of all, including women (Article 21);
- The state is prohibited from trafficking in human beings (Article 23);
- The state is directed to provide equal pay for equal work [Article 39(d)];
- State is directed to make provisions for ensuring just and humane conditions of work and maternity relief (Article 42); and
- A fundamental duty is imposed on every citizen to renounce practices that are derogatory to the dignity of women [Article 51(i)].

**EMPOWERMENT THROUGH VARIOUS LAWS**

The Indian penal code (IPC) is the preliminary law that defines and declares specific acts as crimes, and provides for punishment for the same. Provisions under the IPC related to violence against women are summarized in the table below. In addition to the Indian penal code, criminal laws have also been enacted on specific issues. These include:

**(1) The Immoral Traffic (prevention) Act, 1956:**

In 1956 suppression of Immoral Traffic in Women and Girls Act known as SITA was passed. The basic objective of this Act was to punish brothel keepers, procurers and pimps and to prevent prostitution in or in vicinity of public places. The Act was amended in 1978 and more recently in 1986 and now titled "the Immoral Traffic (Prevention) Act". The main purport of the Act is to inhibit or abolish commercialized vice; namely, traffic in women and girls for purpose of prostitution as an organized meaning of living.

**(2) The Dowry Prohibition Act, 1961:**

In 1961, the Government of India passed the Dowry Prohibition Act, making the dowry demands in wedding arrangements illegal. However, many cases of dowry-related domestic violence, suicides and murders have been reported. In the 1980s, numerous such cases were reported.

In 1985, the Dowry Prohibition (maintenance of lists of presents to the bride and bridegroom) rules were framed. According to these rules, a signed list of presents given at the time of the marriage to the bride and the bridegroom should be maintained. The list should contain a brief description of each present, its approximate value, the name of whoever has given the present and his/her relationship to the person

**(3) The Indecent Representation of Women Act, 1986:**

To prevent indecent representation of women in numerous forms, Parliament passed the Indecent Representation of Women Act, 1986. The object of the Act was to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

**(4) Commission of Sati Prevention Act, 1987:**

Act was enacted to provide for more effective prevention of the commission of Sati and its glorification and for matters connected herewith or incidental thereto.

**(5) The Pre conception and Pre-Natal diagnostic techniques (Prohibition of Sex Selection) Act, 1994:**

The Act provides for regulation of the use of pre-natal diagnostic techniques and for the prevention of the misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide.

**(6) The protection of Women from Domestic Violence Act 2005:**

The objective of the Act is to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for incidental matters.

The Supreme Court has given a number of significant judgments on women's rights in relation to criminal law. In **Vishal Jeet vs. Union of India [(1990)3 SCC 318]**, the court issued directions to all state governments and union territories to prohibit and eradicate child prostitution, devadasi and jogin trade houses, and rehabilitate the victims, in **Delhi domestic Working Women's Forum vs. union of India**, which involved sexual assault of four domestic workers by seven army officers in a moving train, the supreme court laid down a number of guidelines for increasing the victim's access to legal processes for justice. in **Upendra Baxi vs. State of Uttar Pradesh [(1983) 2 SCC 308]**, the Supreme Court ordered authorities of protective homes to protect the health of women inmates without conflicting with their right to dignity, in **Sheela Barse vs. State of Maharashtra**, the Supreme Court held that female suspects must be kept in a separate lock up in the police station and not kept where male suspects are detained. In **Rekha Kholkar vs. State of Goa**, the Bombay High Court awarded compensation to a woman who was charged with theft and physically assaulted and tortured by both male and female police, and issued directions for interrogation of women suspects. In the case of **Vishakha v State of Rajasthan (AIR 1997 SC 3011)** SC laid down detailed guidelines to prevent the sexual harassment at work places and considered it necessary and expedient for employers at work places or institutions to observe these guidelines.

**PROVISIONS UNDER INDIAN PENAL CODE FOR EMPOWERING WOMEN**

Category	IPC Section	Act	Punishment
	294	obscene acts and songs	3 months or fine or both
	304 - B	Dowry death	Not less than seven years
Miscarriage	312	causing miscarriage	3 - 7 years
	313	causing miscarriage without consent	10 years or life
	314	death caused while causing miscarriage without woman's consent	10 years or life
	315	act done to prevent child from being born alive or to cause it to be dead after its birth	10 years
	354	assault or criminal force to a woman with intent to outrage her modesty	2 years or fine or both
Kidnapping	363	kidnapping	7 years
	366	kidnapping women to compel marriage, seduction for illicit intercourse etc	10 years
	366A	procuring minor girl under 18 years of age	10 years
	366B	importation of girl	10 years
	372-373	selling and buying minor for purpose of prostitution	10 years and fine
Sexual assault	356	Use of criminal force with intention to outrage modesty of woman	2 years
	375-376	rape and punishment for rape	Not less than seven years
	377	"Unnatural offence" - carnal intercourse	10 years of life
	376 read with 511	Attempt to rape	
	506	word, gesture or act intended to insult the modesty of a woman	1 years or fine or both
Offences within marriage	493	cohabitation caused by deceitfully inducing woman under belief of law full marriage	10 years
	494	Bigamy- marrying again during life time of husband or wife	seven years and fine
	496	Going through unlawful marriage ceremony	7 years
	497	adultery	five years or fine or both
	498	Enticing, detaining a woman with a criminal intention	2 years
Cruelty to women	304B	Dowry death	7 years or life
	306	abetment to suicide	10 years and fine
	498-A	husband or relative of husband of a women subjecting her to cruelty	three years and fine

**EMPOWERMENT THROUGH LABOUR LAWS**

Labour laws aim at protecting and promoting workers "rights at the work place. Provisions of labour laws on women rights have focused on improving the safety, health and welfare of women in factories and other places of work, minimum wages, equal pay for equal work, maternity benefits, child care facilities,



provisions for adequate rest and leisure, prevention of discrimination and sexual harassment at the work place. Labour laws that protect women at the work place include:

- **The Equal Remuneration Act, 1976** – Provides for equal remuneration to men and women workers for same work or similar work, and prohibits discrimination in recruitment and service conditions except where employment of women is prohibited and restricted by law.
- **Maternity Benefits Act, 1961** – Provides for maternity leave and benefit in order to protect the dignity of motherhood and gender justice.
- **The Factories Act, 1948** – The act has many provisions protecting women at workplace, including issues pertaining to occupational safety, provision of sanitation and crèche facilities.
- **The Mines Act, 1952** – It prohibits the employment of women underground and provides for restricted timings of work for women employed above the ground

Other laws pertaining to rights of workers, which benefit women-, these include Minimum Wages Act 1948, bonded labour system (Abolition) Act 1976, Plantation Labour Act 1951, Payment of Wages Act 1936, Industrial Employment (Standing Orders) Act 1946, Workmen's Compensation Act 1923, Employees State Insurance Act 1948 and The Contract Labour (Prohibition and Regulation) Act 1970.

### EMPOWERMENT THROUGH PROPERTY RIGHTS

In most Indian families, women do not own any property in their own names, and do not get a share of parental property. Due to weak enforcement of laws protecting them, women continue to have little access to land and property. In fact, some of the laws discriminate against women, when it comes to land and property rights.

The Hindu personal laws of mid-1950s (applied to Hindus, Buddhists, Sikhs and Jains) gave women rights to inheritance. However, the sons had an independent share in the ancestral property, while the daughters' shares were based on the share received by their father. Hence, a father could effectively disinherit a daughter by renouncing his share of the ancestral property, but the son will continue to have a share in his own right. Additionally, married daughters, even those facing marital harassment, had no residential rights in the ancestral home. After amendment of Hindu laws in 2005, now women in have been provided the same status as that of men.

### EMPOWERMENT THROUGH MATRIMONIAL LAWS

Matrimonial laws consist of a set of laws that govern family relationships and rights of spouses and children during and subsequent to marriage. It covers aspects such as entering into marriage, divorce, maintenance, custody, succession, inheritance, guardianship and adoption. Different matrimonial laws govern members of different religious communities, with the exception of Special Marriage Act, which is a law common to all religious communities. Matrimonial laws in India today are a curious mixture of laws drawn from religious texts, interpretation of those texts, customs, traditions and principles derived from British Law. Almost all the laws are patriarchal in nature and have discriminatory provisions against women, prescribing an inferior status to women in family and society; and attempting to control women sexuality in subtle ways. Implementation of matrimonial laws is through Family courts in cities where these have been set up, or by District courts in the absence of Family Courts. In a landmark judgment of the Supreme Court it was stated that a demand of dowry amounted to cruelty, entitling the women to divorce. In other landmark judgement, on aspects of Muslim matrimonial law, the Kerala High court stated that failure of husband to maintain his wife entitles her to divorce. In a case where the husband claim that he ceased to be impotent, sought the court's order to compel his wife to submit herself to him for this purpose, the court refused to do so and protected the women's dignity. In a case where the man breached his promise to marry the women, the court said that she was entitled to claim damages. In another case where a Non-resident Indian (NRI) husband deserted his Indian wife, the Supreme Court made suggestions for safeguarding the interests of woman in such situation. It was explained by the court in one case that under the Hindu Marriage Act, the amount of maintenance fixed for the wife should be such that she can live with reasonable comfort considering her status and the mode of life she used to when she lived with her husband. In a case where the Family Court refused custody of minor child to the mother on grounds including that she was a working woman and has to remain away from the house during duty hours, the Bombay High Court, on appeal, awarded the mother custody of the child, stating that there was no disqualification in the mother, who was more educated than the father, and independent. In *Gita Hariharan vs. Reserve Bank of India*, the Supreme Court stated that under the Hindu Minority and Guardianship Act 1956, the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of the affairs of the minor.

### SUMMING UP

Law is like a double-edged sword. On one hand it is tool for empowerment of woman and other marginalized communities. It is up to each individual to make use of empowering laws to assert their rights. Information about such laws is a first step towards assertion of rights through law. The crucial question that arises for deliberation is: Have the women been able to reap the benefits provided for them under the Constitution of India and all the laws which have been made for the empowerment of women? The answer, unfortunately, is not encouraging. There is still a long way to go to achieve the goals enshrined in the Constitution and all other laws. In spite of special constitutional guarantees and other legislations, crimes against women in the form of child marriages, rape, and dowry, practice of Sati, trafficking of the girl child, prostitution, domestic violence and sexual harassment are on the increase. The review of the disabilities and constraints on women, which stem from socio-cultural institutions, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the Constitution. Justice K. Ramaswamy has also stated: "Indian women 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." It is realized that despite the constitutional safeguard and the active judicial support towards the cause of women, changes in social attitudes and institutions cannot be brought about very rapidly. However, it is necessary to accelerate this process of change by deliberate and planned efforts so that the pernicious social evil of gender inequality is buried deep in its grave. Laws written in black and white are not enough to combat the evil. Awakening of the collective consciousness is the need of the day. A problem as multifaceted as women's self-actualization is too important to be left to a single section of the society. This responsibility has to be shared by the State, community organizations, legislators who frame the laws and the judiciary which interprets the Constitution and other laws in order to give a fillip to the legal reform in the field of gender justice and to usher in the new dawn of freedom, dignity and opportunity for both the sexes equally.

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