

## **A STUDY OF GENDER JUSTICE AND WOMEN EMPOWERMENT IN INDIA**

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### **ABSTRACT**

In the literature and religion of Indian society, women are lauded and honored under the names Devi and Shakti, respectively. Despite venturing out into the open (out of hiding), their true situation is pitiful. They have been subjected to abuse, exploitation, and bias. They are given the courtesy of a second thought at best. There is still a significant chasm between the ideal ideals and the practical realities, notwithstanding constitutional, legislative, and judicial efforts. Human rights are inherent, fundamental, and indivisible, and the rights of women and female children are no exception. The distance between the promise of rights and their actual realization is very wide. Concerns for women's human rights are crucial to society's stability. Human rights for women are now seen as an inalienable aspect of international human rights law. The fight for women's human rights has come into the spotlight in recent years. Generally speaking, when people talk about women's rights, they're referring to the inherent rights that women and girls of all ages have but which may be institutionalized, disregarded, or illegitimately repressed by legislation or tradition in a given culture. The Convention on the Elimination of All Forms of Discrimination against Women was passed by the United Nations General Assembly on December 18, 1997, bringing the issue of women's human rights into the spotlight. This is being heralded as a historic moment for women's rights. All cultural, civil, political, economic, and social rights must be freely exercised and enjoyed without interference from the government of any party to the convention. The fight for Indian independence was, at its core, a resistance movement against British imperial oppression of Indian human rights.

**KEYWORDS:** Gender Justice, Women Empowerment, India, women's human rights

### **INTRODUCTION**

All people are born free and equal in dignity and rights, without any distinctions including sex, as proclaimed in the Universal Declaration of Human Rights, 1948, which serves as the charter of the United Nations Organization and professes the principle of non-discrimination.

The United Nations General Assembly passed a Declaration of Eliminations of Discrimination against Women with a unanimous vote in 1967, resolving to end

sex discrimination in all forms of law and practice and to ensure that women enjoy the same protections under civil law as men.

Women were encouraged to take an active role in all facets of public life during the Second World Conference on Human Rights, which took place in Vienna in 1993.

The First United Nations Conference on Women was held in Mexico from June 19– July 2, 1975; the Second United Nations



Conference on the Status of Women was held in Copenhagen from July 14–July 30, 1980; and the Third United Nations Conference on the Status of Women was held in Nairobi, Kenya, from July 15–July 26, 1985, to review and assess progress toward the goals outlined in the United Nations Declarations on the Status of Women.

From September 4-15, 1995, Beijing, China hosted the Fourth International Conference on Women's Action for Equality, Development, and Peace with the theme "View the World Through the Eyes of Women." Beijing Plus Five was a special session of the United Nations General Assembly convened in New York from June 5th to June 10th, 2000, to evaluate the efforts of the State parties in achieving gender equality since the original Beijing Declaration and Platform for Action was adopted five years earlier.

## **HUMAN RIGHTS OF WOMEN: CONSTITUTIONAL PROVISIONS**

Human rights jurisprudence places a premium on the situation of women since it serves as a barometer of societal progress. The Constitution of India, the country's supreme law, protects women's rights. It is appropriate to make reference to some of the most significant laws on women's empowerment.

The Constitution of India not only guarantees women's equal rights, but also gives the government the authority to take affirmative discriminatory measures in their favor. In the Preamble, the Bill of Rights, the Bill of Duties, and the Directive Principles of the Indian Constitution, gender equality is established. Article 14 of the Indian Constitution ensures everyone's fair

treatment in the court system. Discrimination based on a person's sex is forbidden under Article 15. In Article 16, the right to equal protection in the workplace is guaranteed to every citizen. Reservation of seats (at least one-third) in the local bodies of Panchayats and Municipalities for women was established by the 73rd and 74th amendments to the Constitution of India. There is a proposed amendment (the 84th Constitutional Amendment) that would reserve 33 percent of seats in federal and state legislatures.

Discrimination based on a person's religion, ethnicity, caste, sex, etc., is outlawed for all citizens under Article 15. Under Article 15(c) of the Indian Constitution, the government may establish any measure it deems necessary to protect the rights of women and children. Equal compensation for equal labor is guaranteed in Article 39(c), and the State should conduct its policies to provide for all people, male and female, the right to a means of subsistence, as stated in Article 39(a).

The State must provide for equitable and humane working conditions in accordance with Article 42. Article 15 (A) (e) of the Constitution mandates that all citizens abandon behaviors that undermine women's equality.

According to Article 243-D of the Constitution, at least one-third of the seats up for election in every Panchayat must be set aside for women. Elections for Panchayats and Municipalities have had reserved seats for women since the 73rd and 74th Amendments to the Constitution took effect in 1992.



Article 234-T of the Constitution similarly guarantees women a certain number of seats in every municipality's directly elected municipal council. As a result, women now make up a quota of 33 percent in municipal councils.

Under the title "prohibition of trafficking in Human beings and Forced labor," Article 23 protects women from being exploited.

## **WOMEN'S RIGHTS UNDER CRIMINAL LAWS IN INDIA**

The Indian Evidence Act of 1872 and the Indian Penal Code of 1860 (IPC) both have sections addressing crimes committed by and against women..

### **a. Indian Penal Code**

Section 509 of the IPC is another legislation that protects women from an apparently less serious offence. Offenses against women's modesty are punishable by law. This rule makes it illegal to verbally or physically harass a woman or invade her personal space in any way. Section 354 of the IPC makes it illegal to outrage a woman's modesty. If proven guilty, the spouse of a suicide victim faces up to 10 years in jail under Section 306 of the Indian Penal Code.

Marriage fraud and sham weddings are illegal under Section 496. When a husband commits adultery, his wife is not considered an accessory after the fact because of Section 497.

Assault or use of criminal force against any woman with the intent to outrage, or the knowledge that he would so outrage, her modesty is a crime under Section 354 of the Indian Penal Code.

If a miscarriage is induced and it is not done so in good faith to save the woman's

life, the person responsible might face criminal penalties under Section 312.

The crimes of rape are addressed under sections 375 and 376 of the Criminal Code. First, the offense is defined, and then the repercussions are stated. The existing sections 375–376(D) cover the infringement in question. Act does not use the term "sexual assault" anywhere.

Anyone who reveals the rape victim's name or other identifying information is subject to the penalties outlined in Section 228-A.

Punishment for cruelty against a woman at the hands of her husband or his family is outlined in Section 498-A.

Penalties for public obscenity, objectionable book displays, and the selling of such publications are outlined in Sections 292, 293, and 294, respectively. Murders of women for a dowry are addressed under Section 304(b). The penalties for causing a miscarriage are discussed in Sections 312-318. Punishment for violating a woman's modesty is outlined in Section 354, while Section 366 addresses the kidnapping of a woman for the purpose of forcing her into marriage. Procuring an underage girl for sexual purposes is addressed in Section 366-A. Crimes of rape are addressed under Section 376, which includes provisions for punishment. Women are shielded from bigamy under Section 494. Married women are protected from adultery under Section 497. Punishment is provided under Section 509 for insulting a woman's modesty by words or actions, while Section 498-A addresses cruelty towards women at the hands of their husbands or other family members.



## **b. Code of Criminal Procedure 1973**

The lady is entitled to support under Section 125 of the Criminal Procedure Code..

## **c. Indian Evidence Act**

Where there is evidence of sexual intercourse between the accused and the prosecutrix, and the prosecutrix says that she was raped, the court must assume that she did not give her permission in accordance with Section 114-A of the Indian Evidence Act.

Personal law and criminal law include special provisions designed to protect women from discrimination, assault, and other human rights abuses.

Human Rights Commissions at the federal, state, and regional levels were established by the government of India.

In 2001, the government designated that year as "Women's Empowerment Year," and that same year, the National Policy for the Empowerment of Women was developed.

As the status of women in society evolves, so too does the legislation pertaining to them. Although women were accorded respect throughout the Vedic era, their dignity was diminished during the Shastric era and thereafter.

Presumptions on the abetting of suicide by a married woman within 7 years of marriage, the death of a woman due to dowry, and the lack of consent of women for sexual intercourse are provided for in Sections 113(a), 113(b), and 114(c), respectively.

## **1. Criminal Law (Amendment) Act 1983**

In situations involving custodial rape, a rebuttal presumption was established in 1983 according to the Criminal Law Amendment Act. The government passed

new legislation establishing a minimum sentence of seven years in jail for custodial rape, requiring in-camera procedures, and criminalizing the revelation of the victim's identify.

The Act (1983) amended the following provisions:

- The penalty for rape under section 376 has been increased.
- Violent punishments were established for gang rapes and custodial rapes.
- The practice of "rape on pregnant women" was classified as its own distinct crime.
- S/376a, 376b, 376c, and 376d, four distinct types of unauthorized intercourses, were introduced.
- Disclosure of the victim's identify in cases of rape or illicit intercourse has been criminalized and is now prohibited under Sec. 228A.
- Any investigation into or trial for illicit intercourse must take place in camera, as mandated by the newly added Section 327 (2) of the Criminal Procedure Code of 1973.
- In a prosecution for custodial rape, where sexual intercourse by the accused is proved and the questions whether it was without the consent of the women alleged to have been raped, and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. This presumption was added as section 114-A to the Evidence Act, 1872.

It is said that Indians are at fault since they have never seen their laws fairly enforced. When a law begins to show indications of miserable failure, the government usually passes a new law or amends an existing





one and acts as if it has just bestowed a fresh source of magical power.

## **WOMEN'S RIGHTS UNDER PERSONAL LAWS IN INDIA**

### **a. Hindu Adoption Maintenance Act, 1956**

The husband's support duties are spelled forth in Section 18-A. Wives have the option to live apart under Section 18(2), and widows may get support from their father-in-law under Section 19 of the Act.

### **b. Hindu Succession Act, 1956**

According to the Act's Section 14, a Hindu woman owns absolutely all of her property.

### **c. The Hindu Minority and Guardianship Act 1956**

Those under the age of five may have someone other a parent serve as their legal guardian under Section 6 of the Act.

## **WOMEN'S RIGHT UNDER THE LABOUR LAWS OF INDIA**

The Equal Remuneration Act of 1976 ensures that women are paid the same as men for doing the same job, that they are supplied with maternity leave and other workplace amenities, and that they are protected against exploitation. Women are to be provided with maternity benefits.

## **JUDICIAL INITIATIVE TOWARDS EMPOWERMENT OF WOMEN**

Despite a variety of laws protecting women, the male-dominated culture continues to exploit them. Male-dominated culture has discovered methods to undermine the Act's goals and create roadblocks for women's advancement. The court has stepped in to safeguard women when laws failed to do so. When it comes to preserving women's rights, the Indian Judiciary has fundamentally revolutionized constitutional litigation by

throwing out all procedural rules. The courts, by liberally interpreting the language of the statutes, have fostered the broadest possible application of the laws. The court abandoned its dogmatic approach in favor of one that was more amenable to the needs of all members of society. The courts have been more eager to uphold women's constitutional rights.

When the legislative apparatus failed, the court stepped in with historic decisions. When legislative action was taken against women, the court stepped in to provide aid. The highest courts have recently shown concern for women's rights, an attitude that was heavily impacted by international declarations and agreements protecting the rights of women. In recent years, the vigorous judiciary has elevated the status of women by its golden rulings. *Female Employees (Muster Roll) v. Municipal Corporation of Delhi*, The Supreme Court ruled that Delhi Municipal Corporation's female Muster Roll (Daily Wagers) workers are eligible for maternity leave under the Maternity Benefit Act of 1961. The court here explicitly integrated Article 11 of the CEDAW 1979 into Indian law. The Supreme Court granted an immigrant woman 10 lakhs in compensation for her rape under Article 21 of the Constitution in *Chairman, Railway and v. Chandrima Doss*<sup>2</sup>. Court case between *Githa Hariharan* and the Reserve Bank of India Section 6(a) of the Hindu Minority and Guardianship Act, 1956, and Section 19(b) of the Guardians of a Minor Act, were interpreted by the Supreme Court. In the case of *Mohammed Ahmed Khan v. Shah Bano*, Despite differences in personal law, the Supreme Court upheld a woman's entitlement to equal support



under section 125 of the Criminal Procedure Code of 1973. In another landmark decision, the Supreme Court said that "women are one segment of society that has been traditionally subjected to unjust treatment."

*Union of India v. Charansingh*, The Delhi High Court has declared that women are a socially and economically disadvantaged group compared to males. *P.B. Vijay Kumar v. Government of Andhra Pradesh*, Article 15(3) of the Indian Constitution upholds the policy of providing quotas for women in government positions. *Female Workers v. Municipal Corporation of Delhi*, The Supreme Court ruled that eliminating inequality and treating women, who make up about half of our society, with respect and dignity is essential to establishing a fair social order. *State of Uttar Pradesh v. Uttarakhand Mahila Kalyan Parishad* The Supreme Court invalidated the discriminatory policies of the Government of Uttar Pradesh's Education Department. When Air India took on *Nargis Marza*, Indian Air Lines' Discriminatory Rules were overturned by the Supreme Court. *Ms. Subhra Chakraborty vs. Bodhisattwa* Rape is a violation of fundamental human rights, as determined by the Supreme Court.

*Vishakha v. Rajasthan State*, The Supreme Court takes the pervasive problem of sexual harassment in the workplace and beyond very seriously. Since there was little law covering the issue, the courts stepped in and defined sexual harassment and provided guidelines for businesses. *A.K. Chopra v. Apparel Export Promotion Council*. The Supreme Court ruled that the Constitution guarantees protections against sexual harassment, which includes

all aspects of gender equality. Case Brief for *C.B. Muthamma v. Union of India* The Supreme Court has ruled that a service regulation making marriage a disqualifier for assignment to overseas duty is unconstitutional. *Shobha Rani v. Madhukar* The Supreme Court ruled that demanding a dowry is cruel and unusual punishment. According to *Prathibha Rani v. Suraj Kumar*, The constitutionality of the Stridhana was affirmed by the Supreme Court. *Gurmit Singh v. State of Punjab*, Rape was found to constitute an invasion of privacy by the Supreme Court. Case in point: *Bodhisathwa Gowtham v. Subhra Chakaraborty.*, the Supreme Court observed that rape was not only an offence under the criminal law, but it was a violation of the fundamental right to life and liberty guaranteed by Article 21 of Indian Constitution. In *Saveetha Samvedhi* case (1996) 1 SCR 1046), the Supreme Court hold that a married daughter was allowed accommodation in parental house. In *Delhi Domestic Working Women's Forum v. Union of India*, The Supreme Court recommended including a clause in the sentencing guidelines for convicted rapists that would provide financial restitution to victims of the crime. At the time of the rapist's conviction, the court recommended that the victim receive Criminal Injuries Compensation for their suffering. If a victim becomes pregnant as a consequence of rape, she should be compensated by the Criminal Injuries Compensation Board or the court for her physical and emotional pain and suffering, as well as for the financial costs associated with giving birth. To wit: "*Gourav Jain v. Union of India.*" , The Supreme Court established criteria, including the need of



counseling, cajoling, and coercing the women to rehabilitate them and get them out of prostitution.

## CONCLUSION

The goal of restorative justice is to help convicted criminals make amends for their wrongdoing, restore the lives they've ruined, and learn from their mistakes. Instead than focusing on offender management via punishment and social isolation, restorative justice attempts to restore broken relationships. Women's financial problems are not adequately addressed by compensations. It's regrettable that violence against women has increased recently; this is a major cause for worry. The criminal justice system does face a number of challenges as a result of rape. There are calls for the maximum possible sanctions, but they seldom take into account the victim's actual situation. Victims' lives are rocked to their core by the trauma of rape. Many people are permanently damaged by it, losing the ability to form meaningful connections, having their behavior and values radically altered, and living in constant terror. When a woman is raped, it's not only her own community that suffers; we all lose. It wrecks a woman's mind from the inside out and throws her into an emotional tailspin. Therefore, rape is the most despised criminal act. The most fundamental human right is the right to life, which includes the right to live with human dignity as outlined in Article 21. This crime violates both of these rights and is thus a violation of basic human rights. Women who are victims of rape suffer physical and emotional harm. As a result, healing from such a terrible event might take a long time. In fact, survivors

of rape have said they seldom get over the traumatic event. It casts a shade over all of life's joy. Anxiety, shock, great terror, sadness, suicidal thoughts, and post-traumatic stress disorder plague the lady forever, regardless of whether she is married or single. Long-term impacts include things like food disorders, insomnia, libido issues, and a general decline in self-esteem. If the justice system, especially the executive, is not sensitive or their reacting instinct has been killed, there is no point in passing law after law and pronouncing judgment after judgment in defense of dignity and protection of human life, especially with respect to offenses against women. Members of the criminal justice and law enforcement systems, who are tasked with keeping the public safe, are a major source of violence against women.

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