

LEGISLATION RELATED TO WOMEN EMPOWERMENT AND GENDER EQUITY

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INTRODUCTION

Women in ancient India enjoyed equal status with men in all aspects of life. Rigvedic verses suggest that women married at a mature age and were probably free to select their own husbands. Women enjoyed equal status and rights during the early Vedic period. However, in approximately 500 B.C., the status of women began to decline, although Jainism and Buddhism allowed women to be admitted to religious orders, by and large women in India faced confinement and restrictions. With the onset of feudal age the status of women became worse, the practice of child marriages is believed to have started around the sixth century, though the Bhakti movements tried to restore women's status and questioned certain forms of oppression, yet traditions such as Sati, Jauhar, Devadasi etc were some of the practices which led to women loosening their self-identity. Though, some instances of these practices are still found in remote parts of India. The purdah is still practiced by Indian women in some communities. Child marriage remains common in rural areas, although it is illegal under current Indian law yet we can safely say thanks to the social reformers such as Ram Mohan Roy, Ishwar Chandra Vidyasagar and Jyotirao Phule, who fought for the betterment of women, the status of women in the society has witnessed a sea change.

In 1917, the first women's delegation met the Secretary of State of British India, to demand women's political rights, supported by the Indian National Congress. The All India Women's Education Conference was held in Pune in 1927, it became a major organization in the movement for social change. In 1929, the Child Marriage Restraint Act was passed, stipulating fourteen as the minimum age of marriage for a girl.

Women in India now participate fully in areas such as education, sports, politics, media, art and culture, service sectors, science and technology, etc. The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(d) and 42 of the Constitution are of specific importance in this regard.

LAWS RELATED TO WOMEN EMPOWERMENT ARE CLASSIFIED UNDER TWO MAJOR CATEGORIES

A. Indian Penal Code:

Indian Penal Code 1860, chapter XVI deals with offences affecting the human body, however if we look at the broader perspective there are many provisions under Indian Penal Code which indirectly deals with Sexual Offence and can be categorized as

- 1) Obscenity and Indecent Representation.
- 2) Eve Teasing, Improper Touching etc
- 3) Sexual Harassment
- 4) Molestation and indecent assault
- 5) Rape
- 6) Dowry Deaths and Bride Burning

That to deal with such deviant acts India Penal Code has prescribed the quantum of punishment.

(i) **Rape (Sec. 376):** A rapist, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(ii) **Kidnapping & Abduction for different purposes (Sec. 363-373) :** any person who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit

intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(iii) **Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B):** Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in laws or husband, for or in connection with, any demand of dowry, such death shall be called dowry death^l. Whoever commits dowry death shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life.

(iv) **Torture, both mental and physical (Sec. 498-A):** Husband or relative of husband of a women subjecting her to cruelty, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(v) **Molestation (Sec. 354):** Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

(vi) **Sexual Harassment (Sec. 509):** Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such gestures or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

B. Special Laws: Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

(I) **The Dowry Prohibition Act 1961:** This act prohibits the request, payment or acceptance of a dowry "as consideration for the marriage", where "dowry" is defined as a gift demanded or given as a precondition for a marriage. However as per section 3(2) of the Act, gifts given without a precondition are not considered dowry. Asking for or giving of dowry can be

punished by imprisonment of up to six months, a fine of up to Rs. 15000 or the amount of dowry (whichever is higher), or imprisonment up to 5 years. It replaced several pieces of anti-dowry legislation that had been enacted by various Indian states.

(II) The Immoral Traffic (Suppression) Act (SITA) (1956): It is the primary law dealing with the status of sex workers. According to this law, prostitutes can practice their trade privately but cannot legally solicit customers in public. Organized prostitution (brothels, prostitution rings, pimping, etc.) is illegal. As long as it is done individually and voluntarily, a woman can use her body in exchange for material benefit. In particular, the law forbids a sex worker to carry on her profession within 200 yards of a public place. Unlike as is the case with other professions, sex workers are not protected under normal labour laws, but they possess the right to rescue and rehabilitation if they desire and possess all the rights of other citizens.

(III) The Protection of Women from Domestic Violence Act 2005: It is an Act of the Parliament of India enacted to protect women from domestic violence. Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers.

Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(IV) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: It is a legislative act in India that seeks to protect women from sexual harassment at their place of work. The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth. Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

(V) **The Family Courts Act, 1984:** The Court established to conclude upon matters relating to family law like matrimonial reliefs, custody of children, maintenance for wife and children etc is termed as Family Court. The Status of Women Committee in 1975 together with the report of the 59th Law Commission recommended the Central Government to establish a separate judicial forum to settle family disputes immediately before the beginning of the trial proceedings. Hence it was decided to establish a family court in India by the Act of 1984. The Family Court shall have the same status as that of a District Court and shall exercise the jurisdiction accordingly and also empowered to initiate suits and proceedings in par with the conditions stipulated by the Act. Where there is any chance for settlement of the dispute between the parties, the Family Court shall postpone the proceedings and take steps for settlement at the earliest. Under the Act a party to the dispute cannot claim the service of a legal practitioner as of right, but the Court shall have the power to appoint a legal professional. An aggrieved party may, however, prefer an appeal to the High Court from an order of the Family Court. The High Court shall frame rules in the matters connected there with, after publishing in the Gazette. The Act also confers power on the Central and State Government to formulate rules as prescribed under the Act.

(VI) **The Special Marriage Act, 1954:** It is enacted to provide a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the religion or faith followed by either party. The Act originated from a piece of legislation proposed during the late 19th century. The Special Marriage Act, 1954 replaced the old Act III,1872. The new enactment has 3 major objectives:

- To provide a special form of marriage in certain cases,
- To provide for registration of certain marriages and,
- To provide for divorce.

(VII) **The Marriage Laws (Amendment) Bill, 2010:** To amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 to making divorce easier on ground of irretrievable breakdown of marriage was introduced in the parliament in 2012. The Bill replaces the words "not earlier than six months" in Section13-B with the words "Upon receipt of a petition." It also provides a better safe guard to wife by insertingsection13D by which the wife may oppose the grant of a decree on the ground that the dissolution of the marriage will resulting rave

financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage. New section 13E provides restriction on decree for divorce affecting children born out of wedlock and states that a court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

(VIII) **The Maternity Benefit Act, 1961 (Amended in 1995)** : The Maternity Benefit Act, 1961 protects the employment of women during the time of her maternity and entitles her of a 'maternity benefit' – i.e. full paid leave during her absence from work – to take care for her child for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.

(IX) **The Medical Termination of Pregnancy (MTP) Act 1971**, which was enacted by the Indian Parliament in the year 1971 with the intention of reducing the incidence of illegal abortion and consequent maternal mortality and morbidity. The MTP Act came into effect from 1 April 1972 and was amended in the years 1975, 2002 and 2017. Pregnancies not exceeding 12 weeks may be terminated based on a single opinion formed in good faith. In case of pregnancies exceeding 12 weeks but less than 20 weeks, termination needs opinion of two doctors. The Act clearly states the conditions under which a pregnancy can be ended or aborted, the persons who are qualified to conduct the abortion and the place of implementation. Some of these qualifications are as follows:

- (a) Women who's physical and/or mental health were endangered by the pregnancy;
- (b) Women facing the birth of a potentially handicapped or malformed child
- (c) Rape;
- (d) Pregnancies in unmarried girls under the age of eighteen with the consent of a guardian
- (e) Pregnancies in "lunatics" with the consent of a guardian;
- (f) Pregnancies that are a result of failure in sterilization.

(X) **The Equal Remuneration Act, 1976**: This act provides for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters, connected there with or incidental thereto. Apart from the above mentioned legal and constitutional provisions

the Government of India has set up few special initiatives for the protection and empowerment of women

(XI) Hindu Succession Amendment Act, 2005

Earlier, once a daughter was married, she ceased to be part of her father's HUF. Many saw this as curtailing women's property rights. But on September 9, 2005, the Hindu Succession Act, 1956, which governs the devolution of property among Hindus, was amended. According to Hindu Succession Amendment Act, 2005, every daughter, whether married or unmarried, is considered a member of her father's HUF and can even be appointed as 'karta' (who manages) of his HUF property. The amendment now grants daughters the same rights, duties, liabilities and disabilities that were earlier limited to sons.

(XII) National Commission for Women Act: It is a statutory body of the Government of India, generally concerned with advising the government on all policy matters affecting women. It was established in January 1992 under the provisions of the Indian Constitution, as defined in the 1990 National Commission for Women Act. The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of their campaigns have included dowry, politics, religion, equal representation for women in jobs, and the exploitation of women for labour. They have also discussed police abuses against women. The commission regularly publishes a monthly newsletter, Rashtra Mahila in both Hindi and English.

(XIII) Reservation for Women in Local Self Government: The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

(XIV) National Policy for the Empowerment of Women, 2001 : The goal of the National Policy for the Empowerment of Women, passed in the year 2001, is to bring about advancement, development and empowerment of women and specifically includes: (i) Creating an Environment through positive economic and social policies for full development of women to enable them to realize their full potential. (ii) The de jure and de facto enjoyment of all human rights and fundamental freedom by women on equal basis with men in all spheres-political, economic, social, cultural and civil. (iii) Equal access to participation and decision making of women in social, political and economic life of the nation. (iv) Equal access to

women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office, etc. (v) Strengthening legal systems aimed at elimination of all forms of discrimination against women. (vi) Changing societal attitudes and community practices by active participation and involvement of both men and women. (viii) Mainstreaming a gender perspective in the development process. (ix) Building and strengthening partnerships with civil society, particularly women's organization.

CONCLUSION

Though, women Empowerment is a buzz word to-day, and as discussed above there are various legal provisions for women safety and empowerment but the irony is, half of the population is unaware of their legal rights. Guaranteeing the rights of women is one thing but giving them opportunities to reach their full potential is critical. In my view the key area of focus in attaining gender equality should be ensuring that every woman get proper education and their Economic and Political Rights are protected. However, women have miles to go before they can claim that they are truly empowered.