Women Rights in India: Legal Norms and Practices

Ziya Hasan¹ and Ashok Kumar Upadhyay ² and Kritika Singh³
¹Department of Arts, Mangalayatan University, Aligarh, UP
²Department of Library & Information Science, Mangalayatan University, Aligarh, UP
³Faculty of Law, Usha Martin University, Ranchi, Jharkhand
Email: hasanziya9@gmail.com

ABSTRACT

Women are the cradle of any culture. Today in the era of globalization, the focal agenda of all countries is the socio-economic and political development of women. In our Constitution of India, there are many essential safeguards and also positive discriminations provided to women for empowering them. Besides these constitutional provisions, the government of India is relentlessly attempting effective actions for the betterment of women. This paper adheres to explore the legal norms and actual practices in India. In dealing with these norms and practices, an in-depth study of literature shows that despite many laws, the reality is very much different. Still, women are facing discrimination and injustice. The factor includes social and cultural attitudes, behaviour, and discriminating practices of society. Presently, data shows that there is still an alarming rise in the violation of women’s rights. The laws are lax in their proper implementation.

This paper is purely based on secondary sources. It concludes that proper implementation of the laws has become an urgent need of the hour for the protection of women in society. Still, a lot is to be done to bring these provisions of legislation come into action. Inadequate policing and judicial practices deny female victims getting proper justice. India has a long way to go to make Indian women equal citizens in their own country.

Keywords: Constitution, discrimination, India, women, women’s human rights.

INTRODUCTION

Women’s rights were until recently something of a stepchild in the field of human rights (Donnelly: 2005). Among all human beings, the most fundamental tool of women’s concern is recognized as their equal status in society. All girls and women are entitled to claim to realize all women’s rights. They are also the possessor of all civil, political, social, economic, and cultural rights on the same basis as men without any discrimination of sex and gender terms. The world has recognized the rights of men as an inalienable, integral, and indivisible part of universal human rights. The system of solidification of women’s rights can be traced principally with the shifting of the international consciousness of women’s issues which gyrated around the title of ‘International Women’s Year 1975’ and an accompanying first world Conference on women in Mexico City held in the same year. On the one hand, the follow-up conferences in Nairobi and Beijing, respectively, held in 1985 and 1995, had further given impetus to solidify and spread this global consensus. On the other hand, the Convention on the Elimination of all kinds of Discrimination against Women (CEDAW) was adopted by the U.N. General Assembly in 1979 to provide all women of the world a comprehensive list of rights which is also known as ‘International Bill of Women’s Rights.’ It came into enforcement on 3rd September 1981.

India is one of the significant countries that imperatively signed as well as ratified the CEDAW on 9th July 1993. The Convention has two main objectives one is to prohibit discrimination (Article 2), and the second is to ensure equality (Article 4). India had also ratified various international conventions and human rights instruments committing to secure equal rights of women, i.e., Universal Declaration on Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR), International Convention on Economic, Social, and Cultural Rights (ICSECR). Moreover, the principle of equality of ‘sex’ is enshrined in the Constitution of India in the Preamble, the Fundamental Rights, the Directive Principles of State Policy and Fundamental Duties. The Constitution grants unequivocally the equality to women and empowers the state to adopt efficacious
measures of optimistic and positive discrimination, which are ecstatically in favour of women. Within the right framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women’s advancement in different spheres.

The notion of ‘non-discrimination and equality can be clearly found in the Indian Constitution in a very comprehensive and detailed way as a part of Fundamental Rights. Article 14 of the Indian Constitution approves ‘equality,’ and Article 15 prohibits ‘discrimination.’

Article 14: The state shall not deny to any person equality before the law or the equal protection of the laws within in the territory of India.

Article 15: The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.

The Constitution further promises equal rights for women in the social, political and economic areas. It provides Article 16 as equality in employment. Though, the domain of Article 16 is restricted to only the public sector and didn’t include the non-governmental industry where a large number of women work.

Article 16: There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

Article 16(4): Nothing in this article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state.

Significantly, the Constitution also empowers the state by providing DPSP to making efforts for the protection and socio-economic development of women in the country.

Article 39(d): The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood.

Article 39(d)): equal pay for equal work for both men and women.

Article 39(A): To promote justice on the basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Article 42: The State to make provision for securing just and humane conditions of work and for maternity relief.

Article 46: The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation.

Article 47: The State to raise the level of nutrition and the standard of living of its people.

Article 51 (A) (e): To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.

Besides the above-mentioned Articles, the 73rd and 74th Constitutional (Amendment) Acts passed in 1992 by the Parliament overtly ensure one-third of the total seats for women in all elected offices in local self-government, whether in rural areas or urban areas, for ensuring their political participation at the grass-root level.

Article 243 D (3): Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be
filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat.

Article 243 D (4): Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

Article 243 T (3): Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality.

Article 243 T (4): Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide.

Besides these Iron pillars of the women’s constitutional status, the Indian government had passed since Independence various legal Acts for the amelioration of women’s condition in different spheres. However, In British Era, several reformers were emerged and showed their vigorous concern towards the Indian women. Some Acts were also passed at the time of the British Raj, but they got less importance and weak implementation due to ignorance and illiteracy among Indians. Some of those legislations are requisite to be jotted down here:

I. Personal laws:

**Hindu Personal Laws**

After Independence, far-reaching reforms took place when the Hindu Personal Law was codified for the first time in 1955. Though, the Hindu woman had enjoyed a high dignified status during the Vedic era, which was patriarchal in nature. Gradually, she had lost its existence in the medieval period, and their position became worst. Therefore, following the Independence, the government made its efficacious efforts to codify the Hindu Law by passing the following four different Bills:

a. Hindu Marriage Act, 1955
b. Hindu Succession Act, 1956
c. Hindu Minority and Guardianship Act, 1956
d. Hindu Adoption and Maintenance Act, 1956

**Muslim Personal Laws**

Muslim Personal Laws are primarily governed by the Quran and Hadith. The Quran itself granted several vital rights to women, such as inheritance, divorce, Mehr, remarriage, etc. Regarding its legitimacy and juristic enforcement, the MPL is hugely un-codified in its practical aspect. Though, the four statutes have been codified:

a. The Muslim Personal Law (Shariat) Application Act 1937
b. The Dissolution of Muslim Marriage Act 1939
c. The Muslim Women (Protection of Rights on Divorce) Act 1986
d. The Muslim Women (Protection of Rights on Marriage) Act 2019

II. Social Laws:

The social condition of women in India has been very petty for ages. They face subjugation, oppression, and exploitation in their family and society every day to day life. To wriggle out the women from this situation the government has taken some tremendous endeavours to provide women an effective security and protection from the perilous evil extant in the society. These are:

a. The Immoral Trafficking Act 1956
b. Sati Prevention Act 1986

c. The Dowry Prohibition Act 1961

d. The Domestic Violence Act 2005

III. Economic Laws

Indian women are economically marginalized and disregarded in their family and also due to education was not given to them for years, they do not have any voice in this regard and in spite of the various provisions and laws over property the practices are not in favour of them. They are completely dependent on men financially as all economic power used to be in the hands of men. Thus, women require financial strength to stand on their legs on par with men. Besides, if privileged women somehow get the chance to enter in the economic sphere of the country they may face multifarious discriminations and violence on the work place. Concerning this situation, the government provide some provisions through legal Act by protecting women’s rights on the work place so that women could feel save on work place and contribute to economic development of the country. Important Acts among them are as follow:

a. Maternity Benefit Act 1961
b. Equal Remuneration 1976
c. The Domestic Workers Welfare and Social Security Act, 2010
d. Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013

IV. Medical Laws

As women have the responsibility of childbearing, and in Indian society, they are expected to have children’s, their care and protection. All work should be performed by women, as these gender roles in society define women. Further, women do not have much access to their reproductive rights and will on their own pregnancy. Therefore, the government has enacted some provisions on the concerned issue. These are:

a. The Termination of Pregnancy Act 1971:

V. SPECIAL INITIATIVES FOR WOMEN

National Commission for Women:

In January 1992, the government had setup this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.


The Plan of Action is preeminent to ensure the girl child’s survival, protection, and development with the ultimate objective of building up a better future for the girl child.

National Policy for the Empowerment of Women (2001):

The Department of Women and Child Development in the Ministry of Human Resource Development has prepared a National Policy for the Empowerment of Women in 2001. This policy aims to bring about the advancement, development, and empowerment of women.

Practices in India

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In Indian society, women are suffering the most due to the massive violation of their rights, and still, they are the victim of the women’s rights abuse. They are beaten, burnt alive, marginalized, suppressed subordinated by society and considered as second sex and commodity. So far, they are not safe even in their mother’s womb. However, No one has the right to suppress the rights of women. God creates both men and women, and both are equal by the law of nature. They have equal rights to live with their very own self-esteem. But, the reality is that societies in the name of religions have typically maintained disagreements on women’s rights. Consequently, all spheres of contemporary societies in India experienced the ill effects of shifting degrees of infringement of women’s social privileges.

Moreover, the bare truth of gender discrimination is not often perceived as it is, while it is so profoundly rooted in Indian society. The guarantee of women’s dignity and status is a requisite means of eradicating gender discrimination and to protect women from gender-based violence. Women’s freedom and entitlements are very much significant for their socio-economic, political, and other upliftment irrespective of any gender discrimination. However, presently, all women subject to typical exploitation, outrage, harassment, savagery, and discrimination in our society. This narrow perception of ‘gender discrimination’ against women is a matter of genuine concern because it is prevalent gravely in India, even though the country is well known for having the largest democracy in the whole world. It continues to be a critical problem within Indian society.

Conclusion

Fundamental freedoms and human rights are the inherent right of humanity in the whole universe. It is the foremost responsibility of all governments to protect and promote this right for the sake of their people. These rights and freedoms have a unique nature, which is beyond question. There is no denying that women in India have made considerable progress in the last fifty years. Yet, they struggle against many handicaps and social evils in the male-dominated society. The Hindu Code Bill have given the daughter and the son an equal share of the property. The Marriage Act no longer regards women as the property of men. Marriage is now considered a personal affair, and if a partner feels dissatisfied, they have the right to divorce. But the passing of the law is one thing, and its absorption in society’s collective thinking is quite a different matter.

To prove themselves, equal dignity and status are given to women in the Indian Constitution, they have to shake off the shackles of extant slavery and superstitions. They should help the government and society eradicate the perils of evils of dowry, illiteracy, and ignorance among the eves. The dowry problem has assumed a dangerous form in this country. The girls’ parents have to pay thousands and lacs to the bridegrooms and their greedy fathers and mothers. If the brides’ parents do not give promised articles, the cruel and greedy members of the bridegrooms’ family take recourse to afflict tortures on the married women. Some women are murdered in such cases. The dowry deaths are heinous and atrocious crimes committed by inhumane persons. The young girls should be bold and courageous enough in not marrying the boys who demand dowry through their parents. The boys should also refuse to marry if their parents demand dowry. But unfortunately, the number of such bold and conscientious boys is very few. Even the doctors, engineers, teachers, and administrative officers do not hesitate to sell themselves to the wealthy fathers of timid girls. Such persons have brought disgrace to their crews in particular and society in general. The government should enact efficacious and stringent laws to afflict rigorous punishment on dowry seekers, women’s murderers and rapists.

Communities need vital standard paradigm change from crime against women to we are all part of the problem. We have a problem observing at issues such as rape or dowry death, gender violence as secluded and affecting some third person and instead of viewing at rape or dowry as isolated incidents, we need to look forward at regular, continuous outcomes of the complex social and economic factors affecting every individual and the community.

References

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