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A STUDY OF RIGHTS OF WOMEN IN INDIA

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INTRODUCTION

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women³. 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(c) and 42 of the Constitution are of specific importance in this regard⁴. India has an extensive history. Throughout the centuries its legal system has transformed to reflect the evolving social and cultural dynamics. However, women have historically faced disadvantages, under law. Unfortunately, some of the existing laws for women in India continue to be discriminatory and detrimental. There has been a movement aimed at reforming Indian law to ensure fairness and equality for women. This movement has achieved progress in bringing about a lot of changes. Nevertheless, there still remains a lot of work to be done ahead. This article aims to provide an overview of the status of women's rights in India and the laws for women in India in place, to protect them. In India there are laws that safeguard the rights of women, in aspects such, as family matters, criminal offenses, employment conditions and property ownership. Our

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³https://www.google.com/search?q=law+about+women%27s+rights+in+india&oq=Right+of+women+under+dv+act&gs_lcrp=EgZjaHJvbWUqDQgEEAAyhgMYgAQYigUyBggAEEUYOTIICAEQABgWGB4yCAGCEAA YFhgeMg0IAxAAGIYDGIAGIoFMg0IBBAAGIYDGIAGIoFMg0IBRAAGIYDGIAGIoFMg0IBhAAGI YDGIAGIoFMg0IBxAAGKIEGikFMgoICBAAGIAEGKIEMgoICRAAGIAEGKIE0gELNDawMTMwajBq MTWoAgiwAgE&sourceid=chrome&ie=UTF-8

⁴ <https://www.lexisnexis.in/blogs/laws-for-women-in-india/>

constitution provides rights to ensure the protection and progress of women. In this section of the article we will delve into the laws that protect women in India.

RIGHT TO MAINTENANCE

Every married woman has the right to receive support, or in legal terms, maintenance from her husband even if they are not living together. This right is protected by laws for women in India such as, the Hindu Marriage Act, 1955 (HMA) and the Protection of Women from Domestic Violence Act, 2005 (DVA). As, per Section 24 of the HMA either the wife or husband can seek monetary assistance. To be eligible, for this support the petitioner must show that they do not have a source of income to support themselves. The classical Hindu law on maintenance was devised in such a way that no member of the joint family, especially the female members, should be left unprovided for. Maintenance was a supreme duty that a Hindu owed to all those who were dependent on him, and which bound both the person and the property, including even the purchaser of joint family property.

RIGHT TO EQUAL PAY

One of the most important labour rights is the concept of equal pay for the same amount or equal amount of work done. In India the Equal Remuneration Act of 1976 (ERA) is the primary law that ensures both male and female workers are paid equally for doing work which are the same for both. The ERA also prohibits discrimination, against women based on gender in employment related matters like recruitment and promotion. The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. All forms of pay are covered by this law, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay⁵. An individual alleging a violation of the EPA may go directly to court and is not required to file an EEOC charge beforehand. The time limit for filing an EPA charge with the EEOC and the time limit for going to court are the same: within two years of the alleged unlawful compensation practice or, in the case of a willful violation, within three years. The filing of an EEOC charge under the EPA

⁵ <https://www.eeoc.gov/equal-pay/compensation-discrimination>

does not extend the time frame for going to court⁶.

RIGHT TO DIGNITY AND DECENCY

Every woman should lead a life of respect, equality and decency, free from any form of fear, force, violence or discrimination. According to Article 21 of the Constitution every citizen, including women is entitled to the right to life and dignity. Section 354A of the Indian Penal Code criminalizes harassment. The Sexual Harassment of Women, at Workplace (Prevention, Prohibition and Redressal) Act, 2013 establishes a framework for women to report incidents of harassment in their workplace and seek measures to address them. Different views exist regarding the meaning and usefulness of the concept of human dignity in adjudication. Some consider reasoning with the concept as being so discretionary and varied in nature that it represents no more than an empty shell.^{Footnote2} The concept can also be regarded as altogether useless.^{Footnote3} Others acknowledges that it acquires different meanings in different contexts, but sees patterns emerging from the developing case law. From this perspective, the concept of dignity is sufficiently coherent and substantive to be capable of guiding the courts.⁷

RIGHTS AT WORKPLACE

Each and every woman is entitled to a work environment that's safe and conducive, to their well-being. It is crucial that they are free from any form of discrimination or harassment. The Constitution along with legislations such as the Equal Remuneration Act of 1975 the Maternity Benefit Act of 1961 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 guarantees these rights to women. The attainment of rights at work, like the other objectives, is influenced by many aspects of economic, social and institutional structure (Ghai, 2002). Indeed, it is often argued that the concept of rights at work, as derived from ILO standards, is based on the classical employer-employee model in industrialized market economies, and that this has little relevance to the needs and conditions of most developing countries. The great majority of those countries share characteristics in which the language and culture of rights seem out of place. These characteristics are "widespread absolute poverty, extensive under- or unemployment, limited industrialization and dualistic economic structures" (Ghai, 2002, p. 6). There is a fear that the implementation of

⁶ <https://www.eeoc.gov/equal-paycompensation-discrimination>

⁷ [Hanna-Maria Niemi, "The Use of Human Dignity in Legal Argumentation: An Analysis of the Case Law of the Supreme Courts of Finland" https://www.tandfonline.com/doi/full/10.1080/18918131.2021.1999576#abstract](https://www.tandfonline.com/doi/full/10.1080/18918131.2021.1999576#abstract)

rights at work will put developing countries at a competitive disadvantage in international trade and in attracting foreign direct investment. This fear is reinforced by the ideology of neoliberalism and deregulation: the belief that the state should have a minimal role and those “free” and flexible labour markets, supported only by private law rather than public intervention, are the best or only way to ensure economic development and, in the long run, improved conditions of work⁸.

RIGHT AGAINST DOWRY

Lots of women are not able to get married because of unnecessary dowry demands from the other side. The Dowry Prohibition Act, 1961 prohibits the dowry system, i.e. both, the giving and taking of dowry. Every woman in this country has the right to be free from dowry demands, harassment and abuse. Dowry is a word that is very prevalent and common in Indian households. It is a practice that has become a parasite for the Indian society and which has eroded the beautiful institution of marriage. It is not a new practice but has been followed from ages, and its impact is such in Indian society that one can make efforts to reduce it, but it cannot be totally eradicated. Several laws have been enacted to prohibit the practice of dowry, but the legal clutches are weaker than the ambit of the practice of dowry. Further, the article shall enumerate the social and legal consequences of practicing dowry along with its other various aspects. According to section 3, if any person after the commencement of the Act gives or takes, abets the giving or taking of dowry shall be punished with an imprisonment for a term not less than five years and with fine which shall not be less than fifteen thousand rupees or the amount of the value of dowry, whichever is more. According to section 4, if any person directly or indirectly demands dowry from the parents, relatives or guardians of the bride or the bridegroom shall be punished with an imprisonment of not less than six months and which shall extend to two years and with fine which may extend to ten thousand rupees.

RIGHT TO FREE LEGAL AID

Where a woman cannot pay for her legal support, she will have the opportunity of attaining it free of charge. Under the Legal Services Authorities Act, 1987, this is regarded as a right. The Legal Services Authorities Act provides for establishment of legal services authorities at the central, state and district level. Legal aid is a government program that provides help, advice, and representation to those who cannot afford it. Free legal aid is every Indian's fundamental

⁸https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@inst/documents/publication/wcms_079203.pdf

human right according to the Indian Constitution. The National Legal Services Authority regulates this component of legal services. It guarantees help to the poorer parts of society who fall under section 12 of the Legal Services Authority Act, 1987. Legal help to the poor, weak, and illiterate is required for the rule of law to exist. Poor, illiterate people are denied access to justice unless they are given legal counsel.

The Indian Constitution requires the court to be independent and impartial. As a result, courts are accountable for upholding the Constitution and protecting citizens' rights, regardless of their financial circumstances.

RIGHT TO SELF-DEFENCE

Under Section 100 of the Indian Penal Code (IPC), every person, including a woman has the right to protect her body from any violence, attack or assault which can lead to apprehension of death, grievous hurt, kidnapping etc. An individual has the privilege to protect against the assault of an attacker by utilizing such power as might be fundamental. This right isn't restricted to the safeguard of his body but rather stretches out to that of his family and, conceivably, in the instances of a felonious attack, even to that of one who very his insurance. It is no offence to safeguard oneself or some other from unlawful viciousness causing sensible dread of death or deplorable substantial damage or to utilize power in the execution of an obligation forced by law, given no more noteworthy mischief is delivered than needed. The strategy behind the right is to make or empower an individual to forestall another from submitting an offence. No individual has the legitimate obligation to run from the impending risk rather, it is relied upon and is allowed to him that he can take a plan of action to the utilization of power to turn away the risk. The law doesn't anticipate that a duty should be withdrawn from the people. Hostile words without going with the danger of quick actual mischief, be that as it may, don't legitimize the utilization of power in self-defence⁹.

RIGHT AGAINST DOMESTIC VIOLENCE

Some or the other day, it's always in the news that a daughter, wife, daughter-in law faces harassment and abuse, not only sexual but physical and mental too. DVA provides protection of women from domestic violence. If any woman suffers such abuse and violence, section 12 of DVA becomes applicable. Protection of Women from DVA, 2005 is one of the key Acts and

⁹ <https://jotwani.com/the-self-defense-law-in-context-with-the-indian-laws/>

laws for women in India meant for protecting women who are oppressed by domestic violence. The law provides for strict legal actions against husbands that harass abuse and maltreat women in their own houses. The law strives to provide protection orders, residence orders, as well as monetary relief, which is meant to secure their safety and general wellbeing. Protection of Women from Domestic Violence Act 2005 has come into force from 26.10.2006. The Act is aimed at providing protection to wife or female live-in partner from violence at the hands of the husband or male live-in partner or his relatives. The Law extends protection to women who are sisters including adopted sisters and mothers. Domestic violence under the Act includes actual abuse or threat of abuse, whether physical, sexual, verbal, emotional, or economic. Harassment by way of unlawful dowry demands to the women victim or her relatives would also be covered under the definition of Domestic violence. The Department of Social Welfare is the Nodal Department for the implementation of provisions under the Act. For effective implementation, the Rules provide for appointment of Protection Officers in each district as per section 8 of the Act and provide them with necessary infrastructure to enable them to start functioning. Invite applications from service providers as per Rule 11 and register them after due verification as regards their suitability. Publish the names and addresses with telephone number of the Protection Officers and the service providers. The Department of Social Welfare has taken decision to appoint 18 Protection Officers on contract basis for which advertisements in Times of India has also appeared today i.e., 11.12.06. Meanwhile, the Department has designated 9 Welfare Officers as Protection Officers who are currently functioning from their present place of posting in various offices of Department of Social Welfare. The Protection Officers shall be under the control and supervision of the Magistrates and shall perform the duties imposed by the Magistrates¹⁰. The Rules provide for duties and functions of the Protection Officers which shall be as under:

1. To assist the aggrieved person in making a complaint under the Act. If the aggrieved person so desires;
2. To provide her information on the rights of aggrieved persons under the Act.
3. To assist the person in making any application under section 12, or sub-section (2) of section 23 or any other provision of the Act.
4. To prepare a "Safety Plan" including measures to prevent further domestic violence to the aggrieved person after making an assessment of the dangers involved in the situation and on an application being moved under section 12;

¹⁰The Protection of Women from Domestic Violence Act, 2005, <https://wcd.delhi.gov.in/scert/protection-women-domestic-violence-act-2005>

5. To provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;
6. To assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;
7. To assist in obtaining transportation for the aggrieved person and any child to the shelter;
8. To inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of their members to be appointed as counselors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under Section 15;
9. To scrutinize the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;
10. To revise once in three years the list of available counselors by inviting fresh application and forward a revised list of Counsellors on the basis thereof to the concerned Magistrate;
11. To maintain a record and copies of the report and documents forwarded under section 9, 12, 20, 21, 22, 23 or any other provisions of the Act of these rules;
12. To provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidence of domestic violence;
13. To liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;
14. To maintain proper records of the service providers, medical facility and shelter home in the area of his jurisdiction.

Similarly, the Service Provider is entrusted with the responsibility to record domestic incident report and get aggrieved person medical aid, legal aid and shelter. The Service Provider should be a registered organization as per Section 10(1) of the Act. The Protection Officers are to be attached with the Magistrates of the courts for the area notified for each protection officer. Therefore, the Protection Officers are required to function from all the district Courts and needs premises within the court. For effective implementation, they need to be provided with vehicles for spot visits and making reports, staff to assist in maintaining records and corresponding with the aggrieved person, furniture and fixtures for establishing the office. The implementation of the Act provides for effective coordination and correspondence between Protection Officers,

Police aggrieved persons and her family/relatives, district court, there is likely to be a number of cases being registered under the Act. This also requires a great coordination and monitoring among all these stakeholders as all the actions have to be reported within the specified time. Although the rules of the Act provide for appointment of Protection Officers only, there is requirement of a monitoring authority/officer in view of the volume of work in each case, and the number of cases likely to be registered under the Act. Accordingly, it is proposed that a Chief Protection Officer may also be appointed for addressing all the requirements under the scheme for implementation of Protection of Women from Domestic Violence Act 2005. The Chief Protection Officer can function from office in Head Quarters of Department of Social Welfare¹¹.



¹¹The Protection of Women from Domestic Violence Act, 2005, <https://wcd.delhi.gov.in/scert/protection-women-domestic-violence-act-2005>