

WOMEN RIGHTS IN CONSTITUTION OF INDIA

Dr. Varsha
Principal
Biyani Law College, Jaipur

ABSTRACT:

Every individual is entitled to basic human rights. They include rights to live peacefully, right to equality, right to enjoy highest order of physical and mental health, right to practice religion of their choice, right to own property, right to maintain their married and personal life. Women consists almost half of the population and to maintain harmony in society women must be given equal rights and opportunities as their male counterparts. There are various situations in which women are even given an edge over men. The purpose of this study is to enlist various rights provided to women and how these rights came into existence. This study includes some landmark cases which have greatly contributed for women's rights in India. This study also focuses on the misuse of rights by women and the areas of improvement to limit the same. As a progressive society, India has upgraded itself in all the aspects and the concept of women rights is also not untouched by changes. we have accepted the changes and from time to time various rights are provided to women in almost all the spheres of life.

Constitution, legislation and judicial decisions are the three main sources of rights of people and this study most of the rights which are provided to women.

[1] INTRODUCTION

According to the Stanford Encyclopedia of Philosophy, "rights structure the form of governments, the content of laws, and the shape of morality as it is currently perceived". For a society to be progressively harmonious, all the individuals must have equal access to the opportunities which comes with equal rights to all. India has been a patriarchal society since the medieval history period. Today also we can observe the traces of patriarchy in many parts of our country.

India is a country where women have comparatively more rights than man in most of the spheres. Women rights are necessary to maintain harmony among both the genders, also for participation of women in economic activities, to keep women safe against the social evils

likedowry, abduction and crimes against women. Rights empower women to have beat the patriarchy and develop a sense of equality.

[1.1] SOURCES OF RIGHTS:

A person can be entitles to multiple rights from multiple resources depending upon the country one lives in ,the profession one has, the society one lives in and the religion one follows. In general, there are three major sources of right, which are:

- Constitution
- Legislation: central, state or local
- Judicial rulings

All of the above sources have rights and correlative duties. There can be other sources as well but here we view this topic on a large spectrum.

[1.2] TYPES OF RIGHTS

The rights, derived from either of the source mentioned above, are further classified into various types depending upon its nature. Following are some of the classifications of rights:

- **NATURAL V/S LEGAL RIGHTS** : natural right are universal in nature and are applied to all like *right to live* whereas legal rights are based on custom, laws, statutes like *right to vote*.
- **CLAIM V/S LIBERTY RIGHTS** : a claim right is a right that mentions that another person has an obligation towards the right-holder whereas a liberty right is a freedom for the right-holder to do something.
- **POSITIVE V/S NEGATIVE RIGHTS** : positive right means a permission to something like *right to practice religion* whereas a negative right refrains the doing of something like *right against exploitation*.
- **INDIVIDUAL VS GROUP RIGHTS:** individual rights are held by individual people regardless of the group the belong to whereas rights which are available to a person only being a part of a group like labor union etc.
- **OTHER RIGHTS:** there are certain other classifications of rights like economic rights, political rights, economical rights, cultural rights.

2] RIGHTS OF WOMEN UNDER CONSTITUTION

- **[2.1]Fundamental Rights:** fundamental rights are the rights which are guaranteed by Indian constitution to every citizen irrespective of age, gender, caste, religion, race etc. these rights are available to all i.e. both men and women. Fundamental rights are mentioned in part 4 , from section 13 to 35 of constitution of India. following are the fundamental rights:

1. Right to equality(article 14-18)
2. Right to freedom(article 19-22)
3. Right against freedom(article 23-24)
4. Right to freedom of religion(article 25-28)
5. Cultural and educational rights(article 29-30)
6. Right to constitutional remedies(article 32)

- Every citizen who have attained the age of 18 has the right to vote under section 325 and 326 of the constitution.

- Part 2 of constitution deals with The Right of citizenship which is also known as “Right to have rights”. All the rights are available to all the citizens irrespective of their age, gender, religion, etc..

- **[2.2]Rights which are exclusively in favor of women:** Along with fundamental rights there are certain rights which are exclusively available for the favor of women. Following are the exclusive rights:

- Article 15(1) -the state shall not discriminate against anyone on the ground of sex.
- Article 15(3)- the state can make affirmative discrimination in favor of women.Article 16(2)- no citizen would be discriminated for employment on the ground of gender.Article 39(a)- the state shall ensure equal opportunities of adequate livelihood for both men and women.
- Article 39(d)- the state shall ensure equal pay for equal work for men and women.
- Article 39(e)- the state shall ensure that health and strength of women workers is not abused.
- Article 42- the state shall make provisions for humane conditions at work and maternity relief for women.

- Article 51-A(e)- it is the duty of every citizen to renounce practices derogatory to dignity of women.
- Article 243 D(3)-One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women.
- Article 243 D(4)-one-third of the offices of chairpersons at all levels of panchayat shall be reserved for women.
- Article 243 T(3)-one-third of the seats to be filled with direct election in every municipality shall be reserved for women.
- Article 243 T(4)-the offices of chairpersons in every municipality shall be reserved for women as state legislative may decide.

[3] RIGHTS AND SAFEGUARD OF WOMEN UNDER VARIOUS LEGISLATIONS:

- Code of criminal procedure,1973- SECTION 46(4) No woman can be arrested after sunset and before sunrise and without the presence of women police officer.
- CrPC,1973- section 125-a married woman and a divorced women has the right to be maintained by her husband.
- CrPC,1973- Section 106(1)- No woman should be called to police station or any other place other than her residence for questioning.
- Indian Penal Code,1860 protects Indian women from dowry death(section 304B), rape(section 376),outrage a woman's modesty(section 354) , kidnapping(section 366), cruelty(section 498A) and Right to private defense.Protection Of Women from Domestic Violence Act,2005 provides safeguard of women from all kinds of domestic violence and provide the right to get compensation and maintenance from the perpetrator.
- Immoral Traffic(Prevention) Act,1956 prevents trafficking in women and girls for the purpose of prostitution as an organized source of livelihood.
- Commission of Sati(prevention) Act,1987 prevents the happening of sati and its glorification on women.
- Medical Termination Of Pregnancy Act,1971 provides women the right to report to police in case of forced abortion. Also pregnancy can be only terminated by certified medical experts on humanitarian grounds only.
- Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection)

Act (1994) prohibits the sex selection before or after conception to prevent Female feticide.

- Dowry Prohibition Act,1961 prohibits giving or taking or dowry at or before or after marriage from women and her family.
- Maternity Benefit Act,1961 provides women the right to have paid maternity leave before, during and after child birth from the employer.
- Legal Services Authority Act,1987 provides free legal aid to every Indian woman.
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act ,2013 protects women from sexual harassment at workplace both public and private.
- Indecent Representation of women(prohibition)Act,1986 prohibits indecent representation of women through advertisement or publication, paintings, writings, figures or any other mode.
- Minimum Wages Act,1948 provides women with right against discrimination in terms of minimum wages on the basis of sex.
- Equal Remuneration Act ,1976 empowers women to get equal payment for equal work as men.
- Factories Act,1948 and Mines Act,1952 prohibits the employment of women form 7PM to 6AM for the safety of women.
- Hindu succession Act,1956 provide women equal right as men to inherit parental property.Hindu Marriage Act,1955 prohibits polygamy and women have right to seek divorce on the same ground. This act also provide equal rights to men and women in terms of marriage and dissolution of marriage.
- Dissolution of Muslim Marriages Act ,1939 provides muslim wife the right to seek dissolution of marriage.
- Muslim Women (Protection of Rights on Divorce) Act (1986) protects the right of women who have been divorced.

[4] JUDICIAL DECISIONS THAT ENTITLE WOMEN TO NEW RIGHTS VINEETA SHARMA V/S RAKESH SHARMA(2020)

Supreme court held that Daughters would have equal coparcenary rights in Hindu Undivided Family by birth and could not be excluded from inheritance, irrespective of whether they were born before 2005 amendment of Hindu succession act,1956.

VISHAKHA V/S STATE OF RAJASTHAN(1997)

This landmark case led SC to direct centre regarding safety of women at workplace. SC gave Vishakha guidelines and asked centre to formulate legislation for the same(Sexual Harassment of women at Workpace (prevention, prohibition and redressal)act,2013).

THE SECRETORY,MINISTRY OF DEFENCE V/S BABITA PUNIA AND OTHERS(2020)

Supreme court held that all the women army officers are eligible and have the right to get permanent commission allowing them to be in commanding roles.

SHAYRA BANO V/S UNION OF INDIA(2017)

SC declared the practice of instant triple taalaq(Talaq-e-bidat) is against basic tenets of the Quran. Court directed the centre to pass a legislation regarding the same which led to the formulation of Muslim Women(Protection of Rights of marriage) Act,2019.

INDIAN YOUNG LAWYERS ASSOCIATION & OTHER V/S STATE OF KERALA AND OTHERS(2018)

SC held that devotion cannot be subjected to gender discrimination and ruled that women of all ages have the right to visit Sabrimala temple against the centuries old tradition of Prohibition women of menstrual age from entering the temple which violated Article 25 - right to freedom of religion.

[5] MISUSE OF RIGHTS BY WOMEN

Most of the rights mentioned above are either Punishable or compensable or both when violated. And when monetary benefits are attached to a right, there are a huge number of chances for the right to get misused. Since Indian women has a number of right available to them , most of the time these rights are misused against men.

Supreme court in a landmark judgment said-“women are spreading legal terrorism in India”.

More than 66% of respondents, to a recent survey by Legal Services India e-Journal, say that laws for protection of women are being misused. There are laws which are being misused by women, they are mentioned below:

- Dowry laws
- Rape laws
- Assault laws
- Domestic violence laws
- Molestation laws
- Alimony provided to divorcee
- Paid maternity leave related provisions
- Custody of child in divorce

The above mentioned laws can be easily misused because in term of criminal offence there are provisions to directly arrest the men and all these laws are gender biased and give priority to women .There is a pre-conceived notion that a women can only be a victim. In our gender biased laws “women are pronounced innocent unless proved guilty” and “men are pronounced guilty unless proven innocent”.

[5.1]Recent cases of women misusing their liberty and rights:

1. 19 June 2022- A heavily intoxicated women in Mumbai abusing and misbehaving cab driver, passers-by and Mumbai police.
 2. 30 July 2021- A girl named Priyadarshni abusing and assaulting a cab driver in Lucknow. Putting false allegation of hurt. FIR lodged against her and she apologized to the cab driver.
 3. 28 August 2019- in Amity University, Noida, two girls asked 15-20 goons to beat-up the victims brutally and then filed false molestation case against them.
- These are only few of the cases of misuse of liberty given to women.

NCRB DATA,2021 ON FALSE CASES AGAINST MEN

“Every 6 minutes a person is accused of false dowry case in India” “every 30 minutes a man is accused of a false rape case in India”

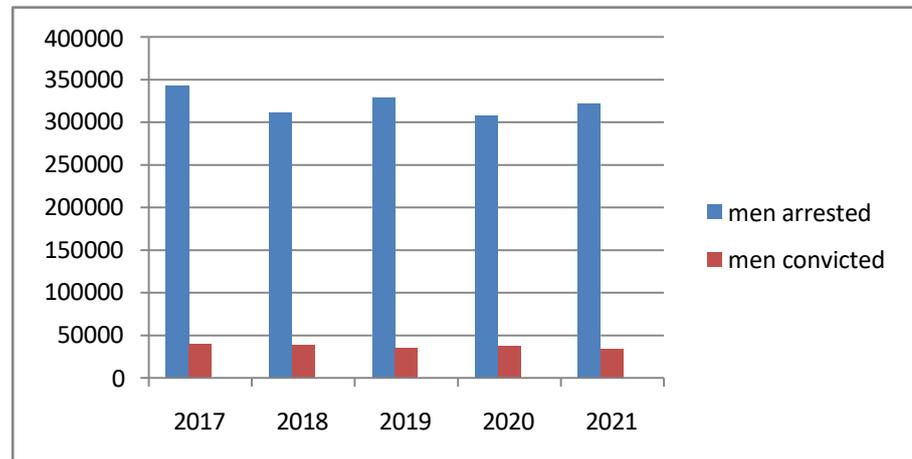


Table 1-NCRB data,2021 showing false rape case against men

In 2017, total of 3,42,197 men were arrested and only 39,529 were convicted. In 2018 total 3,10,999 men were arrested and only 38,923 were convicted. In 2019 total 3,28,467 men were arrested and only 35,202 were convicted. In 2020 total 3,08,070 men were arrested and only 37,582 were convicted. In 2021 total 3,21,517 men were arrested and only 34,027 were convicted.

Summarizing the above data , *around 88% of rape cases against men are false.*

Supreme court in 2015 observed that section 498A of IPC or anti-dowry laws and passed guidelines for the executives to prohibit the misuse of these laws and stop the fake allegations on men.

[5.2] PREVENTION OF MISUSE OF RIGHTS:

When a person is falsely accused of any crime against women, he is not the only one who suffers but his family, who is dependent on him suffers too. Our legislative and executive system needs to make some efforts in order to prevent misuse.

Following can be some of the steps which must be taken:

- Arrest without investigation should not be done unless there are evidence against men.
- The laws must be made stringent to improve the efficiency of executive bodies.
- The penalty on filing false case must be heavy.
- Along with penalty, there should be punishment for filing false cases so that people have fear of punishment before filing false cases.
- At last, it is the responsibility of people not to misuse any law. Laws are the medium for Justice not for harassment of other people.

[6] CONCLUSION

“The education and empowerment of women throughout the world cannot fail to result in a more caring, tolerant, just and peaceful life for all.”

-AUNG SAN SUU KII

India is a country where we have various legislations that ensure the safety, wellbeing and rights of women. Judiciary also plays an important role in the ensuring rights of women. The rights to women are a symbol of a progressive and liberal society. Some rights and laws are being misused by some women for the sake of monetary benefits or to take undue advantage of a men's situations. With amendment into the existing laws we can ensure that the laws are used and not misused. If a person has a right then it should be enforced to protect them not to harass anyone.
