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Rights of Women in India: A Critical Perspective

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Abstract:

Now a day's right of women is a much discussed as well as debated issue all over the world. The growth of Feminist movements has altered the traditional despairing conditions of women by providing them equal rights with men. India, the largest democracy in the world, is very sensitive towards the need of women to make their status elevated. From ancient times to the present day, constant efforts have been made to ensure the rights of women.

This article will scrutinize the condition of women in India. What kinds of social, political, economic and cultural problems do they face in their everyday life and what measures the government has taken to fight back against these evils, what types of rights do women enjoy in our country, and what policies the government has taken and how far the implementation of these laws and regulations have been able to make the condition of the women better, what is the road ahead- will be some of the vital areas to look upon. While preparing the paper, data has been collected from different secondary sources. Experience of different women has been noted and a thorough observation has been made to monitor the conditions of the women. Elaboration of different Court Cases has been used as authentic references to support a particular issue/matter. Through elaborate analysis, an attempt has been made to dive into the core of the problems and dig out the possible remedies.

Keywords: Women's rights, empowerment, crime, violence, societal norm, laws, acts.

Background of the study: With the growth of the feminist movement across the world, women's rights have become a serious matter in the Constitutional and legal framework of any State. India being the largest democracy and the most populous country in the world, naturally raises curiosity among others in terms of the rights of women. After the independence of India, when the process of making the Constitution started, the makers realized that the only way to make women's position better in the country was to ensure their rights. Legal and Constitutional provisions of rights would be able to make the conditions of women better by guaranteeing them security, and legal shelter and in turn confirming the enjoyment of other socio-economic rights of women. The notion of gender equality has been manifested in the Indian constitution through the Fundamental Rights, Directive Principles of the State Policy and also in the Preamble. The Indian Constitution

promises equality for women and permits the State to implement methods of positive discrimination in favour of women. Being a liberal democratic state, India always focuses on the rights of women and takes constructive steps to make the condition of women better.

The Indian Scenario: Women's status in India has been subject to numerous changes over the past few millennia. All over the world women have played a commendable role. It is often said that the civilization of a country is measured by the freedom its women enjoy. In the ancient period, Indian women enjoyed equal rights with men. They did not have to observe purdah pratha (custom). They enthusiastically participated in all types of social, cultural and religious activities. It was after the Mughal invasion and during the British period, women faced great challenges. In the medieval period, women's status worsened drastically. The ill practice of Sati and child marriage made their condition miserable. Great Social reformers of India like Raja Ram Mohan Roy, and Iswar Chandra Vidya Sagar fought back for the rights of women and made their lives better. After independence. The leaders also took multiple initiatives to uplift the status of women constitutionally and legally. Despite these efforts from different segments of society, women have not been completely empowered. Women are facing numerous unequal challenges almost in every sphere. Incidents of dowry, domestic violence, sexual harassment, rape, kidnapping, trafficking, female infanticides, and trafficking are proving the helplessness of women. So, there is an extreme need to elevate the status of women economically, socially and politically in an inclusive way to unknot this vicious cycle. The marginalized women's condition demands special emphasis as the level of deprivation is greater for them. Therefore, women's empowerment in the truest sense is the only feasible solution to make them able to protect their rights with dignity. Women's empowerment is essential to ensure the progress of society as women are great contributors to the process of development especially in the economic sphere. Women's empowerment comprises multiple things like social equality, economic opportunity, property rights, political representation and many more. Govt. India declared the year 2001 as the year of "EMPOWERMENT OF WOMEN." Despite all the efforts women in India face tremendous discrimination in all fields. The main reasons responsible for their suffering can be described as follows:

Different types of violation of the rights of Women: Some challenges are troubling the issues of women's rights in India.

- 1) **Social Customs-** In many parts of India societies are still reluctant to allow women to move outside the private sphere of home and face the outer world. Taking care of the family members, childbirth and child-rearing are considered to be the prime responsibilities of women. Women are not getting equal social opportunities with men and are often treated as second-class citizens.
- 2) **Women and Education:**

The status of women's education is depressing and one of the prime causes behind their suffering. Education can make a woman aware of her rights and make her living condition better but in many cases, it has been found that women do not have access to education. Numerous studies have shown that lower level of women's

literacy rates affects their health, nutrition, earning potential and ability to decide within the household. There is a disparity in literacy rates in various states of India. For example, while Kerala has a female literacy rate of about 86 per cent, Bihar and Uttar Pradesh have female literacy rates of around 55-60 per cent. Additionally, the disparity of female literacy rates across rural and urban areas is also noteworthy in India.

- 3) **Female Infanticide:** The societal structure of India is patriarchal and a preference for a 'boy' child is a social evil. Girl children are often unwanted and treated as a liability in many families. Naturally, the evil of female infanticide (identifying the gender of the foetus and aborting it when it is revealed to be a female) is looming large in our society. Female infanticide has led to a disproportional male-female sex ratio in India.
- 4) **Pay disparity:** A great pay disparity exists among men and women in India. As per a report published in 2019, Indian women earn 19 per cent less than men. Despite having equal qualifications and competence, women are deprived in terms of equal pay scale in both organized and unorganized sectors. This discrimination reflects the patriarchal mindset of society which prioritizes gender over expertise.
- 5) **Child marriage and ill health:** The culture of child marriage is prevalent in many parts of India which causes mental stress for the girl as often she is denied access to education after marriage and is forced to take the responsibility of family and child. Women's health is not considered a matter of importance and often they suffer from malnutrition, anaemia and weakness. Patriarchal society ignores these issues by glorifying the sacrifice made by women as a sign of duty and dedication towards family.
- 6) **Lack of economic self-dependency:** Women's active participation in the Indian workforce is very low and over the years the rate has been declining. Male-dominated orthodox and patriarchal society is largely responsible for this condition. In many cases, it has been found that looking after the family welfare, childbirth and child-rearing are considered to be the prime tasks of women and their participation in the workforce is treated as unnecessary and detrimental to the societal norm. Therefore women have to depend on men economically which lowers their self-esteem and confidence.
- 7) **Crimes against women:** There has been violence against women in almost every aspect of life. Violence against women includes rape, molestation, kidnapping, dowry, female infanticide, sexual harassment, custodial rape and death, witch-hunting, etc. Victims of rape are treated disgracefully, without any fault of theirs. Consequently, very few victims dare to report the matter and seek the help of the judiciary. Trafficking of women and girl children for forced prostitution and sex trade are other dangerous crimes found in India. The practice of dowry has resulted in the deterioration of women's place in society. Problems related to dowry are often found to end with the brutal torture of the groom and ultimately her murder by the money mongers.

To fight back against these crimes and protect women, there are two types of rights in India for women namely constitutional rights and legal rights. Constitutional rights are ensured in the several provisions of the constitution. Alternatively, the legal rights are specified in the numerous laws (acts) of the Parliament and the State Legislatures

Constitutional Rights to Women:

Article 14: This article guarantees equality before the law or the equal protection of the laws within the territory of India. This very significant provision offers equal legal protection to women against any women-based crime.

Article 15: As per 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 and as per article 15(3) the state has the authority to make any special provision for women.

Article 16: This article confirms equal employment opportunities for every citizen of India. There should not be any discrimination in respect of employment opportunities under the State on the grounds of sex.

Article 21: This article deals with the right to life with dignity. This provision has been invoked to safeguard the rights of women such as the right to divorce, to live a life free from violence and the right to safe abortions.

Article 39: Article 39(a) of the Constitution of India (coming under the Directive Principles of the State Policy) deals with the provisions of equal justice and free legal aid. Article 39(d) ensures equal pay for equal work for both men and women.

Article 42: Article 42 of the constitution of India seeks to ensure just and humane conditions of work and for maternity relief. Women are often treated badly in offices, and sometimes they get hackled by their senior male colleagues. In this context, the provisions of Article 42 are very significant and now employers must provide good working conditions to all employees.

Article 51A: Article 51A of the Constitution mentions about the fundamental duties of all citizens. It specifies that all citizens must promote harmony and abandon practices which are derogatory to the dignity of women.

Article 243: Article 243 D (3) provides for reservation of not less than one-third of a total number of seats in Panchayats for women to be allotted by rotation to different Constituencies and Article 243 T (3) provides for reservation of not less than one-third of a total number of seats in Municipalities for women to be allotted by rotation to different Constituencies. Article 243 D (4) and Article 243 T (4) provide that not less than one-third of the total number of officers of chairperson in the Panchayats and municipalities at each level is reserved for women. This opportunity of being a part of the local-level administration process has upgraded the social conditions of women in village areas.

Legal rights for women: Laws related to women are classified under two major categories

A) Indian Penal Code:

(i) Rape (Sec. 376 IPC): 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 to beg 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 IPC): 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 IPC): Husband or relative of husband of a woman 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 IPC): Whoever assaults or uses criminal force on any woman, 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 IPC): 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:

(i) The Protection of Women from Domestic Violence Act 2005: This act was enacted to protect women from all forms of domestic violence. It protects the wife or female live-in partner from domestic violence from the husband or male live-in partner or his relatives. This act includes violence of any kind like physical, sexual, verbal, or emotional.

(ii) Dowry Prohibition Act (1961): This act prohibits the giving or receiving of dowry at or before or any time after the marriage of women.

(iii) The Family Courts Act (1954): The Family Courts Act provides for the establishment of family courts for speedy settlement of family disputes. This act concludes by relating to family matters like matrimonial reliefs, custody of children, and maintenance for wife and children.

(iv) The Sexual Harassment of Women at Workplaces Act (2013): This act seeks to protect women from sexual harassment at their place of work and contribute to the

realization of their rights to gender equality, life and liberty and equality in working conditions everywhere.

(v) The Medical Termination of Pregnancy Act (1971): This act intends to reduce the incidence of illegal abortion and maternal mortality and morbidity. This act provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.

(vi) The Equal Remuneration Act (1976): This act provides for the payment of equal remuneration to both men and women workers for the same work. It prevents discrimination on the grounds of sex. So, working women have the right to draw an equal salary as compared to men.

(vii) Maternity Benefit Act (1961): This act regulates the employment of women in certain establishments for certain periods before and after childbirth and provides for maternity benefits.

(viii) Legal Services Authorities Act (1987): It provides for free legal services to Indian women.

(ix) Hindu Marriage Act (1955): This act introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to Indian men and women in respect of marriage and divorce.

(x) Hindu Succession Act (1956): This act recognizes the right of women to inherit parental property equally with men. The other various laws which also contain certain rights and safeguards for women include the Minimum Wages Act (1948), Employees State Insurance Act (1948), Employees' State Insurance Act (1948), Immoral Traffic (Prevention) Act (1956), Plantation Labour Act (1951), Bonded Labour System (Abolition) Act (1976), Muslim Women (Protection of Rights on Divorce) Act (1986), Special Marriage Act (1954), Foreign Marriage Act (1969), Hindu Adoptions and Maintenance Act (1956).

Cases and Laws Ensuring the Rights of Women: Equality of opportunity has been demonstrated and emphasized by the Supreme Court of India in *C.B Muthamma vs. Union of India*. In this case, the Indian Foreign Service (conduct and discipline) Rules of 1961 stated that women in the service should obtain permission before getting married and may also be asked to quit if the government determines that their dedication to their family and home interferes with their work. This rule was declared by the Court as in defiance of Article 16 of the Constitution of India. Hon'ble Justice Krishna Iyer observed: "We don't mean to universalize or dogmatize that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of peculiar employment, the sensitivity, but save where the difference is demonstrable, the rule of equality must govern." As a result, discrimination based on gender is prohibited in State employment, excepting exceptional circumstances or the need and requirements of a particular service. The principle of equality in matters of employment has further been illustrated in the famous case *Air India vs. Nergesh Meerza*. In that case, the Supreme Court

ruled that the Air India Workers Service Regulation, which required air hosts to retire in the event of marriage or their first pregnancy, was unconstitutional. Also, the regulations gave the managing Director the authority to raise the age limit for Air Hostesses' employment from 35 to 45 years. It was determined that this, too, violated the equality principle because the managing Director had complete discretion to exercise it in one person's favour while refusing to do so in another. Discrimination that is prohibited by the constitution's Articles 15(1) and 16(2) shall not be based only on a person's sex. These constitutional articles do not forbid the State from discriminating based on sex in combination with other factors. Hence, the terms of the retirement of Air Hostesses violated Article 16 because they only considered sex as a factor.

Another manifest declaration of the constitution to achieve equality of status is a directive under Art 39. It provides (a) that the citizens, men and women, equally have the right to an adequate means of livelihood. The State shall, in particular, direct its policy towards securing (b) that there is equal pay for equal work for both men and women (c) That the health and strength of workers, men and women ... are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age and strength. The Principle underlying this provision is "equal wages for equal work" irrespective of "sex".

Several labour laws have been passed over the years, including the Equal Remuneration Act of 1976, the Bonded Labour System (Abolition) Act of 1976, the Factories Act of 1948, the Mines Act of 1952, the Workman's Compensation Act of 1923, the Plantation Labour (Amendment) Act of 1981, and many others. Several International Labor Organizations have been considered in this regard. For instance, India recognized Equal Pay for Work of Equal Value-regardless of "Sex" in 1958, and as a result, the Compensation Act was passed in 1976. In *Randhir Singh vs. Union of India* applying this principle, it was explained that it is true that the principle of "equal pay for equal work" is not expressly declared by our Constitution to be a fundamental right, but it certainly is a constitutional goal. Article 39 (d) of the constitution of India proclaims "equal pay for equal work for both men and women" as the Directive principle of State policy----means equal pay for equal work for everyone and between the sexes. The above principle of "equal pay for equal work" has also been reiterated by the Supreme Court in *Bhagwan Das vs. State of Haryana* and *R.D. Gupta vs. Lt. Governor, Delhi Administration*. It has also been made clear by the Supreme Court that this principle has to be read in the light of Art 14 and Art 16 of the Constitution. The Indecent Representation of Women (Prohibition) Act, 1986 An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for the matters connected therewith or incidental. The Hindu Succession Act of 1956 This Act recognized equal rights for women in the matter of inheritance of property. She can also mortgage the inherited property or use it for herself. After the amendment in 2005, this act included women in coparcenary and made a female Hindu, the absolute owner of her property. The Suppression of Immoral Traffic in Women and Girls Act of 1956 This Act aims to deal with the problem of prostitution of women and

girls. The main purpose of this act is to abolish the scope of prostitution and to reform the welfare of fallen women by setting up protective homes. The Hindu Marriage Act 1955 This Act recognized equal rights of men and women in the matters of marriage and divorce. Under the provision of this Act, the man or woman has equal rights to present a petition in a court of law for divorce. It gives women more bases to dissolve their marriage than men. The Equal Remuneration Act 1976 This Act ensures equal remuneration to men and women workers performing the same work. It also prohibits discrimination in recruitment, promotion, and training of jobs. The Companies Act 2013 According to this act companies have sought to create quotas for women directors, which is a standard norm in European countries. This act was recognized as breaking the glass ceiling in the board rooms. This Act prohibits the giving or taking of dowry that is any property or valuable security given or agreed to be given either directly or indirectly by any party or parents of either side at the time of the marriage ceremony. The dowry system has been a great social and health problem such as cases of burns or suicides. These cases are mainly due to the fact the dowry was not given according to the expectations of the bridegroom party. If any person violates the act may be punished with imprisonment for a term not less than 5 years and with a fine which shall not be less than Rs 15000/- or the amount of the value of such dowry. Still, this Act makes some effort to bring social change. Protection of Women from Domestic Violence Act 2005 An Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family. Domestic violence against women includes actual abuse or threat or abuse that is physical, sexual verbal, emotional or economic. This act provides the rights of women to reside in her matrimonial home or shared household whether or not she has any title or rights in such home or household. The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994, Amendment Act, 2002 The purpose of this Act is to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques to detect genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorder and for the prevent of their misuse for sex determination leading to female feticide. In 2013 India finely enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 prevention of Sexual Harassment against women at the workplace. This act allows that no women shall be subjected to sexual harassment at any workplace. Vishaka v. State of Rajasthan – the apex court held that the sexual harassment of working women amounts to a violation of the right of gender equality and the right to life and personal liberty. The employer or other responsible persons in workplaces or other institutions are under an obligation to prevent or deter the commission of acts of sexual harassment and to provide the proceedings for the prosecution of acts of sexual harassment by taking all steps required. Delhi Domestic Working Women's Forum V. Union of India (AIR 1995 SCC 14(19) - The Supreme Court stated that the national commission for Women should be asked to frame schemes for compensation and rehabilitation to ensure justice for rape victims. It has been further stated that because of the directive principle contained in Article 38(1), it is necessary to set up a criminal injuries compensation board

whether or not, a conviction has taken place. The Constitution empowers the central and state governments to adopt measures of women empowerment. Thus the Govt. of India has been trying to empower women through various schemes or initiatives related to women empowerment in India. A) The Ministry for Women and Child Development, and the Ministry of Human Resource and Development take initiative step in the year 1985. The Ministry for Women and Child Development was set up as a department for the development of children & women in the country. In 2006 this department was given the status of Ministry with powers to make plans, programmes, and schemes for the development of women and children. B) National Commission for Women On 31st Jan. 1992, the Government of India set setup the National Commission for Women under The NCW Act 1990 (Act No. 20 of 1990 of Govt. of India) with Mrs. Jayanti Patnik as chairperson. NCW was exclusively set up to help women via the constitution by reviewing legal and constitutional safeguards for women, recommending remedial legislative measures by fascinating quick redressal of grievances and advising Govt. on all policy matters related to women. C) National Policy for The Empowerment of Women In year 2001 Govt. of India declared the year 2001 as the year of women empowerment and the National Policy for the Empowerment of Women was passed. The policy was aimed at ensuring women's empowerment through positive political, economic and social policies for the full development of women. (D) Pradhan Mantri Ujjwala Yojana (PMUY) It is a welfare program of the government of India launched by Indian Prime Minister Shri Narendra Modi in 2016. The stated objective of the programme is to provide 50,00,0000 LPG Connections to women from families below the poverty line.

Apart from the above-mentioned laws and acts, multiple schemes are ensuring Women's empowerment in India-

- Beti Bachao Beti Padhao Scheme
- One stop centre Scheme
- Woman Helpline Scheme
- UJJAWALA: A comprehensive scheme for prevention of trafficking and rescue, Rehabilitation and Reintegration of victims of trafficking and commercial sexual exploitation
- Working Women Hostel
- Ministry approves new projects under Ujjawala Scheme and continues existing projects
- SWADHAR Grey (A Scheme for women in difficult circumstances.
- NARI SHAKTI PURUSKAR
- Support to training and employment programme for women (STEP).
- Awardees of Stree Shakti Puruskar, 2014 and Awardees of Nari Shakti
- Awardees of Rajya Mahila Samman and Zila Mahila Samman
- Mahila Police Volunteers
- Mahila E- Haat
- Mahila Shakti Kendras(MSK)

Issues relating to Women's Rights:

Women's Rights as Political and Civil Rights: The political rights of women consist of the right to vote, the right to contest in the election, the right to campaign and take part in political life, peaceful assembly, association etc. Civil rights include basic rights such as the right to life, liberty, equality, freedom of speech and expression, freedom of religion, access to information etc. They are also known as first-generation rights. In reality, despite the presence of all these laws and clauses women are incapable of enjoying them.

Representation of women in the union and state legislatures is insignificant. The debate has been raised regarding reservation or quota as a tool for the political empowerment of women. It led to the introduction of the 73rd and 74th amendments that provide one-third membership (33%) to women in the three-tier system of the local self-government (Panchayat Raj) in rural areas and local self-government bodies (Municipalities) in urban areas. The three-tier system consists of village, block and district levels. One-third of the seats are for women of Schedule Castes and Schedule Tribes. This is indeed a landmark achievement in the area of political empowerment of women. Recently the Constitution (106th amendment) Act 2023, reserves one-third of all seats for women in Lok Sabha, State legislative assemblies and the Legislative assembly of the National capital territory of Delhi., including those reserved for SCs and STs.

Women's Rights as Socio-economic Rights: The main socio-economic rights constitute rights to food, shelter, medical care, employment, work, social security etc. They are also commonly known as second-generation rights or welfare rights: These rights are important for complete development and full participation in society. Theoretically, all these rights and securities should be equally available to women. Women are more or less marginalized. They are treated as second-class citizens. Their role as active participants or agents of change is often ignored. The outlook of society and government towards women needs to be reformed. There is a need for change in the orientation of government and society towards women. Women need to be enabled to ensure their equal participation and give opinions on matters that affect their lives.

Future ahead: It is noticeable that the Indian Constitution guarantees frequent rights to women without distinction based on sex. Although women's rights are now acknowledged as human rights, this does not ensure their actualization. Much effort is needed for better outcomes and the full realization of everyone's human rights. To certify that the new progressive legislative provisions have a valuable impact on the protection of women's rights, the prevailing cultural and social perspective of the community should be changed. It is essential to find out the source of the problem. Women are assumed as the fragile section in our society, and accordingly, they are frequently accused of crimes. However, greater efforts are required to establish true liberty for women. To accomplish this goal, governmental initiatives are not adequate. An overall change in the mentality of people and of societal norms is extremely necessary. Together, we need to make a promise to create a gender-neutral society that will ensure equality of opportunity for both men and women. Patriarchal mindset promoting violation of the rights of women must be eradicated. An inclusive society promising and providing women with all types of necessary rights and benefits can make a better tomorrow.

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