



HUMAN RIGHTS OF WOMEN AND CHILDREN: -AN INDIAN PERSPECTIVE

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ABSTRACT:

Human rights are those minimum rights which are compulsorily accessible by every individual. If today we look after the word “protection”, women and children come into picture immediately. Though women and children are believed to be the most delicate and pampered ones their rights are being encroached every day and protection of them comes naturally to balance the human rights scale.

The constitution of India also guarantees the equality of rights of men and women. However, in the sphere of women’s human rights in India, there exists a wide gap between theory and practice. In our society is a male dominated society where men are always assumed to be superior to society. The India Women have to face to discrimination, injustice and dishonour. Despite the legal rights beings granted to them through various international covenants and Government of the country, exploitation against them is endemic. Women and children are being targeted in many ways such as domestic violence, trafficking, prostitution, rape, pornography, child marriage, child labour, child sexual abuse etc. Available legal, social, moral and governmental norms are analyzed in this paper to find out the possible ways by which these people’s human rights are infringed. The research paper also reflects on the different types of abuses, laws, policies and guidelines for the protection of these affected persons in India.

Key words: Human rights, woman, children, India

INTRODUCTION:

India is a democratic republic with the second largest population in the world. In the VEDIC Ages, women were worshipped as goddesses. In the present society, women in India have established their identity and made progress in the fields of education, health and economics as a result of democratic governance, evolution of technology and strengthening of the idea of egalitarianism in the society.

In Indian legal history on child rights was started in 1880s. At the beginning, it was initiated by the British government later on our government followed the path and adjust local requirement with international standards. The rights of children are grossly violated if they are working and India is home to world’s highest number of working children. Because of this situation since Independence, there have been several new laws and regulations prohibiting employment below a certain age and providing protection for working children. In recent years a serious reassessment of government policy on child labour has taken place, the aim being to identify the most effective way of dealing with the problem under Indian conditions. . Rights of the children include the right against exploitation of sexual abuse, right to education, right against discrimination, right to live, right to survival and rig to development. Children always live under the thumb of their parents, all the decision concerning them, from clothes to education are taken by their parents.

It is inevitable truth that women have been ill-treated in every society for ages and India is no exception to that. Persona of a developed nation is reflected within the condition of women of that nation. If society is a

bird and men and women are the two wings of society, as bird's need both of wings to fly, so society needs the empowerment of both men and women to uplift itself. In domestic violence women are treated like a slave and are being robbed of their dignity which is raising questions whether the 498A section of Indian Penal Code is a shield or sword. Flawed Rape Laws are haunting women of being toyed in the street every time they come out of home. Trafficking of women, especially minor girls, has jeopardized the basic esteem of women besides exploiting them in their most despicable manner like prostitution, destroying them physically, socio-economically and in many other respects. 'The Vishaka Guidelines' are being made laughing stock satyriasis in many work place in every single day. The unborn baby-boy has not also got respite from the vile desire having baby boy. Last but not the least modern naked cyber pornography has labeled women as sex-pricking doll. Due to the social stigma most of them could summon up the courage to reveal those heinous acts committed against them in every sphere of their life. Rights of women include the rights against sexual exploitation, right against discrimination, and right to privacy, right to life and even right to employment. The right to live with human dignity not merely includes physical or animal existence rather it embraces several other aspects in its fold. We will now discuss how rights of women and children are infringed and how our constitution and other legislature laid down provisions for protecting their rights.

WOMEN'S HUMAN RIGHTS IN INDIA

The Constitution of India, which was adopted in **1949**, contains several articles incorporating the concept of equality and non-discrimination on the ground of sex. The Constitution recognises human rights in form of various fundamental rights and guarantees equal rights to both men and women without any discrimination. In **1993** the Parliament of India also enacted **Protection of Human Rights Act**. Under the provisions of the act, National Human Rights Commission was established. In case of any violation of Human Rights, aggrieved women can send their complaints to National Human Rights Commission. At present time, the status of Indian women has undergone considerable changes with the expansion of level of literacy which has made them far more Independent and aware of their rights such as right to equal treatment, right to property right to work, and maintenance, a majority of women still remain unaware about their rights and as a result of this, they have to face harassment, exploitation and injustice. After the **Nirbhaya case** in 2012, certain amendments have been made in Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act for ensuring protection to women and to safeguard their interests. Moreover, a number of women oriented specific legislations have also been enacted to protect women's basic human rights. Such laws prescribe punishments for those who violate the acceptable norms of human behaviour and cross the legal boundaries to attack the women or their dignity. The provisions of these laws give the following Human rights in the form of legal rights to women.

A. Women's Human Rights under Constitutional Framework:

The Indian Constitution is the supreme law of India; all other laws get authority from the provisions of the Constitution. 'Indian constitution secures for all its citizens "Justice" - social, economic and political, "Liberty" - of thoughts, expression, belief, faith and worship, "Equality" - of status and of opportunity and dignity of the individual and the integrity of the nation.' With such wordings, the preamble of the Indian constitution ensures the basic human rights of all men as well as women. The constitution of India is known for its idea of equality among men and women. However, a special protection has also been provided to women under the provisions of the constitution from the perspective of human rights of women.

Right to Equality under Article 14: **Article 1** of UDHR declares that all human beings are born free and equal in dignity and rights and **Article 7** provides for equality before law. Under the constitutional framework of India the status of women is equal to men in the eyes of law because the state cannot deny to any person equality before the law or the equal protection of laws within the territory of India.

Right against Discrimination: **Article 2** of UDHR assures all the rights and freedoms without any discrimination. **Article 7** also talks about equal protection against discrimination. **ARTICLE 15(1)** Indian citizens can also not be discriminated on the basis of their sex by any government authority because the state cannot discriminate against any citizen on ground only of religion, race, caste, sex, and place of birth or any of them. Furthermore, No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to: (a) Access to shops, public restriction, hotels and places public entertainment or (b) The use of wells, tanks, bathing Ghats, roads and places of public

resort maintain wholly or partly out of state funds or dedicated to the use of the general public. However, state can make special provisions for women under clause (3) of the article as exceptions to the principles of nondiscrimination.

Right to Equal opportunity in Public Employment: ARTICLE 16 Women are able to get equal opportunity pertaining to public employment because there is equality of opportunity for all citizens, whether males or females, in matters relating to employment or appointment to any office under state and No citizen can, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the state. However, government has authority to make rules for reservation.

Right to Freedom of Speech and Expression: Everyone has right to freedom of opinion and expression under article 19 of UDHR. Women can raise their voice for any matter affecting them by using their right under **Article 19 (1) (a) of Indian Constitution** which guarantees freedom of speech and expression to all citizens.

Right to work: UDHR in its article 23(1) confirms right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment to everyone. Recognising such right in its structure Indian Constitution through **Article 19 (1) (g)** provides the right to work to Indian women by ensuring freedom to all citizens for occupation, profession and business.

Right to Life and Personal Liberty: Right to life, liberty and security of person has been recognised under article 3 of UDHR. **Article 21** of Indian Constitution also provides right to live to all women and men as per their own choice by constitutional guarantee that no person shall be deprived of his/her life or personal liberty except according to procedure established by law.

Right against Exploitation: Article 5 of UDHR protects against torture or cruel, inhuman or degrading treatment. Indian Constitution under **article 23** protects against human trafficking and bonded labour, which works as a shield for women's safety and ensures their right to work. For implementing the idea of this article, Indian parliament enacted the **Suppression of Immoral Trafficking in women and girls Act, 1956** which was renamed as the **Immoral Trafficking (prevention) Act, 1956**.

Constitutional Scheme of Directive Principles of State Policy directs the state to secure the idea of women's right in the society. These are the relevant articles in this regard. **Right to Livelihood: Article 39 (a)** provides that the citizen, whether men or women, equally have the right to an adequate means to livelihood. Same right has been recognised under article 23(3) of UDHR which says that everyone who works has the right to just and favourable remuneration.

Equal Pay for Equal Work: Under article 39 (d), Indian Constitution ensures that the state shall, particular; direct its policy towards securing that there is equal pay for equal work for not only men but also women. UDHR under article 23(2) also provides such right.

Right to Health: Through **article 39(e),** Constitution of India guarantees that the state shall, particular, direct its policy towards securing that the health and strength of workers, men as well as women and the tender age of children are not abused and none of them are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 25(1) of UDHR also provides right to a standard of living adequate for health and well-being.

Equal Justice and Free Legal Aid: Under article 39A of the Constitution provides assistance to those who are unable to afford legal expenses of lawyers. So, the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes 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.

Just and Human Conditions of Work and Maternity Relief: Article 42 of the Constitution directs that the state shall make provision for securing just and human conditions of work and for maternity relief.

Right of Constitutional Remedies: In case of the violation of any of these fundamental rights, the aggrieved woman can move Supreme Court and High Court and file writ petition **under Article 32 & Article 226** for

seeking remedy but there is no such mechanism available in case of Directive Principles of State Policy, which are not enforceable by any court under writ jurisdiction. The state is under duty to implement such principles through its policy. Hence, Directive Principles of State Policy impose a moral obligation on the state for their implementation.

B. Women's Human Rights protected under various Legislations:

There are various legislations in India which recognised women's human rights in form of their legal rights and provide protection to them. These laws are very important in order to ensure the overall empowerment of women.

Right to live with Dignity: Under article 51 (A) (e), it is a fundamental duty of every citizen of India to renounce the practices derogatory to the dignity of women. Article 21 also confirms that every person has a right to live dignity full life. So, the women also have such right under which they can oppose the practices which are against their self-respect. As per legal provisions, no woman can be presented indecently in any publications, paintings, writings, and advertisement or in any other way, if it is done so, it will be an offence under the provisions of **Indecent Representation of Women (Prohibition) Act, 1986**. If any person pulls Dupatta, Sari or any piece of their dress, they can lodge a complaint under Section 354 of Indian Penal Code, 1860. In case of occurrence of such incident at work place, she can move her complaint under **Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act**. In rape cases, First Information Report can be lodged under Section 376 in which the name and the identity of the victim woman will be kept under secrecy and not to be disclosed because the disclosure of the identity of such aggrieved women is itself an offence **under section 228-A of Indian Penal Code, 1860** punishable with imprisonment up to 2 years and fine.

Right to Use Earnings: Women have the right to use the money as per their wish which they earn. In past centuries, women had the right only on the property called "Stridhan" but the enactment of Married Women's Right on Property Act, 1834, extended the definition of women's personal property which includes: (a) Earning or salary from business, profession or service, (b) Earning from scientific, literature or artistic skills, (c) Saving from salary or capital gain, and (d) Insurance policy of women. These all properties are included in their earnings which can be utilized by women as they wish.

Right to own Property: The Hindu Succession Act, 1956 conferred absolute ownership to Hindu women on the properties possessed by her under section 14(1). The Apex Court upheld section 14(1) **in Harak Singh v. Kailash Singh**. This Act enlarged limited estate of Hindu women and also abolished the reversionary rights to a great extent. So, Hindu women have got full rights on properties earned or acquired by her in gift or will.

Right to Private Defence: Many times, a woman finds herself in very difficult situations that apprehend immediate assault on her. If there is no one to save her or rescue her from such assault, the law empowers her to defend herself in form of 'Right to Private Defence'. Right of self-preservation existed during ancient India and self-help was the first rule of criminal law. At present, such right has been given to women under sections **96, 98, 100, 102 and 103 of Indian penal code, 1860**, which can be practised by women in adverse situations.

Right against Discrimination in Employment: Article 23 (1) of UDHR provides everyone the right to work with free choice of getting an employment in just and favourable conditions. In India, discrimination on the grounds of sex or marital status in any employment, whether public or private, has now been outlawed by **Sex Discrimination Act, 1975**. The act applies to all employees of public as well as private sector. Though Sex Discrimination Act, 1975 was enacted to protect woman from sexual discrimination, provisions of the act are also applicable on men except provisions relating to pregnancy which have been inserted in the act especially for women on

Right to get Minimum Pay: Under Article 23(3) of UDHR, everyone including women has the right to get just and favourable remuneration for work which should be sufficient to maintain herself and her family with human dignity. At domestic level, such right has been identified under **Minimum Wages Act, 1948** which was enacted to fix minimum rates of wages in certain categories of employments. Under the Minimum Wages Act women, doing small jobs, have right to get minimum payment for work done by them.

Right against Sexual Harassment at Work Place: for all women, whether working in public sector, private sector, organised industry or unorganised industry, sexual harassment at work place is a big problem. Most of women employees experience such problem one or more times in their career. Some of the male counterparts think that the woman colleagues do not have self-respect and dignity; they try to exploit them. Inappropriately touching woman colleagues against their will; showing them any pornographic content or literature; compelling them for any indecent favour or for making sexual contact etc. are considered as sexual harassment. The Supreme Court in its historic decision in **Vishakha and other v. State of Rajasthan and Others** issued 12 guidelines and declared them as law under Article 142 because at that time there was no enacted law on the subject. After 16 years, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to empower all women against sexual harassment at work place. The act mandates all employers to set up internal complaint committee for Redressal of women employees' sexual harassment complaints, failure to which the employer may be fined up to Rs. 50,000. Apart from this, the Criminal Law (amendment) Act, 2013 has enlarged the scope of Section 354 of IPC which, now, also includes the sexual harassment at work place punishable with an imprisonment 1 to 3 years and /or fine. Any aggrieved women can file complaint under section 354 of IPC even for any unwanted touch or behaviour.

Right of Maternity Benefit: To perform the biological role of child bearing every woman need to leave work for some period in which she requires financial support not only for her living but also to meet medical expenses. So, the law provides maternity benefit to the working women for their survival and to protect their health. **The Maternity Benefit Act, 1961** regulates the employment of women employees in certain establishments immediately before and after child birth and provides them maternity benefit and certain other benefits. The act applies to all factories, mines, plantations whether public or private. State government may extend its ambit to industrial, commercial, agriculture or any other establishments. The act prohibits woman work for 6 weeks immediately after the day of her delivery, miscarriage or medical termination of pregnancy.

Right to claim Maintenance: **The Code of Criminal Procedure, 1973 under section 125** recognises woman's right to get maintenance from her husband. Section 18 of the Hindu Adoption and maintenance act, 1956 also provides such right to women from her estranged husband. By using these provisions, women can claim maintenance even during separation. The **Supreme Court in Bhagwan Dutt v. Kamla Devi** ruled that women can claim maintenance if monthly income earned by her is not sufficient to sustain her. The court also clarified that the phrase "Unable to maintain herself" does not require a woman to be absolute destitute, to entitle for maintenance. Right to maintenance is restricted, in case of her remarriage or conversion to another religion

Children's rights in india

The Acts which deals with the issue of child rights and child labour are: **The Factories Act 1881, Children (Pledging of Labour) Act 1933, the Employment of Children Act 1938, the Factories Act 1948, Employment of Children (Amendment) Act 1951, the Motor Transport Workers Act 1961, the Apprentices Act 1961, the Beedi and Cigar Workers (Conditions of Employment) Act 1966, and Employment of Children (Amendment) Act 1978. The Child Labour (Prohibition and Regulation) Act, 1986** is the most comprehensive Act to deal with the issue of child labour.

The objectives of the Act are:

- Banning the employment of children, i.e. those who have not completed their fourteenth year, in specified occupations and processes;
- Laying down procedures to decide modifications to the schedule of banned occupations or processes;
- Regulating the conditions of work of children in employment where they are not prohibited from working. Thus according to the Act, no child (below 14 years of age) can be employed in any occupation connected with transport of passengers, railways, cinder picking, beedi making, carpet weaving, cement manufacturing, manufacture of matches, cloth printing, mica cutting, explosives and fire works, building and construction industry, tanning, domestic servants, workers in hotels, restaurants, tea shops, resorts spas or other recreational centres etc. Till date it is the most comprehensive act in relation to child labour in India.

But in all these above-mentioned Acts child labour is prohibited only in certain selected formal sectors and is not applied in any family workshop. It is often alleged that the present laws are responsible for institutionalising child labour in India as these acts deal with only listed formal sectors. Two assumptions have broadly influenced Governments policies in respect of child labour. The first is that, child labour is a “harsh reality” and one can only mitigate some of the harshness of the exploitative aspects of child labour. The second assumption is that there is a distinction between child labour and exploitation of the child labour. It has been accepted that a certain amount of child labour will persist under the family environment, which is non-exploitative. This is not only inevitable but also desirable (Sinha, 1996). Over the years, it is observed that our Government, with some modifications, have been adjusting and implementing its policies by following these two assumptions. The framers of the Indian Constitution consciously incorporate relevant provisions in the Constitution to protect the interest of children.

The constitutional provisions in respect of children come under the **Preamble, Part III of the Constitution, i.e. Fundamental Rights, and Part IV of the Constitution, i.e. Directive Principles of State Policy and Fundamental Duties**. The Preamble provides for social, economic and political justice to all the citizen of India. **Article 14** all are equal before law, i.e. equal treatment and protection under law. All children in similar circumstances are required to be treated in a similar manner, **Article 15(3)** permits the State to make special provisions for children, **Article 19(1)** guarantees citizens of India the right to freedom of speech and expression, to form associations or unions, etc., to **Article 21(a)** the State shall provide free and compulsory education to all children of the age of six to fourteen years, **Article 22** provides for safeguards upon arrest, and states that a person should be produced before the nearest Magistrate within 24 hours of arrest.

A juvenile in conflict with law or a child in need of care and protection should be produced before the Competent Authority established under the Juvenile Justice (Care and Protection of Children) Act, 2000 within 24 hours of having been picked up by the police. **Article 23** prohibits trafficking in human beings and forced labour. Any contravention of this provision is punishable under law. **Article 24** prohibits the employment of a child below 14 years in any factory or mine or any other hazardous employment. To **Article 39(e) & (f)** the State is required to ensure protection of children of tender age from abuse, and from entering vocations unsuited to their age and strength. Children are also to be provided with equal opportunities and facilities to develop in a healthy manner. The State is to further ensure that childhood and youth are protected against exploitation and abandonment. According to Article 41 the State is required to take steps to secure educational opportunities and facilities, to Article 45 the State is to take measures to ensure free and compulsory education for all children till they attain 14 years of age. **Article 47** the improvement of public health and the raising of the level of nutrition is a primary duty of the State. **Article 51(c)** asks the State is to respect international law and treaty obligations. Lastly, to **Article 51(k)** a parent or guardian has a fundamental duty to provide opportunities for education to his child or, as the case may be, ward between the ages of six to fourteen years.

Children’s Rights under other legislation provision:

The National Plan of Action for Children, 2005 is the most important milestone regarding the overall development of children in India, which commits itself to ensure all rights to all children up to the age of 18 years. The National Plan has identified the following key areas keeping in mind priorities that require utmost and sustained attention in terms of outreach, interventions and resource allocation. These are: • Securing all children all legal and social protection from all kinds of abuse, exploitation and neglect. • Complete abolition of child labour with the aim of progressively eliminating all forms of economic exploitation of children. • Monitoring, review and reform of policies, programmes and laws to ensure protection of children’s interests and rights. • Ensuring child participation and choice in matters and decisions affecting their lives. In recognition of the fact that 41% of India’s population is below 18, constituting a significant national asset, the National Plan re-affirms the nation’s commitment to wisely, effectively and efficiently invest its national resources to fulfil its commitments to children. To combat child labour, the National Plan goals to eliminate child labour from hazardous occupations, progressively move towards complete eradication of all forms of child labour, and to protect children from all kinds of economic exploitation. According to the National Plan the Strategies to tackle the problem of child labour are: o Countrywide survey to ascertain the existence, prevalence and nature of child labour below ten years of age in both the organised and unorganised sectors. Effectively enforce child labour regulatory legislation and rehabilitation of working children through enrolment in schools. o Link the child labour elimination efforts with education measures an attempt to ensure that all children in the age group of 5-8 years

get directly linked to school. o Ensure convergence of national poverty eradication and developmental programmes aiming at prevention and progressive elimination of all forms of child labour.

The Convention on the Rights of the Child, 1989 is the latest and almost universally accepted instrument for providing universal legal standards for protection of children's interest. The provisions and rights of the Convention can be broadly grouped into four categories: Right to Survival, Right to Protection, Right to Development and Right to Participation. **Our country ratified the Convention in 1992**; today the policies adopted by our government shows our commitment to those global standards. Recently Government decides to link the child labour elimination efforts with the scheme of **Sarva Shiksha Abhiyan (SSA)** and the **Right to Education Act, 2009** attempts to ensure that children in the age group of 5-8 years get directly linked to school and the older children are mainstreamed to the formal education system through the rehabilitation centres. Attempts to curb child labour in India are failing miserably as social ignorance, lack of community involvement and support for child rights continue to drive children to work. In general, programmes concerned with working children should aim for their integrated physical, mental and social development. Effective programmes should promote child development in its broadest sense including taking care of the parents needs rather than just react to isolated and local needs. The creation of the National Commission for Protection of Child Rights is a welcome step and it is hoped that the Commission will take appropriate steps to protect the interest of the children and particularly that of the child labourer.

CONCLUSION:

The legislature and policy framers of India have made multiple laws, rules and regulations ensuring rights of women but proving ineffective because all are limited in form of 'Act' instead of 'Action', that is the reason why Indian women and children's are mistreated, being harassed physically and mentally. Incidents of violations of women's human rights raise some thought-provoking questions before us: how special rights given to women are helpful to them? What are the benefits of enacting such women-oriented legislations? Are they really helping them? Will the women ever get an equal status to men one day? All these questions are still unanswered. There is still long way to go to answer such questions. We need to rethink in this regard and start working to make a safe and better environment for women. In this context Swami Vivekananda rightly said, "There is no chance for the welfare of the world unless the condition of women is improved. It is not possible for a bird to fly on only one wing."

Children can no longer be considered as passive recipients of services. Governments and civil society must accept children as partners and facilitate their participation in matters which affect their lives. The challenge is, therefore, to change the mindset that children can no longer be objects of charity, philanthropy, and welfare. They have rights and the government is obliged to provide for them. There must be legislative, administrative, and judicial support to implement the policies, plans, and legislations in the interest of the child. Still millions of children are working, even in hazardous conditions all over the country. Let us hope that within a reasonable timeframe we will achieve the desired goal of a child labour free country.

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