

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown. A black leather watch with a silver dial is also visible on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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# **A SOCIO -CONSTITUTIONAL LENS ON WOMAN** **RELATED LAW IN INDIA**

AUTHORED BY- VIGNESH. E

Vels Institute of Art Science and advance studies

CO- AUTHOR - M. NANDHINI

## **INTRODUCTION**

“Women is the better half of humanity not the weaker sex” – M K Gandhi “If we are to teach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children” – M K Gandhi Women and children are the major weaker sections of the society and a very easy target to crime. They are subjected to crime and violence in its worst form kidnapping, sexual abuse, child labour, child marriage , dowry are on the increase . Both children and women are teased and harassed where ever they go, in some cases they do not feel safe even at home. The society as we know has been a male dominated all along the times. Biological superiority of men over women has made her weak and vulnerable and thus prone to inequalities both socially and legally. There has been inequality against women seen in the society. They have been treated as secondary to the men in the society and not only that have been subjected to different types of atrocities and injustices due to this discriminatory approach. In traditional patriarchal societies it is generally believed that women should remain confined to their families and under legal and customary subjection of their husbands or other male family members . although in Vedic period women enjoyed more rights and better status than in post Vedic, medieval and British periods yet during the pre-independent India gender inequality and gender violence were all prevalent<sup>1</sup>. Women were regarded as the root cause of all evil and responsible for downfall of men. Women had a decidedly inferior status and were totally dependent on men. Women were confined to the family and remained under legal and customary subjection of their husbands or other male family members. Customs and practices like female infanticide, child marriage, dowry, polygamy, sati, repeated pregnancies, permanent and verbal abuse made life of common women very hard<sup>2</sup>

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<sup>1</sup> Ancient India a Text Book for class XII (ncrt)

2 Law and Social transformation in India



India's constitution makers and our founding fathers were very determined to provide equal rights to both women and men. Various articles in the constitution safeguard women's rights by putting them at par with men socially, politically and economically. The preamble, the fundamental rights, DPSPs and other constitutional provisions provide several general and special safeguards to secure women's human rights. The constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination<sup>3</sup> 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 citizen in matters relating to employment . The Preamble, Articles 14, 15, 15(3), 16, 39(b), 39(c) and 42 of the constitution are of specific importance in this regard. There are 472 million children in India under the age of 18 years, representing 39% of the country's total population. A large percentage, 29% of that figure constitute children between the ages of 0 to 6 years. This research work intends to examine and analyse the status of women in Indian context. How the constitutional provisions acting for upliftment of women and property rights inspect the major challenges which are facing by women in India

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<sup>3</sup> Ancient India a Text Book for class XII (ncrt)

<sup>4</sup> Secs: 3, 17, 27. The Commissions for protection of children's rights act 2005 act

No. 4 of 2006

## 1.1 OBJECTIVE OF THE STUDY

- To discuss the constitutional provisions and other statutes regarding emancipation of women.
- To describe the problems such as gender inequalities, child labour, sexual exploitation, dowry , etc. which are crucially facing by the women in India.
- To study the role of national and international treaties and movements in eradicating the challenges of women in India.
- To generally analyse the recent judicial pronouncements in favour of women
- The property and partition rights and the challenged faced by women

## 1.2 HYPOTHESIS

- The research is aimed at testing the following Hypothesis:  
Constitution of India plays a vital role in holistic development of women
- India has sufficient legislations, treaties, policies and programmes to ensure and secure the dignity equality and justice of women
- Judiciary has a vital role in emancipating and developing the status of women

## 1.3 RESEARCH METHODOLOGY

- The present study comprehensively examines the status of women in ancient medieval and modern Indian context, also the constitutional provisions regarding the protection and safeguard of women
- Further it also analyses the statutes, judicial decisions and national-international Covenants in uplifting the status of women
- Thus, for the purpose of the current research, the researcher had relied

mainly on statues, case laws , government documents, books, articles, dictionaries , websites and so on.



#### 1.4 REVIEW OF LITERATURE

- An attempt is made in this research to review available literature on a socio – constitutional analyses of women and children in Indian context with a view to examine the role of constitutional and other statutes in emancipation of women, also to analyse the challenges which are facing by both.

However, the relevant contribution is briefly presented.

#### 1.5 LIMITATION OF STUDY

- The researcher limited the study only on a socio constitutional analysis of women in Indian context.

#### 1.6 SCHEME OF STUDY

- The researcher has designed the work, to carry out the objectives of the study easily and effectively. The researcher expensively studied the literature in the topic in analytical, historical and descriptive mode. The entire study is divided into 5 chapters
- **Chapter 1** - titled “**INTRODUCTION**”-deals with introduction of the study, object of the study, methodology adopted, the hypothesis and the review of literature and finally the scheme of the study.
- **Chapter 2** - titled “**WEAKER SECTION IN INDIA AN OVERVIEW**” deals with definition of weaker section and their expectations, role of public servants in upliftment of weaker section, status of women in ancient, medieval and modern india.
- **Chapter 3** - titled “**WOMEN’S DOMINANCE IN INDIAN LAWS**“ discusses empowerment of women in constitution and other statues, effect of judicial activism in empowerment, crimes against women hood, gender injustice and womens commission.
- **Chapter 4** - titled “**CONCLUSION AND SUGGESTIONS**” an attempt is made towards giving certain tentative and suggestion for ensuring protection of the right

of women and children in india.

- **Chapter 5** – titled “**REFERENCES**” discuss about the references used for this research project



## 2.1 DEFINITIONS OF WEAKER SECTION AND THEIR EXPECTATIONS

- Just writing a definition. review those sections of society which were stigmatized by evils of chaturvarna system<sup>5</sup> in ancient times and continue to be underprivileged due to social, economical and educational dimensions constitute weaker sections in Indian context.

- Weaker sections are groups of **PEOPLE WHO SUFFER FROM SOME DISABILITY** due to social, biological (e.g. sex), physical and other such factors. Such disability prevents them from enjoying their rights and develop themselves to the fullest possible extent. Women, Scheduled castes and tribals, transgenders, Divyang-jan (differently-abled) etc. come under weaker sections. In the Indian context, weaker sections may be defined as those sections who experience a relative weakness in terms of their ability to access their rights and entitlements, and are deprived of their capacity to lead a quality life of their choice. Examples: Differently-abled (Divang-jan), most of the scheduled castes and scheduled tribes, women, sexual minorities like transgenders, etc. fall in this category

According to Nobel Laureate economist **Amartya Sen**<sup>6</sup> Weaker sections in Indian context encompass a diversity of groups ranging from physically and mentally disabled, pregnant mothers, dalits, religious minorities and poor. They are weaker not because they enjoy lesser rights than others in a democratic India but because the freedom to make choices are less to them. This has been aptly described by him where he emphasize that lack of choices for weaker sections render them more vulnerable.

- In Indian context the weaker section of people comprises of group of people who are vulnerable to discrimination and injustice. The marginalized groups such as
- Women - prone to prostitution, trafficking, domestic violence, less wages,

trafficking, sexual harassment, early marriages etc....



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5 Caste system prevailed in ancient India

6Amartya Kumar Sen CH is an Indian Economist and Philosopher

2. **Senior Citizen**<sup>7</sup> - neglect, seen as burden, physically weak, low economic value, perpetual dependence .

3. **Dalits**- violence, social discrimination, unemployment , poverty

4. **Tribes** - forceful acquisition of habitat, lack of health and education facility, backwardness, poverty.

5. **LGBT** <sup>9</sup>-Discrimination and violence, mental health issues familial.

6. **Religious minorities**- discrimination, existence, persecution, protection and preservation of their culture, customs and traditions, lack of opportunity to participate in political and public life etc.

Constitution through its article like 14, 15, 16 and various other commissions has provided for the upliftment and empowerment of this section. So it's become responsibility for a public servant to acts as a agent of government in reaching out to the weak and help them where ever required. Weaker section sees public servant as a guide who can guide them is realizing their rights, as a helper who can help them with his/her official authority and power.

## 2.2 Role of Public Servants in upliftment of weaker sections

- Weaker sections in Indian context is a much wider social group owing to Indian society's history of various pathological practices like:
- The caste system
  - Patriarchy
  - Social prejudices
  - The concept of "pure and polluted"
  - Blind superstitious beliefs like Karma philosophy
  - The sovereign belief in hierarchy starting from our religious practices to divinity status to mankind
- These practices are a reason lower caste people ,esp. the Dalit community, women, persons

with disabilities have been vulnerable, exploitable and delegated to a subhuman position in the traditional Indian society. Historic neglect, communal outcast, social



7 A person between 60 and 80 years

8 Also known as Panchama, people belonging to lowest cast in India 9 Lesbian, Gay, bisexual, Transgender

stigmatisation have left a large proportion of capable people incapable, making them a weaker section.

The 'weaker sections' are those who lag behind others in various developmental indices and parameters like health, education, etc. In the Indian context, these are people belonging to Scheduled tribes Scheduled caste, minorities, women and children. For inclusive development, betterment of the weaker sections is necessary and for this, they need the a lot from the public servants they have to be impartial and non-biased in dealing with the weaker sections . All rules and regulations have to be equitably implemented for everyone. The public servants, if need be, have to work an extra hour, travel an extra mile , to attend to the requirements of the weaker sections they need to be follow ***Rights-based and not welfare-based approach***<sup>10</sup>.

However, the civil servants have to note that they are not carrying out benefaction or welfare while attending to the needs of weaker sections. Availing public services is their right and the legal rights of weakers are to be fulfilled and at any cost. Rules and regulations should be simplified, forms should be in simple language so that the people could easily understand. and conduct empowerment and democratization through public contact programmes, Government has to be taken closer to people. Through communitisation of public services, people have to be actively engaged in governance and empowered.

**In my opinion, the weaker sections need the following the most from the public servants:**

**1. Empathy:** An act of empathy on the part of public servants will lead to a better understanding of the pains and struggles of these sections. **Ex:** Empathy towards a farmer, who might have lost his land due to a dam project, will ensure to an extent a kind of solace, and belief that he can get justice and rehabilitation.

**2. Compassion:** An act of compassion is more than enough to tide over the possibilities of creation of discontent and disaffection in the future. **Ex:** A police officer, through his/her



compassionate attitude, can relieve the agony of a woman, who might have been molested by an upper caste member in a villages.

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<sup>10</sup> See project brief of UNRISD (United Nations Research Institutions for social Development), 16 May 2017

- 3. Transparency:** The weaker sections deserve to know the kind, and quality of services/ facilities that they are entitled, for it would help in a more effective exercise of their rights. **Ex:** Publication of the details about the MGNREGS works through pro-active measures, will go on to help in achieving the objective of alleviation of poverty in a better manner.
- 4. Responsiveness:** A responsible public servant will go a long way in ensuring that the benefits of the service reach the intended beneficiaries in the aspired manner. **Ex:** Construction of roads, for connecting remote villages, if takes place under constant supervision, monitoring, and fixation of responsibility, can help boost economic status of the weaker sections for such villages.
- 5. TO BE INCLUDED IN THE MAINSTREAM-** The weaker sections want to come into the mainstream of the society so that they can avail all the opportunities & can do progress in different fields.
- 6. HONESTY & PROBITY-** The weaker sections know that only honest public servants will do their jobs in the best possible way. So they want corruption-free delivery of services.
- 7. EQUAL OPPORTUNITIES** - If the equal opportunities are given without any discrimination, then all can develop.
- 8. SYMPATHY-** Sometimes these two emptions shown by the public servants give moral support to the weaker sections.
- 9. BUREAUCRATIC VISITS** to rural areas is being treated by the sections as hurried visits. Need is to listen to their problems rather dictating from headquarters -> Listening rather telling
- 10. PARTICIPATIVE RURAL APPRAISAL** -Civil servants must make these sections as participants in decision making and be facilitators in resolving their problems.

Ex: Swachh Bharat and volunteer campaigning in villages -> both behavioral change and responsibility of stakeholders



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<sup>11</sup> Trade related Entrepreneurship assistance and development

**11. ABIDING BY THE CONSTITUTION-** The Indian constitution has provided for some special provisions for the weaker sections. The public servant needs to follow them keeping in view the best interests of the later. The govt has many schemes like TREAD<sup>11</sup>, PMRY<sup>12</sup>, VAYO SHRI, Rastriya Mahila Kosh, STAND UP INDIA & many more. The public servant needs to implement them efficiently.

**In short**, the public servants can perform a number of tasks, and imbibe a number of qualities, that can go on to help ameliorate the grievances, and also possible remove the inherent cause behind the weakness for the weaker sections, especially for a country like India. Thus weaker sections expect both behavioral change and procedural change from the civil servants which help in resolving their age old problems for bringing equitable and inclusive society.

### **2.3 STATUS OF WOMEN IN ANCIENT, MEDIEVAL AND MODERN INDIA**

**Women in Ancient India:**

In the ancient Indus valley civilization<sup>13</sup> of India, evidences show the worship of the mother goddess. Hence, the veneration for the mother is evident during that period. During the Rig Vedic period, it is believed that the position of wife was honoured and women's position was acknowledged, especially in the performance of

religious ceremonies.

Education of young girls was considered as an important qualification for marriage. There are references in Vedic literature that in the Kshatriya society, brides had exclusive right of selecting their own consorts, which was known as 'Swayamvara'. In Rig Vedic society, dowry system was unknown. However, the concept of marriage as



a dan or gift was prevalent. Monogamy was the general practice though Bigamy was also in practice, but it was limited to the aristocratic classes. The wife was respected in her new house. The wife participated in the sacrificial offerings of her husband.

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<sup>12</sup> Prathan mantri roz gar yojana 1993

<sup>13</sup> Was a bronze age civilization in the north western regions of south Asia, lasting from 3300 BCE to 1300 BCE and its mature form from 2600 BCE to 1900 BCE.

However, being a patriarchal system, the women were expected to bear sons since the son performed the last rites and continued the lineage. Remarriage of widows was permitted under certain conditions. Female morality maintained a high standard although the same degree of fidelity was not expected from the husband. In this age there was no practice of divorce. The Rig Veda states that the widow had the right to marry again with her husband's brother. Rig Veda recognized the right of inheritance of unmarried daughters on the property of her father but married daughters were exempted.

Gradually, religious ceremonies were increasingly conducted by the priests resulting in weakening of the women's eminent position in the household. Later, in the Age of the Upanishads, the 'anuloma' system of marriage, i.e., between the male of a higher caste and female of a lower caste prevailed during this period.

In the Age of Sutras and Epics, the 'Grihya-sutras' give detailed rules regarding the proper seasons for marriage and qualifications of bride and bridegroom. The bride was supposed to be at a mature age, over 15 or 16. The elaborate rites indicate that marriage was a holy bond and not a contract. The women held an honoured position in the household. She was allowed to sing, dance, and enjoy life. Sati was not generally prevalent. Widow Remarriage was allowed under certain circumstances.

On the whole, the Dharma-sutras take a more lenient attitude than the Smritis of a later age. The 'Apastamba' imposes several penalties on a husband who unjustly forsakes his wife. On the other hand, a wife who forsakes her husband has to only perform penance. In case a grown up girl was not married at a proper time by her father, she could choose her husband after three years of waiting. The most pleasing feature of this period is the presence of women teachers, many of whom possessed high spiritual knowledge.

As in all patriarchal societies during that age, the birth of a daughter was unwelcome. The son lived with his parents, earned money for the family, protected the family from

enemies, and perpetuated the name of the family. The Ramayana along with the Mahabharata and the Puranas constitute the epic literature in India. The position of



women gradually deteriorated not only in the society but also in the family. The discontinuance of Upanayana, the neglect of education, and lowering of the marriage age had a negative consequence upon the position and status of woman.

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Ramayana and Mahabharata the Epic literature in India

During this period, a woman was considered to be a commodity which could be kept on bet and could be sold or purchased. But we also get quite contrary views from Ramayana and Mahabharata. Sita is regarded as one of the five ideal and revered women in India, the other four being Ahalya, Draupati, Tara, and Mandodari. There are references in Mahabharata which reflects that women used to guide men on religious and social questions. It was expected of a good woman to cooperate with her husband in religious pursuits.

Marriage was a religious sacrament. A woman was considered unfit for independence at any time as she required protection throughout her life. In the Age 600 BC to 320 AD, marriage between the same caste was preferred although inter caste marriages were prevalent. Of the eight forms of marriage prescribed by the Dharma-sutras, the Arsha form of marriage was most popular. The bridegroom was selected by the girl's father. According to Nearchus, the Indians "marry without giving or taking dowries but the girls, as soon as they are marriageable, are brought forward by their fathers and exposed in public, to be selected by a person who excels in some form of physical exercise". This indicates a modified form of Swayamvara. Lowering of the marriage age affected their education and culture adversely. Emphasis was now laid on the physical chastity of women which discouraged widow remarriage, divorce, and encouragement of Sati. There is also evidence that women were active in such public economic activities as wage-labour, as well as serving as temple dancers, courtesans, and court attendants. During the earlier part of this period, there were highly educated women holding an honourable position in the society and household. Women also received training in arts, music, painting, and for some, military training also. Buddhist and Jain nuns renounced the world for the sake of spiritual salvation. Jain texts refer to Jayanti who carried on discussions with Mahavira himself and later on became a nun. In spite of the progress, there were growing regression. Upanayana ceremony was reduced to only a formality. Manusmriti laid down that marriage was equal to Upanayana while Yajnavalkya took the step of prohibiting Upanayana ceremony for girls.

The wife who used to perform Vedic sacrifices was denied the right to do so. Sati existed but was confined to the warrior class only. Women courtesans were not looked down by religious leaders or kings. A famous courtesan Amrapali who lived during the reign of Bimbisara (300 to 273 BC) was a beauty whom Buddha visited. Chandragupta Maurya, the

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Ramayana and Mahabharata the Epic literature in India

founder of the Maurya dynasty, was reputedly assisted by Kautilya, a Brahman prime minister, who composed the Arthashastra, a handbook of statecraft.

The elaborate documents states that women had property rights to the stridhan, which was the gift made to a woman at the time of her marriage by her parents and afterwards augmented by her husband. Marriage was both a secular and sacred institution. Widows could remarry, although, when they did so, they lost rights to any property inherited from their deceased husbands.

In 320 to 750 AD, the Gupta Empire is seen as the classical age of Indian culture because of its high literary and artistic accomplishments. Some information on roles for elite women comes from the Kama Sutra, a manual about the many ways to acquire pleasure, a legitimate goal for Hindu men in the householder, or the second stage, of their lives. Women were expected to be educated, to give and to receive sexual pleasure, and to be faithful wives. Courtesans were trained in poetry and music as well as the skills of sexual pleasure and were esteemed members of society. An important example is of a noble-hearted courtesan Vasantesena, the heroine of the "*The Little Clay Cart*," a popular play in Sanskrit ascribed to Sudraka (ca. A.D. 400). The other major dramatic female heroine of classical Indian literature is Shakuntala, a docile young woman who yearned for her distant lover in Kalidasa's "Shakuntala and the Ring of Remembrance."

There was a growing tendency to lower the marriageable age of girls with girls being married before or after puberty. Marriage within the same caste was preferred but prohibited within certain degrees of relationship. Girls of high families had adequate opportunities for acquiring proficiency in higher learning. In Vatsyayan's Kamasutra,

instances of princesses are mentioned whose intellect was sharpened by knowledge of the Sastras.

The literary evidence of the Gupta age proves that girls of high families as also those living in hermitages read works on ancient history and legend. Girls living in royal courts were trained in singing and dancing too. Vatsyanana draws a picture of a good wife which may be taken as a reflection of the real life during that period. Sati was extolled by some but strongly disapproved by others.

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#### Ramayana and Mahabharata the Epic literature in India

The only direction in which the position of women improved was in the sphere of proprietary rights. As society began to discourage widow remarriages, there began to arise a class of childless widows who needed money to maintain themselves. Due to a lowering of the age of marriage, girls were not educated as before. This reduced the position and status of women. Brides being too young had no say in choosing their partners. Love marriages were a thing of the past. During this period, marriage became an irrevocable union, but it was one sided in favour of the husband. Since women were not as educated as before, they did not know what their rights were. Among the most striking changes may be the increased recognition in Katyayana of the women's right to property and a remarkable rule in Atri that allowed women molested by robbers to regain her social status.

#### **Women during Vedic Age:**

Ramayana and Mahabharata are the great epics of India. The lifestyle presented in these epics reflects the contemporary socioeconomic reality. Mahabharata, which is written presumably later, presents a story prior to that of Ramayana. The social life presented by Ramayana and Mahabharata may be the first written record of Hindu way of living.

The popular form of marriage as seen in the epics is Swayamvara. Swayamvara is the institution of marriage especially among the higher castes. In this ancient form of

marriage, women were said to have exercised the freedom and autonomy to select their life partner. Sita of Ramayana and Draupati of Mahabharat married by way of Swayamvara.



Swayamvara<sup>14</sup> does not give the freedom of choice to the bride in the modern sense, because often her freedom to choose her husband is limited. In the institution of 'Swayamvara' she is compelled to marry the winner of a competition, conducted to prove the martial excellence of her prospective bridegrooms. Gandhari is the noblest of the women characters in the Mahabharata. She set an example of true sahadharmini who dared to bandage her own eyes for the sake of her blind husband

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<sup>14</sup> It was a practice in which a girl of marriageable age choose a husband from a group of suitors, swayam in Sanskrit means 'self' and vara means 'groom'.

Dhrutarashtra. Debate continues whether Gandhari was doing the right thing by willfully impairing her eyesight Would she have been a better companion and a more useful guide to her totally blind husband if she was not blind? However, she shows boldness to remonstrate with him when she knew her husband was following the wrong path. Has she impaired her sight in order to avoid seeing the injustice done by her husband or to empathize with him. Another character, Kunti is the embodiment of patience, perseverance and self-sacrifice. Draupati, the central figure of the great epic, was a woman who possessed courage, sense of dignity and justice. 'The loftiness of her soul, her unfading courage in the face of disaster, her spirit of self-sacrifice, and above all, her moral earnestness and spiritual integrity has shed luster on the ideals of womanhood in ancient India.' The epics have presented many other noble woman characters.

There was gradual degeneration in the status of women in India after the Vedic age. Caste system and ritualism began to take deep root in the lives of common man. Child marriage and Sati became popular. Buddhism and Jainism emerged as alternative religious orders devoid of caste-based social order.

These new religions professed equality between men and women but had little

impact on rural masses. Among the intellectuals they appeared as strong counter currents for caste ridden Hindu society. Till the arrival of the Muslims, the Hindu philosophy was the guiding force for the masses in India.



Patriarchal social order backed with religious sanctions nurtured gender discrimination in economic, political and social life of traditional communities in India. Education of women, which was an accepted norm during the Vedic period, slowly began to be neglected and later on girls were totally denied any access to education.

Upanayana or sacred thread ceremony, which was performed to initiate a person into the Vedic studies, was prohibited for women and Shudras by the Manu codes thus closing the doors for any formal education to women. Thus there prevailed no system of education for them, as they had no Upanayan Sanskar.

Child marriage was accepted as a means to protect ritual purity of the caste ridden communities. In a matrilineal society where considerable concern for ritual purity is emphasized, women play a vital role in the protection of the purity of the group. If men of ritually low status were to get sexual access to women of higher status, not only the purity of the women but also that of the entire group would be endangered. Since the main threat to purity of the group came from female sexuality, it becomes vital to guard it. Most groups solved this problem by the custom of pre-puberty marriages.

By circa 8th century, the marriageable age for girls was lowered to 9 or 10 years, which not only gave a final blow to any effort at educating women but also encouraged the sinister practice of pre-puberty marriages. The situation of widows was very pathetic in the later Vedic era. Even if certain ancient texts have supported the remarriage of widows, Alberuni<sup>15</sup> has observed that the re-marriage of the widows was prohibited by custom. Today with the introduction of a new comprehensive legislation dealing with the personal laws of the Hindu, Manu<sup>16</sup> Smriti has ceased to be a law. Manu, however, will be venerated as the first law giver for the Hindus.

### **Status of Women in Medieval India:**

Medieval Indian history spreads over 500 years. It is predominantly the history of Muslim rulers. Muslims appeared in India as a warrior class. Their rule in India is divided into two Eras; The Era of Delhi Sultanate and the Mughal Era. The only woman who had ever occupied the throne of Delhi was Razia Sultan. Gulbadan Begum was a woman of exceptional poetic talent who wrote Humayun-namah.

Nur Jahan and Jahan Ara took an active part in the state affairs. Nur Jahan was the greatest Muslim queen of India. She was the very embodiment of beauty and military valour. Mumtaj Mahal a princess of a rare beauty combined with superb intellectual talents and aesthetic tastes. India has also produced heroic women such as Chandbibi, who appeared on

the ramparts of the fort of Ahmednagar dressed in male attire; Tara Bai, the



Maharata heroine who was the life and soul of Maharata resistance during the last determined onslaught of Aurangazeb; Mangammal, whose benign rule is still a green memory in the South, and Ahalya Bai Holkar, to whose administrative genius Sir John Malcolm has paid a magnificent tribute. The Moghul princesses of course played a notable part in the court life of Agra and Delhi. Jehanara, the partisan of Dara Shikoh, Roshanara, the partisan of Aurangazeb, Zebunnissa, the daughter of Aurangazeb, whose poems (under the pen name of Makhfi) have come down to us, and others represented the culture of the court.

Jija Bai, the mother of Shivaji<sup>17</sup>, was a devoted mother, who was strong-willed and autocratic at home, but subordinated herself to the interests of her son. During the medieval period the social life of women underwent great changes. Dependence of women on their husbands or other male relatives was a prominent feature of this period.

Devoid of avenues of any education, having lost the access to Stridhana or dowry, they virtually became the exploited class with disastrous results for themselves and the nation. Indian women were politically, socially, and economically inactive except for those engaged in farming and weaving. Political subordination includes the exclusion of women from all important decision-making processes.

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With the advent of Muslims in India, the social movement of Indian women was restricted. They were prohibited to attend public functions and were not free to participate as men's equals in religious functions. Another social evil that existed in society during this period was child marriage. These child brides were denied all intellectual, physical, and spiritual development<sup>18</sup>.

Similarly, most of the women were made to believe that their ideal place was the home. Thus, they were persuaded by circumstances to accept their inferiority and secondary position. Men being providers, women became dependent on them economically for their subsistence except for the labour classes, where both men and women participated in subsistence farming and other occupations.

Many social evils like female infanticide, Sati, child marriages, developed during the middle

ages due to the political instability of Northern India, especially due to various



invasions. Polygamy came into practice. Islam also made the husband the head of the family<sup>19</sup> and insisted that a wife should obey all his commands and should serve him with utmost loyalty. Another social evil that existed in medieval India was female infanticide. This particular system was prevalent among Rajputs and other high castes. Even among the Muslims this custom existed. This social evil originated from the belief that only the birth of a son could make salvation possible for parents as only a son had the privilege of performing Samskaras.

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<sup>17</sup> was an Indian warrior – king and a member of the bhonsle Maratha clan

<sup>18</sup> Medieval India (NCERT, Text book for XII)

<sup>19</sup> surah al Baqarah 2:228 (Quran)

The son began to be considered as the maintainer of the race. Purdah gained popularity with the advent of the Muslims. The Purdah system existed among Kshatriyas in the period of Dharma Sastras. Dowry system was a common phenomenon. It actually meant “Stridhana” which included gifts, ornaments, property, and cash presented to her by her father or her relatives. But in the medieval period the term acquired special significance. It meant money or “Dakshina” which was actually presented to the bridegroom along with the bride. In Vedic times it ensured some sort of security for her. During the Middle Ages, the term “Stridhana” acquired huge dimensions. The Hindus and Muslims favoured this custom of dowry. This in a way contributed to female infanticide, as it became a heavy burden on the poor. The birth of girls came to be seen as a misfortune by the majority of the population.

The condition of the Hindu widows became more miserable during the medieval period. Rigidity of caste system denied them the right to freedom and social mobility. A

widow was secluded from society and was devoid of any worldly pleasure. The condition of the Muslim widow was slightly better owing to the fact that she could marry after a certain lapse of time following her husband's death. Jauhar refers to the practice of



voluntary immolation by wives and daughters of defeated warriors, in order to avoid capture and consequent molestation by the enemy.

Bhakti movements which flourished during the medieval age gave rise to a new class of man and women who cared little for gender bias. This liberal stream to some extent widened the horizon of women. Female poet-saints also played a significant role in the Bhakti movement. Nonetheless, many of these women had to struggle for acceptance within the largely male dominated movement. Injustices and the patriarchal order itself were not a major focus of these poet-saints.

Akkamahadevi, also known as Akka or Mahadevi was a bhakta from the southern region of Karnataka and a devotee of Shiva in the 12th century CE. Mirabai, or Mira is said to have been born into a ruling Rajput family. Mirabai's poetry tells of her vision of Lord Krishna when she was a child.

In medieval India most of the women's took active part in politics, like Raziya Sultana, daughter of sultan Iltutmish, she successfully led her Delhi administration for four year (1236-1240), similarly Chand Bibi, daughter of Husain Nizam Sahs, the thirist sovereign of Ahmadnagar, the Mughals many time try to capture the Ahmadnagar but Chand bibi took the leadership of Ahmadnagar and made a gallant and successful resistance to the Mughal army led by Akbar's son prince Murad, but ultimately the Mughals could not capture the city during the life time of Chand Bibi, Nur Jahan, wife of Mughal emperor Jahangir. She took over the administration from her husband in the 1620s, Tara Bai wife of Rajaram, she carried on the administration of the Maratha kingdom in the name of her minor son, under her leadership the Marathas began to raid the imperial territories of Berar, Gujrat and Ahmadnagar, Rani Ahalya Bai become the ruler of the Holkar state, she was one of the most successful leader of that period.

### **Women in Colonial India:**

In colonial India anti-imperialist women's movement play a sig-nificant role for freedom. The six women participate at the Bom-bay session of Indian National Congress in 1889. (Two of them from Bengal-Kadambini Ganguly and Swarnakumari Devi). It was only after that appeal that the Calcutta session of Indian Na-tional Congress

under the president ship of Anne Besant resolved that women should be granted the right



of universal franchise in the elected process of our country meanwhile, women's organization like Sahi Samity, (1887) under the leadership of Swarna-kumari Devi and Bharat Sree Mandal (1910) led by Sarala Devi Chowdhurani were formed by the women of the Togore family.

A significant change came when Gandhi led “**Civil Disobedience Movement**” of the 1930s, and “**Quit India Move-ment**”. In this movement many women's play a remarkable role for Indian national movement, like Sarojini Naidu, Pravabati Devi, Kasturba Gandhi, Kamala Nehuru, Jyotirmoyee Ganguli, Latika Ghosh, Ashalata Devi, Neli Sengupta, Captain Laxmi Saigal, Aruna Asaf Ali<sup>20</sup>.

That the time most of the women partici-pate the Indian national movement which is lunched by Gandhi against the British rule, like non-cooperation (1920) civil disobedience movement (1930) and quit India movement (1942) and the greatest women freedom fighter Matangini Hazra who sacri-ficed her life for free India.

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<sup>20</sup> See colonialism and nationalism in India by Prof. P. Venu <sup>21</sup> Modern India ( NCRT. text book for XII)

### **Status of Women in Modern India:**

Modern India refers to the period from A.D.1700 to A.D. 1947. In the background of the intellectual upheaval of the 18th and 19th century there was a worldwide demand for establishment of independent and egalitarian nationalist societies which invariably emphasized the equality of women with men.establishment of independent and egalitarian nationalist societies which invariably emphasized the equality of women with men.

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In India, the caste order of the society was challenged. Colonization disrupted Indian

economy and displaced the whole section of artisans who started migrating to the new found towns and cities seeking employment in the modern factories. New land



revenue system deprived the rural and tribal women of their customary rights to the forests, community property and resources.

The ownership laws made the traditional agriculture land a commodity which can be sold, transferred and alienated from the cultivators creating a new wealthy middle class of zamindars who joined hands with the colonial powers to impoverish the peasants.

British established their rule in India, Modernization begun in the 19th century in India. At the advent of the British rule, the position of women in India was at its lowest ebb. Sati was evidently prevalent. Purdah was strictly enforced on Muslim women. Dancing girls had lucrative professions. Almost all the Hindu temples openly harboured devadasis. The British rule, no doubt, tried to check all these evils.

Most of the reform movements (Brahma Samaj of 1825, Prarthana Samaj of 1897 and Arya Samaj of 1875) were led by male reformers who set the limit of the freedom and development of women. These reformers attacked only those practices that were extremely cruel or visibly violent (of course affecting only high caste Indian women). Seldom had they challenged the kinship structures of women subordination, sanctity of marriage and family, sexual division of labour, and caste hierarchies which perpetuated inequalities.

Women reformers like Pandita Ramabai, Rukhmabai and Tarabai Shinde pointed out the biases of their contemporary male reformers. Theosophical society was established at Chennai and Dr. Annie Besant who came from Europe and joined it. It also developed general social reform programme and did not have any particularly gender friendly attitude.

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Abolition of Sati (widow immolation) of 1829 is considered a great achievement of the reformist movement. There is an economic reason for the prevalence of widow immolation. In Dayabagh system a widow could inherit property of the deceased if she has a child. Sati effectively prevents the inheritance by widows. The act regulated the 'illegal' sati and permitted legal sati (sati practiced voluntarily). This regulation became a sign of government approval of widow immolation leading to actual increase of this practice.

Widow Remarriage was recognized by law in 1856. Widow's remarriage restriction was among high caste and high class families. Widow Remarriage was a high

caste issue, as it was widely in practice among many low caste groups. Widow's remarriage in levirate form was commonly accepted among the Jats of Haryana.

### **Position of Women in Twenty-First Century; India:**

Second decades of twenty-first century till now the women have not own their own fate till now they remain other from the society. Living in a same country, same society, same culture today they are tortured by the men, they are deprived from their own rights as a human being, they are insulted by the patriarchy society till now they have not acquire their own position. They have not out from the four walls after the sunset, today also in a narrow lane, in open field, at empty field, noon at summer, night in storm, in deep forest they have been assaulting by the male member of the society.

Because they belong to female gender, they are inferior from the male, they have not the male gender, they are women; the "other". As the women have not gotten their own real position from the society even in the second decades of twenty-first century, the question of gender equity is raised again and this will raise again and again until the gender equity will have not practically established. The great philosopher of India, Swami Vivekananda has said like a bird can fly in the sky by its two feathers, the society also run by the same participation of both the male and female.

According to him in the bird of so-ciety, male belongs in one feather and women on the other side, without the same participation and same contribution of both the male and female the society will never progress.

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<sup>22</sup> Suzanna Arundhati Roy is an Indian author best known for her novel the God of a Small Thing which won the mass book prize for fiction in 1997.

Why a woman should live by a male's identity? The demand of this movement should be on female's own identity. The literature silently inspires women to such a movement against the male authority and in India, the glorious name *Arundhati Roy*<sup>22</sup> stands apart in a class of her own in the field of Women empowerment through literature.

Her only one and best novel "*God of a Small Thing*" enlightens her movements through the characters like Amu and her mother. They belong to an upper class aristocratic and high society but deprived more than the subaltern women by the social 'taboos and totems'. But they have not abided these rules as their foremothers had abided.



They themselves fight against these social dogmas. The great fire of education, Vidyasagar, Vivekanda, Rabindranath Tagore, Raja Rammohon Roy et all had opened the closed door of female education various centuries ago.

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They had raised the black curtain and through the open door with raising curtain the female gender has reached to the every field and every sector of society. Today they are not only wives or mothers or girls, but they are educated, researcher, well dancer, teacher, artist of drawing; song, actress, pilot, driver, engineer, doctor, reporter, fighter even they are also writer. They are not only come out from the closed door with black curtain- they have reached to Mahakas, and Miss Kalpana Chawla<sup>23</sup> is an ever glorious example of that. Each sector is incomplete without the women. They are heroines, or main characters in cinema world, main characters in literature, they have got place in ev-ery discussion. Today is not only the women talk about their common human rights but also the original gentlemen have been talking about them.

Women's cry has not stopped. They were sometimes remain as Devadasi, sometimes sex keeper of jamindar/Mahajan or sometimes prostitute and when today they have tried to erase the so called tags from their group, such incidents have continued one after another.

From Himalaya in North to Bay of Bengal in south India and from Meghalaya in east to Gujarat in west India—the women have tortured. The fire of the incident of Kamduni in Barasat till now has not stopped, what did the error Nirvaya do in Del-hi??? Are the women remained as things like the past? Previ-ous they assaulted at inside the home and now they are being tortured in outside the home.

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<sup>23</sup> Was an American Astronaut, Engineer and the first women of Indian origin to go to space in 1997

They till now remain as things, and for that to the advertisement of a soap industry the adver-tisement of a nearly naked women is shown in T.V.; to sell the newspaper often the picture of half-naked women are posted. Till now the girl babies are killed before their

birth, house-wife torture, rape, gang- rape are not stopped- days by days these are



increasing and that is why a new movement on gender equity is needed by the participation of women –rather to stop these unfair situations women fighter is needed; as Rabindranath Tagore has said – ***“God, why do not u give the permission to own women’s luck by their own?”*** From the child to an old woman—everyone is assaulted. Law, Human rights, punishment etc. do not stop these ill incidents.

The decoration of women, styles of walking, talking etc. all as if they want to please the male member of the society, they never have to live as their own; all the bloody ideas have to be stopped now; all the mental, emotional, and physical tortures of women should be stopped now and for that the society needs a movement on gender equity should need and I think that the women participation in this movement will show the path of success.

Women in modern India have largely been influenced by the programs of reform and upliftment largely influenced by the western democratic and liberal ideology. Before the advent of the British in India, the life of women was rather oppressive, and they were subject to a constant process of subjugation and social oppression. During the British rule, a number of changes were made in the economic and social structures of Indian society, and some substantial progress was achieved in elimination of inequalities between men and women, in education, employment, social rights, etc.

After the Bhakti Movement, the Christian Missionaries took interest in the education of the girls. The Hunter Commission too emphasized on the need for female education in 1882. The Calcutta, Bombay, and Madras (now Kolkata, Mumbai, and Chennai) institutions did not permit the admission of girls till 1875. It was only after 1882 that girls were allowed to go for higher education.

Since then, there has been a continuous progress in the area of education among females. Though the number of girls studying at various levels was low, yet there has been a marked increase in the number of female students at every level from 1941 onwards. During the 19th century, women in India suffered from disabilities like child-marriage, practice of polygamy, sale of girls for marriage purposes, severe restrictions on widows, non-access to education, and restricting oneself to domestic and child-bearing functions.

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The Indian National Conference started in 1885 by Justice Ranade contained these disabilities. Raja Ram Mohan Roy, who played an important role in getting the Sati system abolished raised voices against the child-marriage and fought for the right of inheritance for

women. Ishwar Chandra Vidyasagar launched a movement for the right of widows to remarry and also pleaded for educating women. Maharaja S. Rao, ruler of



Baroda State worked for prevention of child-marriages, Polygamy, and getting the rights of education to women, and the right of remarriage to widows. Swami Vivekananda, Annie Besant, Mahatma Gandhi, and Swami Dayanand Saraswati also took interest in the social and political rights of women. Some women organizations like the Banga Mahila Samaj, and the Ladies Theosophical Society functioned at local levels to promote modern ideas for women. These organizations took up issues like women's education, abolition of social evils like Purdah and Child marriage, Hindu law reform, moral and material progress of women, equality of rights and opportunities, etc.

**It can be said that, the Indian women's movement worked for two goals:**

(i) Uplift of women.

(ii) Equal rights for both men and women.

During the 19th and 20th centuries, some laws were enacted with the sincere efforts of Indian social reformers, humanists, and some British administrators to improve the condition of women in Indian society. The first effort in this direction was the enactment of law against the practice of Sati. From about 1812, the Bengali reformer Raja Ram Mohan Roy started his own campaign against the practice.

On 4 December 1829, the practice was formally banned in the Bengal Presidency lands, by the then-governor general, William Bentick. Female Infanticide was another inhuman practice afflicting the 19th century Indian society. It was particularly in vogue in Rajputana, Punjab, and the North Western Provinces. Some laws were enacted against this practice in 1795, 1802, and 1804, and then in 1870.

Gradually, this evil practice came to be done away through education and public opinion. Social reformers made sincere efforts to popularize Widow Remarriage by writing in newspapers and contemporary journals. Prominent among these reformers were Raja Rammohan Roy and Iswar Chandra Vidyasagar. They carried out large scale campaigns in this regard mainly through books, pamphlets, and petitions with scores of signatures.

Finally, the Widow Remarriage Act came into force in 1856. The practice of Child Marriage was another social stigma for the women. In November 1870, the Indian Reforms Association was started with the efforts of Keshav Chandra Sen. In 1846, the minimum marriageable age for a girl was only 10 years. In 1891, through the enactment of the Age of Consent Act, this was raised to 12 years. In 1930, through the Sharda Act, the minimum age was raised to 14 years.

After independence, the limit was raised to 18 years in 1978. Voices were raised

against the practice of Purdah during the 19th and 20th century. In Southern India and



among the peasantry, Purdah was not prevalent. Through the large scale participation of women in the national freedom movement, the system disappeared without any specific legislative measure taken against it.

### **The Present Position of Women in Indian Society:**

For what is a man profited, if he shall gain the whole world, and lose his own soul? Unfortunately, the liberty and equality enjoyed by Indian women today have not reached the vast majority of women citizens in India. When a brief study was comprehensively done through facts escalation and consequences of sex-selection of boy child over girl child are quite shocking and very disturbing and very much widely practiced even today in almost all parts and all sections of people in India. The question arises here – are we a Nation of Mass Murders? Does a Girl not have a right to born peacefully and with the same respect like a boy child in our so called cultural and spiritual enriched land? As a nation, we are proud on our strong family values but in the real sense most of us are still dwelling with ‘Artificial Balance’ family to have a son by killing preceding daughters? Ultimately the way we treat any one relationship in the family will eventually affect every other relationship in the family. Marriage is one of the key institutions of civilization. The family unit created in the society is a fundamental building block of the Nation Building. Unstable, unhappy family and children will create an unstable and chaotic society.

Whereas happy family with strong family values will produce children with high self-esteem children who will enrich the world around them and become catalysts of positive Change. As we try to increase our wealth and status by having sons at the expense of daughters and by taking dowry and hosting lavish weddings. Are we not compromising on our principles in the process?

Can a life built on another's suffering ever bring us happiness? Are we comfortable with the choices we are making as an individual, as families, as a society? Indifference is also an action – Silence is also a choice. If each one of us does not do something to stem this crisis, we will definitely have to face the consequences of both Indifference and Silence in some point of our respective lives. In our country, there is tremendous pressure on women to bear sons to such an extent that they are made to feel like failures if they do not. Some women also get threatened for her own life, abandonment, forced abortions and even

divorced in some cases. A childless woman is tagged as 'Banj' which means her married life is total 'incomplete' one who only has daughters are also regarded as partially



incomplete. Most married women feel secured and enjoy the status of sorts only after giving birth to a boy child.

A large percentage of Indian women are anemic and consecutive abortions ruin their health. They may get prolonged diseases or die early. The scientific truth is women have nothing to do with the gender of the baby. But it is only women who get blamed and even today, India is suffering from its partial paralysis due to traditional and ill social practices and poor mindset. The experts predict that this situation will lead to increased levels of anti-social behaviors and rise violence and crime against women and will ultimately present a threat to the stability and security of our country.

History proves, that an adverse sex ratio of women against men is decreasing day by day in India which results in increased violence against women.

The following crimes were committed against women in 2007 to 2024

1. 1 woman was sexually harassed every 48 hours
2. 1 woman or minor girl was abducted every 26 minutes
3. 1 woman was raped every 25 minutes
4. 1 woman was molested every 14 minutes.

UNICEF recently concluded that, “the alarming decline in child sex ratio (in India) is likely to result in more girls being married at a younger age, more girls dropping out of education, increased mortality as a result of early child-bearing and associated increase in acts of violence against girls and women such as rape, abduction, trafficking and force polyandry.”

Moreover, child marriage was prevalent in India and continues even today. In India, however the child marriage was outlawed in 1860 but according to UNICEF on ‘State of the World’s Children 2009 report, 47% of India’s women aged 20-24 were married

before the legal age of 18, with 56% in rural areas. The report also showed that 40% of the world's child marriages occur in India.



Sex ratio is a valuable source for finding the population of women in India and what is the ratio of women to that of men in India. Sex ratio is used to describe the number of females per 1000 of males<sup>25</sup>. In the Population Census 2011 in India it was revealed that the population ratio in India 2011 was 940 females per 1000 of males. The Sex Ratio 2011 shows an upward trend from the census 2001 data.

Census 2001 revealed that there were 933 females to that of 1000 males. Since decades India has seen a decrease in the sex ratio 2011 but since the last two decades there has been a slight increase in the sex ratio. Since the last five decades the sex ratio has been moving around 930 of females to that of 1000 of males as in case of India.

The Sex Ratio in India was almost normal during the phase of the years of independence, but thereafter it started showing gradual signs of decrease. Though the Sex Ratio in India has gone through commendable signs of improvement in last 10 years, there are still some states where the sex ratio is still low and is a cause of alarming concern. One of the states which are continuously showing a decreasing trend in the population of women 2011 is the state of Haryana.

The state of Haryana has the lowest rate of sex ratio in India and the figure shows a number of 877 of females to that of 1000 of males but at the same time there are states such as Pondicherry and Kerala where the number of women is more than the number of men. Kerala houses a number of 1084 females to that of 1000 males. While Pondicherry and Kerala are the only two states where the number of female is more than the number of men, there are also states in India like that of Karnataka, Andhra Pradesh and Maharashtra where the sex ratio 2011 is showing considerable signs of improvement.

Some facts related to the Sex Ratio in India follows the main cause of the decline of the sex ratio in India is due to the biased attitude which is meted out to the women. The main cause of this gender bias is inadequate education. Pondicherry and Kerala houses the maximum number of female while the regions of Daman and Diu and Haryana have the lowest density of female population.

<sup>24</sup> National crime records bureau ministry of home affairs  
2007 <sup>25</sup> population census of India 2011

## 2.4 Realizing Women's Right in India

### 1. Right to Health

#### Constitutional Articles:

- **Article 21** (Right to Life and Dignity), **Article 39(e)** (Maternal Health), **Article 42** (Maternity Relief).

#### Case Laws:

#### 1. Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996)

- **Citation:** (1996) 4 SCC 37
- **Holding:** The Supreme Court held that denial of emergency medical treatment violates Article 21.

#### 2. Devika Biswas v. Union of India (2016)

- **Citation:** (2016) 10 SCC 726
- **Holding:** Recognized women's right to safe reproductive healthcare and banned illegal sterilization camps.

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#### Constitutional Articles:

- **Article 15(3)** (Special Provisions for Women), **Article 21A** (Free Education), **Article 46** (Educational Upliftment).

#### Case Laws:

#### 1. Mohini Jain v. State of Karnataka (1992)

- **Citation:** AIR 1992 SC 1858
- **Holding:** Declared education a fundamental right under Article 21.

#### 2. Unni Krishnan, J.P. v. State of Andhra Pradesh (1993)

- **Citation:** AIR 1993 SC 2178
- **Holding:** Upheld free education for children until 14 years, later codified as Article 21A.

### 3. Right to Life



### Constitutional Articles:

- **Article 14** (Equality), **Article 15(1)** (Non-Discrimination), **Article 21** (Protection from Female Infanticide).

### Case Laws:

#### 1. **Voluntary Health Association of Punjab v. Union of India** (2013)

- **Citation:** (2013) 4 SCC 1
- **Holding:** Directed strict enforcement of the PCPNDT Act to curb sex-selective abortions.

#### 2. **Centre for Enquiry into Health v. Union of India** (2012)

- **Citation:** AIR 2012 SC 2063
- **Holding:** Highlighted state failure to prevent female infanticide under Article 21.

### 4. **Right to Protection & Freedom of Expression** Constitutional Articles:

- **Article 19(1)(a)** (Free Speech), **Article 21** (Protection from Violence), **Article 39(f)** (Exploitation Safeguards).

### Case Laws:

#### 1. **Vishaka v. State of Rajasthan** (1997)

- **Citation:** AIR 1997 SC 3011
- **Holding:** Laid guidelines against workplace sexual harassment under Articles 14, 19, and 21.

## 2. **Navtej Singh Johar v. Union of India** (2018)

- **Citation:** (2018) 10 SCC 1
- **Holding:** Decriminalized homosexuality, affirming LGBTQ+ rights under Articles 14, 15, 19, and 21.



### 3. **Laxmi v. Union of India** (2015)

- **Citation:** (2015) 5 SCC 789
- **Holding:** Mandated compensation for acid attack survivors under Article 21.

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Constitution of India

### 5. **Right to Identity**

#### Constitutional Articles:

- **Article 21A** (Birth Registration), **Article 14** (Equality).

#### Case Law:

### 1. **Justice K.S. Puttaswamy v. Union of India** (2017)

- **Citation:** (2017) 10 SCC 1
- **Holding:** Recognized the right to privacy as intrinsic to Article 21, protecting women's identity rights.

## 6. Risk Factors – Challenges for Women

### Constitutional Articles:

- **Article 38** (Reducing Inequality), **Article 47** (Public Health).

### Case Law:

#### 1. **State of Karnataka v. Union of India** (2017)

- **Citation:** (2017) 7 SCC 722



- **Holding:** Emphasized access to clean water as part of the right to life under Article 21.

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Constitution of India

1. Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37.
1. Devika Biswas v. Union of India, (2016) 10 SCC 726.
2. Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
3. Unni Krishnan, J.P. v. State of A.P., AIR 1993 SC 2178.
4. Voluntary Health Assn. of Punjab v. Union of India, (2013) 4 SCC 1.
5. Centre for Enquiry into Health v. Union of India, AIR 2012 SC 2063.
6. Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
7. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
8. Laxmi v. Union of India, (2015) 5 SCC 789.
9. Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
10. State of Karnataka v. Union of India, (2017) 7 SCC 722.

**CHAPTER-3**

**WOMEN'S DOMINANCE IN INDIAN LAWS**

Women constitute almost 50% of the world's population but India has shown disproportionate sex ratio whereby females population has been comparatively lower than males. As far as their social status is concerned, they are not treated as equal to men in all the places. Although now the women in India enjoy a unique status of equality with the men as per constitutional and legal provision, but the Indian women have come a long way to achieve the present positions.

- First, gender inequality in India can be traced back to the historic days of mahabaratha when Druapathi<sup>29</sup> was put on the dice by her husband as a commodity. History is a

witness that women were made to dance both in private and public places to please the man.

- Second, in Indian society, a female was always dependent on male members of the family even last few years ago.
- Third, a female was not allow to speak with loud voice in the presence of elder members of her in laws. In the family , every faults had gone to her and responsible.
- Fourth, as a widow her dependence on a male members of the family still more increase In many social activities she is not permitted to mix with other members of the



family . other hand , she has very little share in political, social and economic life of the society.

The early twenty century , it was rise of the national movement under the leadership of Mahatma Gandhi who was in favor of removing all the disabilities of women. At the same time, Raja Ram Mohan Ray<sup>30</sup>, Iswar Chandra Vidyasagar<sup>31</sup> and various other social reformers laid stress on women's education, prevention of child marriage , withdrawals of evil practice of sati, removal of polygamy etc. The national movement and various reform movements paved the way for their liberations from the social evils and religious taboos. In the context,

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29 She is described to the most beautiful women of panchala in Mahabara

30 1772-1833

31 1820-1891

we may write about the act of sati (abolish) 1829, Hindu widow remarriage act' 1856, the child restriction act, 1929, women property right act, 1937 etc After independence of India, the constitution makers and the national leaders recognized the equal social position of woman with men .

Many legislations also were made to remove the derogatory practices against women in the Indian society. The year of 2001 was observed as the year of women's empowerment<sup>32</sup>. During the year ,a landmark document has been adopted ,'the national policy for the empowerment of women .' For the beneficiaries of the women, the government has been adopted different schemes and programs i.e. the national credit fund for women (1993), Food and Nutrition Board (FNB), Information and Mass Education (IMF) etc.

The most positive development last few years has been the growing involvement of women in the Panjayati Raj institutions . There are many elected women representatives at the village council level<sup>33</sup>. At the central and state levels too women are progressively making a difference. Today we have seen women chief ministers, women president , different political parties leader, well establish businessmen etc. The most notable amongst

these are Mrs. pratibha Devi Singh Patil, Sheela Dixit, Smt. Mayawati, Mamta Banerji, Medha Patkar , Smt. Smriti Irani, etc. are some examples .

Women are also involving in human development issues of child rearing, education, health, and gender parity. Many of them have gone into the making and marketing of a range of cottage products-pickles, tailoring, embroidery etc. The economic empowerment of women is being regarded these days as a sine-quo-non of progress for a country hence, the issue of economic empowerment of women is of paramount importance to political thinkers , social thinkers and reformers.

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32 Declared by Peaceful society on 2001

33 See Arts. 243D(3) of Indian constitution

### **3.1 Empowerment of Women constitutional and other legal provisions**

The concept of empowerment flows from the power. It is vesting were it does not exist or exist inadequately. Empowerment of women would meaning women to be economically independent , self-reliant , have positive esteem to enable them to face any difficult situation and they should be able to participate in development activities . The empowered women should be able to participate in the process of decision making . In India,

the Ministry of Human Resource Development (MHRD-1985) and the National Commission for Women (NCW) have been worked to safeguard the rights and legal entitlement of women.

Women empowerment simply means giving power to women to take their own decisions and to inculcate such abilities in theme so that they could be able to find their rightful place in the society.

According to the **United Nations**, women's empowerment mainly has five components:

- Generating women's sense of self-worth;
- Women's right to have and to determine their choices;



- Women’s right to have access to equal opportunities and all kinds of resources;
- Women’s right to have the power to regulate and control their own lives ,within and outside the home ; and
- Women’s ability to contribute in creating a more just social and economic order.

Thus, women empowerment is nothing but recognition of women’s basic human rights and creating an environment where they are treated as equals to men. In India “The New Panjayati Raj” is the part of the effort to empower women at least at the village level . the government of India has ratified various international conventions and human rights instruments committing to secure equal rights to women . these are CEDAW<sup>34</sup> (1993), the Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the platform for Action (1995) and other such instruments.

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34 Convention on the elimination of all forms of discrimination against women

### **Need for women empowerment**

Need for empowerment arose due to centuries of domination and discrimination done by men over women; women are the suppressed lot. They are the target of varied types of violence and discriminatory practices done by men all over the world. India is a complex country. We have, through centuries, developed various types of customs, traditions and practices. These customs and traditions, good as well as bad, have become a part of our society’s collective consciousness. We worship female goddesses; we also give great importance to our mothers, daughters, sisters, wives and other female relatives or friends.

But at the same time , Indians are also famous for treating their women badly both inside and outside their home<sup>35</sup>. Indian society consists of people belonging to almost all kinds of religious beliefs. In every religion women are given a special place and every religion

teaches us to treat women with respect and dignity.

But somehow the society has so developed that various types of ill practices, both physical and mental , against women have become norm since ages. For instance, sati pratha , practice of dowry, female infanticide, wife burning , sexual violence, sexual harassment at



work place, domestic violence and other varied kinds of discriminatory practices; all such acts consists of physical as well as mental element.

The reasons for such behaviour against women are many but the most important one are the male superiority complex and patriarchal system of society. For that to change, the society's age-old deep-rooted mind set needs to be changed through social conditioning and sensitization programmes.

Therefore, the concept of women empowerment not only focuses on giving women strength and skills to rise above from their miserable situation but at the same time it also stresses on the need to educate men regarding women issues and inculcating a sense of respect and duty towards women as equals.

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35 Siddhartha Das, women empowerment in India, Orissa review, Dec-2004

### **Reasons for the empowerment of Women**

Today we have noticed different acts and schemes of the central government as well as state government to empower the women of India. But in India women are discriminated and marginalized at every level of the society whether is it social participation, political participation, economic participation, access to education, and also reproductive healthcare.

Women are found to be economically very poor all over the India. A few women engaged in services and other activities. So, they need economic power to stand on their own legs on per with men. Other hand, it has been observed that women are found to be less literate than men. To increase the literacy rate among women it is very important to empower them. It has also noticed that some of women are too weak to work. They consume less food but work more. Therefore, from the health point of view, women folk who are to be weaker are to be made stronger. Another problem is that workplace harassment of women. There are so

many



cases of rape, kidnapping of girl, dowry harassment, and so on. For these reasons, they require empowerment of all kinds in order to protect themselves and to secure their purity and dignity.

To sum up, women empowerment cannot be possible unless women come with and help to self empower themselves. There is a need to formulate reducing feminized poverty, promoting education of women, and prevention and elimination of violence against women.

### **3.2 India and women empowerment Constitutional Provisions**

India's constitution makers and our founding fathers were very determined to provide equal rights to both women and men<sup>36</sup>. Various articles in the constitution safeguard women's rights by putting them at par with men socially, politically and economically. The preamble, the fundamental rights, DPSPs<sup>37</sup> and other constitutional provisions provide several general and special safeguards to secure women's human rights.

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Indian Constitution

36 Arts. 14, 15

37 Arts. 36 to 51

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 citizen in matters relating to

employment . The Preamble, Articles 14, 15, 15(3), 16, 39(b), 39(c) and 42 of the constitution are of specific importance in this regard

### **Preamble**



The Preamble to the constitution of India assures justice, social, economic and political; equality of status and opportunity and dignity to the individual. Thus it treats both men and women equal. 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 women. Key among them is the ratification of the convention on Elimination of all Forms of Discrimination against Women (CEDAW) in 1993.

**Fundamental Rights** These are rights which are embodied in the constitution of India and are enforceable by court of law<sup>38</sup>.

1. Equality before law for women (Article 14) In *Air India v. Nargesh Mizra*<sup>39</sup> the SC struck down the Air India and Indian Airlines Regulation on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary and against the Article 14. In *CB Muthumma*<sup>40</sup> case a central government service regulation saying that no married women shall be appointed for a certain service was held unconstitutional and violative of Article 14 and 16.
2. The state not to discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them (Article 15(i))
3. The state to make any special provision in favour of women and children (Article 15 (3))
4. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
5. Right to life and Personal Liberty (Article 21)

### **Directive Principles**

Directive principles of state Policy also contain important provisions regarding women empowerment and it is the duty of the government to apply these principles while making laws or formulating any policy. Though these are not justiciable in the court but these are essential for governance nonetheless. Some of them are

1. The state to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a));
2. Equal pay for equal work for both men and women (Article 39 (d))
3. No abuse of Health and strength of a women (Article 39 (e))
4. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)
5. The state make provision for securing just and human conditions of work and for maternity relief (Article 42).
6. Uniform civil code (Article 44)
7. The state to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)
8. The state to raise the level of nutrition and the standard of living of its people (Article 47)

### **Fundamental Duties**

Fundamental duties are enriched in part IV-A of the constitution and are positive duties for the people of India to follow. It also contains a duty related to women's rights. Duty to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))

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38 Arts. 12-35 of Constitution

39 AIR 1981 SC 1829 40 1979 AIR 1868, 1980 SCR (1) 668, 1979 SCC (4)

### **Other constitutional Provisions**

Through 73rd and 74th Constitutional Amendment of 1993-41, a very important political right has been given to women which is a landmark in the direction of women empowerment in India.



With this amendment women were given 33.33% reservation in seats at different levels of elections in local governance i.e. at Panchayat, block and Municipality elections. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Tribes) of the total number of seats to be filled by direct election in every panchayath to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayath (Article 243 D (3))

Not less than one-third of the total number of offices of chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (3))

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

Reservation of offices of chairpersons in Municipalities for the scheduled castes, the scheduled Tribes and women in such manner as the legislature of a state may by law provide (Article 243 T(4))

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41 constitutional law of India (Dr. Pandey, 52nd Edn)

## **LEGISLATIVE INITIATIVES TOWARDS EMPOWERMENT OF WOMEN<sup>42</sup>**

Here is the list of some specific laws which were enacted by the parliament in order to fulfil constitutional obligation of women empowerment: In India there are numerous laws



aimed at empowerment of women in the areas of personal, labour, service and criminal and social economic matters. The Fundamental Law of the land namely constitution of India guarantees equality for women. It would be proper to refer some of the most important legislations pertaining to empowerment of women. | Constitution of India, 1950: The Constitution of India not only guarantees equality to women but also empowers the State to adopt measures to positive discrimination in favour of women. The principle of gender equality is enshrined in the Indian Constitution in its preamble, Fundamental Duties and directive principles. Article 14 of the constitution of India guarantees equality before law. Article 15 prohibits discrimination on the grounds of sex. Article 16 states about equality of opportunity for all citizens in matters relating to employment. The 73rd and 74th amendments to the Constitution of India provided for reservation of seats (at least 1/3) in the local bodies of panchayats and Municipalities for women. Another Constitution Amendment (84th Constitution Amendment) reserving 33 per cent in Parliament and State Legislature is in the pipeline

### **Bharatiya Nyaya Sanhita, 2023**

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the Indian Penal Code (IPC), introduces revised and renumbered provisions addressing crimes against women. Below is a mapping of the IPC sections you listed to their corresponding provisions in the BNS, 2023, along with key updates:

#### **1. Obscenity (IPC Sections 292–294)**

- **BNS 2023: Sections 293–295 (renumbered).**
  - Retains punishment for sale, distribution, or public exhibition of obscene materials.
  - Explicitly criminalizes electronic transmission of obscene content (updated for cyber offenses).

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\_\_\_\_42 Legislative and Judicial initiatives towards women empowerment, Article by R. Seyon

## 2. Dowry Death (IPC Section 304B)

- **BNS 2023: Section 80(2)** (renumbered under "Homicide").
  - Retains strict liability for deaths linked to dowry demands.



- Enhances penalties (minimum 7 years imprisonment, extendable to life).

### 3. Causing Miscarriage (IPC Sections 312–318)

- **BNS 2023:** Sections **87–91** (renumbered under "Offenses Against the Body").
  - Clarifies punishments for forced miscarriage, including aggravated cases (e.g., against the woman's will or causing grave harm).

### 4. Outraging Modesty (IPC Section 354)

- **BNS 2023:** Section **74** (expanded).
  - Broadened to include acts like stalking, voyeurism, and cyber harassment.
  - Higher penalties for custodial or authority-figure offenders.

### 5. Kidnapping for Marriage (IPC Section 366)

- **BNS 2023:** Section **136** (renumbered).
  - Criminalizes kidnapping, abduction, or coercing marriage against a woman's will.
  - Includes trafficking-related offenses.

### 6. Procurement of Minor Girls (IPC Section 366A)

- **BNS 2023:** Section **138** (merged with trafficking provisions).
  - Enhanced penalties for trafficking minors for sexual exploitation.
  - Aligns with the Protection of Children from Sexual Offences (POCSO) Act.

## 7. Rape (IPC Section 376)

- **BNS 2023: Section 63** (overhauled).
  - Defines consent more stringently.
  - Introduces graded punishments:
    - **Gang rape:** Minimum 20 years to life imprisonment.
    - **Custodial rape:** Life term or death penalty if victim dies.



- **Marital rape:** Criminalized in limited contexts (e.g., separation periods).

## 8. Bigamy (IPC Section 494)

- **BNS 2023: Section 5** (renumbered under "Offenses Against Marriage").
  - Retains penalties for bigamy but requires stricter proof of prior marriage.

## 9. Adultery (IPC Section 497)

- **BNS 2023: Decriminalized** (as per Supreme Court's 2018 ruling).
  - Now treated as a civil wrong under personal laws.

## 10. Cruelty by Husband/Relatives (IPC Section 498A)

- **BNS 2023: Section 84** (renumbered).
  - Retains criminal liability for dowry-related harassment or coercive cruelty.
  - Adds psychological abuse and economic violence as grounds.

## 11. Insulting Modesty (IPC Section 509)

- **BNS 2023: Section 75** (expanded).
  - Covers verbal, gestural, and digital acts (e.g., online harassment).
  - Punishment includes imprisonment up to 3 years and fines.

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     Bare Act: Bharatiya Niyaya Sanhita, 2023

## 12. 2013 IPC Amendments (Acid Attacks, Gang Rape, etc.)

- **BNS 2023:** Explicitly codifies these offenses:
  - **Acid Attacks:** Section **52** (minimum 10 years imprisonment, compensation mandated).
  - **Sexual Harassment:** Section **74** (includes workplace, educational institutions, and cyber harassment).
  - **Child Sexual Abuse:** Sections **95–98** (aligns with POCSO Act for stricter prosecution).

### Key Changes in BNS 2023



1. **Gender-Neutral Language:** Expanded protections for transgender individuals.
2. **Digital Offenses:** Explicit criminalization of cyberstalking, deepfakes, and non-consensual pornography.
3. **Victim Compensation:** Mandatory monetary relief for survivors of sexual violence.
4. **Fast-Track Courts:** Prioritized trials for crimes against women and children.

**Bharatiya Nagarik Suraksha Sanhita, (BNSS) 2023** Under s. 144, women has got right to maintenance<sup>46</sup>.

### **Bharatiya Sakshya Adhiniyam,(BSA) 2023**

The **Bharatiya Sakshya Adhiniyam (BSA), 2023**, which replaces the Indian Evidence Act, 1872, retains and strengthens critical evidentiary presumptions to protect women, particularly in cases of abetment of suicide, dowry deaths, and sexual violence. Below is the conversion of the mentioned provisions into the BSA framework, along with updates reflecting contemporary legal priorities:

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<sup>46</sup>Bare Act: Bharatiya Niyaya Sanhita, 2023  
Bare Acts: Bhartiya Nagarik Suraksha Sanhita, 2023,  
Bharitiya Sakshya Adhiniyam 2023

#### **1. Presumption of Abetment of Suicide (Old: Section 113A IEA)**

- **BSA 2023: Section 117**
  - **Key Provision:**
    - If a married woman dies by suicide within **7 years of marriage**, and there is evidence of cruelty or harassment by her husband or relatives, the court **shall presume** abetment of suicide.
    - **Burden of Proof:** Shifts to the accused to rebut the presumption.

○ **Updates:**

- Expanded definition of "cruelty" to include psychological abuse, coercive control, and economic deprivation.
- Applies to live-in relationships and de facto marital arrangements (gender-neutral in limited contexts).



## 2. Presumption of Dowry Death (Old: Section 113B IEA)

- **BSA 2023: Section 118**

- **Key Provision:**

- If a woman dies under **unnatural circumstances** (e.g., burns, poisoning) within **7 years of marriage**, and there is evidence of dowry-related harassment, the court **shall presume** it is a "dowry death."
- **Burden of Proof:** Accused must prove innocence.

- **Updates:**

- Includes deaths occurring during **separation or divorce proceedings**.
- Mandates courts to consider **digital evidence** (e.g., messages, emails) to establish harassment.

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Bharitiya Sakshiya Adhinyam 2023

## 3. Presumption of Absence of Consent in Sexual Offenses (Old: Section 114A IEA)

- **BSA 2023: Section 120**

- **Key Provision:**

- In cases of rape, gang rape, or custodial sexual violence, if the survivor states she did not consent, the court **shall presume absence of consent**.
- **Burden of Proof:** Accused must prove consent was freely given.

- **Updates:**

- Explicitly applies to **all forms of sexual assault** (including non-penetrative acts under the BNS, 2023).
- Covers **incidents involving intoxicants, threats, or authority figures** (e.g., employers, police).
- Recognizes **silence or inability to protest** (due to trauma) as lack of consent.



### **Hindu Adoption Maintenance Act, 1956**

Section 18-A provides for obligations of husband to maintain his wife. Section 18 (2) provides rights of wife to live separately and S. 19 provides for maintenance of widow by her father-in-law.

### **Hindu Succession Act, 1956**

Section 14 of the act provides for property of female Hindu to be her absolute property. Section 23 provides right of female legal heirs in the dwelling house.

**The Hindu Minority and Guardianship Act, 1956** Section 6 of the act provides for mother as a natural guardian for minors below 5 years.

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Bare Acts:

Hindu	Adoption	Maintenance	Act,1956,
Bharitiya	Sakshiya	Adhiniyam	2023,
Hindu Succession Act, 1956			

### **The Hindu Marriage Act, 1955**

Section 13(2) of the Act provides for wife to present a petition for divorce. Section 13(b) provides equal right for wife getting divorce by mutual consent. Section 24 of the Act provides for relief for interim maintenance and expenses.

Section 25 of the Act provides for right to a wife to seek permanent alimony and maintenance and S.26 of the Act provides right to claim custody of children.

**The Dowry Prohibition Act, 1961** Under the provisions of this Act demand of dowry either before marriage, during marriage and or after the marriage is an offence.

**The Muslim Women (Protection of Right on Divorce) Act, 1986:** Under the provisions

of the Act provides for maintenance of women by the relatives after the iddat period.

**The Factories Act, 1948** The provisions of this Act provides for health , safety, welfare, and working hours for women labourer working in factories.



**The Equal Remuneration Act, 1976** It provides for payment of equal wages to both men and women workers for the same work or work of similar nature. It also prohibits discrimination against women in the matter of recruitment.

**The Employees State Insurance Act, 1948** The Act provides for insurance pension and maternity benefits to women workers.

**The Maternity Benefit Act, 1961** It provides for maternity benefit with full wages for women workers.

**The Medical Termination of Pregnancy Act, 1971** The Act safeguards women from unnecessary and compulsory abortions.

**The Child Marriage Restraint Act, 1976** and later the prohibition of child Marriage Act, 2006: The Act provides safeguards for girls from child marriage

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\_\_\_\_\_ Indian Legislations for Protection of Women against Crimes

**The Immoral Trafficking (Prevention) Act, 1986:** The Act safeguards women from prostitution.

**The Prenatal Diagnostic Technique (Regulation and Prevention of Measure) Act, 1994:** This Act prohibits diagnosing of pregnant women and also identification of child in the womb whether it is male or female.

**The Indecent Representation of Women (Prohibition) Act 1986** The Act safeguards women from indecent representation

**The Commission of Sati (Prevention) Act, 1992** It safeguards women from sati.

**The National Commission for Women Act, 1992** The Act provides for a setting up a statutory body namely the National Commission for Women to take up remedial measures, and facilitate redressal of grievances and advise the Government on all policy matters

relating to women.



**The Family Courts Act, 1984:** The Act provides for setting up a family Court for in-camera proceedings for women

**The Protection of Women from Domestic Violence Act, 2005** The Act Provides for punishment for domestic violence committed by husband and his relatives and also provides legal assistance for women suffering from domestic violence. It also provides interim maintenance to women and also for compensation and damages.

**The Hindu Succession (Amendment Act),2005** It provides that daughters in a joint Hindu family, governed by Mitakshara law, were granted statutory right in the coparcenary property (being property not partitioned or alienated) of their fathers.

**The Sexual Harassment of Women at Work Place (Prevention, Protection and) Act, 2013** This act provides protection to women against sexual harassment at workplace

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\_\_\_\_\_ Indian Legislations for Protection of Women against Crimes

### **SPECIAL INITIATIVES FOR WOMEN**

(i) **National Commission for Women:** In January 1992, the government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

(ii) **Reservation for Women in Local Self- Government:** The 73rd constitutional Amendment Act passed in 1992 by parliament ensure one third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas

(iii) **The National Plan of Action for the Girl Child (1991 – 2000):** The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

(iv) **National Policy for the Empowerment of Women, 2001:** The department of women & child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women “ in the year 2001.

The goal of this policy is to bring about the advancement, development and empowerment of women. The specific objectives of the policy are as follow:

- a. Creation of an environment through positive economic and social policies for full development of women to enable them to realize their full potential.
- b. Creation of an environment for enjoyments of all human rights and fundamental freedom by women on equal basis with men in all political, economic social, cultural and civil spheres.
- c. Providing equal access to participation and decision making of women in social political and economic life of the nation.
- d. Providing equal access to women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public life etc.
- e. Strengthening legal systems aimed at elimination of all forms of discrimination against women.

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\_\_\_\_\_ Indian Legislations for Protection of Women against Crimes

- f. Changing societal attitudes and community practices by active participation and involvement of both men and women.
- g. Mainstreaming a gender perspective in the development process.
- h. Elimination of discrimination and all forms of violence against women and the girl child.
- i. Building and strengthening partnerships with civil society, particularly women's organizations.

### **The Ministry of Women and Child Development**

Is the nodal agency for all matters pertaining to welfare, development and empowerment of women. It has evolved schemes and programmes for their benefit. These schemes are spread across a very wide spectrum such as women's need for shelter, security, safety, legal aid, justice information, maternal health ,food ,nutrition etc , as well as their need for economic sustenance through skill development, education and access to credit and marketing. The

Ministry also supports autonomous bodies like National Commission,



Central Social Welfare Board and Rashtriya Mahila Kosh which work for the welfare and development of women. Economic sustenance of women through skill development, education and access to credit and marketing is also one of the areas where the Ministry has special focus

## **Women's Rights in Partition Suits and Property Rights**

### **1. Equal Coparcenary Rights**

Under the **Hindu Succession Act, 1956** (amended in 2005), daughters are recognized as coparceners with equal rights to ancestral property, enabling them to demand partition and inherit shares equivalent to male heirs.

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\_\_\_\_\_National Commission for Women

National policies from Ministry of Human rights resources development

### **2. Right to Initiate Partition**

Women can file partition suits under **Order XX, Rule 18 of the Civil Procedure Code (CPC)** to divide joint family or self-acquired property. Courts have upheld this right, even for widows asserting claims posthumously.

### **3. Presumption of Equal Shares**

In partition disputes, courts presume equal division among heirs unless disproven. Methods like *per stripes* (by lineage) or *per capita* (individual shares) apply based on the property type.

#### 4. Burden of Proof and Judicial Notice

The **Bharatiya Sakshya Adhinyam (BSA), 2023** (replacing the Indian Evidence Act, 1872) eases evidentiary burdens:



- **Judicial Notice (Section 52 BSA):** Courts recognize statutory rights (e.g., inheritance laws) without formal proof.
- **Admitted Facts (Section 53 BSA):** Opposing parties' admissions simplify claims.

## 5. No Time Bar for Partition Claims

Partition suits are exempt from limitation periods under **Article 65 of the Limitation Act, 1963**, allowing women to assert rights decades later.

## 6. Protection Against Exploitation

Laws like the **Uniform Partition of Heirs Property Act (UPHPA)** (adopted in some Indian states) mandate fair valuations and mediation to prevent coercive sales disadvantaging women.

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\_\_\_\_\_ Women's Rights in Partition Suits and Property Rights

## CHAPTER 5

### CONCLUSION AND SUGGESTIONS

Women, once considered fit only for domestic chores and looking after the house and babies, have assumed the role of professionals. The ability to exercise full control over their lives is the most common explanation of “women’s empowerment”. The last decades have witnessed some fundamental changes in the status and role of women in society. There has been a shift in policy from the concept of “welfare” in the seventies to “development” in the eighties, to “empowerment” in the nineties and “My body my choice” in the 21st century.

This process has been further accelerated with some sections of women becoming increasingly self-conscious of the discrimination they face in several areas of family and public life. They are also in a position to mobilise themselves on issues that affect their position. Tulsidas’ verse from Ramayana, “Dhol, janwar, shudra, pashu, nari/ ye sub nindan

ke adhikari”, highlights the discrimination and deep-rooted gender bias which still exists against women irrespective of caste, community, religious affiliation or class. The Constitution of India grants equality to women in all fields of life.

Yet, a large number of women are either ill equipped or not in a position to propel themselves out of their traditionally unsatisfactory socio-economic conditions. They are



often absorbed in the struggle to sustain the family physically and emotionally and as a rule are discouraged from taking interest in affairs outside home. Oppression and atrocities on women are still rampant. Patriarchy continues to be embedded in the social system in many parts of India, denying a majority of women the choice to decide on how they live. Female infanticide continues to be common, especially in states like Haryana, UP, MP, and Punjab.

Domestic violence is also widespread and is often due to another malpractice, that of dowry. Apart from a meagre number of urban and sub urban women, Indian women are still crying for social justice. The government has numerous programmes for women empowerment but little has been done or achieved through them. The discrepancy in the idea and practice of women empowerment in India contributes to their social, economic and social backwardness. Women make up 48.5% of India's population. There can be no national progress unless their needs and interests are fully met. Empowerment would not hold any meaning unless women are made strong and aware of their equal status in society.

Policies should be framed to bring them into the mainstream of society. It is important to educate women. The need of the hour is to improve female literacy as education holds the key to development. Women could be empowered through making them realise their collective strength. The policy approach should be towards organising women in groups, raising their level of awareness, and providing them with social and economic support services. The empowerment of women necessitates a strong element of participation, which would enable women to acquire social, economic and political equality. Many women have become empowered through collective reflection and decision making. This empowerment reflects in positive self-image and self-confidence; the ability to think critically; equal participation in the process of bringing about social change; and encouraging group action in order to bring about social change.

Education and training interventions were considered to be one of the most effective tools for the empowerment of rural women, combined with other support services and activities. The principle objective was to empower women through communication of information, education and training to enable them to recognise and improve their social and economic status.

Empowerment would become more relevant if women are educated, better informed, and can take rational decisions. It is also necessary to sensitise the other sex towards women. It is important to usher in changes in societal attitudes and perceptions with regard to the role of women in different spheres of life. Adjustments have to be made

in traditional gender-specific tasks. A woman needs to be physically healthy so that she is able to take up challenges. This aspect is sadly lacking in the majority of women, especially in the rural areas. They have unequal access to basic health resources and lack adequate counselling.

The greatest challenge is to recognise the obstacles that stand in the way of women's right to good health. To be useful to the family, community, and society, women must be provided with healthcare facilities. Most women work in the agricultural sector either as workers in household farms or as wage workers. Yet, it is precisely livelihood in agriculture that has tended to become more stressed and insecure in recent years. The government's policies for alleviating poverty have failed to produce any desirable results, as women still do not receive appropriate wages for their labour. There is also significant amount of unpaid or non-marketed labour within the household. The increase in gender disparity in wages in urban areas is also quite marked, as it results from the employment of women in different and lower-paying activities.

Women are exploited at various levels. They should be provided with wages at par with men so that their status can be elevated in society. In recent years there have been explicit moves to increase women's political participation. The women's reservation policy bill is, however, a very sad story as it is repeatedly being scuttled in Parliament. In the Panchayati Raj system, however, women have been given adequate representation. There are many elected women representatives at the village council level. However, their power is restricted, as it is the men who wield all the authority. Their decisions are often over-ruled by the government machinery. It is crucial to train and give real power to these women leaders so that they can catalyse change in their villages. The movement for gender equality and women's empowerment still has a long way to go, and may even become more difficult in coming years.

The main reason for this is that targeted schemes tend to have a limited impact. To make a positive change, basic infrastructure should be provided in every village and city. To begin with, providing safe drinking water and better sanitation is not only key to improving the lives and health of women but it also reduces their workload in terms of provisioning and ensuring such facilities. Access to affordable cooking fuel reduces the need to travel long distances in search of fuel in the form of wood.

Improved transport connecting villages with each other and with towns can also directly improve living conditions as well as unpaid labour time spent in transporting household items. It can also lead to access to a wider range of goods and services plus better access

to health facilities. Expenditure on food subsidy and better provisions



for public distribution services directly affects the lives of women and girl children in terms of adequate nutrition. The patterns of resource mobilisation by government also have significant effects on women that are usually not recognised. When taxes are regressive and fall disproportionately on items of mass consumption, these tend to affect women more.

This is not only because the consumption of such items may be curtailed but also because the provisioning of such items is frequently considered to be the responsibility of the women of the household. Also, credit policies reduce the flow of credit to small-scale enterprises thus reducing the employment opportunities for women. There is a need to have women-friendly economic policies that can enhance their social and economic position and make them self-reliant

Socio-economic development of women has always been the central focus of planning since Independence, but much more needs to be done to remove the obstacles in the path of women's emancipation both from the government and patriarchy. Efforts should be directed towards all-round development of each and every section of Indian women by giving them their due share.



## CHAPTER V

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