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# Women Rights as Human Rights

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## ABSTRACT

*The concept of women's rights as human rights underscores the importance of addressing gender-based discrimination and violence within the framework of human rights. Gender, a socially constructed concept, has led to hierarchical societal structures that differentiate between men and women, affecting various aspects of their lives. In India, despite constitutional guarantees of equality and fundamental rights, women face numerous challenges such as violence, limited political participation, and societal hierarchies.*

*Legislative measures like the Protection of Human Rights Act and various amendments aim to protect women's rights, but challenges persist. Issues like violence, reproductive health, and political participation remain key areas of concern. Despite legislative provisions, gaps in implementation and patriarchal attitudes hinder progress.*

*The judiciary plays a crucial role in advancing women's rights through landmark judgments like granting equal inheritance rights to daughters and allowing women in the army to serve in permanent commissions. Decisions such as declaring triple talaq unconstitutional and decriminalizing adultery demonstrate the judiciary's commitment to gender equality.*

*Internationally, frameworks like the Universal Declaration of Human Rights and conventions like CEDAW emphasize non-discrimination and equality. However, progress remains slow, and challenges persist, requiring continuous advocacy and action.*

*The recognition of reproductive rights, including access to abortion and contraception, is vital for women's autonomy and health. Despite legal frameworks, discriminatory practices and policies persist, highlighting the need for continued advocacy and legal intervention.*

*In conclusion, while progress has been made in recognizing women's rights as human rights, challenges remain in achieving full gender equality. Addressing systemic discrimination and violence requires concerted efforts from governments, civil society, and international organizations to ensure the protection and fulfilment of women's rights globally.*

## I. INTRODUCTION

The term gender is something that has been socially constructed in order to identify the attributes and roles of both women and men. It needs to be mentioned that this term is not interchangeable with women; we need to understand that the social and cultural meanings given

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to these biological differences result in a system of hierarchal society which causes differentiation between men and women. The major cause of discrimination between the two genders is social positioning which is affected by almost every aspect including political, economic, cultural, social, religious, ideological, and environmental factors. Somewhat relieving part is that the construction of gender is dynamic in nature as it changes over time and with the cultural changes as well; women in India have come a long way, from the traditional role of taking care of household works and their families to taking up the powerful posts in the occupational world and being financial support to their family. “It is important to understand the gender roles” for analyzing the international and national perspective on human rights because it will help us in understanding the different experiences and human rights violations of men and women. Gender analysis also helps in recognizing the unequal status of men and women in our society (roles of both the genders, unequal work balance, access to power and decision making in family and outer world, etc.)

#### **(A) Women Rights as Human rights**

Till very recent times, human rights have not been viewed or conceptualized in a way that takes into account the lives of women and the fact that women face struggles (violence and discrimination in various forms) in their day to day lives. In the past, the human rights network internationally and nationally has failed to take into consideration the routine plights of women and their experiences. The situation has started to better itself as people, in general, have started acknowledging this issue and voicing out for those who are unable to. There are many activists and organizations which now focus solely on this aspect of human rights and continue to work and protect the interest of women in society. However, the government and other organizations including the human rights activists should be more critical towards the development and scope of human rights; they should work around the issues of human rights in such a manner that it encapsulates the gender-specific dimensions. In order to ensure women’s human rights, there has to be a comprehensive understanding of the societal pressure and structure; how they affect the lives of women; power relation in the society needs to be understood as it defines and influence the ability of women to enjoy their basic human right. The power structure specifically has an impact on all aspects of life, including law and politics, economic and social, family, and community life. Women's human rights need to be emphasized because they affect the overall participation of women in our society. There should be no discrimination because of the biological differences between the two gender or because of traditionally accepted roles.

## **II. WOMEN’S HUMAN RIGHTS IN INDIA**

“The Constitution of India” guarantees the right to equality and other forms of human rights under fundamental rights, without discrimination. In order to protect basic “human rights”, the “Parliament” also enacted the “Protection of Human Rights Act, 1993”, under which the “National Human Rights Commission” was established. There were several amendments made to the Indian Penal Code, 1860 after the Nirbhaya case,<sup>3</sup> which will be discussed in this article.

#### **(A) Key issues**

- i. Mental and physical violence against women.
- ii. Female Genital Mutilation.
- iii. Reproductive health including abortion, forced sterilization, maternity benefits, etc.
- iv. Lack of political and civil participation.
- v. Hierarchical system in family and society.

#### **(B) Constitutional Provisions**

- i. Apart from the basic “fundamental rights of equality,”<sup>4</sup> and the “right to life”,<sup>5</sup> women have been given certain other rights under the Constitution which are as follows:
- ii. Article 16 grants them an equal opportunity in public employment.
- iii. Article 42 provides for maternity relief and better human conditions.
- iv. Article 15 (3) makes a specific provision with regards to women and children by allowing states to make special provisions for them.
- v. Article 243(D) makes reservation provisions for women in panchayat elections.

#### **(C) Legislative Provisions**

##### **1. “The Medical Termination of Pregnancy (Amendment) Act, 2021”**

After receiving Presidential Assent in 2021, this act amended the 1971 Act on termination of pregnancy. Salient features of the Act are:

- a. “The gestation limit for abortions has been raised from the earlier ceiling of 20 weeks to 24 weeks.” However, “it is only in special cases where the pregnant women are rape victim survivors or incest survivors, and it would also require the approval and opinion

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<sup>3</sup> “Sumit Jaiswal, Critical analysis of women's Human Rights and their violations in India (September 2020), [https://www.researchgate.net/publication/344014301\\_Critical\\_analysis\\_of\\_women%27s\\_Human\\_Rights\\_and\\_their\\_violations\\_in\\_India](https://www.researchgate.net/publication/344014301_Critical_analysis_of_women%27s_Human_Rights_and_their_violations_in_India), retrieved on 11.09.2021.”

<sup>4</sup> Article 14.

<sup>5</sup> Article 21.

of two registered doctors.”

- b. Approval of a doctor is required in cases of pregnancies with a duration of 20 weeks (which earlier was required for 12 weeks). Moreover, approval of two doctors would be required for the termination in cases where the duration of pregnancy is 20-24 weeks (special categories).
- c. There is a provision for termination of pregnancy caused by failure of contraceptive methods which is now available to all categories of women, regardless of marital status.
- d. The limit on upper gestation period in cases of disability of foetus has been removed, based on the opinion of the medical board set up by the State Governments or the Union Territories.

This amendment has indeed increased access to abortions to an extent, however, it has once again failed to remove the fundamental flaw in the 1971 Act. It has failed to provide the woman with an absolute right to terminate her pregnancy, rather she has to depend on the opinion and satisfaction of medical practitioners and medical boards. In other words, we can say that abortion is still a privilege that is now authorized by the States (in certain cases).

2. “**Maternity Benefit Act of 1961**” empowers women with certain employment leave and other maternity benefits during the pre and post-pregnancy period, in certain establishments.
3. “**Equal Remuneration Act, 1976**” provides for equal pay to both genders for works of similar nature; it also emphasizes the points of discrimination at the workplace.
4. The “**Dissolution of Muslim Marriage Act, 1939**” empowers Muslim women to seek dissolution of marriage; whereas the “**Muslim Women (Protection of Rights on Divorce) Act, 1986**” was “enacted to protect the rights of Muslim women on divorce.”
5. “**Immoral Traffic (Prevention) Act, 1956**” is one of the premier legislation which prevents commercial sexual exploitation of women.
6. **2013 Criminal Amendment**

The Nirbhaya case in the year 2012 brought many changes in the criminal justice system of India. One of the driving forces for introducing “The Criminal Law (Amendment) Act, 2013” was the hue and cry after the brutal gang rape. It brought certain modifications in the existing system as well as introduced certain new provisions concerning sexual offenses in India. Few of the offenses which got recognition after this amendment are as follows:

- a. “Acid attacks,

- b. Voyeurism,
- c. Stalking,
- d. Intentional disrobing of women, and
- e. Sexual harassment”

### III. IMPACT OF JUDICIARY IN ADVANCING WOMEN HUMAN RIGHTS

1. One of the landmark judgments which strengthened the position of women in our country was given in “*Vineeta Sharma v. Rakesh Sharma*”<sup>6</sup> wherein the court granted equal coparcenary rights to daughters as well.
2. In another remarkable judgment, the Apex court in “*The Secretary, Ministry of Defence v. Babita Puniya & Ors.*”<sup>7</sup> made the women army officers eligible for permanent commissions. This is a huge step in defying gender discrimination and empowering women as it puts them in an equal position of promotions, benefits, ranks, etc.
3. The judgment in “*Shayra Bano v. Union of India*”<sup>8</sup> is also a celebrated one as it held triple talaq as unconstitutional and “against the basic tenets of the Quran.” It was only after this case that the Court directed the legislature to pass a law for the protection of Muslim women which led to the enactment of the “Muslim Women (Protection of Rights of Marriage) Act, 2019.”
4. The *Sabrimala judgment*,<sup>9</sup> has set an example of quashing the traditional approach towards women concerning devotional matters as it allowed menstruating women of all ages to enter the temple while breaking the age old customs.
5. The judiciary has time and again come up to protect the interests of women and the guidelines concerning “sexual harassment at the workplace” in “*Vishakha v. State of Rajasthan*”<sup>10</sup> is another example. The guidelines provided in this case eventually laid the foundation of “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.”
6. The Supreme Court in its remarkable decision decriminalized the draconian law of adultery in “*Joseph Shine v. UOI*”,<sup>11</sup> This was a much-needed step because this

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<sup>6</sup> (2020) 9 SCC 1.

<sup>7</sup> Civil Appeal No. 1210 of 2020.

<sup>8</sup> WP (C) 118/2016.

<sup>9</sup> WRIT PETITION (CIVIL) NO. 373 OF 2006.

<sup>10</sup> (1997) 6 SCC 241.

<sup>11</sup> WP (CrI.) 194/2017.

provision of law did not take into consideration the consent of a woman. Even though women could not be punished under the said provision, however, “a husband could prosecute the man who had sexual relations with his wife, even if the wife was a voluntary participant in the act.”

7. “*Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors.*”<sup>12</sup> is one of the landmark cases regarding maternal health care, wherein, the court held that “the right to health” (“which includes access to a minimum standard of treatment in concerned public health facilities”) and “reproductive rights of a mother” are inalienable rights and a part of the fundamental right to life “under Article 21 of the Constitution of India.” The court emphasized on the subject that no woman (pregnant or otherwise) should be denied health care facilities and that they should not be discriminated against based on their social or economic backgrounds. The same proposition has also been held in “*Jaitun v. Maternity Home, MCD, Jangpura & Ors.*”<sup>13</sup>

#### IV. RECOGNITION OF REPRODUCTIVE RIGHTS OF WOMEN

Reproductive rights refer to an individual’s right to procreate and the concerning health issues. The list is not exhaustive but the reproductive rights include:<sup>14</sup>

- i. Right to family planning (number of children, duration between them, timing, etc.),
- ii. Right to abortion,
- iii. Usage of contraception,
- iv. Access to health services related to the reproductive system,
- v. Awareness regarding the reproductive system (sex education), and
- vi. Right to make reproductive decisions without any sort of discrimination, violence, or coercion.

Our country was among the first few countries, globally, to come up with policy making and legal framework regarding the right to abortion and contraception. Women and girls in our country still face discrimination daily including poor health conditions and facilities, decision-making authority, etc. “They still experience significant barriers in the enjoyment of their

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<sup>12</sup> (2010) 172 DLT 9 (Del.).

<sup>13</sup> “W.P. (C) Nos. 8853 of 2008.”

<sup>14</sup> “Reproductive Rights in Indian Courts, Center for Reproductive Rights, <https://reproductiverights.org/sites/default/files/documents/Reproductive-Rights-In-Indian-Courts.pdf>, retrieved on 14.07.2021.”

reproductive rights.”<sup>15</sup> It is not a new fact that laws and policies concerning reproductive health have time and again failed to adopt the women’s right approach, rather the reproductive legislative policies in India focus on the demographic factors “such as population control, while also implicitly or explicitly undermining women’s reproductive autonomy through discriminatory provisions such as spousal consent requirements for access to reproductive health services.”

The patriarchal structure of the country has further been strengthened with the introduction of “*The UP Population (Control, Stabilization, and Welfare) Bill 2021*” which is no less than a draconian law. The enactment of a two-child policy would only worsen the situation as it would lead to coercive measures and pressures on the pregnant women, and would also strengthen the concept of son-preference and sex determination tests as many people would want to know the gender and would opt for abortion if it is a female. This is an anti-women piece of legislation and transgresses the rights of women over her body, recognized by the courts and the Constitution of India. Moreover, it would also deteriorate the reproductive health of women as there are chances of an increase in the contraceptive methods, thereby affecting women’s fertility.

Judiciary has played a vital role in expanding the scope of and recognition of reproductive rights of women. The courts in India have pronounced landmark decisions, over the last decade, which recognize the reproductive rights of women as their “inalienable survival rights” (indirectly comes under the ambit of the fundamental right to life). In the case of “*Devika Biswas v. Union of India*”,<sup>16</sup> the court emphasized on the importance of reproductive rights from the human rights standard. The case of “*Suchita Srivastava v. Chandigarh Administration*”<sup>17</sup> dealt with a pregnant survivor of a rape victim with mild intellectual disabilities, wherein the Apex Court recognized and highlighted the right of reproductive choice (reproductive autonomy). It should be noted that a women’s right concerning choices in reproductive matters is included in the personal liberty aspect of Article 21 of the Constitution of India.

## V. INTERNATIONAL SCENARIO

### 1. “Universal Declaration of Human Rights”

The Charter was adopted in 1945 with a strong goal, that is, “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men

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<sup>15</sup> *Supra* Note 13.

<sup>16</sup> (2016) 10 SCC 726.

<sup>17</sup> (2009) 9 SCC 1.



and women.” Article 1 of this is about the non-discrimination principle, wherein it states that the primary objective of the United Nations is to protect and promote human rights without any kind of discrimination. The principle of “prohibition of discrimination” is also mentioned in Article 13 (“mandate of the General Assembly”) and Article 55 (“promotion of universal human rights”).

## **2. “Declaration on the Elimination of Discrimination against Women”**

It “was adopted” in 1967, with the objective of protecting the interests of women from all kinds of discrimination and providing them with human dignity along with equal rights as men. Thereafter a legally binding treaty was made.

## **3. “The Convention on the Elimination of All Forms of Discrimination against Women”**

This “was adopted by the General Assembly” in the year 1979. The Preamble of this convention explains the plight of women irrespective of existing instruments and that they still not enjoy the equal rights with men. “The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality.”

## **4. “The Convention on the Elimination of Discrimination against Women”**

“This Convention” is one of the most comprehensive pieces “for the protection of the rights of women.” The objective behind this convention is to remove and condemn “all forms of discrimination” against women along with reaffirming their basic human rights in the field of politics, socio-cultural initiatives, economic policies, etc., regardless of their biological being and marital status. This Convention encourages the States to enact national legislation protecting the equal rights of women and banning discrimination.<sup>18</sup>

Article 4 of this Convention allows the member States to take special measures for the achievement of equal protection of men and women; whereas Article 5 highlights the importance of modifying social and cultural patterns of discrimination. Article 10 provides for equal access to education for both genders.

## **5. “The Convention on the Rights of Persons with Disabilities”**

Article 6 of this Convention recognizes the various forms of discrimination that disabled women face and that the States should take all necessary measures for the protection of their

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<sup>18</sup> Articles 1, 2 and 3.

development and empowerment.

### **(A) Global Commitments**

#### **1. “The Beijing Declaration and Platform for Action”**

This declaration actively deals with the protection and empowerment of women and their decision-making process. The primary focus of this convention is that the States should take concrete steps in empowering women while raising access and equal opportunity of full participation.

#### **2. “The United Nations Millennium Development Goals”**

Goal 3 specifically focuses on the “issue of gender equality and the empowerment of women.” One of the primary objectives is to promote the standing of women in the political and governance system.

#### **3. “Vienna Declaration and Programme Of Action”**

This Conference was held in the year 1993 with the theme of protection of human rights. it also reviewed the status of human rights violations and the machinery to resolve the issues. “Women’s rights activists mobilized to ensure that women’s human rights were fully on the agenda of the international community under the rallying cry Women’s Rights are Human Rights.”

## **VI. CONCLUSION**

As already mentioned, times have changed, however, women are still subjected to hierarchal differences and various kinds of violence. We ought to understand that women and girls have equal rights and they are entitled to equal enjoyment of those rights. People and society have definitely become aware of the discrimination, however, the progress and the transition are very slow. One of the recent examples of beating discrimination and empowerment is the appointment of 4 women judges in the Supreme Court of India.<sup>19</sup> However, discrimination exists not only in society but also in the legal system of many countries. Protecting the interests and rights of women must be strictly embedded in legislation (national and international) along with its strict implementation. Even though the Constitution of India and various other legislations have made it clear that there should be no discrimination on the grounds of gender and that women and men are on equal footing concerning the enjoyment of the rights, however, the actual situation is not so ideal in the country. There are huge gender gaps as women are

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<sup>19</sup> “Historic Oath of Women Judges in the Supreme Court, <https://www.ndtv.com/india-news/4-women-judges-in-supreme-court-after-historic-oath-today-2525198>, retrieved on 11.09.2021.”

facing unequal practices that have been prevalent for a long time now. It is a fact that our country has a patriarchal society where males are treated as superior gender when compared to their female counterparts.

In conclusion, I would like to mention that the status of women in our society has come a long way and it is still evolving. There are many places where women are given equal footing and their basic human rights are being exercised. However, there is more work to be done. Human rights activists should be able to make people aware of gender discrimination which expands the scope of human rights violations in various ways. The judicial recognition over the years has definitely helped in the protection of women's human rights while making specific safeguards for them, but we need to understand that such intervention is the need of the hour because of the growing disparity and discrimination against women.

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