



INDIAN CONSTITUTION AND WOMEN LEGAL RIGHTS: A CONGLOMERATE ANALYSIS

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ABSTRACT- The constitution of any country is the fundamental law of the land with greater authority and sanctity. The Indian constitution is unique in its content and spirit. The Indian constitution provides fundamental rights which are justifiable. Now a day's women have faced so many problems, some of the most common crimes are rape, dowry, sexual harassment, kidnapping, cruelty by husband, relatives, assault on a woman and sex trafficking. The government has taken so many initiative programmes and various legislations which contains several rights and safeguards for women. This Article discuss with Indian constitution on legal rights for women. The main aim of this article is to conglomerate analysis for the legal rights based on the Indian constitution and conventions.

Keywords: Indian constitution, Legal Rights, Fundamental Rights and Women's Rights

I. INTRODUCTION

"Constitution is not a mere lawyers document, it is a vehicle of Life and its spirit is always the spirit of Age"- B.R.Ambedkar.

The constitution of any country is the fundamental law of the land with greater authority and sanctity. The Indian constitution is unique in its content and spirit. The salient features of the constitution are blend of rigidity and flexibility, federal system with unitary features, parliamentary form of government, independent judiciary, single citizenship and emergency provision.[5]The Indian constitution originally consisted of 1 preamble,25 parts containing 448 articles, 12 schedules,2 appendices and 104 amendments till date.[13] The aim of fundamental rights is that certain elementary rights such as liberty, freedom of speech and freedom of faith and so on. It should be regarded as inviolable under all circumstances and that the shifting majority in legislatures of the country should not have a free hand in interfering with fundamental rights. Fundamental right is called Magna Carta of India. [11]There are six fundamental rights.It includes the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional Remedies. [1]In 21st century women have faced so many problems. Some of the most common crimes against women are rape, dowry death, sexual harassment, kidnapping and abduction, cruelty by husband, relatives, assault on a woman and sex trafficking. [10] The Constitution not only grants equality to women, it gives measures and solution for the problem of women's and also empowers the State to adopt measures of positive approach in favour of women. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. So many provisions in our law which protects a woman from mental and physical torture. [2]

II. HISTORY OF INDIAN CONSTITUTION

India is a home of ancient "Indus valley civilization" which goes back to 3300 - 1300 BC (Nature period 2600 - 1900 BC). India is world famous for its ancient history and culture. The time before 500 AD is widely accepted as the era of ancient India. The earliest anatomically modern human remains found in south Asia data from approximately 30,000 years ago. Whereas with regard to constitutional history ,

India goes back to only third century BC (269BC to 231BC) in the time of the Emperor “Ashoka the Great”. [12]

2.1. The Edicts of Ashoka: (324BC – 185BC)

Emperor Ashokanaurya established constitutional principles, they are Engraved them in major rocks, pillar and on minor rocks for the public to read, know and follow. Also Known as “Edicts of Ashoka”.

2.2. The East India Company: (1599AD – 1765AD)

In 1600, The East India Company came to India as a trading company from Britain (U.K). In 1765, it became an administrative power after gaining the Right of Taxation in Bengal, Defeating the nawas of Bengal at the battle of Plassey (1757). East India Company (1765AD – 1858AD) takes the Total Unified Control over the whole of India from a single centre in Calcutta. But its rule ended with the revolt of 1857. [8]

2.3 British Raj : (1858AD – 1947AD):

This period of the British Raj was the time when the constitution of India took shape. During this phase, the major constitutional Experiment was incorporated in the following acts and regulations.

- Government of India Act , 1858
- Indian Councils Act , 1861
- Indian Councils Act , 1892
- Indian Councils Act , 1909
- Government of India Act , 1919
- Government of India Act , 1935
- India Independence Act of 1947

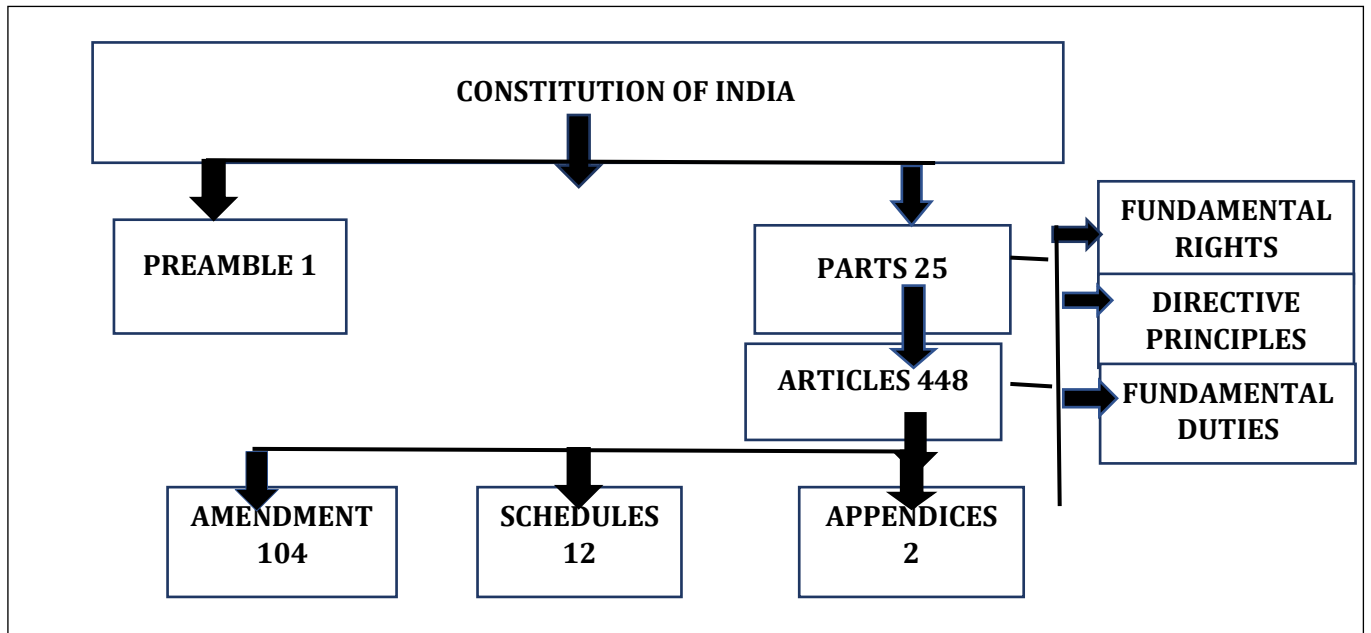
The Government of India act 1858 was an act of the British Parliament that transformed the government and territories of the East India Company to the British crown. The Indian Councils Act of 1861 made major changes to the Governor _ General’s Council. Now there were five members for home, Military, Law, Revenue and Finance. (A Sixth member of public works was added in 1874). After the establishment of the Indian national congress in 1885, demands were increased for reforms in British Indian administration. The Council consisted of 24 members, only five of them are Indians. This act of the British parliament is more commonly called the Morley – Minto reforms. The Act of 1909 stipulated, as demanded by the Muslim leadership. After World War 1, The British government opened the door for Indians to public office and employment. The Government of India Act 1935 was passed on the recommendations of the Simon commission and the round table conference. British India was to be partitioned into two dominions – India & Pakistan. The date for the transfer of power was on August 15, 1947. [3]

Finally Constitution of India, Created in independent India by its own people, was adopted on 26 November 1949 and came into effect on 26 January 1950. As we know it and use it today. [12]

STRUCTURE OF INDIAN CONSTITUTION

The Constitution Consist of 1 preamble, 25 parts, is containing 448 articles, 12 Schedules, 2 appendices and 104 amendments to date. Although it is federal in nature and it also has a strong unitary bias.

Figure 1: Constitution of India



WOMEN IN INDIA: ISSUES AND CHALLENGES

Women in India have to face a lot of issues. They have to go through rape, dowry death, sexual harassment, kidnapping, Obscenity and Pornography, domestic violence and more. Sexual harassment is when one person subjects another person to an unwelcome act of physical intimacy like grabbing, brushing, touching, pinching, eve teasing makes an unwelcome demand or request directly or by implication for sexual favours from another person, shows a person any sexually explicit visual material, in the form of pictures or cartoons or pin-ups or calendars or screensaver version computers or any offensive written material or pornographic e-mails or any other form of unwelcome conduct of a sexual nature, eve teasing, jokes likely to cause awkwardness or embarrassment, innuendos, sexist remarks. Acid attack is a form of violent assault defined as the act of throwing acid or a corrosive substance onto the body of another with the intention to torture. Rape is one of the most heinous atrocities committed on a woman in our society. The year after the Nirbhaya incident in which a 23-year-old paramedical student was raped by a group of men in a moving bus in Delhi on December 16, 2012.[6] The 19-year-old died in Delhi's Safdarjung Hospital, 15 days after she was allegedly gang-raped and tortured in Uttar Pradesh's Hathras by a group of upper-caste men. She was the fifth girl and third Dalit girl who was allegedly raped and brutally murdered in UP. According to the latest data released by the National Crime Records Bureau (NCRB), India recorded 88 rape cases every day in 2019. Out of the total 32,033 reported rape cases in the year, 11 per cent were from the Dalit community, as per NCRB's annual report titled "Crimes in India - 2019".[7] It is known to be the most common crime against women in India. Pornography is printed or visual material containing the explicit description or display of sexual organs or activity intended to stimulate sexual excitement or seems lewd from a responsible reader standpoint. Domestic Violence can be described as where one adult in a relationship misuses power in order to control another. It is the establishment of fear in a relationship through violence that includes other forms of abuse. The violence may involve physical abuse, sexual assault and threats. [16] According to a survey among Indian urban youth about life in lockdown, a majority of respondents of about 79 percent felt safe from domestic violence during the corona virus (COVID-19) lockdown in April 2020. About 33 percent of non-binary respondents felt very unsafe at their home due to emotional and physical harm by their family members in that time. [9]

CONSTITUTIONAL RIGHTS AND PROVISIONS FOR WOMEN

The Constitution of India not only grants equality to women but also empowers the state to adopt measures of positive thoughts and their rights, it is also a tool for eradicating the problems of women in

India by this way the discrimination in favor of women for neutralizing the cumulative socio- economic, educational and political disadvantages faced by them.

Table 1: constitutional rights and provisions for women

No	Articles	Description
1.	Article 14	Equality before Law
2.	Article 15(1)	Prohibition of discrimination, religion, race, caste, sex or place of birth.
3.	Article 15(3)	The state is empowered to make any special provision for women.
4.	Article 15(4)	Special arrangements for promoting socially and educationally backward class.
5.	Article 16(2)	Equality of opportunity for all citizens employment or appointment to any office under the state.
6.	Article 19	Every citizen has Freedom of speech and expression
7.	Article 19(1)	Right to information
8.	Article 21	Protection of life and personal liberty
9.	Article 21(A)	Right to Education.
10.	Article 23(1)	Traffic in human beings and forced labour are prohibited.
11.	Article 39(A)	The state to secure for men to women equally the right to an adequate means of livelihood.
12.	Article 39(D)	The state to secure equal pay for equal work for both Indian men and women.
13.	Article 39(E)	The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength.
14.	Article 42	The state shall make provision for securing just and human conditions of work and maternity relief.
15.	Article 51-A(e)	It shall be the duty of every citizen of India to renounce practices derogatory to the dignity women.
16.	Article 243-D(3)	One Third of the total number of seats to be filled by direct election in every panchayats shall be reserved for women.
17.	Article 243-D(4)	One Third of the total number of offices of chair persons in the panchayats shall be reserved for women.
18.	Article 243-T(3)	One Third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women.
19.	Article 243-T(4)	The offices of chairpersons in the municipalities shall be reserved for women in such manner as the state legislature may provide.[10]

Fundamental Rights, among others ensure equality before the law, equal protection to laws, prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantees equality of opportunity to all citizens in matters relating to employment. [14] Right to equality is an important right provided for in Articles 14, 15 and 16 of the constitution of India. It provides the equal privileges and opportunities to all citizens of India without any discrimination. Right to freedom provided for in articles 19 and 19(1).Right to life provided for in articles 21 and 21(A).Right to religion in the Article 23.Equal pay and equal work provided for in articles 39(A), 39(D) and 39(E).Reservation for women in political areas for articles 243-D (3), 243-D (4), 243-T (3) and 243-T (4). [1]

LEGAL RIGHTS

To bring out the constitutional mandate, the state has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims in any of the crimes be it 'Murder', 'Robbery', 'Cheating' or any other crimes, the crimes which are directed specifically against women are characterized as 'Crime against women'. Although a women can be a victim of any crime in society and in fact all crimes cannot be classified as a crime against women except few crimes which affects women largely. However major steps have been taken by the legislation which has proved

as weapons for women and helped them to stand in male dominating country. Now we will discuss major crimes against women along with the legal provision which penalize the criminal. [10]

THE CRIME IDENTIFIED UNDER THE INDIAN PENAL CODE (IPC):

Table2. The Crime identified under the Indian penal code (IPC)

S.No	Crimes	Indian Penal Code(IPC)	Punishment
1.	Rape	Sec.376 IPC	7 years
2.	Kidnapping & Abduction for different purposes	Sec.363-373 IPC	10 years
3.	Homicide for Dowry, Dowry Deaths or their attempts	Sec.302/304-B IPC	7 years
4.	Torture, both mental and physical	Sec.498-A IPC	3 years
5.	Molestation	Sec.509 IPC	5 years
6.	Sexual Harassment	Sec.509 IPC	3 years
7.	Importation of girls(up to 21 years of age)	Sec.366-B IPC	10 years

Table 2 described a rapist shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine. Any person who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit intercourse, shall be punished with imprisonment of either or description for a term which may extend to ten years, and shall also be liable to fine. Where the death of a women is caused by any burns or bodily injuries occur other than normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in laws or husband, or in connection with, any demand of dowry, such death shall be called dowry death. Whoever commits dowry death shall be punished with imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life. Husband or family of husband of a women subjecting her to cruelty, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine. Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such gestures or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. [2]

VARIOUS LEGISLATION'S CONTAINED SEVERAL RIGHTS AND SAFEGUARDS FOR WOMEN

Table 3. Various Legislation's Contained Several Rights and Safeguards for Women

S.No	Act	Description
1.	Indian Penal Code (1860)	Contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.
2.	Dissolution of Muslim Marriages Act (1939)	Grants a Muslim wife the right to seek the dissolution of her marriage.
3.	Minimum Wages Act, 1948	Does not allow discrimination between male and female workers or different minimum wages for them.
4.	Mines Act (1952) and Factories Act (1948)	Prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.
5.	Hindu Marriage Act (1955)	It provided equal rights to Indian man and woman in respect of marriage and divorce.

6.	Hindu Succession Act (1956)	Recognizes the right of women to inherit parental property equally with men.
7.	Immoral Traffic (Prevention) Act (1956)	The premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organized means of living.
8.	Dowry Prohibition Act (1961)	Prohibits the giving or taking of dowry at or before or any time after the marriage from women.
9.	Maternity Benefit Act (1961)	Regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits.
10.	Medical Termination of pregnancy Act (1971)	The termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.
11.	Code of Criminal Procedure (1973)	Has certain safeguard for women like obligation of a person to maintain his wife, arrest of women by female police.
12.	Equal Remuneration Act (1976)	Provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature.
13.	Family courts Act (1984)	Provides for the establishment of family courts for speedy settlement of family disputes.
14.	Indecent representation of women (prohibition) Act (1986)	Prohibits indecent representation of women through advertisements Or in publications, writings, paintings, figures or in any other manner.
15.	Muslim women (protection of rights on divorce) Act (1986)	Protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.
16.	Legal Service Authorities Act (1987)	Provides for free legal service to Indian women.
17.	Commission of sati (prevention) Act (1987)	Prevention of the commission of sati and its glorification on women.
18.	Protection of women from domestic violence Act (2005)	Violence of any kind of physical, sexual, mental, verbal or emotional.

Table 3 explained the Various Legislation's Contained Several Rights and Safeguards for Women. The first act contains provisions to protect Indian women from dowry, rape, kidnapping, cruelty and other offences. Dissolution of Muslim Marriages Act 1939 contains grants a Muslim wife the right to seek the dissolution of her marriage. Minimum Wages Act, 1948 does not allow discrimination between male and female workers or different minimum wages for them. Mines Act 1952 and Factories Act 1948 prohibits the employment of women between 7 P.M. to 6 A.M. This Act provides their safety and welfare. Hindu Marriage Act 1955 provided equal rights to Indian men and women in respect of marriage and divorce. Hindu Succession Act 1956 recognizes the right of women to inherit their parental property equally with men. Immoral Traffic (Prevention) Act 1956 the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls

for the purpose of prostitution as an organized means of living. Dowry Prohibition Act 1961 prohibits the giving or taking of dowry at or before or any time after the marriage from women. Maternity Benefit Act 1961 regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits. Medical Termination of pregnancy Act 1971 termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds. Code of Criminal Procedure 1973 has certain safeguards for women like obligation of a person to maintain his wife, arrest of women by female police. Equal Remuneration Act 1976 Provides payment of equal remuneration to both men and women workers for same work or work of a similar nature. Family courts Act 1984 provides the establishment of family courts for speedy settlement of family disputes. Indecent representation of women (prohibition) Act 1986 prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner. Muslim women (protection of rights on divorce) Act 1986 protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands. Legal Service Authorities Act (1987) provides for free legal service to Indian women. In the same year Commission of sati (prevention) Act 1987 Prevention of the commission of sati and its glorification on women. Protection of women from domestic violence Act 2005 Violence of any kind of physical, sexual, mental, verbal or emotional. [15]

III. CONCLUSION

The constitution of India has several distinctive features. It is the lengthiest constitution in the world and it is a combination of rigidity and flexibility. India has a parliamentary democracy. The Indian constitution provides the fundamental rights which are justifiable. They are the most important rights of the people. Constitution plays an important role in Indian society and day today life of Indian citizen. The constitution provides for a quasi-federal (it means a federal setup where despite having two clear sets of government central and the states more powers are given to the central government) setup with a strong centre. Fundamental rights are those rights that are guaranteed to each and every citizen by the Indian constitution. If any of these rights are violated, individual can approach the high court or Supreme Court directly. Now a day's women are facing so many problems. The most common crimes against women are rape, dowry death, sexual harassment, kidnapping and abduction, cruelty by husband, relatives, assault on a women and sex trafficking. The government has taken so many initiative programmes. After the Nirbhaya incident, the Delhi Police set up 161 help-desks run by female officers, that 70% of female officers would report for over eight-hour shifts each day, according to 2014 Bureau of Police Research and Development study on national police working conditions. However, those who deal with these help-desks question their competence, India Spend reported on August 12, 2016. In 2013, the Ministry of Finance announced it would set up a Rs 1,000-crore (\$156 million) Nirbhaya Fund to drive initiatives aimed at enhancing the safety of women in the country. In a May 26, 2016, order, the Supreme Court asked the Centre to formulate a national policy for providing relief to rape survivors, saying the Nirbhaya Fund amounted to "just paying a lip service". India recorded an average of 87 rape cases daily in 2019 and overall 4,05,861 cases of crime against women during the year, a rise of over 7% from 2018, the latest government data released on September 29, 2020. Majority of these cases under Indian Penal Code were registered under 'cruelty by husband or his relatives' (30.9 per cent) followed by 'Assault on women with intent to outrage her modesty' (21.8 per cent), 'kidnapping and abduction of women' (17.9 per cent), the NCRB data for 2019 showed.

The Essential Legal Rights for Every Indian Women Right to equal pay (Equal remuneration Act), right against harassment at work (Sexual harassment of women at workplace act, right to anonymity, right against domestic violence, right to Maternity related benefits, right against female foeticide (pre-natal diagnostic techniques), right to free legal Aid (Legal Services Authorities act), right not to be arrested at night, right to dignity and decency and right to property (Hindu succession Act). The legislations role also very important. The National commission for women was set up by an act of parliament 1990 to safeguard the rights and legal entitlements of women. Parliamentary provisions mean the steps which they taken for the women's rights and it includes the enactment of various laws and statutory acts to protect the interest of women and to stop the crime against women. Thus Acts have proved really useful towards progress and safety at women in society.

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