



CONSTITUTIONAL RIGHTS OF WOMEN UNDER INNUMERABLE TURNS IN INDIA

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various legislation in India relating to women's right: The Provisions of The Protection of Women From Domestic Violence Act,2005., Dowry Prohibition Act, Immoral Traffic Prevention Act, The Maternity Benefit Act 1961, , Muslim Women (Protection of rights on divorce) Act, The Indecent Representation of Women (Prohibition) Act 1986, Tthe Commission of Sati (Prevention) Act, Hindu Adoption And Maintenance Act

Women's Rights to Property

The Hindu Women's Right to Property Act, 1937 was one of the most important enactments that brought about changes to give better rights to women. The said Act was the outcome of discontent expressed by a sizeable section of society against the unsatisfactory affairs of the women's rights to property. Even the said Act did not give an absolute right to women. Under the said Act a widow was entitled to a limited interest over the property of her husband. what was to be termed as Hindu widow's estate? The Act was amended in 1938 to exclude the widow from any interest in agricultural land.

Hindu Succession Act 1956

For the purpose of succession to property by Hindu daughter the Hindu Succession Act, 1956, divides the property into four categories:

- *Coparcenary property
- *Property of a male Hindu
- *Property of a female Hindu
- *Dwelling house

Coparcenary property

According to section 6 of the Hindu Succession Act 1956, when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mithakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. In case there are female relatives like daughter, widow, mother, daughter of pre-deceased son, daughter of predeceased daughter, widow of pre-deceased son or widow of pre-deceased son of a predeceased son, then the interest of the deceased co-parcenary will pass on to his heirs by succession and not by survivorship. Section 6 of the Hindu Succession Act has been amended by the Hindu Succession (Amendment) Act, 2005, and according to which, in a joint Hindu family governed by the Mithakshara law, the daughter of a coparcener shall (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mithakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

Any property to which a female Hindu becomes entitled to under this Amendment Act 2005, shall be a property capable of being disposed of by her by testamentary disposition i.e. by way of Will. Where a Hindu dies after the commencement of the Amendment Act 2005, his interest in the property of the joint Hindu family governed by the Mithakshara Law shall devolve by testamentary or intestate succession and not by survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place. Now, there is no distinction between son and daughter in so far as the property rights in coparcenary property is concerned. However this benefit is not available to daughter married prior to or to a partition, which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act 1990. This is to avoid unnecessary litigation, which may spoil cordial relations.

- 1) WOMEN RIGHTS in Several Areas
- 2) The Provisions of the Protection of Women from Domestic Violence Act, 2005.
- 3) Dowry Prohibition Act, 1961.
- 4) Immoral Traffic Prevention Act, 1986
- 5) The Maternity Benefit Act 1961
- 6) Muslim Women (Protection of rights on divorce) Act 1986,
- 7) The Indecent Representation of Women (Prohibition) Act 1986, and
- 8) The Commission of Sati (Prevention) Act, 1987.
- 9) Hindu Adoption and Maintenance Act, 1956.

Rights of a Married Women

The rights of adult/married women under general laws relating to employment and their physical well-being are being specially mentioned here. In this context it may be noticed that Articles 15 and 16 of the Constitution of India prohibit discrimination of any citizen on the grounds inter-alia of sex, or in matters relating to employment or appointment to any elected office under the State.

Coming to the question of physical well-being of married women, it may be pointed out here that in the event of the husband or his relatives subjecting such a woman to cruelty, they can be punished with imprisonment upto three years and fine under Section 498-A of the Indian Penal Code but death of a married woman otherwise than under normal circumstances within 7 years of her marriage can be considered to be a dowry death if it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any of his relatives, or in connection with any demand for dowry.

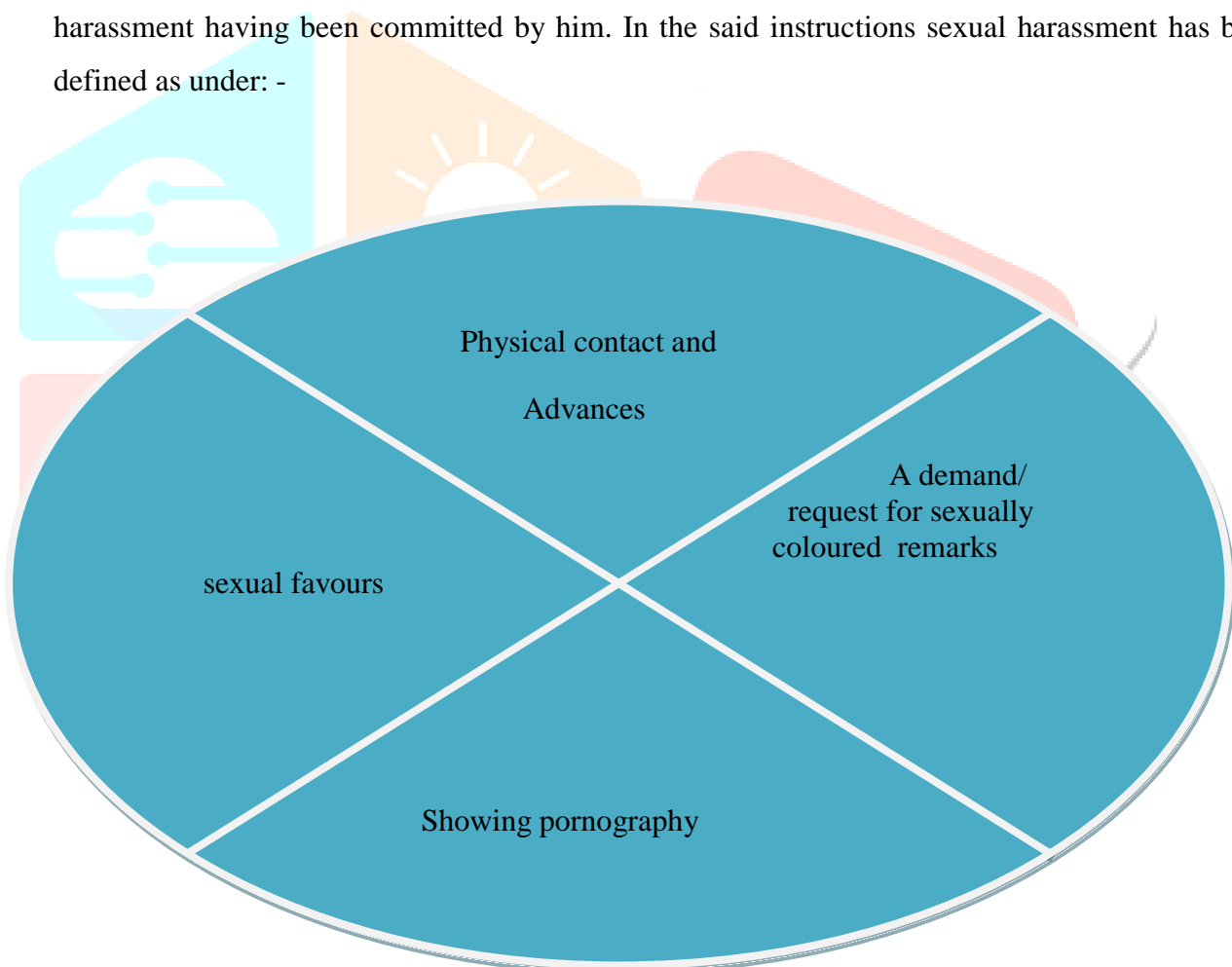
In the event of abetment to commission of suicide by a woman, the abettor can be punished with imprisonment for a term, which may extend upto ten years besides fine.

Protection of Women in Work Places

- Section 19 of the Factories Act, 1948 requires construction of separate latrines and urinals for women.
- Section 22 of the said Act provides that no woman shall be required to clean, lubricate or adjust any part of a prime mover, or any transmission machinery while in motion.
- Section 27 of the said Act provides that no woman shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work. Section 48 thereof lays down that in every factory wherein more than 30 women workers are employed, there shall be provided and maintained a suitable room for the use of the children (under the age of 6 years) of such women.
- Sections 4 and 5 of the Equal Remuneration Act, 1976 provide for equal remuneration for equal work to male and female workers for performing works of similar nature and prohibits discrimination in matters of recruitment of men and women which discrimination if carried out is punishable with imprisonment which shall not be less than three months but which can extend upto one year and fine.
- It may next be noted that as per Section 4 of the Maternity Benefit Act, 1961 no woman shall work in any establishment during six weeks immediately following the day of her delivery or miscarriage. Furthermore, during the period of her pregnancy, a woman shall not be required to do any job of arduous nature or which involves long hours of standing, or any task, which is likely to interfere with her pregnancy.

- Section 5 of the said Act further lays down that a pregnant mother is entitled to 12 weeks leave with full pay i.e. six weeks before and six weeks after the date of birth of child. Furthermore, if she works at least 80 days during the period of one year, she is entitled to full pay leave even in the event of miscarriage.

In view of the judgment of the Honble Supreme Court arising out of Writ Petition (Criminal) Nos. 666-70 of 1992 and Criminal Misc. Petition Nos. 7021-31 of 1992 titled Vishaka and Others versus State of Rajasthan and others, the Haryana Government has provided for establishment of a Complaints Committee which is to be headed by a woman and not less than half of its members are to be females. Such complaints committee will adopt its own methodology for conducting an enquiry into complaints of sexual harassment as speedily and discreetly as possible and furthermore no preliminary enquiry is required to be conducted by the competent authority against a delinquent official when the Complaints Committee records its satisfaction of sexual harassment having been committed by him. In the said instructions sexual harassment has been defined as under: -



The foregoing discussion would reveal that the Governments have from time to time done their bit for ameliorating the lot of women but laws alone in themselves will not be of much consequence unless women for whose benefit these have been enacted also rise to the occasion and assert their rights firmly, whenever and wherever their rights are either ignored or suppressed or trampled upon.

Privileges under Criminal Laws

Indian Evidence Act, 1872

Section 114: Presumption as to absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual inter course by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Indian Penal Code, 1860

Section 498-A

Section 304-B

Section 306

Section 3423 and 376

Code of Criminal Procedure, 1973

Section 47(2) of the Code of Criminal Procedure requires that no place or apartment which is in the occupation of a female and who is not the person to be arrested shall be searched by any police officer etc before giving of a notice to the female occupier thereof that she is at liberty to withdraw therefrom.

As per section 100(3) of the Code of Criminal Procedure, if a female is reasonably suspected of concealing about her person any article for which search can be made, such shall only be conducted by another woman with strict regard to decency.

No made person below the age of fifteen years or woman can be called by any police officer to the police station in connection with investigation of any case.

- (i) It is laid down in para 26.18-A, Volume 3 of Punjab Police Rules 1934 (framed under the Police Act, 1861) that all arrests of women whether with or without warrant, and whether in bailable or non-bailable offences, shall only be carried out by a police officer not below the rank of Assistant Sub-Inspector of the Police, or when no such officer is available, then by a head constable in the presence of responsible male relatives of such woman and responsible officials of the village/town.
- (ii) Arrest of a woman has also to be intimated by the arresting officer to the Superintendent of police, and reasons have to be specified if the arrest was made by an officer lower in rank than Assistant Sub-Inspector.

- (iii) The said rule further requires that no woman in police custody shall be lodged even for a night in a Police Station except in unavoidable circumstances and the gazetted police officer supporting an application for remand to police custody of any woman shall be responsible for taking necessary measures for decent custody of such prisoner.
- (iv) The above quoted rule further requires that women attending police investigations and enquiries (as distinct from those under arrest) shall not be detained for any period than absolutely necessary and further more they shall not to be required to visit the police station between sun-set and sun-rise.

If a woman is arrested, it is imperative on the part of the arresting officer to prepare a memo indicating the reasons for arrest, the place where the arrested person will be detained after arrest and when she/he will be produced before the Court. Copy of such memo of arrest is also required to be given to the family members or relatives or neighbourer of the arrested person as so directed by the Hon'ble Supreme Court in the case titled D. K. Basu vs. State of West Bengal reported in 1997(1) SCC 416.

- (v) Every woman under arrest is entitled to get free legal services as so provided in Section 12 of Legal Services Authorities Act, 1987 and it is the duty of the court before whom such arrested person is produced that he/she is entitled to get free legal services as so laid down in the case titled Khatri and others vs. State of Bihar reported in AIR 1981 SC 928 and followed in the subsequent case titled Sukh Dass vs. Union Territory of Arunachal Pradesh reported in AIR 1986 SC 991.

In the event of a female upon trial being sentenced to death for commission of heinous offences such as murder etc., her sentence of execution is required to be postponed and can even be commuted to imprisonment for life as so provided under Section 416 of the Code of Criminal Procedure.

It may also be mentioned here that Section 312 of the Indian Penal Code prohibits any person from voluntarily causing a woman to miscarry and such violation is made punishable with imprisonment which may extend to seven years and fine but if such miscarriage is carried out without the consent of the woman, such act is punishable upto ten years imprisonment and fine.

Furthermore, if any person attempts to cause miscarriage, without good faith, of a child, without the consent of the pregnant woman and does any act which causes the death of such woman, he can be sentenced to life imprisonment. Moreover, any person doing any act for preventing a child from being born alive can be punished with imprisonment upto ten years and fine. Even the father or mother of a child upto 12 years old and having custody of such child are not permitted to leave or expose such child with the intention of abandoning it and if

any such act is committed by any person, he/she can be punished with imprisonment upto seven years and fine. It would not be out of place to mention here that any person secretly burying or otherwise disposing off the dead body of child (whether such child dies before, or after, or during its birth) for intentionally concealing the birth of such child can be punished with imprisonment upto two years and fine.

(vi)

(vii) Assault on or use of criminal force against any woman by a man with the intention of outraging her modesty, is made punishable with imprisonment upto two years and/or fine. It may also be mentioned here that if any person induces a minor girl under the age of 18 years to go from any place with an intention to illicit intercourse, such person is liable to be punished with imprisonment upto 10 years, besides fine. Even importation of a minor girl from a foreign country for being forced or seduced to illicit intercourse is punishable with imprisonment upto ten years besides fine.

(viii) Buying or selling of a girl who is a minor i.e., under the age of 18 years for the purpose of prostitution is punishable with imprisonment for ten years and fine.

Sexual inter-course by a man with a woman against her will, or without her consent (when she is above 16 years of age) or when her consent is obtained by putting her in fear of death or hurt, or by causing her to believe that she is legally married to him or when she at the time of giving consent is by reason of unsoundness of mind or a administration by him personally or through another person of any drug/alcohol etc. is termed as rape within the meaning of Section 375 IPC which act is punishable with which shall not be less than seven years but may extend to life imprisonment. It may be added here that consent of a girl under 16 years of age under such like circumstances is no consent. It may also specifically be noticed here that printing or publishing the identity of a victim of rape without the permission of the court is punishable with imprisonment of upto 2 years or fine.

(i) Sexual intercourse by a man with his wife who is living separately under a decree of separation from court can also invite punishment for the husband upto 2 years and fine.

(ii) It also deserves to be highlighted here that attempt at inter-course by a public servant with a woman in his custody, or by a jail Superintendent with a female in-mate under his charge or of the jail, by a person on the management of a hospital with any woman in that hospital can invite punishment upto 5 years, besides fine.

Carnal intercourse against the order of nature by a man with a woman is made punishable with imprisonment upto ten years or even upto life and fine. Even co-habitation by a man with a woman who is made by him to believe that she is lawfully married to him can extend upto 10 years and fine. If a husband having a wife living contracts a second marriage he can

be punished with imprisonment upto 7 years and fine but if such subsequent marriage is contracted while concealing his first marriage, the husband can be imprisoned upto 10 years, besides fine. Even the dishonest act of a male going through the ceremony of being married but knowing that he is not there lawfully married can invite punishment upto seven years.

Sexual intercourse by a person with the wife of another man, without the consent and connivance of the husband of such wife is termed as adultery, which is punishable with imprisonment upto 5 years and fine. It may simultaneously be noticed here that a man enticing a married woman from the custody of her husband or guardian with the intention that she may have illicit intercourse with some other person or conceals or details such female can be punished with imprisonment upto 3 years. Any person engaging a female for prostitution or renting a house for the said purpose can be punished with imprisonment which may extend upto three years and any person above the age of 18 years who lives on the income of a prostitute can be sentenced with imprisonment upto two years as so provided in Section 4 of the Immoral Traffic (Prevention) Act, 1956.

Legal Literacy Aspect

Coming to the legal literacy aspect in the back-drop of the circumstances enumerated above, some of the important legislations having a direct bearing in the lives of ordinary Indian women.

(a) Section 6 of the Pre-Natal Diagnostic Technology (Regulation and Prevention of Misuse) Act, 1994, prohibits any person in charge of a hospital or laboratory from undertaking any test for the purpose of determining the sex of the foetus of a child in the womb and such violation has been made punishable under Section 22 of the said act with imprisonment which may extends upto three years and fine and any medical practitioner found indulging in such an act can also be debarred by the State Medical Council from carrying out any medical practice.

(b) Mention may simultaneously be made here of the Medical Termination of Pregnancy Act, 1971 which prohibits the undertaking of termination of pregnancy by a person who is not a registered medical practitioner and even by a medical practitioner without the consent of the pregnant woman or her guardian (if she is under the age of 18 years, or is a mentally challenged person) where the pregnancy exceeds 12 weeks but does not exceeds 20 weeks, and that too for saving the life of the pregnant woman, or grave injury to her physical or mental health, or where there is substantial risk that if such a child is born, he may be seriously handicapped. It will thus be seen that the law of the land attempts to ensure that no discrimination is carried out or practiced in respect of a female child not only after she is born but even at the stage of pregnancy, or when she is a child.

(c) For further ensuring that such girl child is not traumatized, the law further prohibits her marriage before she has completed the age of 18 years and any one marrying such

(d) female child below the age of 18 years is also liable to be punished with imprisonment upto three months and fine.

