



# Women's Right As Human Rights

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## Abstract

Women have always been an integral part of society, though not as much equally represented in the legal sphere—despite the centuries-long struggle they have undertaken. However, the outcomes of their efforts have led to significant legal recognition. This research paper focuses on both domestic statutory frameworks and international legal policies to understand the current landscape.

Once side-lined, women's rights have now become a core part of legal structures and jurisprudence. This study explores the evolution and enforcement of women's rights as human rights, with emphasis on the confluence between international conventions and domestic legal mechanisms. Key instruments—such as the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Conference on Population and Development (ICPD)—are examined for their role in shaping global standards. The paper further analyses how these norms influence national legislation and judicial decisions in India.

Constitutional provisions, statutory protections, and landmark judgments—including *Vishaka v. State of Rajasthan* and *Joseph Shine v. Union of India*—are evaluated for their contributions to gender justice. Moreover, the study critically assesses the persistent challenges in translating legal rights into lived realities, including societal norms, weak enforcement, and institutional shortcomings.

Although women's rights are now widely recognized at the global level, significant gaps remain within various sectors of society. The paper concludes with legal and policy reform suggestions to strengthen the realization of women's rights as fundamental human rights.

**Keywords :** Women's Rights, Human Rights, Gender Justice, International Conventions, CEDAW, UDHR, ICPD, Legal Framework, Statutory Protections, Indian Constitution, Landmark Judgments, *Vishaka v. State of Rajasthan*, *Joseph Shine v. Union of India*, Societal Norms, Legal Enforcement, Policy Reform, Judicial Interpretation, Domestic Legislation, Institutional Challenges

## 1. Introduction

The main conceptual idea of human rights has been around for thousands of years. It has evolved in various civilizations such as Greece thinkers like Plato and Aristotle discussed about natural law and justice, the idea of natural rights emerged under roman law, while China emphasized on the concept of Confucianism and to promote fairness and social duties, including India which followed (ahimsa) non-violence, equality and welfare of all beings through ancient text like the rig Veda and Upanishads.

The medieval development in human rights brought Manga Carta 1215, England which limited the power of the king and protected feudal rights, while Quran and sharia recognised duties towards women, children

and the poor. Soon in modern world the concept of individual rights and individual rights gained enough strength to deem it of importance through thinkers like John Locke that argued that life, liberty and property are natural rights.

Small changes over centuries, emerged a new concept of HUMAN RIGHTS that provide basic rights and freedom to every individual simply because they are human.

*“Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.”*

— Office of the High Commissioner for Human Rights (OHCHR)<sup>1</sup>

A definition provided by United Nations (UN)

*“Human rights are writ on a large canvas, as they include the right to life, liberty, equality, and the dignity of the individual guaranteed by the Constitution and embodied in the international covenants.”*

## Indian Perspective (Justice V.R. Krishna Iyer)<sup>2</sup>

### 2. Historical Context of Women's Rights

Throughout history, the exclusion of women from formal legal systems and rights discourses has been systemic and widespread. Even as human rights declarations emerged, they often failed to address the lived realities of women. The Universal Declaration of Human Rights (1948) marked a turning point by affirming that "all human beings are born free and equal in dignity and rights." However, the gender-neutral language of such documents frequently masked deeply ingrained gender biases and patriarchal structures.

In the 19th and early 20th centuries, global women's movements primarily centred on suffrage and civil rights, demanding access to education, property rights, and political participation. The feminist waves that followed—particularly the second wave in the 1960s and 70s—brought a broader focus to systemic gender inequality, reproductive rights, and workplace discrimination.

Yet, despite these developments, international human rights frameworks were slow to integrate a gendered perspective. It wasn't until the late 20th century that the global community began to formally recognize the unique and intersectional challenges women face. The 1993 Vienna World Conference on Human Rights was a landmark moment in asserting that “women's rights are human rights,” paving the way for more inclusive international policymaking.

### 3. International Legal Frameworks for Women's Right<sup>3</sup>

VIENNA DECLARATION AND PROGRAMME OF ACTION<sup>4</sup> In 1993, the World Conference on Human Rights was held in Vienna. It sought to review the status of the human rights machinery in place at the time. 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.” Particularly around the issue of violence against women, civil society activists organized tribunals to put the spotlight on violations of women's rights, previously unaddressed because they were considered part of the private

<sup>1</sup> <https://www.un.org/en/global-issues/human-rights>

<sup>2</sup> [https://www.humandignitytrust.org/wp-content/uploads/resources/Puttaswamy-v-Union-of-India-full-judgment.pdf?utm\\_source=chatgpt.com](https://www.humandignitytrust.org/wp-content/uploads/resources/Puttaswamy-v-Union-of-India-full-judgment.pdf?utm_source=chatgpt.com)

<sup>3</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-14-2.pdf>

sphere, taboo or simply accepted as an inevitable part of women's lives. The Conference was successful in adopting the Vienna Declaration and Programme of Action, which stated that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights" (para. 18) and placed particularly heavy emphasis on eliminating all forms of gender-based violence. Importantly, the Programme of Action also called for "the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism" (para. 38).

**B. INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT** The International Conference on Population and Development, which was held in 1994, represented a milestone for women's rights. While the Conference was focused on population issues, the delegates meeting in Cairo agreed that population was not only about demographics importantly, about people. The issues taken up in its Programme of Action<sup>5</sup> are fundamentally related to women's human rights, including gender equality, the family, reproductive health, birth control and family planning, women's health, as well as immigration and education of women. Importantly, the Programme of Action is explicitly grounded in human rights and proclaims that "advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related programmes." The Conference was also important for its clear statement of reproductive rights, explaining that these "rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents." The Programme of Action sets specific targets for: the provision of universal education; the reduction of infant, child and maternal mortality; and ensuring universal access to reproductive health care, including family planning, assisted childbirth and prevention of sexually transmitted infections, including HIV/AIDS, by 2015. Follow-up conferences have been organized to assess progress towards these goals, and inequality and lack of accountability constitute ongoing challenges to their achievement.

**C. BEIJING DECLARATION AND PLATFORM FOR ACTION**<sup>6</sup> Adopted during the Fourth World Conference on Women in September 1995, the Beijing Declaration and Platform for Action focused on 12 areas concerning the implementation of women's human rights a set out an agenda for women's empowerment. It builds on the results of the previous three world conferences on women, but is considered a significant achievement in explicitly articulating women's rights as human rights. The Platform for Action includes a series of strategic objectives to eliminate discrimination against women and achieve equality between women and men. It involves political and legal strategies on a global scale based on a human rights framework. The Platform for Action is the most comprehensive expression of States' commitments to the human rights of women. Subsequent reviews of the implementation of the Beijing Declaration and Platform for Action have revealed that although significant progress has been made in some areas of women's human rights, "discriminatory legislation as well as harmful traditional and customary practices and negative stereotyping of women and men still persist" particularly in family, civil, penal, labour and commercial laws or codes, or administrative rules and regulations.<sup>7</sup> Both the 2005 and the 2010 reviews of the Platform concluded that de jure and de facto equality had not been achieved in any country in the world and the 2010 review recognized that even where legal reforms had taken place, they were often ineffectively enforced.

#### 4. Domestic Legal rights provide in India

India's Constitution is progressive in its formal commitment to gender equality. Several provisions explicitly affirm women's rights as fundamental rights.<sup>4</sup>

- Sexual/ reproductive rights – It is particularly essential right to provide a much-needed immunity against all forms of sexual violence.
- Freedom of movement – Even with all the globalisation, it is still difficult for women to move freely not just within our country but between countries.
- Right to equal pay – The Indian Constitution provides Article 39(d) and article 41 that states that all men and women are entitled to equal pay for equal work.

The supreme court considered the equal pay for equal work in *Kishori Mohanlal Bakshi v. Union of India* (1962).

- Right to live in decency and dignity – The right to live in dignity and decency is provide to all individuals, however laws are sensitive towards women and have provided under Indian Penal Code (IPC) section 354A – now provide under *Bhartiya Nyaya Suraksha Sanhita* (BNSS) in section 73 as sexual harassment, section 354 (IPC) as section 74 (BNSS) regarding Assault or use of criminal force with intent to disrobe, section 354C (IPC) as section 75 (BNSS) regarding Voyeurism and lastly section 354D (IPC) as section 76 (BNSS) regarding Stalking.
- Right Against Domestic Violence - Women residing in shared households—such as mothers, sisters, or wives—are protected under Section 498A of the Indian Penal Code (IPC) from domestic violence. This includes not only physical harm but also verbal, emotional, economic, and sexual abuse by a husband, male live-in partner, or his relatives. Violators of this law may face imprisonment of up to three years, along with a fine.
- Right Against Dowry Although the Dowry Prohibition Act of 1961 criminalizes the giving and receiving of dowry, the practice still persists in many parts of India. Often disguised as 'gifts', dowry exchanges are still informally expected. The law imposes penalties of up to five years in prison and a fine of ₹15,000 or the value of the dowry given—whichever is higher—on those found guilty.
- Right to Anonymity of Sexual Assault Victims Indian law strictly prohibits revealing the identity of victims of sexual offences under Sections 376, 376A, 376B, 376C, and 376D of the IPC. Section 228A makes it a criminal offence to disclose or publish the names of such victims, unless authorized in writing by the victim or their legal representative (in cases where the victim is deceased, a minor, or mentally unfit). Additionally, Section 23 of the POCSO Act, 2012 prohibits media from disclosing any information that could identify a child victim.
- Right to Legal Aid Under Article 39A of the Indian Constitution, added through the 42nd Amendment, individuals from economically or socially disadvantaged backgrounds are entitled to free legal assistance. Articles 14 and 22(1) further mandate equal protection under the law and just legal procedures. To uphold these principles, the Legal Services Authorities Act, 1987 led to the establishment of the National Legal Services Authority (NALSA), which ensures accessible and efficient legal aid services across the country.
- Right Against Night-time Arrest Section 46 of the Code of Criminal Procedure (CrPC), 1973, outlines how arrests are to be made. A person is considered arrested only when physically restrained or touched by an officer to detain them. Mere verbal declaration of arrest is not sufficient unless the individual voluntarily complies.

<sup>4</sup> [https://blog.ipleaders.in/all-about-womens-rights/#The Beijing Declaration](https://blog.ipleaders.in/all-about-womens-rights/#The_Beijing_Declaration)

For women, special protection is offered—police must obtain prior permission from a magistrate to arrest them at night.

## a. Constitutional Provisions<sup>5</sup>

### *Article 14: Equality Before the Law*

Article 14 of the Indian Constitution affirms that every individual is entitled to equality before the law and equal protection of the laws within India. This foundational principle ensures that women enjoy the same legal status and opportunities as men across social, economic, and political domains, forming the basis of gender equality in the country.

### *Articles 15(1) and 15(3): Non-Discrimination and Protective Measures*

Article 15(1) bars the State from discriminating against any person on the grounds of religion, race, caste, sex, or place of birth. At the same time, Article 15(3) allows the State to create special provisions for women and children. Together, these clauses protect women from unfair treatment while enabling targeted policies that promote gender equity and address long-standing inequalities.

### *Article 16: Equal Employment Opportunities*

Article 16 guarantees all citizens, including women, equal opportunities in matters of public employment. It ensures fair access to government jobs and appointments, helping women compete equally in the public sector workforce.

### *Directive Principles of State Policy and Women's Welfare*

The Directive Principles, though not enforceable in court, guide the State in shaping policies that promote social justice. Several provisions focus specifically on women's rights and well-being.

- **Article 39(a)** calls for equal access to livelihood for both men and women.
- **Article 39(d)** demands equal pay for equal work, addressing gender-based wage disparities.
- **Article 39A** promotes equal access to justice, particularly for economically or socially disadvantaged groups, including women.

These provisions aim to reduce gender-based economic and legal inequalities.

### *Article 42 and the Maternity Benefit Act, 1961*

Under Article 42, the Constitution directs the State to ensure fair working conditions and maternity benefits. This principle is reflected in the **Maternity Benefit Act, 1961**, which provides essential protections for working women during pregnancy and childbirth, demonstrating the State's commitment to women's health and dignity in the workplace.

### *Article 51A(e): Fundamental Duties and Women's Dignity*

Article 51A(e) emphasizes the duty of every citizen to reject behaviours and practices that are degrading to women. This provision encourages a respectful and dignified treatment of women in all spheres of life, fostering a culture of gender sensitivity and equality.

<sup>5</sup> [https://lawbhoomi.com/constitutional-provisions-for-women-in-india/#Key\\_Constitutional\\_Provisions\\_for\\_Women\\_in\\_India](https://lawbhoomi.com/constitutional-provisions-for-women-in-india/#Key_Constitutional_Provisions_for_Women_in_India)

The Constitution actively supports women's involvement in grassroots democracy through reservations in local self-government institutions:

- **Articles 243-D (3) & 243-D (4)** and
- **Articles 243-T (3) & 243-T (4)**

These clauses ensure that **one-third of seats in Panchayats and Municipalities**, as well as **one-third of leadership positions**, are reserved for women. This measure strengthens women's political representation and decision-making power at the local level.

## b. Key Statutory Protections

- *Protection of Women from Domestic Violence Act, 2005 - An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and formatters connected therewith or incidental thereto.*<sup>6</sup>

This act is a legislation that protects women from domestic abuse that is just physical but emotional, sexual and verbal or economical abuse. Unlike traditional criminal laws, this Act recognizes that domestic violence goes beyond physical harm and includes emotional, verbal, sexual, and economic abuse within a domestic setting. It applies to women in all domestic relationships, including wives, mothers, sisters, and live-in partners. The Act empowers aggrieved women to seek protection orders, residence rights, monetary relief, custody of children, and support services such as medical aid and shelter. It also mandates the appointment of Protection Officers to assist victims and ensure speedy redressal through Magistrate courts. By acknowledging the complex nature of domestic violence and offering civil remedies, the Act marks a significant step toward safeguarding the dignity, safety, and rights of women within their homes.

- *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*

The *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* is a landmark legislation enacted to ensure a safe and secure working environment for women, free from sexual harassment. The Act defines sexual harassment broadly, including unwelcome physical contact, sexually coloured remarks, showing pornography, or any verbal or non-verbal conduct of a sexual nature. It applies to all workplaces—government or private, organised or unorganised sectors—and protects women employees, interns, and visitors. One of the key features of the Act is the mandatory establishment of **Internal Complaints Committees (ICCs)** at workplaces with more than ten employees to investigate complaints. The law also provides for confidentiality, time-bound redressal, and protection from retaliation. Rooted in the Supreme Court's guidelines laid down in *Vishaka v. State of Rajasthan (1997)*, this Act strengthens women's constitutional right to equality and dignity in the workplace and holds employers accountable for preventing and addressing sexual misconduct.

**Objective:** The Act aims to prevent and address incidents of sexual harassment of women at their place of work and provide a mechanism for redressal of complaints related to such harassment.<sup>7</sup>

- *Dowry Prohibition Act, 1961*

The *Dowry Prohibition Act, 1961* was enacted to curb the social evil of dowry in India, which has led to widespread exploitation, violence, and deaths of women. The Act makes the giving, taking, or demanding

<sup>6</sup> <https://www.indiacode.nic.in/handle/123456789/2021>

<sup>7</sup> <https://wcd.delhi.gov.in/wcd/sexual-harassment-women-workplaceprevention-prohibition-and-redressal-act-2013sh-act-2013>

of dowry a punishable offence. It defines **dowry** as any property or valuable security given directly or indirectly by one party to a marriage to the other party, or to their relatives, in connection with the marriage. Under this law, both the giver and taker of dowry are liable to punishment, which may include imprisonment for up to **five years** and a **fine of ₹15,000 or the amount of dowry**, whichever is more. Despite being a criminal offence, dowry continues to be practiced under various social customs, and the Act aims to bring awareness, deterrence, and legal remedy to women affected by such practices. Amendments over the years have strengthened its provisions and made it an important tool in addressing **domestic violence and dowry-related harassment**, especially under Section **498A** of the IPC.

- *Maternity Benefit Act, 1961 (Amended 2017)*

The *Maternity Benefit Act, 1961* is a key social welfare legislation aimed at safeguarding the employment rights of women during pregnancy and post-childbirth. It applies to women working in factories, mines, plantations, shops, and establishments employing **10 or more people**. The Act provides for **paid maternity leave** of **26 weeks** (for the first two children) and **12 weeks** for subsequent children. It also ensures maternity benefits such as **nursing breaks**, protection from dismissal during pregnancy, and **financial compensation** in case of medical complications arising from pregnancy or miscarriage. The Act prohibits employers from assigning strenuous tasks to pregnant women and mandates re-employment after maternity leave. By protecting women's health, employment, and dignity during a critical phase of life, the Act reflects the spirit of **Article 42** of the Indian Constitution, which directs the State to ensure just and humane working conditions and maternity relief.

### c. Landmark Judgments

*CASE - Vishaka v. State of Rajasthan (1997): The Supreme Court issued guidelines on sexual harassment at the workplace, using CEDAW as a guiding principle.*

### Definition of Sexual Harassment<sup>8</sup>

Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- Physical contact and advances
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

### Preventive Steps

- Employers or persons in charge of workplaces must take appropriate steps to prevent sexual harassment.
- A clear sexual harassment policy should be notified, published, and circulated.
- Awareness programs should be conducted for employees.

### Complaint Mechanism

- A **complaint mechanism** must be set up for redressal of grievances.
- It must be **time-bound** and ensure **confidentiality**.

<sup>8</sup> [https://cag.gov.in/uploads/cms\\_pages\\_files/Vishkha-Guidelines-against-Sexual-Harassment-in-Workplace-061de8308de91c7-65164897.pdf](https://cag.gov.in/uploads/cms_pages_files/Vishkha-Guidelines-against-Sexual-Harassment-in-Workplace-061de8308de91c7-65164897.pdf)

## Complaints Committee

- Every workplace should have a **Complaints Committee**.
- It must be headed by a **woman** and have at least **50% women members**.
- It should also include a **third-party member** (from an NGO or other body familiar with the issue of sexual harassment) to prevent any bias.

## Worker's Initiative

- Women employees should be allowed to raise issues of sexual harassment at appropriate forums.

## Disciplinary Action

- If the conduct amounts to misconduct, appropriate disciplinary action must be initiated.

## Criminal Proceedings

- If the conduct constitutes an offence under the Indian Penal Code or any other law, the employer must initiate legal action by lodging a complaint with the appropriate authority.

## Victim Protection

- Victims should not face any disadvantage or retaliation at the workplace.

## Annual Report

- The committee should prepare an annual report and share it with the government department or authority

*CASE - Joseph Shine v. Union of India (2018): The court decriminalized adultery, emphasizing personal autonomy and gender equality.<sup>9</sup>*

- Section 497 IPC declared unconstitutional:  
The Court unanimously held that Section 497 IPC (Adultery) was violative of Articles 14, 15, and 21 of the Constitution and hence unconstitutional.
- Adultery is no longer a criminal offence:  
The Court ruled that adultery may be a ground for civil issues like divorce, but it cannot be treated as a criminal offence.
- Violation of Equality (Article 14):  
The law treated men and women unequally—only men could be prosecuted, and women were treated as the property of their husbands. The Court held this discriminatory and arbitrary.
- Violation of Right to Life and Personal Liberty (Article 21):  
The law infringed upon the personal autonomy and dignity of individuals, especially women.
- Violation of Article 15 (No discrimination based on sex):  
The law was based on gender stereotypes and assumed that women had no agency, thereby violating the guarantee of non-discrimination.
- Marital status does not take away autonomy:  
The Court emphasized that a woman's identity and autonomy do not disappear upon marriage.
- Doctrine of Constitutional Morality:  
The judgment reinforced the idea that constitutional morality must guide the interpretation of laws, not social or moral values.

*CJI Dipak Misra (writing for himself and Justice A.M. Khanwilkar):*

*"A husband is not the master of his wife."*

<sup>9</sup> <https://indiankanoon.org/doc/42184625/>

CASE - Navtej Singh Johar v. Union of India (2018): Though primarily an LGBTQ+ rights case, it reaffirmed the importance of sexual autonomy and dignity for all.

These legal frameworks demonstrate the Indian judiciary's willingness to interpret laws in line with international human rights principles, reinforcing women's constitutional and human rights.

## **5. Persisting Challenges in Realizing Women's Rights**

Despite significant legal and institutional progress, women's rights often remain theoretical rather than experiential, especially for marginalized and rural communities. There have to be more practical solutions to push such reforms deeper into constricted societies. Legal recognition alone is insufficient without practical enforcement and societal change.

### **a. Societal Norms and Patriarchy**

Deeply rooted patriarchal norms continue to limit women's agency in various spheres, including marriage, education, employment, and political participation. Social acceptance of violence against women, honour-based violence, and restricted mobility remain widespread. Distribution of power and work is not balanced, not inside families nor outside them. There has been an increase in the level of thinking to make such changes, however it is practically observed not every human is capable of adapting new ideas and structures easily and to resolve such situations there has to be communication on a personal level.

### **b. Lack of Enforcement Mechanisms**

Many women face challenges in accessing justice due to inadequate implementation of protective laws, lack of gender-sensitive law enforcement, and lengthy legal proceedings. Rural and economically disadvantaged women face even greater barriers. There has to be involvement of females in all sectors to make it comfortable for women and laws are meant to protect women but frequently remain on paper due to poor implementation, delayed justice, and lack of accountability in enforcement agencies.

### **c. Institutional Gaps**

There is a shortage of women in positions of power across legal, political, and law enforcement systems. Additionally, many legal services remain inaccessible or unaffordable to the most vulnerable populations such as insufficient representation of women in decision-making bodies, lack of gender-sensitized personnel, and inadequate support systems like legal aid and shelters, further weaken the protection of women's rights.

### **d. Intersectional Discrimination**

Dalit, Adivasi, Muslim, disabled, and LGBTQ+ women often experience layered forms of discrimination. This intersectionality complicates access to justice and equality, which policies often fail to fully address. Discrimination is based on many forms based on caste, class, religion, disability, or sexual orientation—compounds the marginalization of many women, making them more vulnerable to violence, exploitation, and denial of justice. Together, these structural challenges create significant barriers in achieving substantive gender equality.

## **6. Conclusion and Suggestions for Reform**

Women's rights are not a separate category of concern but a central pillar of human rights. They must be understood as essential to achieving justice, peace, and inclusive development. While constitutional and legal frameworks exist, the real challenge lies in bridging the gap between legal recognition and lived realities.

To move forward, the following reforms are crucial:

- Stronger enforcement mechanisms, including faster judicial processes and gender-sensitized policing.
- Comprehensive sex education to challenge harmful norms and promote bodily autonomy.
- Increased political and institutional representation of women, especially from marginalized backgrounds.
- Policy reforms that adopt intersectional approaches and address socio-economic barriers.
- International collaboration for sharing best practices and holding states accountable to global standards.
- Ultimately, for human rights to be meaningful, they must reflect the realities and voices of all women, everywhere. Ensuring that women's rights are fully recognized, protected, and fulfilled is not just a legal obligation—it is a moral imperative.

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