



THE STATUS OF WOMEN IN INDIA: A HUMAN RIGHTS PERSPECTIVES

Dr. MALABIKA TALUKDAR

Principal, NERIM Law College, Affiliated to Dibrugarh University,
Jayanagar, Guwahati- 22, Assam, India

Introduction and the Concept

Human rights are those minimum rights which are compulsorily obtainable by every individual as he/she is a member of human family. The constitution of India also guarantees the equality of rights of men and women. However, in the sphere of women's human rights in India, there exists a wide gulf between theory and practice. Indian society is a male dominated society where men are always assumed to be superior to society. The women in India very often have to face discrimination, injustice and dishonour. Though women in India have been given more rights as compared to men, even then the condition of women in India is miserable.¹

The "Human Rights of Women" or "Women Empowerment" is the most vital system to strengthen the future of women in India and all over the world. It is a systematic approach which needs to be developed more seriously in India. The Government of India came up in the new millennium by declaring the year 2001 as 'Women's Empowerment Year' to focus on a vision 'where women are equal partners like men'.²

This process has been further accelerated with some sections of women becoming increasingly self-conscious of their discrimination in several areas of family and public life. They are also in a position to mobilize themselves on issues that can affect their overall position. Empowerment would become more relevant if women are educated, better informed and can take rational decisions. A woman needs to be physically healthy so that she is able to take challenges of equality.³

Apart from these, the development of a nation solely depends on the social status of women. Women constitute almost one half of the globe's population. Women have been victims of exploitations by male dominated society. Women need to be empowered and men need to be oriented about their obligations towards women. Women continue to be exploited. The position is same everywhere wherever developed, the developing or under developed. Women play major roles during various stages of their life as a daughter, wife, mother and sister, etc. In spite of her contribution to human beings, she still belongs to a backward class on account of various social,



political, economic and psychological barriers and impediments. On one side, woman is worshipped as goddess and on the other side she is oppressed, suppressed, depressed, exploited and victimized by the male dominated society. A report of the United Nations say that "Women constitute half of the world population, perform nearly two thirds of work hours, receive one tenth of the world's income and own less than one-hundredth per cent of the world's property." Women still suffer from discrimination, exploitation and victimization. The need of the hour is empowerment of women. Empowerment essentially means decentralization of authority and power. It aims at getting participation of deprived sections of people in decision-making process. It means giving voice for voiceless. Empowerment may mean equal status to women to develop her. Man should give women opportunity and freedom to develop her. Women empowerment looks at basic woman rights and attempts on organising to attain them. Women empowerment can influence not only their own lives but also the lives of man and children. Women empowerment may enhance their self-confidence and their ability and willingness to challenge oppression. Women empowerment aims at eliminating discrimination and challenging gender inequality.⁴

International Treaties and Conventions for Women Empowerment

The 20th century has witnessed the upsurge of women empowerment movement universally. The Universal Declaration of Human Rights (1948) reaffirming faith in the fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women, contemplated the entitlement of all cherished freedoms to all human beings without any distinction of any kind, including discrimination based on sex. The World Conference on Human Rights at Vienna in 1993 had declared the human rights of women and the girl child to be "inalienable, integral and indivisible part of universal human rights" and eradication of any form of discrimination on the basis of sex, is the priority objective of the international community. The Convocation on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 is the United Nations' landmark treaty marking the struggle for women's rights. Described as the Bill of Rights for women, it spells out what constitutes discrimination against women and propagates strategies based on "non-discriminatory" model, so that women's rights are seen to be violated, if women are denied the same rights as men. General Recommendation 19 to CEDAW, formulated in 1992, deals entirely with the violence against women and explicitly states that gender-based violence is a form of discrimination which seriously inhibits a women's ability to enjoy rights and freedoms on the basis of equality with men and asks State parties to have regard to this, while reviewing their laws and policies. The Declaration on the Elimination of Violence against Women (1993) is a comprehensive



statement of international standards with regard to the protection of women from violence. The Declaration sets out the international norms which States have recognised as being fundamental in the struggle to eliminate all forms of violence against women. Any "grave or systematic violations" are liable to be inquired into and penalised ever since the Optional Protocol of December 2000.⁵

For centuries,⁶ women in this country have been socially and economically handicapped. They have been deprived of equal participation in the socio-economic activities of the nation. The Constitution of India has taken a long leap in the direction of eradicating the lingering effects of such adverse forces so far as women are concerned. It recognises women as a class by itself and permits enactment of laws and reservations favouring them. Several articles in our Constitution make express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation. Article 51 of the Constitution obligates the State to honour international law and treaty obligations. Our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by Article 51-A.

In spite of all these developments,⁷ the truth remains that widespread violations of women's rights continue to persist. The forces of globalisation and extremism and the unwillingness of other segments of humanity continue to pose a threat to women's human rights. Structural inequalities and power imbalances facilitate such violations. Urge for easy money, at times greed, facilitating a life full of comforts, possibly luxury, has in the recent few years made women more susceptible to exploitation and violence.

Human Rights of Women under Indian Constitution

It is imperative to provide equal opportunities to all sections of society in order to strengthen democracy and democratic institutions. Indian constitution has provided all the rights to the women equal to men. Women in India constitute about half of the total population. The women's human rights have been elaborated in various provisions of the Part three of the Indian Constitution that is Fundamental Rights and Part four that is Directive Principles of State Policy.⁸

Article 14 states--'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'



Thus article 14 guarantees to every person, male and female, the right to equality before the law or the equal protection of the laws.⁹

The constitution makers unsatisfied with the general declaration of right to equality and conceding the prevalent bias in the country, provided in article 15 that 'State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.'¹⁰

But for the underprivileged living in extreme conditions of subjugation and indignity for centuries due to historical and social factors, 'equality before law' does not have any attraction. Therefore, Article 15 (3) makes special provisions for the betterment of such sections of society. These have been labeled as positive discrimination. Clause (3) of article 15 states that 'nothing in this article shall prevent the State from making any special provision for women and children.'¹²

Article 16 provides equality of opportunity for men and women in matters of public employment. Gender discrimination at least in theory has been prohibited by this article paving the way for the Indian women to look forward to enter government employment.¹²

Article 21 (A) provides that 'State shall provide free and compulsory education to children between 6-14 years of age.' This provision is equally applicable to male and female children.¹³

A ban has been imposed under Fundamental Rights against exploitation on immoral human traffick (article 23). This article embodies the declaration that traffick in human beings, beggar and other similar forms of forced labour are prohibited. The prohibition applies not only to the State but also to private persons, bodies and organizations. Traffick in human beings includes traffick in women and children for immoral or other purposes.¹⁴

The effective implementation of the above mentioned rights article 32 provides guaranteed remedial methods to achieve the goals of Part three of Indian Constitution. This very article itself is a Fundamental Right.¹⁵

If fundamental rights are a kind of guarantee to establish political democracy, the directive principles of state policy are instruments to bring socio-economic democracy. Unjusticeable though they are, but are fundamental in the governance of the country. Some 16 articles of Part IV of the Constitution contain such provisions. Some of them are of indirect relevance to women whereas some are directly women specific as such:¹⁶



- The State will implement for both men and women the principle of 'equal pay for equal work'. 'Equal Wages Act 1976' was passed by Indian Parliament. Government will also strive to protect the health of male and female workers.
- The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Further, the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. (Article 41).
- The State shall make provision for securing just and humane conditions of work and for maternity relief (Article 42). Laws such as the Industrial Disputes Act, the Minimum Wages Act, the Maternity Relief Act, the Workmen Compensation Act, the Employees Insurance Act implement this provision.
- The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. This article is thus an attempt on the part of the State to provide all citizens economic, social and cultural rights.
- Part IV-A inserted by the Constitution (Forty-second Amendment Act, 1976) as Fundamental Duties confers the duty over citizens of India to renounce practices derogatory to the dignity of women.(Article 51A(e)).

Thus,¹⁷ Indian Constitution contains several provisions at different places for the safeguard and protection of women through which women can be granted the right of equality and dignified life. Women's Human Rights related Laws in Democratic India's Parliament and respective state legislatures have enacted relevant laws for the promotion of welfare and empowerment of women from time to time. These laws have also tried to remove the obstacles in the path of women's development and progress.

Some of the Human Rights of Women in India¹⁸

Below, some of the human rights enjoyed by women can be identified as follows:



- Right to equality
- Right to education
- Right to live with dignity
- Right to liberty
- Right to politics
- Right to property
- Right to equal opportunity for employment
- Right to free choice of profession
- Right to livelihood
- Right to work in equitable condition
- Right to get equal wages for equal work
- Right to protection from gender discrimination
- Right to social protection in the eventuality of retirement, old age and sickness
- Right to protection from inhuman treatment
- Right to protection of health
- Right to privacy in terms of personal life, family, residence, correspondence etc. and
- Right to protection from society, state and family system.

Judicial Initiatives towards protection of Women's Human Rights in India

The judiciary¹⁹ by its various landmark judgments had filled up the gap created by the legislative machinery for protection of human rights. The judiciary had extended helping hands to women. when the legislature had denied it. The higher judiciary has shown concern for women's right in recent times; it also had been greatly influenced by the international declaration and covenants on women's rights. The vibrant judiciary has recently exalted the dignity of women by its golden judgments. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*²⁰, the Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation. In this case, the Court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian Law. In *Chairman, Railway Board v. Chandrima Dass*²¹, the Supreme Court awarded compensation of 10 lakhs to an alien woman under Article 21 of Constitution, who has been a victim of rape. In *Githa Hariharan v. Reserve Bank of India*²², the Supreme Court interpreted Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 in such a way that father and mother get equal status as guardians of a minor. In *Mohammed Ahmed Khan v. Shah Bano*²³, the Supreme Court granted equal right of maintenance under Section 125 of Cr.



P.C. 1973 to a divorced married woman notwithstanding the personal law. The Supreme Court also held that "large segments of society which have been traditionally subjected to unjust treatment, women are one such segment." In *Charansingh v. Union of India*²⁴, the Delhi High Court expressed that women are a backward class as compared to men. In *Government of Andhra Pradesh v. P. B. Vijay Kumar*²⁵, the Supreme Court has held that the issue of reservation for women in State services was upheld under Article 15(3) of the Indian Constitution. In *Municipal Corporation of Delhi v. Female Workers*²⁶, the Supreme Court held that a just social order could be achieved only when inequalities are obliterated and women, which constitute almost half of the segment of our society, are honoured and treated with dignity. In *Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*²⁷, the Supreme Court struck down the discriminatory rules of Education Department of Government of Uttar Pradesh. In *Air India v. Nargis Mirza*²⁸, the Supreme Court struck down the discriminatory Rules of Indian Airlines. In *Bodhisattwa v. Ms. Subhra Chakraborty*²⁹, the Supreme Court held that rape is a crime against basic human rights.

In *Vishakha v. State of Rajasthan*³⁰, the Supreme Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. Considering the inadequacy of legislation on the point, the Court even assumed the role of legislature and defined sexual harassment and laid down instruction for the employers. In *Apparel Export Promotion Council v. A. K. Chopra*³¹, the Supreme Court found all facets of gender equality including prevention of sexual harassment in the fundamental rights granted by the Constitution. In *C. B. Muthamma v. Union of India*³², a service rule whereby marriage was a disability for appointment to foreign service was declared unconstitutional by the Supreme Court. In *Shobha Rani v. Madhukar*³³, the Supreme Court held that dowry demand was held enough to amount to cruelty. In *Prathibha Rani v. Suraj Kumar*³⁴, the Supreme Court upheld women's right to the Stridhana. In *State of Punjab v. Gurmit Singh*³⁵, the Supreme Court held that rape was held to be violative of the right of privacy.

Therefore, from the above discussed judicial pronouncements of different courts in our country, it is clear that our Indian Judiciary is playing an active role in promoting and protecting the rights of the women and also is trying to preserve the interests of the women of our country.

Violation of Women's Human Rights in India

It has been repeatedly said these days that women in India are enjoying the rights equal to men. But in reality, the women in India have been the



sufferers from past. Not only in earlier times but even now days also, women have to face discrimination, injustice and dishonour.³⁶

The women in Indian society never stood for a fair status. The following crimes³⁷ were done against the women in the past times.

- **Devadasis:** Devadasis was a religious practice in some parts of southern India, in which women were married to a deity or temple. In the later period, the illegitimate sexual exploitation of the devadasi's became a norm in some part of the country.
- **Jauhar:** Jauhar refers to practice of the voluntary immolation of all wives and daughters of defeated warriors in order to avoid capture and consequent molestation by the enemy. The practice was followed by the wives of Rajput rulers, who are known to place a high premium on honour.
- **Purdah:** Purdah is a practice among some communities of requiring women to cover their bodies so as to cover their skin and conceal their form. It curtails their right to interact freely and it is a symbol of the subordination of women.
- **Sati:** Sati is an old custom in Indian society in which widows were immolated alive on her husband's funeral pyre. Although the act was supposed to be voluntary on the widow's part, it is believed to have been sometimes forced on the widow.

The following are some of the human rights violations which are still existing in our country; the details can be discussed as follows:³⁸

- **Violation of "Right to Equality" and "Right to Protection against Gender Discrimination":** Discrimination against the girl child starts the moment she enters into the mother's womb. The child is exposed to gender differences since birth and in recent times even before birth, in the form of sex – determination tests leading to foeticide and female infanticide. The home, which is supposed to be the most secure place, is where women are most exposed to violence. If a girl child opens her eyes in any way, she is killed after her birth by different cruel methods in some parts of the country. Thus the very important „right to life“ is denied to women. In India, men are always assumed to be superior to women and are given more preference.



The „World Human Rights Conference in Vienna“ first recognised gender – based violence as a human rights violation in 1993. The same was declared by “United Nations Declaration” in 1993.

- **Violation of “Right to Education”:** Education is considered as means of development of personality and awareness. Education is one of the most important human rights but the position of women’s education in India is not at all satisfactory. Young girls may be brought up to believe that they are suited only to certain professions or in some cases to serve as wives and mothers.

Despite in the improvement in the literacy rate after independence, there continues to be large gap between the literacy levels of men and women. Almost half the women population are even unable to recognise language characters. At least 60 million girls lack access to primary education in India. Due to large percentage of uneducated women in India, they are not even aware of their basic human rights and can never fight for them.

- **Violation of “Political Right”:** The political status of women in India is very unsatisfactory, particularly their representation in higher political institutions – Parliament and provincial Legislation which is of great under – representation which hampers their effective role in influencing the government initiatives and policies regarding women’s welfare and development. Their representation has been unable to reach even 10% in Lok Sabha. Thus it is clear that: a) There is male domination in Indian politics and almost all the parties give very little support to women in election despite their vocal support for 33% reservation of seats for women in Parliament and Provincial Legislation. b) Women have made initiatives in political participation but they have not been accepted in politics.
- **Violation of “Right to Property”:** In most of the Indian families, women do not own property in their own names and do not get share of parental property. Due to weak enforcement of laws protecting them, women continue to have little access to land and property. In fact, some of the laws discriminate against women, when it comes to land and property rights. Though, women have been given rights to inheritance, but the sons had an independent share in the ancestral property, while the daughter’s shares were based on the share received by the father. Hence, father could anytime disinherit daughter by renouncing his share but the son will continue to have a share in his



own right. The married daughters facing harassment have no rights in ancestral home.

- **Violation of “Right to Protection of Health”:** According to the World Bank report, malnutrition is the major cause of female infertility. The presence of excessive malnutrition among female children as compared to male children is basically due to differences in the intra – family allocation of food between the male and female children. Normally, the male members are fed before the female members of the family. According to Human Development Report, in rural Punjab, 21% of girls in low income families suffer from severe malnutrition as compared with 3 % of boys in the same family. Even the low income boys are far better than upper income girls. Girl babies are less breast – fed than boy babies. 60% of girl babies are born with low birth weight. Sometimes due to economic distress and natural calamities like floods, droughts or earthquakes, the discrimination against the female child increases. Moreover it has been confirmed by various studies that the girl’s diet is inferior to the boy’s diet both in quality and quantity. Boys are given more nutritive foods like milk, eggs, butter, ghee, fruits, and vegetables as compared to girls. Due to this inferior quality diet, girls are more vulnerable to infections and diseases. The reason again is that families spend less on medication for girls than for boys.
- **Violation of “Right to Equal Opportunity for Employment” and “Right to Get Equal Wages for Equal Work”:** The employment of the women in agriculture, traditional industries and in sizeable section of new industries is declining at a very fast rate. The reason is that the adoption of new technological changes requires new skill, knowledge and training. And women in India, who constitute a large share of world’s illiterate lacks such skills and knowledge. The studies have also showed that for the same task, women are paid less than the males. Technological changes in agriculture and industry are throwing out women from the production process. The women workers are concentrated only for certain jobs which require so – called female skills. Thus, Indian labour market is adverse to women workers. It shows that, the role of women in large scale industries and technology based businesses is very limited. But even in the small- scale industries their participation is very low. Only 10.11% of the micro and small enterprises are owned by women today. Statistics show that only 15% of the senior management posts are held by the women. In agriculture where women comprise of the majority of agricultural labourers, the



average wage of women on an average is 30 – 50% less than that of men.

- **Violation of “Right to Live with Dignity”: Eve Teasing and Sexual Abuse:** Eve teasing is an act of terror that violates a woman’s body, space and self – respect. It is one of the many ways through which a woman is systematically made to feel inferior, weak and afraid. Whether it is an obscene word whispered into a woman’s ear; offensive remarks on her appearance; any intrusive way of touching any part of women’s body; a gesture which is perceived and intended to be vulgar: all these acts represent a violation of woman’s person and her bodily integrity. Thus, eve teasing denies a woman’s fundamental right to move freely and carry herself with dignity, solely on the basis of her sex. There is no particular places where eve – teasers congregate. No place is really “safe” for women. Roads, buses, train, cinema halls, parks, beaches, even a woman’s house and neighbourhood may be sites where her self – worth is abused.

- **Violation of “Right from Society, State and Family System”:**

1) Child Marriage

Child marriage has been traditionally prevalent in India and continues to this date. Discrimination against the girl begins even before their birth and continues as they grow. According to the law, a girl cannot be married until she has reached the age of 18 at least. But the girl in India is taken as a burden on the family. Sometimes the marriages are settled even before the birth of the child. In south India, marriages between cousins is common as they believe that a girl is secured as she has been married within the clan. Parents also believe that it is easy for the child – bride to adapt to new environment as well as it is easy for others to mould the child to suit their family environment. Some believe that they marry girls at an early age so as to avoid the risk of their unmarried daughters getting pregnant.

This shows that the reasons for child marriages in India are so baseless. Basically, this phenomenon of child marriage is linked to poverty, illiteracy, dowry, landlessness and other social evils.

The impact of child marriage is widowhood, inadequate socialisation, education deprivation, lack of independence to select the life partner, lack of economic independence, low health/nutritional levels as a result of early/frequent pregnancies in an unprepared psychological state of young bride. However, the Indian boys have to suffer less due to male dominated



society. Around 40% child marriages occur in India. A study conducted by “Family Planning Foundation” showed that the mortality rates were higher among babies born to women under 18. Another study showed that around 56% girls from poorer families are married underage and became mothers. So, all this indicated that immediate steps should be taken to stop the evil of Child Marriage.

2) Dowry Harassment and Bride Burning:

The demand of dowry by the husband and his family and then killing of the bride because of not bringing enough dowry to the in – laws has become a very common crime these days. In spite of the Dowry prohibition Act passed by the government, which has made dowry demands in wedding illegal, the dowry incidents are increasing day by day. According to survey, around 5000 women die each year due to dowry deaths and at least a dozen die each day in “kitchen fires”.

3) Rape:

Young girls in India often are the victims of rape. Almost 255 of rapes are of girls under 16 years of age. The law against rape is unchanged from 120 years. In rape cases, it is very torturing that the victim has to prove that she has been raped. The victim finds it difficult to undergo medical examination immediately after the trauma of assault. Besides this, the family too is reluctant to bring in prosecution due to family prestige and hard police procedures.

4) Domestic Violence:

Wife beating, abuse by alcoholic husbands are the violence done against women which are never publicly acknowledged. The cause is mainly the man demanding the hard earned money of the wife for his drinking. But an Indian woman always tries to conceal it as they are ashamed of talking about it. Interference of in – laws and extra marital affairs of the husbands are the another cause of such violence. The pity women are unwilling to go to court because of lack of alternative support system.

Thus,³⁹ all these violence done against women raises the question mark that how these special rights being given to women are helping them? What are the benefits of framing such laws for the women? Are they really helping them? Will the women really be given an equal status to men one day? All these questions are still unanswered. There is still long way to go to answer such questions.



1. Suggestions & Concluding Remarks

Notwithstanding the remarkable changes in the position of women in free India, there is still a great divergence between the constitutional position and stark reality of deprivation and degradation. Whatever whiff of emancipation has blown in Indian society, has been inhaled and enjoyed by the urban women, their population belonging to the rural areas are still totally untouched by the wind of changes. They still have been living in miserable conditions, steeped in poverty, ignorance, superstition and slavery. There still exists a wide gulf between the goals enunciated in the Constitution, legislations, policies, plans, programmes and related mechanisms on the one hand and the situational reality on the status of women in India, on the other. The human rights scenario in the country continues to be dismal and depressing. Women are being brutalized, commodified, materialized and subjected to inhuman exploitation and discrimination.⁴⁰

The guidelines or the principles need to be kept in mind to achieve the goal of gender justice or women empowerment in our country.⁴¹

1. be informed of the historical and cultural background in which the women have lived over the ages and understand their feelings and have regard to their needs as a class;
2. because the women are weaker sections of the society, strike a balance in your approach in dealing with any issue related to gender, or where a woman is victim, in such a way, that the weaker are not only treated as equals but also feel confident that they are equals;
3. treat women with dignity and honour and inculcate confidence in them by your conduct, behaviour and ideology whenever they come to you as victims or seekers of justice;
4. do not allow them to be harassed and certainly do not do anything yourselves which may amount to harassment of a woman; and
5. make efforts to render a woman victim quick, speedy, cheaper and effective justice—true to its meaning.

Therefore⁴², the efforts should be directed towards the all around development of each and every section of Indian women, not confining the benefit to a particular section of women in society, by giving them their due share. It is a must to protect their chastity, modesty and dignity and ensure their dignified position in society. Without removing social stigma, enduring progress and development could not be achieved. For this, the governmental and non-governmental organisations including media should come forward



and play an active role in creating awareness in society. We need to focus particularly on women, because in every society they struggle against gender norms that limit their resources and opportunities for improvement and because we know that women empowerment is a tremendous resource for social change and a broader fight against global poverty.

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