

**PERSPECTIVE
ON
WOMEN'S LEGAL RIGHTS**



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ADVOCATES, LEGAL ADVISORS & CONSULTANTS

**SEMINAR ON WOMEN AND FAMILY LAWS &
LITIGATION**

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CONSTITUTIONAL PROVISIONS

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women and women's advancement in different spheres.

Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

- i. Equality before law for women (Article 14)



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- ii. The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))
- iii. The State to make any special provision in favour of women and children (Article 15 (3))
- iv. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
- v. The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))
- vi. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)



- vii. The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)
- viii. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)
- ix. The State to raise the level of nutrition and the standard of living of its people (Article 47)
- x. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))



- xi. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))
- xii. Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))
- xiii. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality(Article 243 T (3))
- xiv. Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))



LEGAL PROVISIONS

To uphold 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 of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.



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(1) The Crimes Identified Under the Indian Penal Code (IPC)

- Rape (Sec. 376 IPC)
- Assault with an intent to outrage a woman's modesty (Sec. 354)
- Kidnapping & Abduction for different purposes (Sec. 363-373)
- Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- Torture, both mental and physical (Sec. 498-A IPC)
- Molestation (Sec. 354 IPC)
- Sexual Harassment (Sec. 354 A, 509 IPC)



- Assault or use of criminal force with an intent to disrobe (Sec 354 B)
- Voyeurism (Sec. 354 C)
- Stalking (Sec. 354 D)
- Voluntarily causing grievous hurt by use of acid (Sec. 326 A)
- Voluntarily throwing or attempting to throw acid (Sec 326 B)
- Importation of girls (up to 21 years of age)



(2) The Crimes identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- The Employees State Insurance Act, 1948
- The Plantation Labour Act, 1951
- The Family Courts Act, 1954
- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Hindu Succession Act, 1956 with amendment in 2005
- Immoral Traffic (Prevention) Act, 1956



- The Maternity Benefit Act, 1961 (Amended in 1995)
- Dowry Prohibition Act, 1961
- The Medical Termination of Pregnancy Act, 1971
- The Contract Labour (Regulation and Abolition) Act, 1976
- The Equal Remuneration Act, 1976
- The Prohibition of Child Marriage Act, 2006
- The Criminal Law (Amendment) Act, 1983
- The Factories (Amendment) Act, 1986
- Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- The Protection of Women from Domestic Violence Act, 2005



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SPECIAL INITIATIVES FOR WOMEN

1. National Commission for Women

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

2. Reservation for Women in Local Self -Government

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

3. The National Plan of Action for the Girl Child (1991-2000)

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.



4. **National Policy for the Empowerment of Women, 2001**

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.



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GENERAL LEGAL RIGHTS EVERY WOMAN MUST KNOW

Women in India suffer from grave social inequalities ranging from mistreatment by their spouses, to eve teasing, gender specific abortions amongst others. Most women aren't aware of women rights in India and other times their legal rights are not protected as they should be. Women empowerment plays a significant role in letting them know their rights.

1. Right to privacy while recording statement

Under section 164 of the Criminal Procedure Code, a woman who has been raped or molested can record her statement before the Court when the case is under trial in camera. Further she can record the statement with only one police officer and woman constable in full privacy. The police have to, by law, upkeep the woman's right to privacy.



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2. **Delay of no consequence**

The Supreme Court has ruled that the police must register an FIR even if there has been a gap between the report and the occurrence of the incident in case of women victim. The police cannot refuse to register an FIR even if a considerable period of time has elapsed since the incident of rape or molestation took place. Rape is a horrifying incident for any woman, so it's natural for her to go into shock and not want to report it immediately. She may also fear for her safety and the reputation and dignity of her family.

3. **Complaint through e-mail**

A woman can send a written complaint through an email or registered post addressed to a senior police officer of the level of Deputy Commissioner or Commissioner of Police. The officer then directs the Police Inspector of the police station, of the area where the incident occurred, to conduct proper verification of the complainant and lodge an FIR. The police can then come over to the residence of the victim to take her statement.



4. Police can't say no

As per Hon'ble Supreme Court's guidelines, a woman can lodge report of rape or sexual harassment or any other related crime against her with any police station in the city and the police after taking the report/FIR can send it to police station having jurisdiction for investigation.

5. No arrests after sunset

According to the Hon'ble Supreme Court's ruling, a woman cannot be arrested after sunset and before sunrise. There are many cases of women being harassed by the police at wee hours, but all this can be avoided if you exercise the right of being present in the police station only during daytime. Even if there is a woman constable accompanying the officers, the police can't arrest a woman at night. In case the woman has committed a serious crime, the police has to get it in writing from the magistrate explaining why the arrest is necessary during the night.



6. **Women can't be called to the police station**

Women cannot be called to the police station for interrogation under Section 160 of the Criminal Procedure Code. This law provides Indian women the right of not being physically present at the police station for interrogation. The police can interrogate a woman at her residence in the presence of a woman constable and family members or friends as per the guidelines issued by the Hon'ble Supreme Court.

7. **Protect identity**

Under no circumstances can the identity of a rape victim be revealed. Neither the police nor media can make known the name of the victim in public. Section 228-A of the Indian Penal Code makes the disclosure of a victim's identity a punishable offense. This is done to prevent social victimisation or ostracism of the victim of a sexual offense. Even while a judgment is in progress at the high court or a lower court, the name of the victim is not indicated, she is only described as 'victim' in the judgment.



8. The doctor can't decide

Rape is crime and not a medical condition. Therefore a doctor cannot give any report to say whether rape has taken place or not. A case of rape can't be dismissed even if the doctor says rape had not taken place. A victim of rape needs to be medically examined as per Section 164 A of the Criminal Procedure Code, and only the report can act as proof. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion and the doctor can't decide on this.

9. Free legal aid

Women can exercise their right to free legal aid. The government has set up in each state a body known Legal Services Authorities Act, 1988. This particular right is especially of great help to distressed and economically weak women to assert their rights.



10. National Commission for Women

A woman has the liberty to approach then National Commission for Women for registration of her complaint. Subsequent to the registration of the complaint, the consultant would cause for the verification of the complaint so as to ascertain the veracity of the same and may seek further information from the parties if so considered necessary. Once the merits of the case have been established, the cell would take appropriate actions which broadly include counselling and resolution of the conflict through mediation/conciliation and thereby arrive at a settlement of the matter. The cell at the same time would take the following action:

- Take up the issue with the State Government and local police administration for initiating legal process.
- Request the concerned State Commission for Women for necessary follow up, monitoring and reporting the latest development in the case.
- Take up the case with Missions and NGO's Abroad – Counseling, Mediation, shelter, protection ,etc of the aggrieved woman abroad



- Recommend the issuance of Look out Corner Notices, Recommend Issuance of summons abroad
- Recommend action under Section 188, 285, etc of Cr.P.C., Passports Act and other laws.

11. Employers must protect

The Hon'ble Supreme Court has directed that it is mandatory for all firms, public and private, to set up these committees to resolve matters of sexual harassment which is to be headed by a woman and 50% of the members have to be women. This committee within the organisation shall redress the complaints of sexual harassment.

12. Sexual Harassment Act

In April 2013, India enacted its own law on sexual harassment in the workplace - The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013.



“sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

“workplace” includes—

- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;



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- (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- (iii) hospitals or nursing homes;
- (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- (v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;
- (vi) a dwelling place or a house;
- (p) “unorganised sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.



Penalties under The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013

- During pendency of the proceedings, the aggrieved woman or the respondent may be transferred to any other workplace or the aggrieved woman may be granted leave up to a period of three months

If the allegations are proved,

- Action may be taken in accordance with the provisions of the service rules applicable
- Deduct sums from his income/ wage and to pay the same amount to the aggrieved woman

Where the employer fails to comply with the provisions of the Act, he shall be liable to be punished with a fine which may extend to Rs. 50,000. In case of a second or subsequent conviction under this Act, the employer may be punished with twice the punishment prescribed or by cancellation of his licence or withdrawal of his registration.



Under Prevention of Women from Domestic Violence Act, 2005

- A woman can obtain a protection order from the magistrate against all kind of violence.
- A magistrate can prohibit the offender from communicating in any form with the aggrieved person.
- A magistrate can restrain the offender from alienating any assets, operating joint bank lockers or joint bank accounts.
- The magistrate may pass any such other orders as may be necessary for protection of the woman.
- The woman has the right to reside in the household and cannot be dispossessed.



- The magistrate can even prohibit the husband or his relatives to enter the shared household and further prohibit them from alienating, disposing of, or encumbering the same.
- The husband can be even directed to secure same level of alternate accommodation and to pay the rent for it.
- The woman is entitled for maintenance, loss of earnings and medical expenses, etc.

