

# Rights of Women in Hindu Law and the Constitution of India- A Critical Analysis

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## **Abstract**

The subject of women's rights has always been extensively studied by the researchers and social thinkers to provide for the protection and advantage of women worldwide. Man and woman are both equal and both play vital roles in the creation and development of their families and the society. The struggle for legal equality has been one of the major concerns of the women's movement all over the world. The life of an average Indian Women is still governed by customs, habits, prejudices and unwritten codes of conduct. Legal complexities combine with social realities to make the life of an average Indian Women insecure and miserable. Even the apex court has not been able to do much in its role as the prime guardian of the life and dignity of the citizens. Here we discuss the women's rights granted to women in India under Hindu law and constitution of India. And also to understand the causes as to why women are suffering at most of the fronts of life and why women are not getting any benefit from various laws which are framed for her well being and protection.

## **Introduction**

The position of the Indian woman have been subservient to the male since ancient time. She was devoid of an independent identity and was dependent on the father, husband or sons. Gradually with the encounter of western thoughts and ideology, it was realized that women deserved a better position. And hence various social reforms took place in India. Some of the major reformations took place for the eradication of child marriage, sati, unequal property

rights, marital and economic rights. There is a strong need to equip women with their much deserved rights and privileges.

Women in India have been denied several rights right from the ancient times. The rigorous laws prevailing in the ancient period have now been transitioned into a liberal and humane law of modern era over several centuries. This reform has been done to check social injustice towards women. Here the women's rights granted to

women in India under Hindu law and constitution of India are discussed.

### **Hindu Law**

Hindu law is one of the oldest systems of Law.. The Hindu Law is indeed generally recognized as having its origin in the Vedic age. The Hindu society has been patriarchal from the beginning. The personal law of the Hindus traditionally was based on patriarchal notions. Thus, women under Hindu law were denied several rights.

Hindu Marriage Act, 1955 provides laws meant for protection of women's rights under marriage. Marriage of a female less than 18 years of age or a male of less than 21 years of age is voidable. Section 6 of the Hindu Marriage Act specifies the guardianship for marriage. Wherever the consent of a guardian in marriage is necessary for a bride under this Act, the persons entitled to give such consent are the following: the father; the mother; the paternal grandfather; the paternal grandmother; the brother by full blood; the brother by half blood; etc. Section 7 of the Hindu Marriage Act recognizes the ceremonies and customs of marriage. Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party.

The daughters were not given a birth right in the ancestral property. Inheritance was restricted only to male members of the Hindu Undivided Family. The daughter has been made a coparcener by birth in the joint property after coming into force of the Hindu Succession (Amendment) Act, 2005. Coparcenary refers to equal inheritance which was restricted only to male members of the Hindu Undivided Family. The Hindu Succession (Amendment) Act, 2005 was passed to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and to give equal rights to daughters in coparcenary property as the sons have.

Apart from the Hindu Law, some other acts i.e. Domestic Violence Act 2005, have a direct impact on the rights of hindu women. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was passed to regulate forced termination of female foetus. Personal law Amendment Act (2010) also provides scope for more reforms.

### **Constitutional Women's Rights**

The constitution now grants equality to women. In order to fulfill this constitutional mandate the parliament and judiciary have from time to time made laws and interpreted the existing ones that would guarantee gender justice. The right to equality for men

& women before the laws is a fundamental right yet the state is specifically permitted to make laws in favour of women to enable them to overcome traditional handicaps. Furthermore, respect for the dignity of women has been made a fundamental duty of Indian citizens and all actions derogatory to such dignity are liable to punishment. Various constitutional privileges have now been provided to women in different articles of constitution.

The State has also enacted various legislative measures to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Also some acts which have special provisions to safeguard women and their interests. Special initiatives for women has also been taken by the government in the form of setting up certain government body or other plan of actions. National Commission for Women was set-up by government in January 1992 to study and monitor all matters relating to the constitutional and legal safeguards provided for women, and review the existing legislation to suggest amendments wherever necessary. Reservation in local self – government has been provided to women according to the 73rd Constitutional

Amendment Act passed in 1992 by Parliament. One-third of the total seats in all elected offices in local bodies whether in rural areas or urban areas are reserved for women. “National Policy for the Empowerment of Women” was prepared by The Department of Women & Child Development in the Ministry of Human Resource Development in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

The Apex Court interprets Constitutional provision in favour of women. Whenever there is an anti-women legislation, rule or order of the government or any other agency then the Court comes into picture to rescue the rights of women (Manica & Sumitra, 2012). Despite constitutional guarantees of justice, social, economic and political, and assurances of a life of freedom, equality and dignity, sexual abuse, dowry deaths, bigamy and other heinous crimes are ravaging the lives of millions of women who remain a prey to predator in the form of husbands, relatives or friends.

### **Discussion**

All theoretical indicators of equal rights and high social status such as policy, declarations, constitutional guarantees and prohibitive and protective measures exist

only on papers. The life of an average Indian Women is still governed by customs, habits, prejudices and unwritten codes of conduct. Legal complexities combine with social realities to make the life of an average Indian Women insecure and miserable. Even the apex court has not been able to do much in its role as the prime guardian of the life and dignity of the citizens. Some notice is taken of the problems of the rich and influential but nothing is done when newspapers report cases of bride burning rape and other heinous crimes which could not even be registered because the victim was poor and helpless or there was resistance from someone rich or highly connected. There is a general degeneration of the criminal justice system. Most of the laws are highly based in favour of men. The attitude of the society is totally pro-male.

For centuries, within the four walls of home women have been subjected to various forms of exploitation, harassment and torture both in physical and sexual capacities for instance, female infanticide, child marriage, dowry, rape etc (Rajan & Pradhan, 2013). To overcome the unequal treatment meted forced on the women from the time immemorial, several provisions were added in the constitution for the protection of women. But due to lack of well formulated

action plan certain equality clauses are still a dream and others take a lot of time to come in action. For instance it took twenty six years to achieve legislation for equal pay for equal work for both men and women in the organised sector. Strong and immediate steps are needed to be undertaken to translate these rights into action.

The fact that the historical subjection of women has not been ended is constantly before us in the form of the reducing number of women in each census. It is falling at an alarming rate which is a matter of concern. Similarly crimes against women have been on the increase. Incidents of rape, sexual assault, sexual harassment, domestic violence, cheating etc have been growing not only in numbers but also in intensity and brutality. The statistics provided by the Crime Bureau of India brings this before us every year. These statistics only reveal the numbers of reported cases. One can easily imagine how much bigger the numbers would be if one were to take into account the numerous unreported cases. Various legislations have been enacted right from the 1950's. But these various laws together with the Constitution have not succeeded in ensuring that gender justice is meted out.

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