

# LEGALFOXES LAW TIMES

## WOMEN IN THE PROCESS OF DEVELOPMENT-LEGAL PERSPECTIVE

### INTRODUCTION:

The Preamble of our Constitution starts saying, “We, the People of India, having solemnly resolved and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the integrity of the nation;

HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

If we take a close look at the words mentioned in the Preamble of our Constitution which is considered as the heart and soul, we can really assess where the position of women stands. Justice has no well-defined definition. But it can be understood as the protection of one’s rights against exploitation. Here, the Constitution assures Justice to all in social, political and economic aspects. Are women included in this concept of Justice?

Liberty as a common word means freedom to do any act. The Constitution gives Liberty of expressing one’s thoughts, feelings, beliefs etc. But how far women are expressing their ideas or views with freedom, at least in their homes?

The next line of the Constitution guarantees the equality of status and opportunities among all. Do women in our country has equal position and chances as men have? And it is clear from these instances that is no dignity to many of the women in our country.

Though the above provisions are imbibed in our Constitution which has come into effect in 1950, fate of most of the women remain same even today. In my opinion this has happened because these provisions have failed to bring a change in the mind-set of people. Rights alongwith duties are enshrined in the Constitution. But we, as citizens always emphasise on our rights but neglect our duties which are equally important.

The consciousness of one's duty to respect other's right can pave path to reduce many of the crimes that are being occurred. To an extent it is true that a person can contribute in the process of development by following one's duties. Now let us establish a relationship between the laws and their role to involve women in the process of development which is our main concern.

### **WHAT IS DEVELOPMENT?**

Development in a simple is a process in which someone or something grows or changes and becomes more advanced.<sup>1</sup> In other way, development means to make something better than it is; to improve. So when we say India is developing, it means that India has been growing and becoming advanced than it used to be in the past days. It has undergone an era of transformations and passed through various stages to become what it is at present.

It has crossed the stages where there's high unemployment; absolute poverty; lack of basic necessities like food, clothing and shelter; dreadful diseases which have resulted in deaths of masses and so on. Now India is capable of generating employment to its citizens, has reached to the level of relative poverty, is providing basic necessities, assures Food Security and has eradicated many of the dreadful diseases.

For a country like India which has attained independence from the colonial rule of Britain in 1947, it's not an easy task to reach this level at which it stands today. India follows the Five Year Plan technique to define its objectives and to attain them. In those plans, the Ninth Five Year

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<sup>1</sup>DEVELOPMENT | Meaning in the Cambridge English Dictionary' (*Dictionary.cambridge.org*, 2020) <<https://dictionary.cambridge.org/dictionary/english/development>> accessed 21 March 2020.

Plan mainly focuses on, “Growth with justice and equity”.<sup>2</sup> Though the target is 7%, it has reached only 5.6%.<sup>3</sup>

The Eleventh<sup>4</sup> and Twelfth<sup>5</sup> Five Year Plans focuses on the inclusive and sustainable growth respectively. But how far these objectives have come true? There is a growth in the 9<sup>th</sup> Five Year plan but there is no growth regarding Justice and Equality among people. India is able to have inclusive growth but is incapable to include women in that growth.

As a part of this, and because of various other situations, the Government of India has enacted various laws on various aspects. Though these laws are often seen as the laws for the protection of women, and their interests, they indeed are for the upliftment of women, empowerment of women to make them part of the development and to make them self-sufficient. The below is a brief description of such Acts which actually have some effect on the society and the lives of women.

### **LAWS THAT INVOLVE WOMEN IN DEVELOPMENT:**

We all know there are many laws or Acts that are enacted for the sake of women. We often regard them as instruments for empowerment and protection of women. Now we will see how these laws actually help women to get involved in the process of development. The following is the list of such laws or Acts in this regard:

#### **1) The Prohibition of Child Marriage Act, 2006**

As reported by UNICEF, 27% of the children are getting married before attaining the prescribed age in 2016.<sup>6</sup> According to this Act, the right age of marriage for girls is 18 years, and for boys is 21 years. But in many parts of the country, this rule is not in force.

Though it has negative effect on both boys and girls, the ultimate victim of this social evil

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<sup>2</sup>(Niti.gov.in, 2020) <<https://niti.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/9th/vol1/v1c1-2.htm>> accessed 22 March 2020.

<sup>3</sup>*Id.*

<sup>4</sup>(Planning commission, 2020) <[http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11\\_v2/11th\\_vol2.pdf](http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v2/11th_vol2.pdf)> accessed 23 March 2020.

<sup>5</sup>(Mhrd.gov.in, 2020)

<[https://mhrd.gov.in/sites/upload\\_files/mhrd/files/document-reports/XIIFYP\\_SocialSector.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/document-reports/XIIFYP_SocialSector.pdf)> accessed 24 March 2020.

<sup>6</sup>Child Marriage | UNICEF' (Unicef.in, 2020) <<http://unicef.in/Whatwedo/30/Child-Marriage,>> accessed 24 March 2020.

is the girl. Child marriages can retard the growth of women in many aspects like physical, mental, education, economic etc.

When a girl is married at a tender age, she loses the opportunity of education. She has to look after the household activities, serve her in-laws and many responsibilities are imposed on her which she can't manage. Many of the fathers think that it is a kind of protection to save their daughters from increasing crimes. But what they never realise is that it is the gravest crime committed by them.

This problem is now globally recognised by every country and proper steps have been taken to prohibit them. Even in India because of this Act the rate of child marriages has eventually decreased. However, it is to be noted that they are not completely prohibited and are evident in rural areas.

As the incidence of child marriages has reduced, people have realised the importance of girl education. Slowly girls are sent to schools and colleges. Even, during our freedom struggle, there have been women who have completed their education. Chandramukhi Basu and Kadambini Ganguly have passed their B.A in 1882 which is a classic example. It is a well-known fact that education is the cure for all the social evils that exist in our society.

The prohibition of child marriages helped in the promotion of education among women. More and more women are being educated and they are also contributing in the national income of the country. In this way, this Act has helped women to participate in the process of development of the country.

## 2) **Dowry Prohibition Act, 1961**

Section 304b of Indian Penal Code defines Dowry Death as - Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

The instances of dowry deaths have been increasing in spite of having various provisions. A statement made by Maneka Gandhi, the Minister of Women and Child Development, in the Lok Sabha in 2015, shows that a total of 24,771 dowry deaths have been registered between 2012-2014. Dowry deaths rose from about 19 per day in 2001 to 21 per day in

2016.<sup>7</sup> In spite of having a law to control dowry deaths, still there are cases of dowry deaths and harassments.

However, we have to admit one thing in this context. Has there been no law enacted for this, there could have been many incidents which might have gone unnoticed. As the law is in force, many women have stepped out to register the crimes against them. Today, women are not afraid of their in-laws and they have attained some independence in the families. Earlier, these women are not allowed to work by their in-laws. But now, they are employed in different fields.

### **3) Maternity Benefit Act, 1961**

Under this Act, a woman can get 12 weeks paid leave when she is a pregnant. With the recent amendment this period is increased to 26 weeks. A woman can utilize this from 8 weeks before the date of her delivery and the remaining 26 days post-delivery.

Because of this Act, women are free from the fear of losing their jobs because of pregnancy. This would actually benefit both the mother and the child. Also, a woman can apply for 12 weeks leave if she adopts a child within three months of age.

### **4) The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994**

In 1994, the government of India in an attempt to stop female foeticide passed this Act. Later it has an amendment in 2002. There prevails a tendency in the Indian families that they produce children until a male heir is born. Sometimes it is not desirable to the women who conceive. Also, in maximum cases the foetus is killed in the womb if it turns out to be a girl. Repeated abortions can actually have a negative effect on the woman and killing a baby in the womb of the mother is now considered as an offence.

This Act, explicitly prohibits the medical personnel from conducting any kinds of tests which could aid in the determination of the sex of the baby. However, any kind of pre-natal diagnostic techniques can be utilized to detect chromosomal abnormalities, congenital anomalies, and any other type of abnormalities or diseases, which are prescribed by the Central Supervisory Board; constituted under this Act.

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<sup>7</sup>'Why Dowry Deaths Have Risen In India' (2018) 3 ASARC  
<<https://crawford.anu.edu.au/acde/asarc/pdf/papers/2018/WP2018-03.pdf>> accessed 22 March 2020.

This Act actually helps to reduce the female foeticide rates and increase the sex ratio in the country which is the need of the hour. Low sex ratio would mainly affect the demographic dividend and socially there will be a crisis to select a mate by the male. Thus it can be expressed as this Act is a life giver to the unborn female lives.

**5) Medical Termination of Pregnancy, 1971**

The Medical termination of Pregnancy (MTP) Act of 1971, is an act that is intended to protect the interests of both the pregnant women, and the unborn foetus, when the situation arises for ensuring a regulated medical termination of pregnancy under certain circumstances.

The Act specifies 20 weeks as the time period within which a woman can go for abortion as per the causes specified in the PNMT Act. But there is a criticism to this time limits as the abnormalities either physical or mental can be determined only after 18 weeks of pregnancy. So 2 weeks thereafter would be a short span for the couple to take any crucial decision regarding the termination of pregnancy.

The termination of the pregnancy is allowed in the cases where there is a threat to the physical or mental health or life of the woman itself. Sometimes it becomes necessary for a woman to go for abortion for various issues, and this Act, would help women in those conditions to terminate their pregnancies to save their lives.

**6) Immoral Traffic Prevention Act, 1956**

The Government of India has ratified International Convention for the Suppression of Immoral Traffic in Persons, and the Exploitation of the Prostitution of others in the year 1950. Subsequently, it has passed the Suppression of Immoral traffic in Women and girls Act, 1956.

The present Immoral Prevention Act was a result of the amendment made to this Act. This Act mainly focuses on the trafficking in relation to the prostitution and no other forms of trafficking like for the purpose of domestic work, child labour, organ trading etc. However, this Act can give the sign of protection to the women, so that, they can expose themselves to the outer world.

**7) The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

This Act provides protection to the women at workplaces from the sexual harassment, prevention of the same, and redressal of the complaints of sexual harassment. The Supreme Court has laid down certain guidelines in the case of *Vishaka v. State of Rajasthan*.<sup>8</sup> Subsequently, the Government of India has enacted this law for a better protection of working women.

The following are considered as the unwelcome acts or behaviour on the part of men according to the Section 2(n) –

- a. Physical contact or advance
- b. A demand or request for sexual favours
- c. Making sexually coloured remarks
- d. Showing pornography

The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment under Section 3(2)-

- Implied or explicit promise of preferential treatment in employment
- Implied or explicit threat of detrimental treatment in employment
- Implied or explicit threat about her present or future employment status
- Interferes with work or creates an intimidating/hostile/offensive work environment
- Humiliating treatment likely to affect her health and safety.

It has taken a lot of time for women to come out of their houses and enter into the professional area. But still men have their ways to create trouble to these women. After many struggles women are employed in different sectors. If there are further harassment at the workplaces women can never come forward in our country. Thus this Act has helped the working women to raise their voices against the harassment at workplaces, to create security to themselves.

#### **8) Equal Remuneration Act, 1976**

It aims to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

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<sup>8</sup> AIR 1997 SC 3011.

In simple, under this Act, every person employed would be paid equal remuneration irrespective of their sex. This can help to reduce the gender bias arising in the workplace. It also help in elevating the status of women on par with the men. Prior to this Act, women are paid low wages than men because of the notion that women are less capable of doing work equally to men. Now there is no such type of exploitation of women and their work is paid in proper amount.

#### 9) **Hindu Succession Act, 1956**

As per our old customary beliefs, women are not given any share in the property of the father. Even after marriage she has no claim in her husband's property. But according to the recent amendment made to this Act in 2005, women would have a right in the property just as the men do have.

The daughter can get an equal share in the property along with the son(s) and also, she is equally responsible for the liabilities. A wife also has equal share in the property, when there is any partition between her husband and children. Also a mother has a right for maintenance from her heirs, and a widow can get a share in the property, as her son gets.

This Act also help in eliminating the gender discrimination from the home itself. It gives women independency as many women are not allowed to go for work after their marriage. A kind of economic support is guaranteed to the women of such category.

These above mentioned Acts are the core of all the laws enacted so far which have direct impact in the society. Though there is no overnight change with these laws, but they do have some effect on the lives of the women. They have helped women to come out of their narrow sphere of life and have broadened their scope of living.

Our Constitution has also provided equality in every provision of it. But there are some provisions which clearly show some importance to the women. The following is a brief note of such provisions -

| <b>ARTICLE</b> | <b>PROVISIONS GUARANTEED</b> |
|----------------|------------------------------|
| Article 14     | Equality before law          |



|                 |   |
|-----------------|---|
| Article 15(i)   | No discrimination on grounds of religion, caste, sex, place of birth, or any of them  |
| Article 15(3)   | The State to make any special provisions in favour of women and children  |
| Article 16      | Equal opportunities to all relating to employment or appointment to any office under the State  |
| Article 39(a)   | The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood  |
| Article 39(d)   | Equal pay for equal work  |
| Article 39A     | Equal justice and free legal aid  |
| Article 42      | The State to make provision for securing just and humane conditions of work and for maternity relief  |
| Article 51A (e) | 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 124 A   | One of the eminent persons for the National Judicial Appointments to be nominated from the people belonging to schedule caste, schedule tribes, other backward classes, minorities or women |

The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional amendments provide reservation of one-third of the seats to women in the local body elections. However, some of the states have moved a step forward and are providing 50% reservation in this regard.

### **SUGGESTIONS:**

In the recent past, the four extremes of India has been under the leadership of women. The northern most state, Jammu and Kashmir have been led by Mehbuba Mufti; the southern state Tamil Nadu by Puruchi Thalaiva- Jaya Lalitha and the western state Gujarat by Anandi Ben Patil and the eastern state, West-Bengal is still led by Mamta Banerjee. It show the power of women

that they can even lead a country with their iron fisted hands. Even today many crucial ministries are held by Women which shows their supremacy in any field.

We can say that women have inborn talents, but they are unable to exhibit them because of jeopardises in our society. All the above mentioned laws are not always helping women. Just as a day witnesses both light and dark, these laws also have flaws in them.

For example, the Immoral Traffic Prevention Act specifically focuses on the traffic relating to prostitutes. Then what about other types of trafficking that are prevalent in the country? Not all of the women are trafficked for the purpose of prostitution. Some are done for organs business, some for domestic labour purpose, etc. The law gives scope for the criminals to go for other types of trafficking.

The Dowry Prohibition Act, helps a woman to file complaint against her husband and family for the dowry harassment. The law fails to provide any type of incentive to the woman aftermath. Such woman will always be labelled by the society and she will be deprived of means of livelihood. Unless a dignity of living is provided by the law, its purpose is not served.

Medical Termination of Pregnancy Act specifies that a woman can terminate her pregnancy on some of the grounds within 20 weeks. In reality, any complications grown in the baby would be detected after 18 weeks of pregnancy. Two weeks thereafter is such a short span that a woman cannot prepare herself mentally or physically to terminate her pregnancy. In this case, this Act has no purpose of being existing.

Though the Hindu Succession Act ensures that the women have equal property rights, many women are denied such right. In most of the rural areas, people don't even know that they have such rights. So, they never claim their right for property and the parents of a woman think that their responsibility gets completed once they give dowry at the time of her marriage. When a law is enacted it is for every person residing in the country. If people are not aware of their basic rights, then why the laws should be enacted?

Apart from all these laws, Constitutional provisions etc., there is one thing which is important in any society. No laws can actually change a person's behaviour. No laws can imbibe the feeling of duties or responsibilities in a person. No law can even give protection to anyone. Laws are just

writings on a piece of paper. They can't bring out the desirable changes which we all want. Though we advise people to wear helmet while driving, many just ignore it. Because everyone feels that they are doing the right thing, they drive properly, and so on.

So even if you have a law that can ever mend your way of life unless you realise the importance of it. In the above instance, if the person gets hurt because of not wearing a helmet, then s/he will definitely wear it for the next time and also s/he will advise others to do the same. So just enactment of laws does not relieve the ministers from their responsibilities. It is their duty again to let the laws reach the public. Seminars, conferences, advertisements, notifications, interaction through media etc. can help in bringing awareness of laws to the public. Only when a person knows His/Her right, s/he claims it. Similarly, when a person knows the duties imposed on him/her, s/he will fulfil them. Nothing but following one's rights and fulfilling one's responsibilities can actually help in the development of any country.

### **CONCLUSION:**

Arundhati Battacharya, Inra Nooyi, Chanda Kochar, Kiran Mazumdar, Naina Lal Kidwai etc. are the moving examples who are actually contributing their services in the development of the country. They have acquired these positions because of various efforts. For a woman to come out of the house, support from her family is must. A family can support woman only when they believe that she is protected in the outer environment. Such belief can be built by the Government through the laws and by the officials through the proper implementation of those laws.

A change in the thinking of people is also required as no law can reach to every woman in need in a country like India with nearly 120 billion of population. Ultimately, it is we who can actually make women to be a part of the country's development. A person living in your next house can act faster than a person who is in the capital city making laws. It is correctly said by Aristotle that Man is a social animal. Unless people live hand-in-hand with good relations, the situation can't be changed. As it is said that education is the cure to all social evils and home is the first school to everyone, the proper standards of living should be taught from here to have a bright future ahead to the coming generations.

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