

India

1. Discrimination in the family

a) Overarching legal framework for marriage

India's legal system is pluralistic, and the Indian Constitution allows for personal laws, which vary according to religion. The Hindu Marriage Act (1855) and the Hindu Succession Act (1956) govern the Hindu population. The Muslim Personal Law Sharia Application Act (1937) and the Muslim Women's Protection of Rights on Divorce Act (1986) govern the Muslim population. Christians and Parsis are governed by the Christian Marriage Act (1872) and the Parsi Marriage and Divorce Act (1936).

The Special Marriage Act (1954) offers a framework for Indian citizens to get married irrespective of the religion followed by either party. The Act prohibits forced marriage, which it defines as one party being "incapable of giving a valid consent to [the marriage] in consequence of unsoundness of mind" (India, 1954).

b) Child marriage

Under the Special Marriage Act, the legal age for marriage is 18 for women and 21 for men (India, 1954). Child marriage is prohibited under the Prohibition of Child Marriage Act (2006) and there are no legal exceptions to the minimum age. The act establishes penalties for early marriage and renders them voidable (India, 2006). The Act also establishes sanctions for those facilitating child marriage by performing, directing or abetting (India, 2006). The Act places a full-time child marriage prohibition officer in every state to prevent and police child marriage violations, remove children from dangerous situation and file charges against parents (India, 2006).

While there has been a decline in early marriages since the passage of the Act, the prevalence of child marriage remains high in India and reporting of child marriages remains low (CEDAW, 2014; U.S. Dept of State, 2016). Judges continue to refer to Muslim Personal Laws to authorize the marriage of under-age girls and no legislation to ensure the registration of all marriages has been adopted (CEDAW, 2014). Furthermore, the Act requires that victims of child marriage file a petition with a court to void their marriage within two years after reaching the age of majority, which may act as a barrier for girls who lack the autonomy to access and pay for legal services (CEDAW, 2014).

c) Household responsibilities

The Personal Laws Amendment Act (2010) adjusted the Guardians and Wards Act (1890) to grant men and women equal rights in marriage to act as legal guardians of their children. As per the Constitution, married and unmarried women have the same rights as men to choose where to live (India, 2016).

In practice, fathers are typically considered to be the natural head of the family and exercise parental authority, while women are expected to be responsible for domestic and unpaid care work (CEDAW, 2014).

d) Divorce

In India, the right to divorce changes depending on the religious or civil law one gets married under. The Special Marriage Act, as well as the Hindu Marriage Act, allow for a petition for divorce to be presented by either the husband or the wife (India, 1954; India, 1955). The Christian Marriage Act states that marriages can be dissolved by a man for any reason, while Christian women may only initiate divorce on the grounds of adultery (India, 1972). Under Muslim law, which is the law of decision for all Muslims in India as per the Sharia Application Act (1937), husbands can divorce their wives unilaterally.

India does not currently have joint custody as the default law in the event of divorce (India, 2015). Gender-based stereotypes, that a girl child should be raised by the mother, while a boy child should be raised by the father, persist (India, 2015).

e) Inheritance

The Hindu Succession Act (1956) grants Hindu, Sikh, Buddhist and Jain women equal inheritance rights to ancestral and jointly owned property. Enforcement of the law, however, remains weak and in practice many women, particularly rural women from scheduled castes and tribes, are still deprived of their inheritance (CEDAW, 2014). Under Muslim sharia law, the law of decision for all Muslims in India as per the Sharia Application Act (1937), women traditionally inherit half as much as men.

In 2016, the Delhi high court ruled that the eldest female member of a family can now act as the legal head of household (or *Karta*) and make decisions on family inheritance and property management in the event of the death of her older brothers or parents (High Court of Delhi, 2016). Previously, the role of *Karta* was restricted to the oldest male of a family, but the 2005 Amendment to the Hindu Succession Act removed the ineligibility of women to assume the role (India, 2005b)

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The Dowry Prohibition Act (1961) prohibits the giving or taking of dowry in India. However, dowry continues to be widely practiced and often contributes to violence against young brides, in some cases resulting in death (Jeyaseelan et al, 2015; U.S. Dept. of State, 2016). The Indian government, in its Twelfth Five Year Plan, has announced the appointment of dedicated, full-time Dowry Prohibition Officers to enforce the Act, and train law enforcement agencies on issues of dowry related harassment and dowry deaths (India, 2013).

Following the Sharia Application Act, polygamy is legal for the Muslim population of India, but illegal for all other groups (India, 1937).

Adultery is a crime under Article 497 of India's Penal Code, which it defines from the perspective of the man as "sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man" (India, 1860). In such cases, the wife is considered an abettor and is punishable (India, 1860).

2. Restricted Physical integrity

a) Violence against women

India currently does not have an overarching law covering violence against women. Instead, violence against women is covered by sections of the Penal Code (1860) and laws including the Protection of Women from Domestic Violence Act (2005), the Protection of Children from Sexual Offences Act (2012), and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013).

Women in India face many barriers to their safety and protection from physical, sexual and psychological violence. Rape, domestic violence, dowry-related deaths, honor killings and sexual harassment pose serious threats to women's physical integrity in Indian society (UNHRC, 2014; WILPF, 2014, U.S. Dept. of State, 2016).

b) Domestic violence

Domestic violence is prohibited by the Protection of Women from Domestic Violence Act (2005), under which women can file protection orders and file cases against perpetrators living in the same residence, and the Indian Penal Code (India, 1860, Art. 498A). The definition of domestic violence included in the Act covers physical, psychological, sexual and economic abuse (India, 2005). Perpetrators of domestic violence are subject to a prison term of up to three years (India, 2005). In the Act, the Indian government also sets out measures to prevent and reduce domestic violence, including free legal aid for women and access to free services of official service providers (India, 2005).

The implementation of the Act remains weak, due to lack of capacity and resources of law enforcement, and widespread corruption among police and military (CEDAW, 2014; U.S. Dept. of State, 2016; UNHRC, 2014). Domestic violence continues to be prevalent in Indian society, and is tied to entrenched patriarchal and customary practices, socioeconomic dependency of women on their husbands, and fear of exclusion or marginalization from their communities (UNHRC, 2014).

c) Rape

The Indian Penal Code criminalises rape, which is punishable by imprisonment up to seven years, up to ten years in aggravated offences, and up to 20 years for gang rape (India, 1860, Art. 376 A-D). The definition of rape is based on lack of consent to physical intercourse and does not require proof of physical force or resistance, but does require penetration (India, 1860, Art. 375). Originally, as per the Penal Code, marital rape only existed in cases where the wife was under 15 years of age, however following a ruling of the Indian Supreme Court in 2017, marital rape is now considered illegal in cases where the wife is under 18 years of age (India, 1860, Art. 375; Supreme Court of India, 2017).

In addition, public servants who improperly conduct investigations in gender-based violence crimes, subject to a punishment of from six months to two years of imprisonment and a fine and hospital staff who fail to treat victims punishable by a prison term of up to one year and/or a fine (India, 1860, Art. 166 A-B).

Women from scheduled castes and tribes, namely Dalit and Adivasi women, are particularly vulnerable to sexual violence due to caste-based discrimination and their presence in conflict areas (UNHRC, 2014).

d) Sexual harassment

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013) prohibits sexual harassment in the workplace, including educational establishments, sporting establishments, public places and private homes (India, 2013b). The Act requires all state departments and institutions with more than 50 employees to operate committees to prevent and address sexual harassment (India, 2013b).

The Act includes fiscal remedies, to match the mental trauma, loss in career opportunity, medical expenses and/or loss in income incurred by the victim (India, 2013b). The Indian Penal Code includes criminal remedies for sexual harassment offences, with offenders subject to imprisonment up to three years (India, 1860, Art. 354A). The Penal Code's definition of sexual harassment includes unwelcome physical contact and advances, demands for sexual favours, showing pornography against the will of a woman, and sexually coloured remarks (India, 1860, Art. 354A)

However, in practice, a large majority of women say they do not report sexual harassment by superiors because they fear the repercussions (INBA, 2017). Employers are either unaware of the Act and its provisions, or only implement them partially (INBA, 2017).

e) Female genital mutilation

There is no national law addressing female genital mutilation (FGM). However, legal interpretations and rulings by the Indian Supreme Court have concluded that the practice of FGM violates constitutional norms of equality and non-discrimination, namely Articles 14 and 15 of the Indian Constitution (Lawyers Collective, 2017).

According to human rights groups and non-governmental organizations, FGM is practiced by the *Dawoodi Bohras*, a Shiite Islamic sect concentrated in the Maharashtra and Gujarat states (U.S. Dept. of State, 2016). Among the *Bohra* community the ritual is known as "*Khatna*," which involves FGM of girls around 6-7 years old (Lawyers Collective, 2017). The exact FGM prevalence rate is unknown, however surveys have found that up to 80% of *Bohra* women have been through the *khatna* process (Lawyers Collective, 2017).

f) Abortion

Following the Medical Termination of Pregnancy Act (1971), abortion may be legally performed in India up to twenty weeks of pregnancy, in the cases of grave threat to a woman's physical or mental health, or where there is a risk that a child may be born with physical or mental abnormalities. This includes cases of rape, and of the failure of a contraception device, which are both considered to constitute a grave injury to the mental health of the pregnant woman (India, 1971, Art. 2). Up to eighteen years, women require the permission of a parents or guardian to terminate their pregnancy (India, 1971).

Despite these legal arrangements, India continues to have a high rate of death resulting from unsafe abortions, lack of access to safe abortions, and lack of post-abortion care (CEDAW, 2014). Disparities in women's health care between urban and rural areas, and limited availability to family planning methods and emergency contraception further contribute to this issue (CEDAW, 2014).

Gender-selective abortion, when women choose to or are forced to abort a girl child, continues to be widespread issue in India despite the passage of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994) (UNHRC, 2014; U.S. Dept. of State, 2016). Son preference, driven by customary practices, patriarchal norms and socioeconomic factors, has led to a declining girl-child sex rate (UNHRC, 2014).

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Acid attacks continue to take place, despite the passage of amendments to the Penal Code in 2013 that increased penalties for acid-throwing from five to seven years (India, 1860, Art. 326B). Victims of acid attacks are frequently women who challenge patriarchal norms, for instance by opposing a marriage proposal (UNHRC, 2014).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

The Married Women's Property Act (1974), Hindu Succession Act (1956) and Hindu Marriage Act (1955), grant men and women in India equal rights to own, use, make decisions related to, and inherit land and non-land assets, independent of their married status. Joint land titling is only provided for in a few states, namely Karnataka, West Bengal, Assam and Madhya Pradesh (Oxfam, 2013). In practice, very few women farmers share a title with their husbands (Oxfam, 2013).

In its Twelfth Five Year Plan, the government of India stresses the importance of endowing women with land, and establishes initiatives including credit support to women to lease land, increase legal awareness of inheritance rights and government recording of women's inheritance shares (India, 2013).

While the legal framework provides for equal rights, in practice Indian women continue to have limited access to land. Some states do not follow the amendments to the Hindu Succession Act that grant equal inheritance rights to daughters (India, 2005; Oxfam, 2013). Women face gender-specific barriers to gaining access to and control over land: the design of rural programs may fail to take them into consideration, they may have less access to information, and they may be affected by cultural, religious, community or family dynamics that discriminate against women as land owners (UN Women, 2016).

b) Secure access to formal financial resources

There are no legal restrictions regarding women's access to financial services, including credit. The right for all citizens to choose any profession, or carry on any occupation, trade or business is guaranteed in the Indian Constitution (India, 2016).

In 2013, the government opened a financial services banking company for women, intending to advance their economic empowerment (CEDAW, 2014). The government has also established various financial empowerment projects including cash transfer schemes and microcredit initiatives to increase women's access to credit (CEDAW, 2014).

India's Mission for Financial Inclusion or *Pradhan Mantri Jan Dhan Yojana*, initiated by Prime Minister Modi in 2014, has significantly boosted the percentage of women with a bank account, with the number of female account holders now higher than ever before (Shettar, 2016).

In practice, several banks continue to require either the husband's or the father's signature to approve loan applications for women, which continues to pose issues for women's access to financial services (ICF, 2014).

c) Workplace rights

The Constitution of India mandates non-discrimination on the basis of sex in employment, stating that "no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated criminalizes discrimination in remuneration, recruitment, hiring, promotions and training processes" (India, 2016, Art. 16(2)). Of the core ILO conventions, India has only ratified the Equal Remuneration Convention (1951) and the Discrimination (Employment and Occupation) Convention (1985) (ILO, 2017).

To enforce the Equal Remuneration Act, the government appoints local Labour Officers to hear and decide on complaints (India, 1976). Offenders found guilty of discrimination are subject to a fine of up to twelve thousand rupees, or with imprisonment for a term between three months and a year (India, 1976). Companies are also obligated to maintain registers of their employees' salaries that can be consulted by government inspectors (India, 1976).

As prescribed in the Maternity Benefits Act (1961, Art. 4), employed women are granted six weeks of fully paid maternity leave. The Act protects women from dismissal during and on account of their pregnancy (India, 1961b). Indian law does not provide for paternity or parental leave.

Despite these legal provisions, the rate of female labour force participation remains very low in India, and women are more likely than men to be employed in the informal economy, for instance in agriculture, domestic and home-based work, where they are not covered by labour laws or social protection measures (CEDAW, 2014; IMF, 2015). India ranks among the bottom of countries when it comes to having women in senior management roles (IMF, 2015). Reconciling work with the responsibilities of caring for family is perceived as the biggest challenge for working women in India, by both men and women alike, as women are often expected by default to assume the role of caretaker (ILO, 2017).

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4. Restricted Civil liberties

a) Citizenship rights

The Indian Constitution, the Citizenship Act (1955) and the Citizenship Amendment Act (2003) grant Indian men and women the same rights to acquire, change and retain their nationality (India, 2016, Art. 5). The Citizenship Amendment Act also guarantees the right of women to confer nationality to their children and register their children's birth, irrespective of their marital status (India, 2003).

Article 15 of the Constitution recognizes and prohibits discrimination on the grounds of sex, stating: "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them" (India, 2016).

Rural women from scheduled tribes, particularly Dalit women, face multiple barriers – namely, legal illiteracy and limited knowledge of birth registration procedures – which prevent them from registering births and obtaining birth certificates for their children (CEDAW, 2014).

The Citizenship Amendment Act (2003, Art. 14(A)) and Passports Act (1967, Art. 1 (2)) provide women and men with equal rights to obtain identity cards and apply for passports. The Aadhaar Act (2016) introduced a universal biometric ID system, automatically registering all residents of India and assigning each resident a unique identification number. The government has also introduced a joint mother/child protection card that links maternal, new-born and child care and enables gender-disaggregated tracking of new-borns to ensure optimal care for girl children (India, 2013).

Article 21 of the Constitution grants all Indian citizens the right to personal liberty and travel (India, 2016).

b) Voting

Under Article 326 of the Constitution, all Indian citizens over 18 years of age have the right to vote (India, 2016). In its Twelfth Five Year Plan, the government outlines measures to improve the participation of female voters, including pre-election preparation and awareness-raising of women voters (India, 2013).

c) Political voice

The Constitution, under Article 325, guarantees men and women in India the same rights to hold public and political office (India, 2016). As per the 73rd and 74th Amendments to the Constitution, 33% of seats for panchayats in rural areas and urban local bodies are reserved for women (India, 2016). The Women's Reservation Bill, which proposed to reserve 33% of seats in the lower house of parliament, the Lok Sabha and all state legislative assemblies for women, was never voted on and lapsed in 2014 (PRS, 2016).

In its Twelfth Five Year Plan, the government assigns responsibility to the Ministry of Women and Child Development and the Ministry of Panchayati Raj to implement initiatives that build the capacity of

women candidates and train women representatives (India, 2013). The Ministry of Urban Development also organizes a number of training programmes, workshops and seminars to build the capacities of women elected representatives at the local level (CEDAW, 2014).

Socio-cultural barriers and violence against Indian women involved in politics and public life impede their successful participation and representation (UN Women, 2014; CEDAW, 2014). Women candidates may face threats of violence, emotional blackmail, verbal harassment, expectations of sexual favours and attempts at character assassination during and post- election (UN Women, 2014). The number of women contesting elections, even locally, remains low as women generally contest only the seats that have been reserved for them and they are often nominated to their position (CEDAW, 2014). This prevents women from growing supportive constituencies (CEDAW, 2014).

d) Access to justice

Article 239A of the Constitution states that the Indian legal system operates on the basis of equal opportunity, guaranteeing men and women equal rights to sue, be sued and have their testimony carry weight in all types of cases (India, 2016). The Constitution also provides for free legal aid (India, 2016).

The Criminal Procedure Code Amendment Act (2008) includes special provisions for victims of rape: trials for rape offences must be conducted, as far as practicable, by women judges, a three-month time limit is imposed for the completion of investigating rape cases, and safeguards are imposed to protect the identity of women victims (India, 2008; CEDAW, 2014).

Despite these provisions, fair trial rights, equality before the law and equal protection of the law are affected by numerous challenges. Women are often discouraged from bringing cases of violence to the police and to courts out of fear of reprisals, and alternative, informal dispute settlement methods are often sought, to the detriment of female victims (UNHRC, 2014). In practice, there frequently is a complete or partial absence of legal, housing, security and financial assistance measures for victims of violence, inhibiting their ability to safely participate in judicial processes (UNHRC, 2014). Corruption among law enforcement officials limits the effectiveness of the law (U.S. Dept. of State, 2016).

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