

## LAWS FOR MARRIED WOMAN'S RIGHTS IN INDIA

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### ABSTRACT

*A normal marriage is seen as the integral foundation in the society that binds two families for the rest of their lives. As it seems to be a viable relationship for the whole life, some of them turn out to be scary and tough as well. It's our society that makes it hard for only a woman to speak or take action against marriage abuse. Women choose to stay silent, simply because they are unaware of married women's rights in India. So, they needed to know her legal rights. This paper traces the essential rights of women which are vital for self-development and protection in such a way that it describes the right to matrimonial home, right to abortion, report against domestic violations, right to property, and right to seek maintenance and alimony, etc. These laws protect women against injustice and ensure that women have equality. Once women are aware of their rights, then they can protect themselves. The paper talks about the majority of women are misguided about their constitutional rights. Mostly, it's only because of ignorance that they cannot exercise all their legal rights and are unable to achieve legal equality with men. In this paper, an attempt has been made to estimate the extent of knowledge on the part of married women of various laws recently passed to improve the position of women in India.*

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**Keywords:** Women, Violence, Matrimonial home, Dowry Prohibition, Divorce, Maintenance.

### PURPOSE OF THE STUDY

1. To analyze the various women's rights after marriage in India.
2. To review the Government enactments which ensure married women's rights.

### INTRODUCTION

*"A married woman has the same right to control her own body as does an unmarried woman."*

- Sol Wachtler<sup>1</sup>

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<sup>1</sup> <https://meaningin.com/quotes/sol-wachtler/36856-a-married-woman-has-the-same-right-to-control-her->

In India, women leave their parent's homes, and their surname and live in the home provided by the husband or by his family members upon marriage which is known as a matrimonial home and becomes a second home for the rest of her life. The main assumption is that women have rights only in the husband's house after marriage, not in the parent's house, but the legal status has been changed and today onwards women have the right to live in both houses. Marriage is undoubtedly considered one of the important parts of our society and life as well. For women, this extraction is widespread in front of the home and tends to influence the needs of the family. Most Indian women believed that these thoughts and the illusion of a happy life, marry unaware that marriage can be unhappy, difficult, or harsh. Marriage contracts impose a legal obligation on husbands and their families to provide protection and maintenance to their wives. In our society, women are recognized as housewives. Therefore, women have to run their families, cook for the whole family, raise children and take care of the sick, but they can earn a decent income to support themselves. Further, Due to a matrimonial conflict when economic support is withdrawn, most women are rendered destitute. Even in this era, marriage ties are so traumatic that we do not teach our daughters and brides how to deal with such marital alliances. But now times and circumstances are changed, and women are not dependent on people who are close to them, at least when they have to gather information in favor of them.

Some laws protect a woman's rights in her marital home and allow her to live there with pride and give the same vibe she used to have in her parental home. The marital family and husband cannot harass a wife for dowry. In the event of domestic or sexual violence in such circumstances, the wife has access to both criminal and civil legal remedies. She has a right to file for divorce and cut off marriage anytime. Also, she has a right to take out the custody of her children. Every woman, whether married or about to get married, needs to know her legal rights. If they know her legal rights, they have the freedom to speak also they can punish any cruelty in marriage and claim freedom from the alliance and dignity. It further illustrates that there are some legal rights that each married woman is entitled to.

## **RESEARCH METHODOLOGY**

This paper is descriptive and systematic. In this paper, a challenge has been taken to study and review married women's rights in India. Secondary sources of information like books, websites, journals, and newspapers are used for the research.

## CONSTITUTIONAL RIGHTS PROVIDED TO THE WIFE

### 1. Right to a residence in a Marital home:

A matrimonial home means when a woman is married then, she has the right to live in her husband's household. Eventually, in the case where the house is not owned by her husband and the house is in the name of his parents, a woman has a right to reside in this house and thus it cannot be thrown away. After the husband's death, a woman has a legal right to live in the marital home. It was stated in Section 17 of the Protection of Women from Domestic Violence Act, 2005<sup>2</sup> that every woman has a right to live in a shared household.

- i. Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title, or beneficial interest in the same.
- ii. The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the defendant which is established by law.

In this case, The Hon'ble Supreme Court, in **S.R. Batra and Anr. vs Smt. Taruna Batra**<sup>3</sup> observed that under Section 2(s) Protection of Women from Domestic Violence Act, 2005. The wife is entitled to reside in a "shared household".

### 2. Property rights:

In Indian families, property rights of women vary dependent on religion, or community, and are mixed in law and custom. According to Hindu Succession Act, 2005 this act provides equal rights to women. For the Hindus, Buddhists, Sikhs, and Jains the Hindu personal laws of 1956 mainly applied to give women rights to inheritances. In today's era, married daughters, who are facing violence, domestic abuse, and harassment had no residential rights in the parental home. But after the amendment of the Hindu laws, now married women also have equal status as men. Women are eligible for shelter, support, and maintenance from their husband and their family. In the case of the separation of property between her husband and her children, she also gets an equal share as others. In the case where the husband died, she has the legal right to get an equal share of the husband's property which is divided between her, her children, also and

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<sup>2</sup> <https://indiankanoon.org/doc/615600/>

<sup>3</sup> (2007) 3 SCC 169

his mother. If a partner marries again to another woman without divorce or separation, then the right to the property belongs to the first wife. The Hon'ble Supreme Court, in **BP Achala Anand v. S. Appi Reddy**<sup>4</sup>, observed that the wife can claim to reside in her marital home under such laws. Women have the right to live with their husbands and to remain under their roof. Where in the case of any reasonable cause or any misconduct in such case woman can claim to shift residence and live separately.

### **3. Right to report the domestic violence:**

According to Sec. 2(a) in the domestic violence act stated that "Aggrieved person" means any woman after the marriage who is or has stayed, in a domestic relationship with the husband and who asserts been subjected to any act of domestic violence by the husband. Hence, any woman who is or has stayed in a domestic relationship is entitled to make a complaint under this act. Hon'ble Supreme Court widened the definition of a wife for maintenance payable to such a woman who is in a live-in relationship. Whereas, in normal cases where a man is in a relationship with another woman like marriage despite having a wife, then this act has been applied. The Hon'ble Supreme Court, in **Ishpal Singh Kahai v. Ramanjeet Kahai**,<sup>5</sup> case observed that the objective of the Act is to grant statutory protection who suffer violence in the domestic sector who had no proprietary rights and also, provide the security and protect the woman regardless of their proprietary rights in her residence. The main purpose of the act is to protect the wife against violence.

### **4. Right to Abortion:**

In 1971, Abortion, or the termination of a pregnancy through chemical, surgical, or other means, was legalized in India. The Medical Termination of Pregnancy (MTP) Act, 1971 says that any woman after the marriage, seeking an abortion shall be able to get one, providing the grounds that are permissible under this law. Also, she has full power and legal right to abort a child without the approval of the husband. To get a child to be aborted the limit has been raised to 24 weeks.

However, the Right to life and liberty, and chase for her happiness consent her right to have an abortion because it's a woman's right. Internationally, Reproductive rights are recognized as critical to promoting development and advancing woman's rights. The Supreme Court, in **Anil**

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<sup>4</sup> (2005) 3 SCC 313

<sup>5</sup> 2011(3) ALL MR 353

**Kumar Malhotra v. Ajay Pasricha**<sup>6</sup>, case observed that the woman has the right to decide in the case of abortion, and also the consent of the husband is not required under Section 3(4) of the Medical Termination of Pregnancy Act. As per the Act, it's a woman's right to give birth to a child or not. It recognizes and implements the reproductive rights of women.

### **5. Right to Divorce:**

Women can file a case for divorce without the permission of their husband in the event of infidelity, cruelty, physical and emotional violence, desertion, etc. under section 13 of the Hindu Marriage Act, 1995. Also, Section 13B of the Act stated that they allow divorce by mutual consent.

### **6. Right to claim maintenance:**

A wife who is incapable to maintain herself is entitled to claim maintenance charges under section 125 of CrPC. The "wife" term means a woman who has been married and who has been divorced from her husband. Mainly, it provides a quick remedy to women who were unable to maintain themselves. As per Muslim law, during the period of the iddat, the husband is liable to provide the maintenance of her wife. Hon'ble Supreme Court, in **Bhuvan Mohan Singh v. Meena & Ors**<sup>7</sup>, case observed that section 125 of CrPC "was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean leading the life of an animal... She is entitled in law to lead a life in the same manner as she lived in the house of her husband". Hence, under section 125 of the CrPC, a wife is entitled to claim the maintenance.

### **7. Dowry Prohibition and Harassment:**

Dowry means giving or taking the money or goods that a woman brings to her husband's house after marriage. The act of Dowry Prohibition, 1961 prohibits the taking or giving of the dowry. Also, a woman can file a case against her parental family or the in-laws for exchanging the dowry. Further, in the case when a woman faces any cruelty in her marital home, the Supreme Court held that woman can file a case against dowry harassment under Section 498 IPC against

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<sup>6</sup> C.R. 6337/2011

<sup>7</sup> 2014 SC 671

her husband and in-laws where she currently lived. However, Section 498 of the IPC criminalizes the dowry harassment of a married woman in the form of cruelty, domestic violence, abetment to suicide, dowry death, and so on.

### 8. Right to Stree Dhan:

Streedhan states all the gifts a woman receives during her pre-marriage, marriage ceremonies, and during the birth of her baby. It provides a woman has ownership of all her Stree Dhan even after separation from her husband. It contains all movable, immovable property, gifts, money, and so on. Financial security is the crucial idea behind this right. However, this legal right is only given to Hindu women, not any other religion. Section 14 of the Hindu Succession Act, 1956, and Section 27 of HMA, 1955 gives a woman's right to her Streedhan makes the absolute owner of that property.

The Hon'ble Supreme Court, in **Pratibha Rani vs. Suraj Kumar**<sup>8</sup>, described the concept of 'Streedhan' and its legal position under the law. The Supreme Court held that:

“a Hindu married woman is the complete owner of her Streedhan property and can deal with it in any manner she likes and, even if it is placed in the custody of her husband or her in-laws, they would be deemed to be trustees and bound to return the same if and when demanded by her”.<sup>9</sup> Therefore, Women is considered the absolute owner of such property and can deal with it in their way. Also, she doesn't need any permission from her husband as she may spend the entire or give it away at her choice by gift or will.

### 9. Right to claim child's custody:

Below the age of 5 years, the child needs love and affection which is only provided by the mother therefore, the child custody below the age of 5 years old should be given to the mother. When we talk about Section 6 of the Hindu Minority and Guardianship Act, 1956, the custody of the child is given to the father above the age of 5 years and below the age of 18 years. The Hon'ble Supreme Court, in **Geeta Hariharan v Reserve Bank of India**,<sup>10</sup> held that the mother can claim custody on the death of the father or in the absence of it. Further, if the child is

<sup>8</sup> 1985 AIR 628, 1985 SCR (3) 191

<sup>9</sup> <https://www.lawctopus.com/academike/streedhan-right-woman/#:~:text=%E2%80%9Ca%20Hindu%20married%20woman%20is,and%20when%20demanded%20by%20her%E2%80%9D>.

<sup>10</sup> AIR 1999, 2 SCC 228

illegitimate then this rule is not applicable. In that case, the right to custody is only given to the mother.

### **10. Right to live with dignity and self-respect and loyal relationship**

A woman has a right to live free from any physical torture, stress, or mental situation because she has the freedom to speak against any injustice also, she has the right to live her life with dignity or peace and have the same lifestyle that her husband and in-laws have. In the case of adultery, if the husband has relation with another woman, then he will be charged under section 497 of IPC. On the ground of having an extra-marital relationship, the wife has the right to file a divorce case against the husband. Also, a woman legally deserves a loyal or committed relationship in a marriage.

### **CONCLUSION**

“When a woman moves forward the family moves, the village moves and the nation moves”.

<sup>11</sup> Once our society and their thoughts have been developed then our value systems lead to becoming a good family, a good society, and eventually a good nation. Proper awareness of women’s rights can ensure the safety and protection of women along with its enforcement. Also, True equality can ensure a well democratic system and values. Lastly, a woman should take her stand and empower herself for all the right reasons.

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<sup>11</sup> <https://www.humana-india.org/latest/an-employed-woman-is-an-empowered-woman>