CHAPTER III

RIGHTS OF WOMEN IN INDIA:
LEGISLATIVE AND JUDICIAL APPROACH

On women’s backwardness Gandhiji said, ‘Let us not live with one limb completely or partially paralyzed, we will be incapable of defending ourselves or healthily competing with the other nations, if we allow the better half of ourselves to become paralysed’. 198

The most important touchstone for determining the rights of women in post-independent period is the Constitution of India. It was framed *interalia* keeping the subversion of rights of women in mind. A number of provisions have been made in the Constitution for emancipation of women by granting them various rights. The formulation of socio-economic objectives in the Indian Constitution owes its origin essentially to the realization that the content of political freedom is impaired by the absence of social justice, and that without protection of social and economic rights, rights to equality, liberty of person and freedom of speech and association, may lose much of their significance. 199 Equality of women is necessary for social justice, and is a pre-requisite for social, political, and

---

198 Young India, 3rd February, 1927 and 28 June, 1928

84
economic development of the nation. Women will continue to be subjugated till such time as they do not achieve equality with men in all spheres of life.

This chapter discusses the rights of women from the constitutional perspective as well as the rights accorded to them under different legislations and special legislations enacted for their benefits. The role of Indian judiciary has been also studied in according status to women. It is endeavoured to study the rights granted to women under the Indian Constitution covered in Preamble, fundamental rights, directive principles, fundamental duties, panchayats and municipalities.

**Constitutional Rights of Women**

The framers of the Constitution were well aware of the unequal treatment meted out to the women of the country. The Indian Constitution seeks to protect the interests of women through fundamental rights as well as directive principles of State policy. It has various provisions for removing all kinds of disparities and discrimination against women from which they were suffering before independence. This Constitution aimed at the creation of new legal norms, social philosophy and economic values which are to be effected by striking synthesis, and fundamental adjustment between individual rights and social interest to achieve the desired goals of the community.  

The Preamble to the Constitution sets out the aim and aspirations of the people of India which have been converted into various provisions of the Constitution. The important words in the preamble to the Constitution are ‘to secure to all its citizens justice: social, economic and political; liberty of thought, expression, belief, faith and worship; and equality of status and opportunity.’ The words ‘to all its citizens’ imply all persons who are citizens of the country irrespective of their caste, creed or gender. The fundamental rights contained in Articles 12 to

---

35 of Part III of the Constitution are inviolable. Some of the fundamental rights are express declaration of rights like Article 25, some are in the nature of prohibitions like Article 23(1) and 24 and others impose restrictions on state action like Articles 14, 15 and 16 etc. The Directive Principles empower the State to secure a social order for promoting the welfare of the people. As a result of the rights accorded to Indian women under the Constitution and also due to the general process of social change, women enjoy many rights which were not available to them earlier.

The Preamble contains the quintessence of the Constitution. In the famous case of Keshavanand Bharti v. State of Kerala\textsuperscript{201} it was held that the Preamble forms part of the Constitution and the Constitution is to be interpreted in the light of the noble vision expressed in the Preamble. The Indian Constitution seeks to protect the interests of women mainly through fundamental rights and directive principles. Justice P.N.Bhagwati has observed \textit{'These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.'}\textsuperscript{202}

Article 14 of the Constitution of India enunciates the general principle of right to equality and prohibits the State from denying to any person equality before the law and equal protection of the laws. Both these expressions aim at establishing equality of status as envisaged by the preamble of the Constitution. Before Independence, women were frequently denuded of status. The term \textit{'equality before the law'} implies absence of special privilege in favour of any person. The term \textit{''equal protection of the law''} implies equality of treatment in equal circumstances. Social justice means that all citizens are treated equally irrespective of their status in society as a result of the accident of birth, race, caste,

\textsuperscript{201} (1973)4 SCC 225
\textsuperscript{202} Maneka Gandhi v. Union of India AIR 1978 SC 597
religion, sex, title etc. This article prohibits only hostile discrimination and not reasonable classification. The principle underlying Article 14 is that all persons and things similarly circumstanced or placed shall be treated alike both in privileges conferred and liabilities imposed.203 The Supreme Court of India is the guardian of fundamental rights as can be seen from the various judgments passed from time to time.

It was held in Pathumma v. State of Kerala204 that Article 14 prohibits hostile discrimination and not reasonable classification. The Supreme Court declared Rule 18(4) of the Indian Foreign Services Rules, 1961, which required permission before marriage and denial of right to employment to married women for panel employees in Government, discriminatory on the ground of sex and thus violative of Article 14 of the Indian Constitution. In C.B.Muthama v. Union of India,205 the Court upholding the principle of equality of status placed women employees at par with men. In the famous case of Air India v. Nargesh Mirza206 the Airlines Regulation provided that an airhostess was to retire from service upon attaining the age of 35 years or on marriage if it took place within four years of her joining service, or on her first pregnancy, whichever occurred earlier. The Supreme Court in the above case declared as unconstitutional the bar against pregnancy on the services of the airhostess, and struck down the regulation providing for retirement of the airhostess on her marriage or on attaining the age of 35 years as violative of Article 14. The retirement clause in the Air India Employees Service Regulations 46 and 47 was held to be not only a callous and a cruel act, but also an insult to Indian womanhood. The Court further held that discrimination should not be made on the basis of sex in State services. Women can achieve equality only when they are given financial independence, which is likely when the conditions of service consider their reproductive role seriously.

203 AIR 1951 SC 41
204 AIR 1978 SC 771
205 AIR 1979 SC 1868
206 AIR 1981 SC 1829
In Bombay Labour Union v. International Franchises Pvt. Ltd. the Supreme Court had declared unconstitutional a clause in the Regulation of the Corporation which required that unmarried women were to give up service on marriage. This appears to be discriminatory on the face, because there is no such requirement for men. In Yeshaswini Merchant v. Air India Ltd. & Ors., V. Revathi v. Union of India and Somithri Vishnu v. Union of India the validity of Section 198(2) of Criminal Procedure read with Section 497 of Indian Penal Code was challenged on the ground of violation of Article 14. However the Supreme Court upheld the constitutionality of the impugned provisions. The term ‘protection’ in the clause ‘equal protection’ of the laws under Article 14 as viewed by Granville Austin ‘seems to place upon the government the positive responsibility to give the have-less access to those rights they previously have been powerless to exercise.’ In Vijay Laxmi v. Punjab University and others, the Supreme Court held that appointment of a lady principal in a women’s college cannot be held to be violative of Article 14 or 16 of the Constitution, because the classification is reasonable and it has nexus with the object sought to be achieved.

Even in the family domain women are discriminated. They are not given the same rights as their husbands in matters not only relating to their family but also as regards their minor children. The Supreme Court gave a very important decision in Geetha Harihara v. Reserve Bank of India that mother could act as natural guardian of minor even where the father was alive. The word ‘after’ in Section 6(a) of the Hindu Minority and Guardianship Act, 1956 was to read to mean ‘in the absence of father’ so that the section is consistent with the Constitutional safeguards of gender equality. The Court observed that gender

207 AIR1966 SC 942
208 2002 (3) Mah. L. J. 701
209 AIR 1988 SC 835
210 AIR 1985 SC 1618
211 Granville Austin, Working a Democratic Constitution, Oxford University Press, New Delhi, (1990), P. 669
212 AIR 1978 SC 771
213 AIR 1999 SC 1149
equality is one of the basic principles of our Constitution and in the event the word 'after' is to be read to mean a disqualification of a father to act as a guardian during the life time of the mother. Under Section 6 of Hindu Adoption and Maintenance Act, 1956, the father is the only guardian and the mother can become the guardian only 'after' the father.

Under Article 15 of the Constitution of India, the State is enjoined not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them. However Article 15(3) lays down that the State is not prevented from making special provision for women and children. Although this Article is an enabling provision for women, the discretion conferred therein shall be exercised without fail, and exercised reasonably. The Kerala High Court in Omana Oomen v. Fact Limited held that denial of appearance in the internal examinations to women apprentice trainees, merely on the ground of sex is violative of Articles 14 and 15 of the Constitution. The Supreme Court declared in Uttarkhand Mahila Kalyan Parishad and others v. State of Uttar Pradesh that under the Constitutional arrangement, there is no occasion for a differential treatment between men and women employees in the educational department when they are doing the same job, nor is there any justification for a preferential treatment in the matter of affording promotional avenues for the male teachers. The Supreme Court directed the State of Uttar-Pradesh to create equal pay scales. In Giridhar Gopal v. State of Madhya Bharata, the Supreme Court held that Section 354 of Indian Penal Code which makes an assault or use of criminal force, whether by man or woman, with intent to outrage the modesty of a woman, as punishable is based on a valid classification under Article 14 and does not violate Article 15. This judgment shows that the approach of the judiciary is pro-women.

215 AIR 1991 Ker. 129
216 AIR 1992 SC 1695
217 AIR 1953 MB 147
Under the Laws of inheritance also women’s rights were subjugated. The Constitution gave her rights through the various personal laws. Section 14 of the Hindu Succession Act, 1956, which has resulted in converting the women’s limited ownership of property into full ownership has been found in pursuance of Article 15 (3).218 The purpose of this Article is to eliminate the socio economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women. The court observed in the case of Sharda Mishra v. State of Uttar Pradesh 219 that special benefit for male candidates is violative of Articles 14 and 15(3), there can be special benefits for women, but no provision giving special benefits to men can be made. Chief Justice Chagla remarked in Dattatraya Motiram v. State of Bombay220 that as a result of joint operation of Article 15(1) and Article 15(3), the State could discriminate in favour of women against men, but it could not discriminate in favour of men against women. Accordingly, reservation of seats for women in election to a Municipality was upheld. The High Court in the above case stated: ‘Even if in making special provisions for women for giving them reserved seats, the State has discriminated against men, by reasons of Art. 15(3) the Constitution has permitted the State to do so, even though the provision may result in discrimination only on the ground of sex’.

The Supreme Court in Government of Andhra Pradesh v. P.B. Vijaykumar221 observed regarding clause 3 of Article 15 –‘The insertion of clause (3) to Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result they are unable to participate in the socio-economic activity of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women’.

218 Thota Sesharatamma v. Thota Manikyamma (1991) 4 SCC 312
219 AIR 1993 All. 112
220 AIR 1953 BOM. 842
221 AIR 1995 SC 1648
equality between men and women that Article 15(3) is placed in Article 15. The object of this section is to strengthen and improve the status of women.

The Supreme Court has held in Shahdad v. Mohd. Abdullah222 that even Section 354 of Indian Penal Code is not invalid because it protects the modesty only of women and Section 488 (now Section 125 of the Act of 1973) of Criminal Procedure Code, 1882 is valid although it obliges the husband to maintain his wife and not vice versa. A rule granting a special allowance to women principals was upheld under Article 15(3) in Shamsher Singh v. State of Punjab.223 Article 15(3) is reformist.

Article 14 lays down the general rule of equality before the law and Article 15(1) prohibits discrimination. Clause (1) of Article 16 provides equality of opportunity in matters relating to employment or appointment to any office under the State. Clause (2) of this Article lays down specific grounds on which citizens are not to be discriminated against each other in offices under the State. These are religion, race, caste, sex, descent, place of birth, residence or any of them. Article 16(1) and Article 14 go hand in hand. According to Article 16(2), no citizen can be discriminated against or be ineligible for any employment or office under the State on the grounds only of religion, race, caste, sex, descent, place of birth or residence or any of them. Equal protection of the law does not postulate equal treatment of all persons without distinction: it merely guarantees the application of the same laws alike without discrimination to all persons similarly situated.224

The Apex Court in Gazula Daratha Rama Rao v. State of Andhra Pradesh225 explained the scope of Article 14, 15 and 16 stating that Article 14 guarantees the general right of equality; Article 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or

---

222 AIR 1967 J&K 120
223 AIR 1970 P&H 372
224 All India Station Master’s and Assistant Station Master’s Association, Delhi v. Gen. Manager Central Railway, AIR 1960 SC 384
225 AIR 1961 SC 564
appointment to any office under the State. Article 16 which gives equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State is available in matters of employment or appointment under the State, in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, gratuity, pension and age of retirement.

In Associate Banks Officers Association v. State Bank of India226, the Supreme Court has held that women workers are in no way inferior to their counterparts, and hence there should be no discrimination on the ground of sex against women. Sex should not be the sole ground of ineligibility for any post. The insistence on keeping only males for the posts of reservation clerks in metropolitan cities by the Railway has been held to be violative of Articles 16(1) and (2) of the Indian Constitution in P. Rathinam v. State of Gujarat.227

Article 19 guarantees to the citizens of India freedoms viz. of speech and expression, peaceable assembly, association, free movement, residence, and practicing any profession and carrying on any business. However, these freedoms are not absolute but subject to some restrictions under Article 19(2) to 19(6). Article 19(1) a gives to the citizen inter alia freedom of speech and expression but is subjected to reasonable restrictions. The Supreme Court held in the case of Indian Express Newspaper v. Union of India228 that the word 'speech and expression' in Article 19(1)a includes freedom of press also. Freedom of press is freedom to print, publish and circulate what one pleases without any license or previous permission. However restrictions on this are imposed under article 19(2), by which the State has the powers to make laws to impose reasonable restrictions in the interests of inter alia public order, decency and morality. The fundamental rights under Article 19 are not absolute but subjected to reasonable restrictions.

226 (1998) 1 SCC 428
227 1994 SCC (Cri.) 1163
228 (1985) 1 SCC 641
imposed under article 12. The restrictions must be not arbitrary or of any excessive nature so as to go beyond the requirement of the interests of the public.\textsuperscript{229} The right under 19(1)(g)\textsuperscript{230} must be exercised consistently with human dignity, therefore harassment in work place amounts to violation of the right to work. Each incident of sexual harassment of women at workplace results in violation of fundamental rights of ‘gender equality’ and ‘right to life and liberty’.\textsuperscript{231} Further in \textbf{K. A. Abbas v. Union of India}\textsuperscript{232} the Supreme Court upheld the censorship of films under 19(1)(a) on the ground that films have to be treated separately from other forms of art and expression because a motion picture is able to stir emotions more deeply than any other product of art. The validity of Cinematograph Act, 1952 along with the rules made under it was challenged in this case where the Supreme Court upheld the validity of the impugned Act and said that pre-censorship of films was justified under Article 19(2) as imposing a reasonable restriction on Article 19 (1) (a).

It is observed that in \textbf{Ramesh Prabhoo v. Prabhakar Kunte},\textsuperscript{233} the Supreme Court has given a somewhat wider meaning to the terms decency and morality. It is not confined only to sexual morality. The meaning of the word decency indicates that the action must be in conformity with current standards of behaviour. A law against obscenity would be protected under the present clause. Obscenity means offensive to modesty or decency, lewd, filthy, repulsive.\textsuperscript{234}

Article 21 gives right to life and personal liberty. Right to life should be taken to mean right to live with dignity.\textsuperscript{235} The scope of this article has increased tremendously due to judicial pronouncements. The Honorable Supreme Court in

\textsuperscript{229} Chintaman Rao v. State of M.P AIR 1951 SC 118
\textsuperscript{230} Article 19 (g) guarantees to women also the right to ‘practice any profession or to carry on any occupation, trade or business.’
\textsuperscript{231} AIR 1997 SC 3011
\textsuperscript{232} AIR 1971 SC 481
\textsuperscript{233} (1996)1 SCC 130
\textsuperscript{234} Gopalan v. State of Madras 1950 SCR 88
\textsuperscript{235} Francis v. Union Territory AIR 1981 SC 746
the case of Bandhua Mukti Morcha v. Union of India\textsuperscript{236} held that right to life should be taken to mean right to live with human dignity, free of exploitation. In Maneka Gandhi v. Union of India\textsuperscript{237} also, the Supreme Court expressed the view that the right to life does not merely confine the physical existence, but it includes within its ambit the right to live with human dignity. The Court recognized the right to privacy of women as an important aspect of personal liberty in Neera Mathur v. Life Insurance Corporation Of India.\textsuperscript{238} Life Insurance Corporation’s questionnaire sought information about the menstrual periods of an employee and her past pregnancies. The Supreme Court held that it amounted to invasion of privacy and such probes could not be made. Justice Bhagwati declared in Neerja Choudhary v. State of Madhya Pradesh\textsuperscript{239} that women and children cannot be compelled to work in unhygienic conditions and for nominal wages. In Francis Coralie Mullin v. Administrator, Union Territory of Delhi\textsuperscript{240} the court confirmed that to the aspiration reflected in the term ‘protection’ in the marginal note to Article 21, it is essential that access to those conditions which make life livable with human dignity is part of right under Article 21.\textsuperscript{240}

The Apex Court ensured in Gautam Kandu v. State of West Bengal\textsuperscript{241} that an application for a blood test to disprove paternity of a child in a maintenance suit was rejected. The Court observed that permitting blood tests to prove or disprove paternity unless there was a strong case and access was ruled out would be slanderous, embarrassing and humiliating for the woman. The High Court of Punjab and Haryana held in Surjit Singh v. Kanwaljit Kaur\textsuperscript{242} that allowing the medical examination to test her virginity would certainly violate her right of privacy and personal liberty enshrined under Article 21 of the Constitution. This

\textsuperscript{236} AIR 1984 SC 802
\textsuperscript{237} AIR 1978 SC 597
\textsuperscript{238} (1992)1 SCC 286
\textsuperscript{239} AIR 1984 SC 1099
\textsuperscript{240} Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 603;1981 SCC (Cri) 212
\textsuperscript{241} (1993)3 SCC 418
\textsuperscript{242} AIR 2003 P&H 353

94
judgement goes a long way in respecting and upholding the dignity of womanhood.

Article 23 prohibits trafficking in women and children. This Act however could not eradicate this evil totally from the society. Traffic in human beings means selling and buying human beings as slaves and also includes immoral traffic in women and children for immoral or other purposes. Beggary and other forms of involuntary forced labour is absolutely forbidden for both men and women. The Supreme Court in Sanjit Roy v. State of Rajasthan\textsuperscript{243} delivered a monumental judgment holding that payment of wages less than that prescribed under the Minimum Wages Act, 1948 amounts to forced labour or beggary and no exception by any other statute can be allowed as Constitutional in view of the nature of the Minimum Wages Act. Trafficking in human beings includes ‘Devdasi system.’ The Andhra Pradesh legislature has enacted the Devdasi (Prohibition of Dedication) Act, 1988 to prohibit the practice of dedicating women as Devdasi to the deities in the Hindu temples, which invariably results in evils like prostitution.

In Chandra Raja Kumari v. Commissioner of Police, Hyderabad\textsuperscript{244}, it was held that the right to live includes the right to live with dignity and decency and right to live happily. If beauty contests tend to offend the dignity of a woman and tend to deal with her indecently in the circumstances amounting to indecent representation in any form, they are bound to offend article 21 of the constitution. The above cited cases reveal how the judiciary has given effect to the various fundamental rights granted under the Constitution, thereby according rights to women. This has definitely resulted in the improvement of the status of women. The judiciary has made the fundamental rights vibrate with life.

\textsuperscript{243} (1983)1 SCC 525
\textsuperscript{244} 1998 (1) ALD 810
Directive Principles of State Policy

Directive principles are not justiciable, but they empower the State to secure a social order for the promotion of welfare of the people. Article 37 specifically makes the directive principles as fundamental in the governance of the country and makes it mandatory for the State to apply these principles in making laws. Article 39 lays down that the State shall in particular direct its policy towards securing the following among others---

a) that the citizens, men and women equally have the right to an adequate means of livelihood;

b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

d) that there is equal pay for equal work for both men and women;

e) that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Equal justice and free legal aid to every man or woman citizen is provided as a State policy in the Directive Principles under Article 39-A. The Kerala High Court has held in the case of Balan Nair v. Bhavani Amma\textsuperscript{245} that the main thrust of Article 15(3) and Article 39 of the Indian Constitution is to assist women and children in distress, and if these two articles are read together, this empowers as well as directs the State to make special laws in favour of women and children and to develop the condition of freedom, equality and dignity.

Article 42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. Under Article 42 many Acts have been enacted. Some of the major Acts are:


---

\textsuperscript{245} AIR 1987 Ker. 110
Plantations (Labour) Act, 1951. If there is an obligation upon the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the context of the right to life.\textsuperscript{246}

The provision in Directive principles about entitlement to livelihood, equal pay for equal work, maternity leave, equitable distribution of material resources of production and respect for International Conventions have built the foundation of feminism. The directive principles under the Indian Constitution direct the State to secure equal pay for equal work.\textsuperscript{247} To give effect to this provision, Equal Remuneration Act, 1976 was enacted in the year 1976. The Supreme Court has deduced the principle of equal pay for equal work from Articles 14, 16 & 39(d) and Preamble of the Constitution.\textsuperscript{248}

Article 51 of the Constitution enjoins the State to endeavour to foster respect for international law or treaty obligations. Article 51(e)\textsuperscript{249} enjoins to promote harmony and lays down that it shall be the duty of every citizen of India to promote harmony and spirit of common brotherhood, among all people of India, transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women. There is a constitutional obligation to see that while interpreting any proviso of law the judiciary should keep the goals enunciated in Part IV in view.

Art. 253 empowers the Union to legislate with respect to its treaty obligations without reference to or being bound by the scheme of distribution of legislative powers under the Constitution. Some of the Directive principles such as directive on legal aid,\textsuperscript{250} protection of weaker section and protection of just and human

\textsuperscript{246} Olga Tellies v. Bombay Municipality Corporation AIR 1986 SC 180
\textsuperscript{247} Article 39 Indian Constitution
\textsuperscript{249} Fundamental duties of the citizen were inserted in 1976 by the 42\textsuperscript{nd} amendment.
\textsuperscript{250} M.H. Haskot v. State of Maharashtra (1978) 3 SCC 544
conditions of work, and free and compulsory education have been given effect by the judiciary. Article 243 D states that as per sub-clause 2 of Article 243 D not less than one third of the total number of seats which are reserved for scheduled castes and schedule tribes shall be reserved for women belonging to these communities. The amendment also states that not less than one third of the total number of offices of chairperson in the Panchayats shall be reserved for women. Even the 74th amendment to the Constitution provided for mandatory reservation of seats not less than one third for women belonging to the schedule caste and schedule tribes in every Municipality.

Various provisions in the Indian Constitution have given effect to various legislative enactments like the Immoral Traffic Prohibition Act, 1986, Dowry Prohibition Act, 1961, Indecent Representation of women Act, 1986 and the recently enacted Protection of Women from Domestic Violence Act, 2005. The rights of women have been marginalized due to various factors like patriarchal background, social and customary practices, and economic dependence, to name a few. But the Constitution has provided many rights to women. The legislation has been enacting laws favouring women. As seen from the various judgements of the Apex Court, the Apex Court has been in favour of granting rights to women and protecting the rights when ever possible.

Labour Laws relating to Women

Economic dependence of women is the root cause of their subordination. In a democratic system, the law through legislative or administrative responses to new social conditions and ideas as well as through judicial interpretation, not only

251 Bandhu Mukti Morcha v. Union of India (1984)3 SCC 161
252 Unnikrishnan v. State of Karnataka (1993)1 SCC 645
253 73rd Amendment Act, 1992 of the Constitution
254 Article 243 (T) Sub-clause 2 and 243 T (3)
255 Article 14,15,16 under the fundamental rights and article 39(a & ) 39(d) and article 42 under directive principles of State policy and article 51A(e) under fundamental duties
articulates but also sets the course for major social changes. Many legislations dealing with labour laws have special provisions for women because it is important to give them fair opportunities to employment. The Equal Remuneration Act, 1976 was enacted for the purpose of providing equal remuneration to men and women and for prevention of discrimination on the grounds of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

The history and evolution of the principle of equal pay was explained in the case of Associate Bank Officer's Association v. State Bank of India. The statements of objects and reasons of the Act are as follows: Article 39 of the Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this Constitutional provision, the President promulgated on 26th September, 1975, the Equal Remuneration Ordinance, 1975 so that the provision of Article 39 of the Constitution may be implemented in that year which was being celebrated as the International Women's Year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of a similar nature for the prevention of discrimination on the grounds of sex. The Ordinance also ensures that there will be no discrimination against recruitment of women and provides for the setting up of Advisory Committees to promote employment opportunities for women. The Act covers workers in any establishment or employment and extends to the whole of India. It was held in J.P. Singh v. Telex that principles of equality are virtually in the nature of natural law and denial of equality would be against the article of equality.

In Mackinnon Mackenzie v. Audrey D'Cousta the Court held that if men and women employed on same jobs are paid differently, there is undoubtedly sex

---

257 1998,1 SCC 428
258 (1999)2 LL. J 43 (Pat.)
259 (1987) 2SCC 469
discrimination. The Supreme Court in the same case observed that the Act did not permit the management to pay a section of its employees doing the same work or of a similar nature, lesser pay, contrary to section 4 (1) only because it is not able to pay equal remuneration to all its employees. The Supreme Court stated in the case of *Sanjeev Kumar and Others v. Union of India*\(^{260}\) that to enforce the principle of equal pay for equal work as a fundamental right or discriminatory treatment in violation of Articles 14 and 16, it must be demonstrated that the employees are discriminated against in matters relating to pay and other emoluments with other similarly placed employees. Pursuant to the Constitutional mandate Parliament passed the Equal Remuneration Act, 1975. This Act was amended in 1981 as the Act of 1976 did not provide that discrimination will not be made in the matter of promotion, training, transfer etc. The amended Act makes it mandatory for the employee to pay equal wages to man and woman workers and prohibits discrimination of women on the ground of sex in matters of recruitment, training, promotion and transfer. The amended Act also makes provision for stricter punishment in case of violation of this mandate. The Supreme Court in the case of *Randhir Singh v. Union of India*\(^{261}\) explained that it is true that the principle of ‘*equal pay for equal work*’ is not expressly declared by our Constitution to be a fundamental right, but it certainly is a constitutional goal. The Supreme Court even in *Griha Kalyan Kendra v. Union of India*\(^{262}\) has observed that equal pay for equal work is not expressly declared by the Constitution as a Fundamental Right in view of the Directive Principle of State Policy as contained in Art. 39(d) of the Constitution, but ‘*equal pay for equal work*’ has assumed the status of Fundamental Right in service jurisprudence having regard to the Constitutional mandate in Art. 14 and 16 of the Constitution. The judiciary has played an important role in enforcing and strengthening the constitutional goal of equal pay for equal work to men and women both, without any discrimination against women.

\(^{260}\) 2001 ICLR 885 (Del.)  
\(^{261}\) AIR 1982 SC 877,881  
\(^{262}\) AIR (1991) SC 173
Maternity Benefit Act, 1961

International attention on maternity protection of the world community was attracted when the first Maternity Protection Conference was convened in 1919 by the International Labour Organisation.263 The Universal Declaration of Human Rights264, 1948 lays down that motherhood and childhood are entitled to special care and assistance and that all children whether born in, or out of wedlock, shall enjoy the same social protection. In pursuance of this direction, the State was enjoined to make provision for securing just and humane conditions of work and for maternity relief, the Maternity Benefit Act was enacted in the year 1961. It was enacted to regulate the employment of women in certain establishment for certain periods before and after child birth and to provide for maternity and other benefits. This Act is applicable to labour legislation exclusively devoted to working women in factories, mines, plantations, and establishments wherein persons are employed for the exhibition of equestrian, acrobatic and other performances. The pregnant woman is not required to do work of arduous nature involving long hours of standing, or which is likely to interfere with her pregnancy or the normal development of foetus or which is likely to cause her miscarriage or otherwise adversely affect her health. The Act gives a pregnant woman right to claim maternity benefit for twelve weeks of which not more than six weeks shall precede the date of her expected delivery. In order to enable the women worker to subsist during this period and to preserve her health, the law makes a provision for Maternity Benefit so that the woman can play both her productive and reproductive roles efficiently.265

264 Article 25(2) of the Constitution
265 B. Shah v. P.V. Labour Court (1977) 4 SCC 384
In Municipal Corporation of Delhi v. Female Workers (muster roll)\textsuperscript{266} the Supreme Court declared that not only the regular woman employees but also those woman employees engaged on casual basis or on muster roll daily wage basis are entitled to Maternity Relief under this Act.

**The Employees State Insurance Act, 1948**

This Act provides for various benefits in different contingencies. As per the provisions of this Act the insured women is entitled to get sickness benefit, disablement benefit, dependants benefit, medical benefit and funeral expenses along with insured men workers. An insured women worker is also entitled to periodical payment in case of confinement or miscarriage or sickness arising of pregnancy, premature birth of child or miscarriage.

**The Factories Act, 1948**

This Act was enacted to protect workers employed in factories against industrial and occupational hazards. The Act also contains special provisions for protecting women and children who are employed as labour in the factories. It prohibits the employment of women and children near hazardous machines (cotton openers). Also it requires that no woman shall be required to work in a factory except between 6 a.m and 7 p.m.

**The Mines Act, 1952**

No woman shall be employed in any part of the mine which is below ground or in any mine above ground except between the hours of 6 a.m. and 7 p.m.\textsuperscript{267} Every woman employed in a mine above ground shall be allowed an interval of not less

\textsuperscript{266} (2000) 3 SCC 224
\textsuperscript{267} As per section 46 of the Act
than eleven hours between the termination of employment on any one day and the commencement of the next period of employment.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

No woman or young person shall be required to work on any industrial premises except between 6 a.m. and 7 p.m. under the provision of this Act.

It is observed that the Indian Constitution contains several provisions for protecting the interest of working women. Based on these provisions there are enactments which specifically benefit working women like Maternity Benefit Act, 1961, Equal Remuneration Act, 1976 and some others.

Special Legislations for Women

The legislation enacted some enactments exclusively for the benefit of women. These legislations provide protection to women. Till such time as women are given physical safety and security, they cannot be said to have any status. These special legislations are enumerated below:

National Commission for Women Act, 1990

The United Nations Commission on the Status of Women in its twenty-fifth report had recommended to all member States to establish National Commission or similar bodies with a mandate to review, estimate and recommend measures and priorities to ensure equality between man and women and the full integration of women in all spheres of national life.268 In this context the National Commission for Women Act, 1990 was enacted. The object of the Act was to constitute a

268 Mukulita Vijayawargiya: National Commission for women: Legal Frame work ' 34 JILI (1992) 2
103
Pre-natal Diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994

According to the United Nations International Children’s Emergency Fund, 40 to 50 million girls have gone missing in India since 1901—missing because they were not allowed to be born or if born, murdered within days or even hours of their birth.²⁷⁰ Amniocentesis, the technique supposed to be used for diagnosis of the condition of the foetus, is used, unfortunately for determining the sex of the child in the mother’s womb. Also, if the foetus is female, the female child is killed even before birth as parents generally do not welcome a female child. The Maharashtra Government made this practice of detecting the sex of the child in the womb illegal through the passing of the Maharashtra Regulation of use of Pre-natal Diagnostic Techniques Act, 1988. Under this Act it is obligatory to obtain an undertaking from a woman who prefers such test to the effect that she will not terminate the pregnancy if the diagnosis shows the possibility of a normal child of either sex. The Central Act was passed on the same lines. It is named Pre-natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994. This Act provides for the regulation of the use of prenatal diagnostic technique for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformation or sex linked disorders in an unborn child. The object of the Act is the prevention of the misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide and for matters connected therewith. The prenatal test is widely and grotesquely abused. Also, in spite of the Act, there is only one conviction in ten years.²⁷¹ The womb is also

²⁶⁹ Act 20 of 1990
²⁷⁰ Shobori Ganguli on ‘Where have all the girls gone?’ published in ‘The Pioneer (Lko) dated 7.8.1998, p.6
²⁷¹ Hindustan Times, Mumbai, June 14, 2007, P.1
not a safe place for a girl child. Sex determination test is a multi-crore ‘industry’ in India.

In Rajasthan the decline in the sex ratio has lead to a new trend of swap marriages locally known as ‘Aata-Saata’. Father of girls are refusing to marry off their daughters unless a girl from the groom’s family simultaneously ties the knot with their bachelor son.272 For those states which have been able to control sex-determination tests using ultra sound or sonography, a new United States patented gender testing kit that enables sex determination as early as five weeks after conception and which is available on the internet spells more trouble. If the kit enters the Indian market, it can lead to mass abortions of the female foetus.273 The diagnostic tool – Baby Gender Mentor Home DNA Gender Testing Kit which is available on www.pregnancystore.com at a price of about $275 is likely to throw India’s already beleaguered pre-natal determination test totally out of control.

The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act was enacted to liberalize provisions relating to the termination of pregnancy as and by way of life saving measures for women. It permits termination of pregnancy by medical practitioner within twenty weeks of pregnancy where the continuance of pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health or where there is a substantial risk that if the child was born, it would suffer from such physical or mental abnormalities so as to be seriously handicapped.274 The anguish caused by such pregnancy shall be presumed to cause grave injury to the mind of a pregnant woman if such pregnancy is caused by sexual offence or is the result of failure of any contraceptive used by her or her husband for the purpose

272 Sunday Express, Mumbai, April 2, 2006, P.1
273 Khushwant Singh, Times of India, Mumbai, Saturday, June 17, 2006, P.1
274 S.3, The Medical Termination of Pregnancy Act

105
of limiting the number of children. The Indian Penal Code, 1860\textsuperscript{275} provides for the punishment of any person who voluntarily causes a pregnant women to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of a woman. The Medical Termination of Pregnancy Act was passed in 1971 for granting women the right to terminate her pregnancy under certain circumstances, but it is used as a population control measure.

**Indecent Representation of Women (Prohibition) Act, 1986**

Indecent Representation of Women (Prohibition Act), 1986 was enacted under Article 51(e) of the Constitution. Section 2 of this Act defines indecent representation of women as the depiction in any manner of the figure of a woman: her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to or denigrating women or is likely to deprave, corrupt or injure the public morality or morals.

The National Commission of Women recommended the amendment of Section 1 of the Indecent Representation of Women (Prohibition )Act, 1987 to make the definition of derogatory representation of women more stringent. It further proposed increasing punishment of violators. It also proposed to add provisions that no woman shall allow herself to be photographed nude or semi-nude for the purpose of any book, periodicals, etc. The definition has sought to combine the twin concepts of indecent representation which is pure and simple exploitation of women’s figure for commercial purposes and the concept of obscenity which stands for something immoral and corrupting from the point of view of pubic health and morals.

\textsuperscript{275} Sections 312 to 314 I.P.C.

As per International Planned Federation Report, 1996, 18% of girls in Asia, 15% of girls in America, 8% in Latin America and 49% of girls in India marry before the legal age of 18 years. 276 In a city like Mumbai, 8,560 children under 15 were married in the year 2001, the bulk of them being girls. 277 Child marriages are performed in many parts of India specially in rural areas of Rajasthan, Andhra Pradesh, Bihar and Uttar Pradesh. The Child Marriage Restraint Act, 1929 was enacted to prevent Child Marriages. It was known as Sarada Act after Harvilas Sarada who was instrumental in getting it enacted. According to it marriage age for boys was 18 and for girls 14 years. In 1976, the Act was amended to increase the age for boys to 21 and for girls to 18 years. Except under the Special Marriages Act, all child marriages are legal and binding. Under this Act, provision is made to restrain any person from performing a child marriage in violation of the provisions of this Act through an injunction by any person having information of such marriage. The mild sentence imposed on the parents and guardian of minors who are answerable for bringing about such marriages does not dissuade them from getting their minor children married. The Andhra Pradesh High Court in Gadela v. Gadela 278 laid down that a marriage of a minor person in violation of the Hindu Marriage Act, 1955 shall be void. The child Marriage Restraint Act was repealed by re-enacting the Prevention of Child Marriage Act, 2006. This Act provided for the prohibition of child marriages and for matters connected therewith and incidental thereto. This Act gave certain rights to victims of child marriages and children born from these marriages. The main provision of the new Act is that every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage.

277 Study by Institute of Health Systems, Hyderabad, as reported in Mumbai Mirror, February 17, 2006, P. 1
278 AIR 1975 AP 193
Dowry Prohibition Act, 1961

Dowry is a social evil, which is growing day by day surpassing the barriers of castes and customs. The National Crime Records Bureau had reported a whopping 75,930 incidents of torture and cruelty against women in matrimonial homes in 2007. On an average 5,000 wives are burned to death every year. In order to curb and control this menace, the Dowry Prohibition Act, 1961 was enacted. This Act provides punishment for the giver as well as taker of dowry. After a number of Supreme Court decisions, specially in Pratibha Rani v. Suraj Kumar the Joint Committee of Parliament recommended many changes in the Dowry Prohibition Act, 1961. As a consequence, this Act was amended in the years 1984 & 1986. The 1984 amendment to this Act has replaced the words ‘in consideration of marriage’ with ‘in connection with marriage’ in the definition of dowry. The words at any time after the marriage were added in 1986. The definition now has a wider scope. The focus on the amendments in the Dowry Prohibition Act, 1961 was to make punishment for the givers and takers of dowry more stringent, widen the definition of dowry and extend women’s control over the dowry items. It is a comprehensive and laudable Act. The Supreme Court has held in S. Gopal Reddy v. State of Andhra Pradesh that the demand, even if made before the marriage amounts to an offence under section 4 of this Act. The Supreme Court in the same case observed that the Act was a piece of social legislation which aimed to punish not only the actual receiving but also the very demand of dowry made before or at the time or after the marriage, where such demand is referable to the consideration of marriage.

In Pratibha Rani v. Suraj Kumar, the court held that if despite demands, the husband or his parents did not return to the wife the articles given in marriage, it

279 The Times of India, Mumbai, June 2, 2009, P.1
280 Ibid
281 (1985) 2 SCC Cri. ( P. 642)
282 (1996) 4 SCC 596
283 AIR 1985 SC 628
amounted to an offence of criminal breach of trust. Section 304 B\textsuperscript{284} was inserted in Indian Penal Code to save brides from being burnt for non payment of dowry, and to curb this social evil which was gaining momentum.\textsuperscript{285} The offence of dowry death is punishable under this section with imprisonment of not less than seven years but which may extend to imprisonment for life. The prosecution has to establish a complete and conclusive chain of circumstances leading to the guilt of the accused. It rather reiterates in substance the offence contained in Section 302 of Indian Penal Code. Even prior to its enactment in a number of cases, the husband and in-laws have been convicted under Section 302 IPC for murdering the wife/bride burning by pouring oil or by other means.

In Shanti v. State of Haryana\textsuperscript{286} it was held that Section 304 B of Indian Penal Code has the following essential ingredients:

1. The death of the woman should be caused by burns or bodily injury or otherwise than under normal circumstances.

2. Such death should have occurred within seven years of her marriage. She must have been subjected to cruelty or harassment by her husband or any relative of her husband. Such cruelty or harassment should be in connection with demand of dowry. In Pawan Kumar v. State of Haryana,\textsuperscript{287} the wife died of burn injuries within 7 years of marriage. She committed suicide because of mental cruelty inflicted on her by her husband as his dowry demands could not be fulfilled. The Supreme Court held the husband guilty under Sections 304 B & 498A as well as Section 306 of Indian Penal Code.

\textsuperscript{284} S. 304 B which was inserted by an amendment in IPC by Act no. 43 of 1986
\textsuperscript{285} Amarnath Gupta v. State of M.P. 1991 Cr. L.J. 2163
\textsuperscript{286} (1991)1 D.M.C.
\textsuperscript{287} (1998)3 SCC 309
Section 498 A of Indian Penal Code\(^{288}\) was inserted to combat the increasing menace of dowry. In \textit{Shanti v. State of Haryana},\(^{289}\) it was held that to charge the husband under Sections 304B & 498 A, the prosecution has to prove that the husband subjected the wife to cruelty or harassment for or in connection with a demand for dowry. The offence under these two sections is cognizable and non bailable. The punishment for murder is ten years imprisonment whereas for dowry death under section 304 B it is seven years. This is highly demoralizing.

The Court in \textit{Ramesh Kumar v. State of Chattisgarh}\(^{290}\) declared that the facts amounted to cruelty where the wife was teased by her husband and ill-treated to the extent that she was turned out of the house at odd hours for mistakes which were pardonable. In the case of \textit{Inder v. Sunita},\(^{291}\) it was contended that Section 498 A was ultravires of the Constitution on the ground that demanding dowry was an offence under Section 4 of the Dowry Prohibition Act as well and it thereby created a situation of double jeopardy. The Court, while rejecting the contention, said that Section 498 A punished demand for dowry from the wife or her relative coupled with cruelty to her. Thus, the person may be prosecuted in respect of both the offences.

In the canons of crimes of greed and cruelty against women, the phenomenon of dowry deaths and bride burning occupies a leading position yet for years it was considered an aberration of certain North Indian Communities.\(^{292}\) 92% complaints received by Delhi Commission for Women are dowry related.\(^{293}\) National Crimes Record Bureau reveals that 7618 women were killed for dowry in 2006.\(^{294}\)

\(^{288}\) Criminal Law Amendment Act, 1983
\(^{289}\) (1001) 1 SCC 371
\(^{290}\) (2001) 9 SCC 618
\(^{291}\) 1986 Cr.L.J. 1910
\(^{293}\) Times Nation, The Times of India, Mumbai, September 12, 2005, P.12
\(^{294}\) Ibid
In *L.V. Jadhav v. Shankarrao*\(^{295}\) the Court held that there is no warrant for taking the view that the initial demand for giving property or valuable security would not constitute an offence and that an offence would take place only when the demand was made again, after the party on whom demand was made had to comply with it. In *Sataya Rani Chaddha v. State of Delhi*\(^{296}\) the Supreme Court held that where the complainant failed to prove that the accused had demanded a scooter prior to the marriage, and the demand for scooter arose again after marriage, which was not in continuation of the first demand, the accused was not held guilty of demanding dowry. Though the Supreme Court did not approve of death penalty of Smt. Lachchmi devi, who was found guilty of the death of her daughter-in-law by burning her, in *Smt. Lachchmi devi v. State of Rajasthan*\(^{297}\) the judicial trend has changed considerably since this decision.

The Supreme Court in *Shobha Rani v. Madhukar Reddi*\(^{298}\) held that the demand for dowry by the husband or his parents amounts to cruelty. Hence, the wife is entitled to get the decree of divorce under the Hindu Marriage Act, 1955. The Supreme Court in *Pratibha Rani v. Suraj Kumar*\(^{299}\) held that the absolute property of the wife cannot become the joint property of the husband and the wife or his relations merely because the wife enters the matrimonial home in which every thing is held by the family as a whole.

The amendment to section 113-A\(^{300}\) in the Indian Evidence Act 1872 was necessitated to meet the challenge to save the married woman from being ill-treated or forced to commit suicide by the husband or relatives of the husband to force to fetch more dowry. A presumption can be raised under section 113-A only

\(^{295}\) (1983) 4 SCC 231  
\(^{296}\) 1994 2 SCC 40  
\(^{297}\) AIR 1988 SC 1785  
\(^{298}\) AIR 1988 SC 121  
\(^{299}\) AIR 1985 SC 628  
\(^{300}\) When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
when the prosecution has discharged the initial onus of proving cruelty. However, the presumptions under sections 113-A & 113 B are rebuttable presumptions. Section 113B has laid down that the presumption of dowry death shall be made if it is shown that soon before her death such woman was subjected to such cruelty or harassment in connection with any demand for dowry. The Supreme Court has observed in Vikas v. State of Rajasthan\textsuperscript{301} that the receipt and payment of dowry has to be controlled not only by effective implementation of the Act but by the society also, through various ways and means to curb this menace. This judgement takes very realistic approach for restricting and curbing dowry demands in marriage. In the judgement of Narotam v. State of Punjab,\textsuperscript{302} the Summit Court observed: ‘It is distressing that dowry or bride price should mar married felicity with feudal cruelty in India, largely because the anti dowry law sleeps on the status book and social consciousness is not mobilized to ban effectually its vicious survival. Law hanging limp is a slur on the executive excessive charged with is enforcement and its traumatic consequences--- Will the administration may become participants in the observance of social welfare legislation?’

The Protection of Women from Domestic Violence Act, 2005

This Act seeks to cover those women who are or have been in a relationship with the abuser, where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage or adoption in addition to relationship with family members living together as a joint family. The Act covers abuse or threat of abuse, whether physical, sexual, verbal, emotional or economic. The statement of objects and reasons of the Act states: ‘Domestic violence is undoubtedly a human issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and Platform for Action (1995) have acknowledged this. The United Nations

\textsuperscript{301} 2002 SC 2830
\textsuperscript{302} AIR 1978 SC 1542
Committees on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations No. xii (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.' It is therefore proposed to enact a law keeping in view the rights guaranteed under Article 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society." Declaration on the Elimination of Violence against Women states that;-'Violence against women constitutes a violation of the rights and fundamental freedoms of women." This Act is a real boon to women. This Act is a unique experiment in Indian legislative history as it creates an interface between the government and non-Governmental organisation sector and utilizes the experience and resources of both to provide effective machinery for its implementation. This Act is intended to effectively protect the rights of women and to give them a decent and dignified status. This Act recognizes sexual abuse as a form of violence. According to section 3 of the Act, sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women.

A woman who is a victim of domestic violence has the right to continue residing in the shared household. This is indeed a positive step towards the recognition of her rights and control over the matrimonial domain. Shared household means a household where the person lives or at any stage has lived in a domestic relationship either singly or along with the respondent. In Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and Others and Ajitbhai Revandas Patel and Another v. State of Gujarat and Another it was opined that the domestic violence of a man against his wife is cognizable and triable under Section 498A of the Indian Penal Code.

304 General Assembly Resolution No. 48/104, 1993
305 Section 17 of the Protection of Women from Domestic Violence Act, 2005
306 Sec. 2 (2) Protection of Women from Domestic Violence Act, 2005
307 2008 (2) AWC 1636 (SC)
violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also there under acquires a right of residence.

The Immoral Traffic (Prevention ) Act,1956

Prostitution and the evil of traffic in human beings for the purposes of prostitution acquired such monstrous proportions that the International Community responded to it by signing various conventions like the International Agreement for the Suppression of White Slave Traffic,8 International Convention for the Suppression of Traffic – Women and Children9 and the International Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution.10 India is a signatory to the 1950 Convention for the Suppression of Traffic in Human Beings and Exploitation of Children. India has also signed the Convention on Rights of the Girl Child, 1990. Article 18 of this Convention recognizes the child’s right to protection from sexual exploitation and abuse including prostitution.308 The expression ‘traffic in human beings’ implies buying and selling of human beings as if they are chattels, such practice is constitutionally abolished.309 Legislation on the subject of suppression of immoral traffic in human beings existed in a few states and was not uniform. An International Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others was ratified by India in 1950. With the view to implement the provisions of the said Convention, the Suppression of Immoral Traffic in Women and Girls Bill was introduced and passed by both the Houses of the Parliament. The drawback of this Act was that it punishes a prostitute, who is always a woman, who could be arrested under this Act for the offence of soliciting. According to Suppression of Immoral Trafficking Act, 1956 prostitution per se is not illegal. This Act was amended to The Immoral Traffic ( Prevention) Act, 1986. The new Act has provisions which are more preventive than punitive. The Immoral Traffic (Prevention ) Act, 1986 was enacted to

suppress the evils of prostitution. This Act merely seeks to prevent commercialized prostitutes or to punish those who live on the earnings of prostitutes or exploit them. Prostitution is a heinous crime against women when she is forced to sell her body due to economic needs. The effects and evils of prostitution are notorious and terrifying for the women.

Under the new Act, the prostitute can carry on her trade whenever she likes subject to certain restrictions. The penal provisions of this Act punish only those activities of the prostitute and of those associated with them which offend public order and decency and expose the ordinary citizen to what is offensive and injurious or involves the exploitation of others.\(^{310}\) It is applicable to men and women both. The object of this Act was to inhibit or abolish the commercial vice of traffic in women, men and children for the purpose of prostitution as an organized means of living. Prostitution\(^{311}\) is defined as sexual exploitation or abuse of persons for commercial purposes and the expression prostitute shall be construed accordingly. The Act provides for welfare and remedial provisions. This Act recognizes that even men can be sexually abused and should be protected. This Act punishes the offences of prostitution and soliciting when carried on in or in the vicinity of a public place. This Act permits removal of the prostitutes from any area in the interest of the general public.\(^{312}\) This section was challenged often. Inspite of the amended Act introduced in 1986, incidents of prostitution in its new manifestations like call girl culture and masseur parlour have increased.

In *State of Uttar Pradesh v. Kaushaliya*\(^{313}\) also it was challenged, where the Supreme Court held that the difference between the prostitute and non prostitute

\(^{311}\) Section 2 (f) of PITA
\(^{312}\) Section 20 of PITA
\(^{313}\) (1964) 4 SSCR 1002
is a reasonable classification. The Indian Penal Code lends a helping hand to the special laws enacted to curb prostitution by attacking the source of this evil.

S. 366-A and 366-B of Indian Penal Code makes the procuration of minor girls for illicit sexual intercourse illegal. Sections 372 and 373 of Indian Penal Code make selling and buying of girls of any age for purposes of prostitution a heinous crime for which imprisonment upto ten years and a fine can be imposed. All these sections conjointly punish the giver and receiver of a person below 18 years of age for immoral purpose. This section does not specify the nature of the possession, duration or its intensity.

The judiciary in *Raj Bahadur v. Legal Remembrancer*\(^{314}\) held that traffic in women for Immoral purposes is prohibited under Article 23 of the Indian Constitution. The National Expert Committee on Women Prisoners headed by V.R.Krishna Iyer, retired Judge of the Supreme Court made a forceful plea to penalize the client by amending the law in the interest of attuning it in the present day context of gender parity.\(^{315}\) In India the first committee set up by the Government of India to report on the Status of the problem of prostitution, the Rama Rao Committee, 1954 had pointed out that the provision for after care and follow up is not adequate. Prostitutes require long term treatment. They should be helped to earn a living. Counseling services are also needed. The children of prostitutes are not provided for in the Act.

**Commission of Sati (Prevention) Act, 1987**

Lord Bentinck declared the practice of sati as illegal and punishable offence in 1829 with the support of Raja Ram Mohan Roy. Prior to the enactment of the Commission of Sati (Prevention) Act, 1987 the accused were liable to be punished under section 306 of the Indian Penal Code for the offence of abetment of suicide in all cases of commission of sati.

---

\(^{314}\) AIR 1953 Cal. 522

\(^{315}\) In its report submitted to the Minister of Human Resources Development in May 1987
This Act of 1987 provides for more effective prevention of the commission of sati and its glorification and for matters connected herewith or incidental thereto. The object and reasons of this Act stated that sati or the burning alive or burying alive of widows or women is revolting to the feeling of human nature and is nowhere enjoined in the religious scriptures of India as an imperative duty. Under this Act, the attempt to commit sati, abetment of sati and glorification of sati are punishable. Anyone who admits to having witnessed a sati is liable to prosecution. Special courts are constituted for trial of offences under this Act. The onus of proof of innocence is on the accused. No person who has abetted the commission of sati can inherit any estate of the deceased.

The Family Courts Act, 1984

The statement of objects and reasons of the Act reads, ‘Family courts be set up with a view to promote conciliation in and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith’. The provisions of this Act provide that endeavour shall be made by the Family Court in arriving at a settlement in respect of the subject matter of the suit or proceedings under this Act. In the appointment of judges, the Act specifies, ‘every endeavour shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children are selected’. 316

Personal laws and Women

The Hindu Law reforms were introduced in the First Parliament of free India in four separate enactments covering marriage, divorce, adoption, maintenance, succession, minority and guardianship. The Law Commission opined about Hindu Law as follows, ‘Hindu Law was never static: it was dynamic and changing from

316 Family Courts Act, 1984, Chapter II, Clause 4(a)
time to time. The structure of any society, which wants to be strong, homogenous and progressive, must be steady, but not static, stable but not stationary: and that is exactly the picture we get if we study the development of Hindu Law before the British rule in India.  

Four major Acts which are The Hindu Marriage Act 1955, The Hindu Succession Act 1956, The Hindu Minority and Guardianship Act, 1956 & The Hindu Adoption and Maintenance Act 1956 were enacted. Warren Hastings directed 11 pundits in Calcutta to compile a digest of Hindu Law. The work was completed in the year 1775 and was entitled Vivadar Nava Setu, and called Gentoo code.

Sir William Jones worked on Islamic and Hindu law as suspicion regarding the reliability of the Pundits grew. Few legislations were passed to benefit Hindu women like the Hindu Women’s Right to Property Act, 1937. The object of this Act stated as follows, ‘The aim of the Hindu ---Bill , introduced by Dr. G.V.Deshmukh was to set right the problems created by the judicial decisions of the English courts which had constrained the scope of stridhan during the later phase of the 19th century.’ However the Act gave only limited right of property to Hindu women. The Hindu Woman’s Right to Separate Residence and Maintenance Act, 1946 provided some ground on which a wife could live separately and claim maintenance from her husband. The Act was repealed but its provisions are re-enacted in Hindu Adoption and Maintenance Act, 1956.

The reforms made in the Hindu Personal Law improved the position of women with regard to divorce and inheritance but they did not get equality. As the reform proposals assumed their final shape that the ideas came to be stressed that women should be entitled to equal rights. The important rights gained by women as result of the four enactments in Hindu Law were: to hold property as absolute owners and to recognize daughters as class I heir to her father’s property.

319 Archana Parashar, Women and Family Law Reforms in India, Sage Publications, Delhi, 1992, P.76-143
at par with sons, and entitlement to property of her husband as his widow if he died before her, right to divorce. However the right of the father and also of the husband to make a will has limited the women’s right to inheritance.

The Hindu Minority and Guardianship Act 1956 recognized the father as the natural guardian of legitimate children in respect of their person and property. The mother can become the guardian only ‘after’ the father. This is the indication of patriarchal attitude. The Supreme Court by its decision has respected the status of mother in *Geeta Hariharan and Vandana Shiva and another v. Reserve Bank of India*[^320] and held that mother can act as the natural guardian of the minor even when the father is alive. Section 15(2)(b) of the Hindu Succession Act has been held to be not invalid on the ground of discrimination on the basis of sex.

For Parsis and Christians marriages were monogamous under the Parsi Marriage and Divorce Act, 1865 and under the Christian Marriage Act, 1872 respectively. For Muslim males marriages continue till date to be polygamous. Hindu Marriage Act, 1955 introduced monogamous marriages for Hindus.

In *Ahmedabad Women Action Group v. Union of India*[^321] a public interest litigation was filed to declare the Muslim Personal Law, which allows polygamy, to be void as offending Article 14 & 15 of the Constitution. But the Supreme Court refused to take cognizance of the matter. Registration of marriages was compulsory for Christians and Parsis. Registration of marriages under the personal law is not compulsory for the Hindus and Muslims. Andhra Pradesh enacted the compulsory registration of Marriages Act in 2002. However, the incidence of child marriages in Andhra is amongst the highest in India, with nearly 41% of girls in the State being married of before they are 18 years old.[^322] The National average is 19%. In Kerala and Tamil Nadu only 5% of the girls are

[^320]: AIR 1999 SC 1149
[^321]: AIR 1997 SC 3614
[^322]: Study by Institute of Health Systems, Hyderabad, as reported in Mumbai Mirror, February 17, 2006
married before they reach the age of 18 years. A division bench of Supreme Court comprising Justice Arijit Pasayat and P. Sathasivam directed the Central Government, the State Government and the Union Territories to notify within three months the rules and procedures for compulsory registration of marriages in Seema v. Ashwinkumar.

Divorce, except under some customary form in some castes, was unknown to Hindus before the enactment of the Hindu Marriage Act, 1955. The right to divorce is available to a Muslim male who can divorce his wife at any time without assigning any reason or fault of the wife. He can obtain divorce without any intervention of the court. But for a Muslim wife to obtain divorce was very difficult. She could obtain ‘khula’ only if she agreed to give some material consideration to her husband for granting her divorce and her husband agreed to release her on that consideration. Polygamy and unilateral divorce by pronouncing talaq thrice in the presence of two witnesses, which are peculiar features of Muslim Personal Law are unjust, unfair, derogatory, humiliating and discriminatory against Muslim women on the ground of sex. The judgement invalidating triple talaq of the Allahabad High Court, in which Justice Hari Nath Tihari observed, ‘Since the practice of triple talak denigrates women, it is violative of the Constitution.’ The Dissolution of Muslim Marriages Act, 1939 gave a Muslim wife many grounds on which she could avail divorce from her husband through the intervention of the court. The Supreme Court laid down in Shammim Ara v. State of Uttar Pradesh and another that the correct talak as ordained by the Holy Koran is that talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbitrators.

323 ibid
324 AIR 2006 SC 1158
326 Flavia Agnes, TRIPLE TALAQ JUDGMENT - ARE WOMEN THE REAL BENEFICIARIES Economic and Political Weekly Vol XXIX No.20 May 14, 1994, P.1169
327 JT 2002 (7) SC 250

120
For Christians, the Ecclesiastical Courts during the reign of Queen Elizabeth could grant divorce on the ground of infidelity only. These courts had the right to pronounce nullity of marriage only and not the right to dissolve the marriage through divorce on any other ground. Later the enactment of the Indian Divorce Act, 1869 granted six grounds to a Indian Christian women to obtain divorce from her husband. However all the grounds were coupled, for instance adultery with cruelty or adultery with remarriage. A Christian wife had to prove adultery of her husband along with some other grounds like cruelty, bigamy, incest etc. But a Christian husband could get divorce only on the ground of wife's adultery after marriage. The Bombay High Court in *Verghese v. Verghese* held Section 10 of this Act to be discriminatory and therefore violative of Article 14 of the Constitution. Indian Divorce Act also did not recognize cruelty itself as a ground for divorce. It was only in 2001 that cruelty was accepted as a ground of divorce, and women acquired the same grounds of divorce as men. So practically till the amendment of 2001, it was almost impossible for Christians to obtain divorce. In *P.E.Mathew v. Union of India* the Indian Divorce Act, 1869 was challenged as arbitrary, discriminatory and violative of Article 14 of the Constitution. But it was held that personal Christian law was outside the scope of fundamental rights.

**In Ammini v. Union of India,** the Kerala High Court Struck down Section 10 of the Indian Divorce Act, holding that discrimination between Christian spouses, wherein different grounds of divorce are available to the husband as compared to the wife, violates Articles 14 and 15 of the Constitution. In this case the Kerala High Court also observed as follows: 'It will be humiliating and oppressed life without freedom to remarry and enjoy life in the normal course. It will be life without freedom to uphold the dignity of the individual in all respects. Restitution

---

328 S.10 of Indian Divorce Act, 1869
329 AIR 1997 Bom 349
330 AIR 1999 Ker 345
331 AIR 1995 Ker 252
of conjugal rights constituted the grossest form of violation of any individual 's right to privacy and therefore violative of Article 14 & 21.'

The remedy of restitution of conjugal rights is available to the Muslims under the personal law, to Hindus under Section 9 of the Hindu Marriage Act, to Indian Christians under Section 32 of the Indian Divorce Act, and to Parsis under Section 36 of the Parsi Marriage and Divorce Act, 1936. This remedy is made available even to person marrying in civil form under Special Marriage Act.332 In the case of Shakila v. Gulam,333 Vaidya J. observed that this barbarous remedy should be sparingly awarded, particularly after the constitution of India came into force. The Constitution guarantees personal liberty and equality of status and opportunity to men and women alike. The court held the right of privacy to be more important and superior to right of spousal society in the case of T. Sareetha v. Venkat Subbiah 334 and recommended striking off Section 9 of Hindu Marriage Act as barbarous, uncivilized and an engine of oppression against wife and therefore violative of Art. 14 and 21 of the Constitution. But T. Sareetha's case was overruled by the Supreme Court in another case of Saroj Rani v. Sudarshan Kumar,335 by the Supreme Court holding that introducing Constitutional right in family relations is like introducing 'bull in a China shop.' In the same case the Supreme Court observed that the purpose of the decree is to offer inducement to the husband or to the wife. The concept of restitution of conjugal rights is an ancient relic of the past. But in the cases of Shahdad v. Mohd. Abdulla336 and Shobha Rani v. Saroj kumar,337 the Supreme Court upheld the provision of constitutional validity of Section 9 of the Hindu Marriage Act to be valid.

As per Section 18 (1) of the Hindu Adoption and Maintenance Act 1956, a Hindu wife is entitled to be maintained by her husband during her life time. The right to

332 Section 22 of the Act
333 AIR 1971 Bom 166
334 AIR 1993 AP 356
335 AIR 1984 SC 1564
336 AIR 167 J&K 120
337 AIR 1984 SC 1562
be maintained includes the right to reside in the matrimonial home. An injunction can be granted even under the Family Court’s Act to protect the wife’s right of residence in her matrimonial home. The Hindu Marriage Act, 1955 does not make any difference between husband and wife as far as right to receive maintenance is concerned of the spouses after obtaining divorce. So also the Parsi Marriage and Divorce Act, 1936. However under the Divorce Act and Special Marriage Act, 1954, this right to receive maintenance is made available only to the wife, who can claim maintenance from her husband after divorce from him under certain circumstances. Under the Islamic law, a divorced Muslim women was entitled to maintenance only upto three months from the date of divorce. With the decision of Mohd. Ahmed Khan v. Shah Banoo Begum the Supreme Court granted that section 125 of Criminal Procedure Code is applicable to Muslim women. Another enactment favouring the rights of divorced women was passed in 1986 being The Muslim Women (Protection of Rights on Divorce) Act, 1986 which granted women the right to receive maintenance primarily from her husband and failing him from other relatives till such time as she got remarried if she had no means of maintenance for herself.

An analysis of the religious based succession laws show that they originate from a fundamental desire to secure and keep control over the property in the hands of men and to assert the superiority of one gender over the other. Also the constitutional guarantee of equality for women has not been able to achieve substantive equality for women. A sizable population of native Christians in India had no succession laws of their own. The Indian Succession Act was meant to be applicable to all Indians but due to resistance from all communities, it confined to the property of Indian Christians and Parsis dying intestate. The Christian and Parsi sons and daughters are entitled to equal share in the property of their parents. However, under the Indian Succession Act, 1925, Parsi daughters were allowed only half the share as compared to their brothers in the property of their parents. However, under the Indian Succession Act, 1925, Parsi daughters were allowed only half the share as compared to their brothers in the property of their parents.

338 Section 7(1)(d) Family Court’s Act
339 AIR 1985 SC 945
parents by way of inheritance till the amendment of 1991. Also when the Christian son dies intestate under the Indian Succession Act, if the father is alive, he takes the whole share of the deceased son to the exclusion of the mother. This provision is highly discriminatory. Under the Shariat Laws, Muslim sons get twice the share of the daughter.

The law of inheritance amongst Hindus was governed by two major schools of law—The Mitakshara and Dayabhaga and in some parts of south India the matriarchal system prevailed. As a result the law was uncertain and ambiguous. Finally, the Hindu Succession Act 1956 codified the multiplicity of laws concerning the property of women. It has established parity between men and women in the matter of inheritance. The sons and daughters have equal rights of inheritance in the property of their parents. But the daughters had equal rights only in the self-acquired property of their father. The daughters could be denied this share by throwing the property back in the common stock using the doctrine of blending or by forming new coparcenaries. After the Hindu Succession Amendment Act, 2005 there is no difference between son and daughter in the right of inheritance even in the coparcenary property. Hindu Succession Amendment Act provides that daughters have the same right in the joint family property as coparceners and can even demand partition. Unless the partition is one which has been registered prior to December 20, 2004, a daughter’s right cannot be defeated. She can make a will for disposition of her share in the joint family property like any of her other assets. This Act is ameliorative in nature. It is possible for a man to make a will of all his property and thereby disinherit the females altogether. The provision of this Act permits Hindu female to hold any property possessed by her as her absolute property. A widow could succeed to the property of her husband, and daughters received equal shares with the son. An unchaste widow was not entitled to inherit the property of her husband but if after inheriting her husband’s property, she did not remain chaste, she is not divested of

---

340 S.8 Hindu Succession Act, 1956
her property. However this disability is done away with by the amendment of 2002 in the Hindu Succession Act which came into effect on 9.9.2005. Section 23 of the Hindu Succession Act, 1956 was discriminatory as when property left by the deceased intestate was a dwelling house, having left male and female heirs in class I of the schedule, the female heir was not entitled to partition of the house until male members agree to the partition. Also she was entitled to live in the house only if she was without her husband, either as a widow or a divorcee or unmarried. However with the Amendment of 2005 in the Hindu Marriage Act this section has been done away with.

Need for a Uniform Civil Code

Dr. B.R. Ambedkar, the Chairman of the Drafting Committee of the Constitution, while supporting the need of a Uniform Civil Code stated,341 ‘We have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete criminal code operating throughout the country—The only province the civil law has not been able to invade so far is marriage and succession -- and it is the intention of those who desire to have Article 35 as part of the Constitution to bring about the change. He further added that even Muslim law was not uniformly applied throughout the country till 1937. For instance, the Hindu law, and not the Shariat law applied in matters of succession in North West Frontier Provinces. Similarly, in North Malabar, the matriarchal Marummakkathayam law applied to both Hindus and Muslims.’ In July 1947, three members of sub-committee on Fundamental Rights namely Masani, Hansa Mehta, and Rajkumari wrote to the Chairman to reconsider putting the Uniform Civil Code into fundamental rights rather than directive principles. They felt that Uniform Civil Code was more important than national language for generating unity. However, since the entire issue of a common civil code was politically sensitive, the framers of the Constitution arrived at a compromise by placing it as a Directive Principle of State Policy in Article 44.

The Uniform Civil Code is perceived by some as an integral part of the ideology that threatens the democratic rights of minority communities. Under Article 44 of the Constitution, the State is bound by a Constitutional Mandate to secularise family laws. This article of the Constitution lays down that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and consequently; it has the legislative competence to do so.\textsuperscript{342}

As India is a secular state, it is necessary to have a uniform civil code applicable to all irrespective of caste, creed or sex of a person. The judiciary has time and again emphasized the need to have a uniform civil code. In the landmark case of \textit{Mohd. Ahmed Khan v. Shah Banoo Begum}\textsuperscript{343} the Supreme Court observed that, ‘It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. A common Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. Though there are difficulties in bringing persons of different faiths and persuasions on a common platform, but a beginning has to be made if the Constitution of India is to have any meaning’. This need to implement the Uniform Civil Code was reiterated in \textit{Ms. Jorden Deigneh v. S.S.Chopra}.\textsuperscript{344} D.Chinnappa Reddy J. observed in this case as under, ‘The present case is yet another which focuses on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case.’

Even in the case of \textit{Sarla Mudgal v. Union of India}\textsuperscript{345} the Supreme Court strongly advocated the need of a uniform civil code. In this case the Supreme

\begin{flushright}
\textsuperscript{342} Justice Y.V. Chandrachud in Mohd.Ahmcd Khan v. Shah Banoo AIR 1985 SC 945
\textsuperscript{343} AIR 1985 945
\textsuperscript{344} AIR 1985 SC 935
\textsuperscript{345} AIR 1995 SC 1531
\end{flushright}
Court held that conversion of a Hindu male to Islam only for the purpose of contracting bigamous marriages circumvents S. 494 of Indian Penal Code. The Court felt the need to have a uniform civil code for the citizens of India. It laid down that Article 44 is based on the concept that there is no relation between religious and personal law in a civilized society. The Supreme Court in C. Masilamani Mudaliar v Idol of Sri Swaninatha Swami Thirukoil held 'The personal laws conferring inferior status on women is anathema to equality. The laws thus derived must be consistent with the Constitution lest they become void under article 13 if they violate fundamental rights. Unless women are granted equal rights like men in matters of personal law, women's status will not improve.'

The debate around the Uniform Civil Code in the Constituent Assembly centered around national integration and not on women's rights and gender justice. It formed part of the Directive Principles of the Constitution which is non enforceable. The constituent assembly assured women that they would not be discriminated against on the ground of sex. Such possibility has however been provided in the name of religious freedom under fundamental rights of the Indian Constitution, which allowed for the freedom of each religion to retain its personal laws. The Committee on the status of women in India in their report gave as under, 'The absence of a Uniform Civil Code in the last quarter of the 20th century, 27 years after independence is an incongruity that cannot be justified with all the emphasis that is placed on secularism, science and modernization.' Law Minister C. C. Biswas said that the enactment of Special Marriages Act, 1954 was the first step towards the attainment of the objective of a Uniform Civil Code contemplated in Article 44 of the Constitution. The Special Marriage Act came into force on January 1, 1955 and was succeeded by an earlier Act of 1872, which provided for a form of marriage for persons who do not profess the

---

346 (1996) 8 SCC 525
348 Rajya Sabha on 28.07.1952
Christian, Jewish, Hindu, Muslim, Parsi, Sikh or Jain religion. Under its present form two persons of opposite sex may marry each other irrespective of the religion professed by either of them.

Law relating to judicial separation, divorce and nullity of marriage is far from uniform. In Jorden Diengdeh v. S. S. Chopra the Supreme Court observed,'Surely the time has now come for a complete reform of the law of marriage and make a uniform law applicable to all people irrespective of religion or caste. The laws thus derived must be consistent with the Constitution lest they become void under Article 13 if they violate fundamental rights.' A step towards securing social justice was also the codification of personal laws especially the Hindu Laws. It was held in Mary Roy v. State of Kerala that the discriminatory personal law of the Indian Christians of Travancore and Cochin i.e. Travancore Christian Succession Act, 1092 stood repealed by the provisions of the secular law of Indian Succession Act, 1925. In John Vallamattom v. Union of India the constitutional validity of Section 118 of the Indian Succession Act, 1925 was challenged as being discriminatory, therefore violative of Article 14 and Article 15 of the Constitution. The Court held that Section 118 of the Act is anomalous, discriminatory and violative of Articles 14, 15, 25 and 26 of the Constitution and should be struck down.

Goa was liberated in 1961 from Portuguese rule after 450 years. Several laws prevalent in the country were made applicable to Goa. But family laws remained unchanged. So the Goan women were not governed by Indian Divorce Act and Hindu Marriage Act, but by Family Laws of Goa. They govern all communities in matters of marriages, divorce, custody of children and succession irrespective of their religion. The women activities at the second National Conference on Women's Studies at Trivandrum appealed to all democratic sections of society to

349 AIR 1985 SC 935
350 (1986)2 SCC209
351 (2003) 6 SCC 611
struggle for the establishment of a Uniform civil code which will incorporate the values of gender justice and secularism.\textsuperscript{352}

Even without the clear mandate of Article 44 of the Constitution, the legislature is competent to enact a uniform civil code in exercise of its power vested in it under List III, Entry 5 of the VII Schedule to the Constitution. So it can be said that a uniform civil code is an idea whose time has come.

Criminal Laws

Rapid changes during the last few decades due to social pressure of urbanization, compelling ethics of success, demonstration of money power and geographical mobility have put the traditional Indian values in the melting pot and resulted in a moral and psychological atmosphere which is highly crimogenic.\textsuperscript{353} It is extremely necessary to have laws for safeguarding and protecting woman against the criminal atmosphere which is prevalent in the present scenario. On woman depends the refinement of a society. She is the very support of the society. The foundation must be strong through legislative protection. There have been many new enactments and many provisions have been added with this view in mind. Women require protection from physical violence as well as from attack on their dignity and freedom. The Indian Penal Code provides some special provisions for protection of Indian Women. The following is the list of offences relating to women for which punishment is provided under Indian Penal Code.

\textsuperscript{352} Nandita Haskar, ‘Changes for a Uniform Code’ Indian Express, Chandigarh, May 6, 1984, P. 6
<table>
<thead>
<tr>
<th>Name of Offence</th>
<th>Section</th>
<th>Minimum Punishment</th>
<th>Maximum Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale, hire, distribution, etc. of obscene books, etc. which tend to deprave and corrupt persons</td>
<td>292</td>
<td></td>
<td>1&lt;sup&gt;st&lt;/sup&gt; conviction imprisonment of either description which may extend to 2 years, and fine upto Rs. 2,000</td>
</tr>
<tr>
<td>Sale, etc. of obscene objects to young persons</td>
<td>293</td>
<td></td>
<td>1&lt;sup&gt;st&lt;/sup&gt; conviction - imprisonment of either description upto 3 years and fine upto Rs. 2,000; 2&lt;sup&gt;nd&lt;/sup&gt; conviction - imprisonment upto 7 years and fine, and fine upto Rs. 5,000</td>
</tr>
<tr>
<td>Obscene acts and songs in public place</td>
<td>294</td>
<td>---</td>
<td>3 months or fine or both</td>
</tr>
<tr>
<td>Dowry death</td>
<td>304-B</td>
<td>7 years</td>
<td>Life imprisonment</td>
</tr>
<tr>
<td>Causing miscarriage without woman’s consent</td>
<td>313</td>
<td>---</td>
<td>Life imprisonment or ten years and fine</td>
</tr>
<tr>
<td>Death caused by act done with intent to cause miscarriage</td>
<td>314</td>
<td>---</td>
<td>10 years and fine, if without woman’s consent.</td>
</tr>
<tr>
<td>Simple hurt-wife beating</td>
<td>323</td>
<td>---</td>
<td>One year and also fine up to Rs. 10,000/- or both</td>
</tr>
<tr>
<td>Grievous hurt (wife beating)</td>
<td>325</td>
<td>---</td>
<td>7 years and also fine</td>
</tr>
<tr>
<td>Assault or criminal force to woman with intent to outrage her modesty</td>
<td>354</td>
<td>---</td>
<td>2 years or fine or both</td>
</tr>
<tr>
<td></td>
<td>Offence</td>
<td>Section</td>
<td>Sentence</td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------------------------</td>
<td>---------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>9</td>
<td>Kidnapping, abducting or inducing woman to compel her marriage</td>
<td>366</td>
<td>10 years and also fine</td>
</tr>
<tr>
<td>10</td>
<td>Procuration of minor girls</td>
<td>366-A</td>
<td>10 years and also fine</td>
</tr>
<tr>
<td>11</td>
<td>Importation of girls from foreign country</td>
<td>366-B</td>
<td>10 years and also fine</td>
</tr>
<tr>
<td>12</td>
<td>Selling minor for purpose of prostitution</td>
<td>372</td>
<td>10 years and also fine</td>
</tr>
<tr>
<td>13</td>
<td>Buying minor for purpose of prostitution</td>
<td>373</td>
<td>10 years and also fine</td>
</tr>
<tr>
<td>14</td>
<td>Rape</td>
<td>376</td>
<td>7/10 years and also fine</td>
</tr>
<tr>
<td>15</td>
<td>Sexual intercourse with one's wife living separately</td>
<td>376-A</td>
<td>2 years and also fine</td>
</tr>
<tr>
<td>16</td>
<td>Intercourse by public servant with woman in his custody</td>
<td>376-B</td>
<td>5 years and also fine</td>
</tr>
<tr>
<td>17</td>
<td>Intercourse by superintendent in jail remand home etc.</td>
<td>376-C</td>
<td>5 years and also fine</td>
</tr>
<tr>
<td>18</td>
<td>Intercourse by any member of the management of a hospital with any woman in that hospital</td>
<td>376-D</td>
<td>5 years and also fine</td>
</tr>
<tr>
<td>19</td>
<td>Cohabitation caused by a man deceitfully inducing a belief of lawful marriage</td>
<td>493</td>
<td>10 years and also fine</td>
</tr>
<tr>
<td>20</td>
<td>Bigamy</td>
<td>494</td>
<td>7 years and also fine</td>
</tr>
<tr>
<td>21</td>
<td>Bigamy with concealment</td>
<td>495</td>
<td>10 years and also fine</td>
</tr>
<tr>
<td>No</td>
<td>Description</td>
<td>Section</td>
<td>Imprisonment</td>
</tr>
<tr>
<td>----</td>
<td>------------------------------------------------------------------------------</td>
<td>---------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>22</td>
<td>Marriage ceremony fraudulently gone through without lawful marriage</td>
<td>496</td>
<td>7 years and also fine</td>
</tr>
<tr>
<td>23</td>
<td>Adultery</td>
<td>497</td>
<td>5 years or fine or both</td>
</tr>
<tr>
<td>24</td>
<td>Enticing or taking away or detaining with criminal intent a married woman</td>
<td>498</td>
<td>2 years or fine or both</td>
</tr>
<tr>
<td>25</td>
<td>Subjecting a woman to cruelty related to dowry</td>
<td>498-A</td>
<td>3 years and also fine</td>
</tr>
<tr>
<td>26</td>
<td>Word, gesture or act intended to insult the modesty of a woman</td>
<td>509</td>
<td>1 year, or fine or both</td>
</tr>
<tr>
<td>27</td>
<td>Dowry Death</td>
<td>304-B</td>
<td>Imprisonment for not less than 7 years but which can extend up to life.</td>
</tr>
</tbody>
</table>

Out of these offences shown in the above chart, offences provided under 228-A, 304-B, 363-A, 366-A, 366-B, 376-A, 376-B, 376-C, 376-D, 498-A, specially protecting the woman, were added in the course of time. Rape is a heinous offence having severe, serious and long lasting effect on the victim. The number of rapes a day has increased to nearly 700% since 1971.\(^{354}\)

In the famous case of *Tukaram v. State of Maharashtra*,\(^{355}\) it was alleged that a tribal girl named Mathura was raped by obtaining her consent by putting her in fear of death or hurt. The court acquitted the accused police constable, because

---

\(^{354}\) Hindustan Times, Mumbai, January 14, 2008, P.1

\(^{355}\) AIR 1979 SC 185
the court opined that as the girl was habituated to sexual intercourse, there was consent to rape her. This decision led to public protest and eventually certain changes were ushered in Indian Penal Code. Section 375 was also amended. The minimum punishment for rape is made 10 years in case of custodial, gang rape, rape of pregnant women, and minor girls under the age of 12 years. According to Mumbai based psychiatrist Dr. Harish Shetty, 'men indulge in rape as it accords them a sense of power that is linked to their sense of identity.'

Prior to the enactment of the Indian Penal Code, 1860 there was no provision which prohibited the cohabitation of a man and his wife, whatever her age. The code mentioned the age of 10 years to be the legal age when the husband could cohabit with his wife. The Bill was introduced for raising the age of the girl from 10 years to 12 years for cohabitation after marriage only after the shocking and tragic case of Queen Empress v. Hurree Mohan Muthee where the death of a girl occurred due to the bleeding of a hemorrhage from the rupture during cohabitation. In 1925, the age of cohabitation for the wife was raised to 15 years. The other amendment introduced by the Criminal Law (Amendment ) Act 1983 is the law relating to sexual offences contained in provisions of sections 228 A Indian Penal Code, 327(2 ) of the Code of Criminal Procedure and Section 114 of the Indian Evidence Act. Section 228 A of Indian Penal Code protects the identity of the rape victim from disclosure and thereby protects the victim against social victimization and ostracism. S.372(2) of Criminal Procedure Code provides for conducting the inquiry into and trial of rape victim in camera. Section114 A of the Indian Evidence Act raises a presumption as to absence of consent in certain prosecutions for rape, wherein prosecution for rape under clauses A,B,C,D,E,F,G of S. 376 (2) of Indian Penal Code, where sexual intercourse by accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the

---

356 Criminal Law Amendment Act ,1983 introduced Sections 376A,376B,376C,376D, to prevent sexual abuse of women in custody, care and control of various categories of persons
357 Times of India. Mumbai, May 29,2005
358 (1891) 18 Cal. 49
court shall presume that she did not consent. The Supreme Court in *Bharwada Bhoginbhai Hirjibhai* observed that in cases of custodial rape, rape of pregnant women and gang rape, mere evidence of the ravished woman has at least partially removed the infirmity from the evidence of a victim of rape, that has unjustly attached to her testimony without taking note of the fact that in India like in the Occident, a disclosure of this nature is likely to ruin the prospect of the girl’s rehabilitation in society for all time to come and unless her story was painfully true, she would not have taken such a grave risk merely to malign the accused.

In the case of *Pratap Misra v. State of Orissa* a pregnant lady was raped by three persons one after the other. Abortion took place because of her rape. The Trial court and High Court convicted the three accused. However, the Supreme Court acquitted the three accused as doctor had opined that if three persons have forcible intercourse with a pregnant woman one after the other, abortion should have taken place immediately due to shock. It was held that absence of injuries either to the accused or to the prosecutrix showed that she did not put up any resistance to the alleged rape committed by the accused. This decision is a major step back to the protection of women. The Supreme Court reduced the minimum sentence of imprisonment of 10 years to five years for the offence of rape in the case of *Premchand v. State of Haryana*. This again led to protest and widespread criticism. It is humbly submitted that because of the technicality of the evidence to be produced, there are chances of grave injustice. This case appears to be again a step back for women’s protection as the culprit got away with less punishment. In Sathin’s case, the sessions judge acquitted the accused, because among other things immediate report of her rape by the victim, Bhanwari Devi, straight to the police without first informing her in-laws was unnatural. The court, keeping in mind the dignity and decency of womanhood, evolved a rule that character, reputation or status of a rape victim is not a relevant factor to be considered while awarding a

359 AIR 1983 SC 753
360 AIR 1977 SC 1307
361 1989 (1)SCC (Cri.)418
362 Lawyers Collective, January 1996, P.7-12
sentence to the rapist. In *State of Maharashtra v. Madhukar Narain*\(^{363}\) the Supreme Court has established that the right to privacy is available even to women of easy virtue. In *State of Maharashtra v. Chandra Prakash Kewalchand*\(^{364}\) the Supreme Court has observed that if the girl in the custodial rape case said that she did not give her consent, the court presumed that she did not consent. Both these judgments are progressive steps towards granting status to woman. In *Bodhisathwa v. Subhra Chakraborty*,\(^{365}\) the Supreme Court declared that rape is a crime against basic human rights. It was also held that women also have the right to life and liberty, they also have the right to be respected and treated as equal citizens and they also have the right to lead an honorable and peaceful life. In this case Supreme Court had awarded interim compensation of Rs.100/- per month to the rape victim. In *Delhi Domestic Working Women’s Forum v. Union of India*\(^{366}\) the Supreme Court has observed that the effect of rape was a long term one, impairing the capacity of personal relationship, altering behavioral values and putting her into deep emotional crisis. In instances of custodial rape, the obligation of the State to protect its citizen has been invoked and State has been directed to pay compensation to the victim of rape. In the judgement of Supreme Court in *State of Punjab v. Gurmit Singh*\(^{367}\) it was held that absence of bodily injury and fact of submission do not imply consent. Rape is a crime against basic human rights and is violative of the victim’s most cherished of the Fundamental Rights, namely the right to life contained in Article 21. As the exception to S. 375 does not punish marital rape above the age of 15, the married girl above that age has no legal protection.

In a landmark judgment of *State of Maharashtra v. Kewalchand Jain*\(^{368}\) it was observed that to insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a

---

\(^{363}\) (1991) 1 SCC 57  
\(^{364}\) 1990(1)SCC 550  
\(^{365}\) (1996)2 SCC 490  
\(^{366}\) 1996 1 SCC 490  
\(^{367}\) AIR 1990 SC 1393  
\(^{368}\) 1995 Cri. L.J. 4173
crime and thereby insult womanhood. This judgement is in the continuation of the trend of the judiciary where the offence of rape is treated with the severity it deserves.

The Indian Penal Code (S.319) deals with hurt and aims to protect a woman from being beaten up by her husband. S. 361 of IPC protects a girl from being kidnapped from lawful guardianship. The father is the legal guardian of his children and if the father kidnaps the child he would not be guilty but mother in the same case would be guilty. Section 354 of IPC which makes assault or use of criminal force with intent to outrage the modesty of any woman (and does not include man) is not invalid as being a violation of the equal protection clause.\(^{369}\) This section is enacted in the interest of decency and morals. An indecent assault upon a woman causes intense shame and suffering to the victim and arouses the just indignation of both the person assaulted and of the public.

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.\(^{370}\) The courts in the country tried the offense of outraging the modesty of a woman without a precise definition of what constitutes a women's modesty. Now the Supreme Court has defined modesty as *the essence of a woman's modesty is her sex.*\(^{371}\) The bench was comprised of Justices Arijit Pasayat and S.H. Kapadia of the Supreme Court. Outraging a woman's modesty as mentioned in section 354 IPC will apply to crimes against women that stop short of penetration, in which event it becomes rape. The broad definition of the court shows growing sensitivity

\(^{369}\) Girdha Gopal v. State AIR 1953 Madh. Bharat 147
\(^{370}\) Sec. 509 of the IPC
\(^{371}\) Times of India, Mumbai, 21.03.07 P.1
to a changing society in which relatively subtle acts of harassment of women have come to be viewed as crimes worthy of punishment.

In the State of Maharashtra, the Government enacted the Maharashtra Eve Teasing Prevention Act, 2006. According to the amendment in this Act, eve-teasing is a cognizable and non-bailable offence. Any person using obscene language, making similar gestures or teasing women in some other way will be booked immediately under this Act. Under the provisions of this Act, those found guilty for the first time will be sentenced to imprisonment for 15 days with penalty. The jail term would be doubled if the same person is found guilty of eve-teasing for the second time.372

There is right to prosecute wife's adulterer but not the right to the wife to prosecute her husband's adulteress.373 Because the wife does not have proprietary rights over the husband, the offence of adultery could be committed only by a male and not by a female who cannot be punished even as an abettor. However this provision is saved by Article 15 (3). The Supreme Court held that women in the country were so situated that special legislation was required in order to protect them.374 The aggrieved wife is not given any right to prosecute the husband's paramour and if she is a married woman and is forced by her husband into adulterous intercourse, she has no local standi or status to prosecute either her husband or the other person involved in committing the offence of adultery. The law on adultery as provided under s.497 of Indian Penal Code treats a woman as man's property. The law does not grant women (wife) the right to sue her husband for adultery. The husband alone has been perceived as an aggrieved party. Sexual relationship with an unmarried female, divorced woman and widow is not adultery because these women do not belong to any man. An adulterous relationship if it is indulged in with the connivance of her husband is not

372 Hindustan Times, Mumbai, June 16.
373 Section 497 IPC
374 Yusuf Abdul Aziz v. State of Maharashtra AIR 1951 Bom. 470
adultery. However, the court upheld the validity of this section of Indian Penal Code in the case of *Smt. Choki v. State of Rajasthan.*

The Court in *Giridhar Gopal v. State,* has held that section 354 of Indian Penal Code which makes an exception in case of women and children under 16 years of age is not discriminatory. The act of pulling a woman, removing her dress coupled with a request for sexual intercourse is such as would be an outrage to the modesty of a woman and knowledge that modesty is likely to be outraged is sufficient to constitute the offence without any deliberate intention of having outrage alone for its object.

The underlying principle of section 509 of the Indian Penal Code is causing annoyance to a woman by insulting her modesty. Hence the singing of an obscene song, uttering obscene words with an intent that the woman should hear them, or exposure of one's nude person would be punishable under this section by reason of their depraved suggestiveness. What constitutes an insult to female modesty is a question of fact though it requires no description. Thus any word, spoken or sung, exhibiting of picture or figure which is suggestive of lewdness is immoral and insults female modesty, unless the woman was a consenting party to it. Insulting the modesty of a girl, the word modesty has not been defined anywhere in the Code. In the case of *Tarak Das v. State,* the accused, a University graduate, wrote a letter containing indecent overtures and posted it to a nurse whom he was not acquainted with. The letter was an object which was exhibited to the nurse on whose address it was posted. The court held that it was intended to insult her modesty. This Section does not require any force or assault which is essential element of an offence under s.354 Indian Penal Code. Section 509 Indian Penal Code applies to cases which are an insult to the modesty of a woman while in section 354 the modesty is intended to be outraged. The act of the accused of

---

375 AIR 1957 Raj. 10
376 Girdha Gopal v. State, AIR 1953 Madh. Bharat 147
377 Pawan Kumar v. State of Haryana AIR 2004 SC 1497
378 AIR 1983 SC 753
slapping the posterior of a lady Indian Administrative Service officer in the presence of a gathering comprising the elite of society, when considered in the light of sequence of events involving overtures, words used and gestures made, prima facie amounted to commission of offence under section 509 of Indian Penal Code by the accused.379

The requirement of female police officer to arrest380 and search women, the need to arrest and interrogate women only during day hours,381 fair conditions in protective homes382 have been insisted in many of the cases. Statutory changes relating to the burden of proof in the law relating to dowry, rape and immoral traffic are welcome steps.

The court held in Government of Andhra Pradesh v. Vijaya kumar,383 'These is in support of justice for women. We are in the grip of customs and traditions which openly or covertly discriminate against women. Culture is not static, it is evolving.' The judgement of the honourable court in Yusuf Abdul Aziz is a landmark in the history in the constitutionality of the penal provisions protecting women. The criminal law needs to be gender sensitized in its conception, formulation and administration to actually ensure equal protection to women.384

Sexual Harassment of working women

The established patriarchal attitudes prevent sexual harassment from being seen as a serious offence. They invert the stigma of harassment on women themselves. The Supreme Court formulated effective measures in the landmark judgment of

---

383 1995( 3 )SCALE 613
Vishakha and others v. State of Rajasthan\textsuperscript{385} to prevent dehumanization and marginalization of women. Sexual harassment of women at workplace by their male colleagues is common practice in every part of the world. Equality in employment can be seriously impaired when women are subject to gender specific violence.

According to this judgment, States are bound to include rules and regulations prohibiting sexual harassment and set up complaints committees headed by a woman and having not less than half of its members as women. It has been held that it is the responsibility of the employer to ensure that all women employees are protected and not exploited at work place. The guidelines given in this judgement led by the Apex Court were later concretized by the court in the case of Apparel Export Promotion Council v. A.K. Chopra.\textsuperscript{386} The guidelines and norms given in the Vishakha's judgement have to be observed strictly at all work places for the preservation of gender equality of working women. The pernicious social evil of gender discrimination should be eradicated totally. The Vishakha's case gives a gender sensitive dimension by suggesting that a woman has a right to live in a violence free society, where her bodily integrity is respected. In the same case sexual harassment at the work place was perceived as a violation of the fundamental right to equality. The secular provision of Section 125 of the Criminal Procedure Code, 1973 was enacted with a social purpose of securing socio-economic justice to women and children.

In Kanniappan v. Akilandamma\textsuperscript{387} the Court held as: 'The object to including this section in the Code could only have been the prevention of destitution on public ground; that it should only be applied in cases where in absence of these provisions or the more cumbersome process of civil law, the wife or children or parents would be destitute, the object is not to punish a husband or a father or a

\textsuperscript{385} AIR 1997 SC 3011  
\textsuperscript{386} (1999) 1 SCC 759  
\textsuperscript{387} AIR 1954 Madras 427
son for his past neglect but to prevent vagrancy by compelling those who could do so by supporting those who are unable to do so, and have to moral claim to be supported". This section contemplates the passing of an order of maintenance where a person neglects or refuses to maintain his wife, his legitimate minor children, his major children who are physically or mentally not normal, his father or mother unable to maintain himself or herself. In *Ramji v. Muna Devi* 388 the court held that the right to maintenance under the section is a distinct statutory right, which the legislature has recognized irrespective of the nationality or the creed of the parties.

The new issues which are fast gaining popularity is of surrogate motherhood and live-in-relationships, for which the laws are yet to be enacted. Surrogate motherhood in a poor country like India may further be a new avenue for exploiting the health of women by pressuring her to undergo a number of pregnancies and child births only for economic gains. The issues of natural bond between mother and child, ties of love and affection are sacrificed by the surrogate mother for a few rupees. It can also have adverse effect on her health. The whole idea of outsourcing a child has serious implications and problems for the commissioning parents, surrogate mother and the child. Just a generation or two ago, it was scandalous for an unmarried man and woman to live together. Today in cities the trend is to live together for couples before they get married. Even the rights of women in live in relationships are recognized. There are two divorces for every five marriages in city of Mumbai. 389 The reason is the economic independence of women who do not like to tolerate every nonsense from their husbands and have the ability to walk. In the case of *Smt. Sarla v. Mahendra Kumar*, 390 the Rajasthan High Court, while awarding maintenance to a wife who was leading an adulterous life held, “It is not unnatural that when a husband leaves his newly wedded wife alone and himself goes away at a distant place to earn his livelihood,

---

388 1959 Cr. L.J. 386,
389 The Times of India, Mumbai, January 25, 2008, P.I
a lady who is suffering sexual deprivation may develop intimacy as well as illicit relations with a stranger." A new trend is set by the Delhi High Court decision in *Naz Foundation v. Government of NCT of Delhi*\(^{391}\) wherein Chief Justice Ajit Prakash Shah and Justice J.S.Muralidhar have decriminalized section 377 of IPC when the relationship is consensual. The matter is under appeal.

The conflict between the two value systems of capitalist economy with its stress on individualism and instrumental rationality and liberal democracy with its emphasis on citizenship, democracy, patriotism and human rights is played out on woman as its site.\(^{392}\) Development in science, technology, universalisation of education, modernization and globalization have changed the approach of people towards women to a certain extent. The response of the State to women issues has been a process of both progression and retrogression in some cases at the same time. Empowerment of women necessitates a strong element of participation which would enable them to acquire social, economic and political equality. Enactment of laws for benefit of women was only the first step towards achieving equality. In many cases, legislative victories required judicial implementation for effective enforcement. To sum up this chapter, it is grouped under three headings:

**Constitutional approach, legislative protection and judicial view**

The Constitutions of India has its ideals of establishing an egalitarian social order to accord socio-economic and political justice for all sections of the society and ensured dignity of all persons. The preamble of the Constitution has the key words, 'to secure to all its citizens, justice, social, economic and political irrespective of caste, creed and gender'. The ideals enshrined in the Preamble of the Indian Constitution regarding justice, social, economic, and political, equality of status and opportunity for men and women alike gave women all the rights and

\(^{391}\) WP (C) No. 7455/2001

condition conducive for their upliftment and empowerment. The principle of gender equality is firmly established in the Constitution. The fundamental rights introduced in part III of the Constitution provide a number of rights to women, specially article 14, 15, 16 & 21. Article 14 aims at establishing the equality of status by placing all persons in similar circumstances to be treated to all privileges and liabilities in similar ways, as envisaged by the Preamble of the Constitution. Positive discrimination in favour of women is allowed under Article 15(3). Article 16 gives equal opportunity to all citizens (men and women both) in matters relating to employment. The directive principles of State policy are the soul of the nation. They contain special provisions for women, which though not justiciable, to be implemented by the executive and legislative wing of the State to implement them. Articles 39 (a) to 39 (c) lay down that women have right to adequate means of livelihood, equal pay for equal work, assurance from the State that "health and strength of men and women and tender age of children should not be abused" and it should make just and human conditions of work and maternity relief. Article 39 is particularly progressive as it tries to ensure that ownership and control of material resources are not concentrated in the hands of only a few. Article 39A which has made a provision for free legal aid to men and women both ensures equality of justice. The 73rd and 74th amendments to the Constitution of India in 1993 are landmarks to ensure political empowerment of women. Article 51 (e) enjoins every citizen to renounce practices derogatory to the dignity of women. The 84th Constitutional Amendment Bill 1998 which contains provision for reservation of 33% seats to women in the composition of Lok Sabha and the Legislative Assemblies of the State will go a long way in giving rights to women and providing status to them in the society. India has more elected women representatives than all other countries put together. According to the Ministry of Panchayati Raj’s mid term appraisal of the state of the Panchayats, women in our panchayat in 2006-2007, 'No less than 10 lakh women are in our Panchayat Raj Institution.'

---

393 Article 39(c) Indian Constitution
394 Pallavi Polanki, Elected Women Politicians: India leads the world, Hindustan Times, Mumbai, March 23, 2008, P.21
Articles 325 and 326 introduced adult franchise without distinction of sex. In the Indian Constitution, the status of human rights is thus fairly high with social, cultural and economic rights given to all citizens. However, articles 25 to 28 and article 29 are a set back in conferring rights to women as they provide that citizens can retain the personal laws. The retention of personal laws which are premised on the principles of gender inequality and subordination of women and the decision to postpone the enactment of a civil code based on equal rights for men and women also negated the principles of justice and equality enshrined in the Preamble and Articles 14 and 15 of the Constitution. The Right of Freedom of Religion embodies in Articles 25 to 28 deny equality to women in personal, economic, sexual, social, educational and cultural level. This shows how gender injustice is perpetuated at the very source of law. Any policies for affirmative actions to be taken by the government towards eradicating special disabilities related to women were bound to come in conflict with the ideology of gender discrimination inherent in personal laws. The debate around the Uniform Civil Code in the constituent assembly centered around on the national integration, and not on women’s rights and gender justice, and it formed part of Directive principles of the constitution which is non-enforceable.

The reason for gender injustice can be attributed to unequal power equations in gender relations. Despite the enactment of an egalitarian Constitution which contains comprehensive provision for empowering women, they have not achieved full equality, nor has there been an end to discrimination in the laws. Unlike the right to live, the right to basic health has yet to appear in the Directive Principles of the Constitution of India. The process of change in favour of women
is slow. A lot needs to be done to accord them better rights and protect the rights conferred on them.

Legislative protection

It will thus be seen that during the last few decades or so, conscious and concerted efforts have been undertaken by the Governments to improve the status of women. Numerous laws have been enacted relating to prohibition of female infanticide, dowry, exposure of women in advertisements and films, female child marriage, atrocities and molestation, abduction and rape, maternity benefits, medical termination of pregnancy, prohibition of prostitution and trafficking in women and protection in employment. The Central and the State Governments have enacted many women specific and women related legislations to protect the interest of women. Time and again there have been amendments in the legislations to benefit women, so that the deep set negative customs, norms, practices, attitudes and values can be replaced by new norms in society. Examples are that the practice of commission of sati, the practice of giving and receiving or demanding dowry have been criminalized, thereby imposing punishments on the perpetrators of the crime. Law can be an instrument for bringing about social change and in giving us a gender just society. For the purpose of upliftment and emancipation of women and for providing them protection, various Acts such as Immoral Traffic (Prevention) Act, 1956, Equal Remuneration Act, 1976, Hindu Succession Act 1956, Hindu Marriage Act 1955, followed by Maternity Benefit Act 1961, Dowry Prohibition Act 1961, as also Muslim Women (Protection of Rights on Divorce) Act, 1986, Indecent Representation of Women (Prohibition) Act 1986, Commission of Sati (Prevention) Act, 1987 and Protection from Domestic Violence Act, 2006 have been enacted.

The Government has set up the National Commission for Women in 1992 which suggests changes into the existing laws and enactments of new laws whenever
required. The Commission took up the issues of child marriages and reviewed laws such as Dowry Prohibition Act, 1961, Indecent Representation (prevention) Act, 1987, Indian Penal Code 1860, and others to make them more stringent and effective. It also sponsored legal awareness programmes, parivarik mahila lok adalat. The Amendments are made in various Acts, and new Acts are enacted keeping pace with the changes in the circumstances.

Some laws treat women victims as offenders by stipulating punishment for women. The Immoral Traffic (Prohibition) Act, Commission of Sati (Prevention) Act and Pre-natal Diagnostic are blatant examples where the law considers women as guilty and therefore liable for punishment. It reinforces the negative and anti women notions in the society.

In spite of the status accorded to women by the Constitution and the legislation, there is a difference between the actual realities and mere possibilities. Many of our laws are without teeth. People's participation in seeking gender justice is minimum due to illiteracy, ignorance and apathy of the law-enforcing agencies, such a police, bureaucrats, lawyers and judges and also the indifference of common people. In a democratic system of government, laws are difficult to implement without the active participation of the people. Therefore even till today the prime object of ensuring equality between males and females has not been achieved. The drop in the sex ratio in the states of Punjab to 793 females for every 1000 males and in Haryana to 820 females for every 1000 males are the glaring examples of the questioning of female’s right to live. The level of economic justice achieved so far is revealed by the fact that nearly 40% of the population is below the poverty line. The bulk of them are women. The National Policy on education does not regard education as an intrinsic right. As a result there is still illiteracy and economic dependence of women in our country.

---

395 Indian Express, Mumbai, December 9, 2000, P.2
The rights are theoretically sound seem rhetoric in the wake of oppression and subjugation of women.

Judicial View

Recent judgments of the court on the need for Uniform Civil Code, need for equal property rights for women, the need for in camera trial for the rape victim, decisions regarding sexual harassment of women at their work places, education for all, speak of the judicial will to safeguards the rights available to women. The Supreme Court and the different High Courts have developed a tradition of Public Interest Litigation whereby any person can approach the court in case of infringement of his/her rights which otherwise may not have been possible due to poverty or other disability.

The Supreme Court in the public interest litigation of Vishakha v. State of Rajasthan\textsuperscript{396} formulated effective measures for curbing sexual harassment of working women at the place of work. The judgement of the Supreme Court by way of the guidelines in Vishakha’s judgement is a progressive step in favour of working women. The court in the context of articles 21 and 42, evolved legally binding guidelines to deal with the problems of sexual harassment of women at the work place. The judgement delivered on the basis of Vishkha’s guidelines in the case of Apparel Export Promotion Council v. A.K..Chopra\textsuperscript{397} is a highly welcome step. Thus the court converted what seemed a non-justiciable issue into a justiciable one by invoking the wide sweep of the enforceable article 21. The Indian judiciary has played a vital role in modernizing the law relating to woman’s employment. The Supreme Court has deduced the principle of equal pay for equal work from Article 14, 16 and 39 (d) and the preamble to the Constitution.

\textsuperscript{396} AIR 1997 SC 3011
\textsuperscript{397} 1997 SCC(Cri.)932
The judiciary has taken a very realistic view of the problems relating to dowry. There are many judgments which have ensured that justice will be done to the women who complains of dowry related cruelty, or who face dowry demands from her in-laws. In Ashok Kumar v. State of Rajasthan\(^{398}\) Justice Ram Manohar Sahay observed that, ‘Bride burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously it is basically an economic problem of a class which suffers both from ego and complex —social ostracization is needed to curtail increasing malady of bride burning.’

In Bhai Sher Jung v. Varinder Kaur\(^{399}\) the Court held that whatever property is given to the wife by way of gift or will, must constitute her stridhan and she is absolute owner of it. The court observed that any person who holds the property of the wife and denies it to her will be guilty of criminal breach of trust and the suit under s. 406 of Indian Penal Code is maintainable. The Court pointed out that s. 27 of Hindu Marriage Act, 1955 and S.14 of the Hindu Succession Act 1956 had not in any way modified the concept of stridhan. These judgments go a long way in granting women their rights. The Supreme Court has extended the scope of Article 21 which protects life and liberty to include the right of environment and public health. It has also included the right to live with human dignity. The most significant instance of expansive interpretation of a fundamental right and powerful endorsement of social and economic rights is the decision in the case of Francis Coralie Mullan’s case.\(^{400}\) The court in that case held that the expression ‘life’ in Article 21 does not connote merely physical existence but embraces something more. It includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter over the head.\(^{401}\) Clause 3 of Article 15, which permits special provision for women and children has been widely resorted to and the

---

\(^{398}\) (1991)1 SCC 166  
\(^{399}\) 179 Cri.L.J. 493(P&H)  
\(^{400}\) (1981) 1 SCC 603;1981 SCC (Cri) 212  
courts have upheld the validity of special measures for women in legislation. The Supreme Court declared in *Bodhisathwa v. Subhra Chakraborty*, that rape is a crime against basic human rights. It was also held that women also have the right to life and liberty, they also have the right to be respected and treated as equal citizens and they also have the right to lead an honorable and peaceful life. In this case Supreme Court had awarded interim compensation of Rs.100/-per month to the rape victim. In the case of *Pratap Misra v. State of Orissa* a pregnant lady was raped by three persons one after the other. However the Supreme Court acquitted the three accused on the opinion of the doctor. It was held that absence of injuries either to the accused or to the prosecuterix showed that she did not put up any resistance to the alleged rape committed by the accused. This decision is a major step back to the protection of women. The Supreme Court reduced the minimum sentence of imprisonment of ten years to five years in *Premchand v. State of Haryana*. This again is a set back. But in the case of *State of Punjab v. Gurmit Singh* it was held that absence of bodily injury and fact of submission do not imply consent.

In *Delhi Domestic Working Women’s Forum v. Union of India*, the court held that the effect of rape was a long term one, impairing the capacity of personal relationship, altering behavioral values and putting her into deep emotional crisis. In instances of custodial rape, the State has obligation to protect its citizen, has been invoked and State has been directed to pay compensation for rape. The Honorable Court has in the above case pointed out that victims invariably found rape trials a traumatic experience. The victims often say that they considered the ordeal of giving evidence in court worse that the rape itself. The observations made by the Court are appreciable.

---

402 (1996)2 SCC 490  
403 AIR 1977 SC 1307  
404 1989 I SCC 418  
405 AIR 1990 SC 1393  
406 1996 I SCC 490
The Supreme Court in its decision in *Ramesh Chander v. Veena Kaushal*\(^{407}\) held that the provision for maintenance to a wife including a divorced wife is a measure for social justice and is especially enacted to protect women and children and it falls within the Constitution sweep of Article 15(3) reinforced by Article 39. This judgement is very important for safeguarding the women’s rights towards their maintenance. The court held that payment of wages less than the prescribed amounts to forced labour or beggary in *Sanjit Roy v. State of Rajasthan*\(^{408}\) which is a monumental judgement. In case of *Mangal Mul v. Punni Devi*\(^{409}\) the Supreme Court observed, 'Maintenance as we see it necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner more or less to which she was accustomed'.

The judiciary has played an important role in enforcing and strengthening the constitutional goal of equal pay for equal work to men and women both. Clause 3 of Article 15, which permits special provision for women and children has been widely resorted to and the courts have upheld the validity of special measures in legislation. Hostile discrimination against women has always been struck down by the Supreme Court of India from time to time. Because, 'since sex, like race and national origin, is an immutable characteristic determined solely by accident of birth, imposition of special disabilities upon the members for their sex (female) would seem to violate the basic concept of our system that legal burdens should bear some relationship to individual responsibility.'\(^{410}\)

However, under the Commission of Sati (Prevention) Act many who would have helped in investigation shy away due to the fear that they will be treated as abettors of the crime. The publicly burning alive of Roopkunwar on September 4, 1987 was termed as ‘Sati’. It brought out the relationship between law, tradition

\(^{407}\) AIR 1978 SC 1807  
\(^{408}\) AIR 1983 SC 328  
\(^{409}\) 1995 5 scale 199  
\(^{410}\) Sharron A. Frontiero v. Allliot L. Richardson (1973)36 L.Ed.2583
and its effect on women. Almost ten years after passing of the Commission of Sati (Prevention) Act, the acquittal of all thirty-two persons charged with the public burning of Roopkunvar have raised many unanswered questions.

It can be deduced that though India had achieved a certain degree of legislative protection for women, but in terms of the international standards as set in the different Conventions a lot is yet required to be achieved. There is pervasiveness of gender injustice in all perspectives of social life whether it be in the field of education, employment, health, or survival. World over there is a pre-conceived notion that physically and intellectually a female is inferior to a male, though there is no medical basis for such a notion. Indian tradition and cultural norms have reiterated these attitudes.

The representation of women in Lok Sabha seats is in no way adequate representation for 50% of the population. Though the number of women in the Lok Sabha is at all time high of 49, this accounts for merely 9.1% of all lower House Seats.¹¹¹ No headway has been made on the controversial women’s reservation Bill to provide 33% reservation for women in Parliament. It is undisputed that women’s subservience and inferior situation in comparison to men has imposed limits on their development. They suffer great hardship and troubles in order to have to belong to men to justify their existence. The extent and magnitude of situation goes on unabated whether it is in the field of health, education, employment or in other broader perspective of social life. A majority of women agree that they regularly experience sexual harassment in offices, workplace, public transport and streets. Women are passing through the phase of subjugation and emancipation. Though there is no shortage of legislations enacted to benefit women and women friendly laws, but a lot still needs to be done to uplift the socio-economic status of women in different walks of life. From agricultural society to international society, the role of women has changed.

¹¹¹ The Times of India, Mumbai, March 10, 2009, P.14
significantly in the present times. The ‘Towards Equality’ report shattered the myth that the constitutional guarantee for equality between sexes would equally benefit all sections of society irrespective of the gender. It revealed that the process of development has affected men and women unequally because of the women’s initial unfavorable position. Consider the following statistics:

Statistics

- The survey published by the Geneva World Forum shows that the full economic and political empowerment remains a distant dream for millions of women in much of the western world, let alone developing countries. The report says that no country has yet managed to eliminate the gender gap but Nordic states have succeeded in narrowing it. India is placed in 53rd position, even behind Bangladesh and other Latin American and African nations.\(^{412}\)

- India has 12.39 crore women workers, out of which 10.6 crore are in rural areas. Only 7% are in organized sector, 93% are in the unorganized informal sector.\(^{413}\)

- The survey study done across 149 companies in India indicated that although 16% managers in junior levels are women, they comprise only 6% of senior managerial position and 1% have women Chief Executive Officer.\(^{414}\)

- The first woman judge to the Supreme Court was appointed only four decades after the Apex Court had been in existence.

- According to Crime Clock 2006, India reported one molestation every 15 minutes, one crime against women every 3 minutes, one dowry death every 77 minutes, one rape every 29 minutes, one case of sexual harassment every 53 minutes.\(^{415}\)

- There were 540 maternal deaths per 1,00,000 live births. (The National Family Health Survey: 1998-99).

\(^{412}\) The Hindu, Madras, May 20, 2005
\(^{413}\) Chapter II Women and the Economy: Report of the working Group of Empowerment of women from the XI Plan, Ministry of women and child development, Government of India
\(^{414}\) Times of India, 7th March 2006
\(^{415}\) Times of India, Mumbai, September 1, 2006
• What is shocking is that only one percent of the private properties are in the names of women, and the rest 99 percent in the names of men.  

• In 2005, a whopping 1.55 lakh cases of crime against women were registered across India. However, convictions were recorded in only 30,826 cases a mere 19.8%. In 2006 the registered cases were 1.64 lakhs by conviction declined to 28,998 or 17.5%. In 2007, 1.85 lakh cases were registered in 2007 but the trial courts found the charge sustainable only in 27,612 cases a meager 14.9%.  

• Nearly half the women in India are married off before they reach the legal age of 18, a joint Indo American study was recently announced in the Medical Journal Lancet. Nearly half that is 48.4% of women who were married as children reported giving birth before they turned 18.  

• Two of every five young married Indian women face unwanted sex frequently or occasionally, according to the two major studies by the Population Council.  

• Avoidable complications during childbirth kill 78,000 women in India every year. This means that on an average one woman dies every seven minutes from complications related to pregnancy and childbirth.  

• In 2000, reported child marriages increased by 58.6% over the previous year.  

• In India a woman is raped every half an hour, and is killed every 76 minutes according to the report of the National Crime Records Bureau.  

• The latest crime statistic pertaining to 2006 released by the Home Ministry’s National Crime Records Bureau (NCRB) show that every hour 18 women become victims of crime. The number of rapes has increased nearly 700% since 1971. NCRB reveals that a total of 7618 women were raped every hour in 2006.
killed for dowry in 2006. Among the states Andhra Pradesh has the highest number of crimes committed against women -21,484 cases, Uttar Pradesh was a close second and followed by Madhya Pradesh.\textsuperscript{423} The data narrated is the tip of the iceberg.

- The United Grants Commission's 10th Plan Profile shows that the growth of student enrolment had increased in the last decade from 62.17 lakhs to 93.14 (1999-2000) that is 50% but women's enrolment had not risen proportionately to that of men in 2001. Although women's enrolment increased from 20.92 lakh to 33.24 lakhs it represented a marginal improvement from 33.6% to 36.15% in 2000.

- Every year twelve million girls are born in India. Twenty five percent of them do not live to see their fifteenth birthday.\textsuperscript{424}

- According to NCRB (National Crimes Record Bureau) the number of cases registered under the crime against women under the IPC and special laws was 164765 in 2006.\textsuperscript{425}

- Even in the world two third of world's adult illiterates are women, who number about half a billion and 70% of the world's poor are women.\textsuperscript{426}

- The National Family Health Survey 2005-2006 reveals that of the 28,139 married women it surveyed, one third reported physical violence at the hands of their husbands.\textsuperscript{427}

These statistics speak volumes for themselves. Unfortunately, a woman in our country belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have therefore been the victims of tyranny at the hands of men with whom they under the constitution enjoy equal status.\textsuperscript{428} In respect of the status that is accorded to women by law, by the judiciary from time to time and by the Constitution, still a

\textsuperscript{423} Hindustan Times, Mumbai, January 14, 2008 P.1
\textsuperscript{425} Times Nation, Mumbai, March 11, 2008, P. 13
\textsuperscript{427} The Times of India, Mumbai, June 21, 2009, P. 22
\textsuperscript{428} Bodhisattava Gautam v. Subhra Chakrobarty 1996 '1 SCC 490

154
lot of efforts are required to ensure that these benefits are enjoyed by all the women in India. Despite Constitutional guarantee of equality, justice, right to live with dignity, freedom of speech, it is found that women suffer from discrimination at various levels and various kinds of crimes are perpetuated on them. In spite of progressive and protective legislations, women’s rights are subjugated and they suffer inequality in many fields. The trauma that a woman undergoes in fighting for her legal rights is highly demoralizing. \(^{429}\) Dhanvanti More, mother of four girls was forced to undergo 10 abortions over 23 years because her husband Ramachandra, wanted a son.\(^{430}\) For economic reasons women from all States indulge in the trade of body exposition.\(^{431}\) The trend of vulgar display of women’s bodies for marketing various products is on rise. A rather shockingly sad headline of the newspaper is ‘Donkeys get paid more than women.\(^{432}\) The donkeys employed by the Bombay Municipal Corporation to cart off muck during desilting are paid more than the women contract labourers. A lot needs to be done to uplift the socio-economic and political status of women in different walks of life.

\(^{430}\) Hindustan Times, Mumbai, June 9, 2006, P. 3
\(^{431}\) K.P. Mohammad 1984, Cr. L. J. 745 (Kerala)
\(^{432}\) Hindustan Times, Mumbai, May 21, 2006, HT Metro, P. 1