

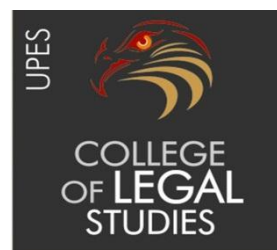
**POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES**

**POSITION OF WOMEN IN SOCIETY: LEGAL AND  
JUDICIAL RESPONSES**

**Monica Rani**

**Submitted under the guidance of Dr. Shikha Dimri**

*This dissertation is submitted in partial fulfillment of the degree of  
B.B.A. LL.B. (Hons)*



**College of Legal Studies  
University of Petroleum and Energy Studies  
Dehradun  
2015**

**CERTIFICATE**

This is to certify that the research work entitled “**Position of Women in Society: Legal & Judicial Responses**” is the work done by **Monica Rani** under my guidance and supervision for the partial fulfillment of the requirement of B.B.A.-LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

Dr. Shikha Dimri  
Assistant Professor

Date: April 6<sup>th</sup>, 2015

**DECLARATION**

I declare that the dissertation entitled “**Position of Women in Society: Legal & Judicial Responses**” is the outcome of my own work conducted under the supervision of **Dr. Shikha Dimri**, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises of my original work and due acknowledgement has been made in the text to all other material used.

Monica Rani

Date: April 6<sup>th</sup>, 2015

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**ABBREVIATIONS**

A.P.: Andhra Pradesh  
AIR: All India Reporter  
All. : Allahabad  
Anr. : Another  
Art. : Article  
Assn.: Association  
COI: Constitution of India  
Cr.: Criminal  
Cr.P.C.: Code of Criminal Procedure  
Cri.L.C.: Criminal Labour Court  
D.M.C.: Divorce and Matrimonial Cases  
DPSP: Directive Principle of State Policy  
Ed. : Edition  
edu.: Education  
Hon'ble: Honourable  
IPC: Indian Penal Code  
Jhar.: Jharkhand  
JT. : Judgment Today  
L.C.: Labour Court  
LCD: Labour Court Digest  
LJ. : Labour Journal  
M.P.: Madhya Pradesh  
Mad.: Madras  
NGO: Non-Governmental Organisation  
Punj.: Punjab  
SC: Supreme Court  
SCC: Supreme Court Cases  
U.P.: Uttar Pradesh  
UN: United Nation

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UOI: Union of India

v. : Verses

www: World Wide Web

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- *Sarita Samvedi v. Union of India* 1996 (2) SCC 380.
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- *Smt. Shabeeh Zehra v. Syed Sarwar Husain Rizvi*, 1991 LCD (9) All (Lko. Bench) 214 (219).
- *State of Bombay v. Kathi Kaluoged*, AIR 1961 SC 1808.
- *State of Haryana v. Rajpal Sharma*, AIR 1997 SC 449.
- *State of M.P. v. Ashok and Anr.*, 1993 (1) D.M.C. 243
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- *Vishal Jeet v. Union of India, AIR 1990 SC 1412.*

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### 1. INTRODUCTION

The premise of the Indian thought of right female conduct can be attracted to Manu 200 BC: “*by a young girl, by a young woman, or even by an aged one, nothing must be done independent, even in her own house*”.<sup>1</sup> They are structured as a mate for men and men need to make her stroll with them sometime during life<sup>2</sup>.

India is an enhanced society where no misrepresentation could apply to the country's different local, religious, social and financial gatherings. In any case certain wide conditions in which Indian ladies live exasperate the way they contribute in the economy. A common denominator in their lives is that they are by and large limited to home with confined adaptability, and in seclusion. Other, unrecorded, various leveled practices put further restrictions on ladies. All through history, ladies have for the most part been limited to the part of a home-creator; that of a mother and wife<sup>3</sup>.

Regardless of India's reputation for esteeming ladies, including considering her as a Goddess, history lets us know that ladies were likewise abused. There was no equality between men and women. This is valid for ancient, medieval and early current times barring some progressive developments, for example, that of Basaweshwara, the twelfth century philosopher in Karnataka, who supported fairness, casteless society, status for women, and progression of the down trodden. Change developments in the nineteenth and twentieth hundreds of years drove by awesome social reformers gave change to women's legitimate status in India.

Independence of India foreshadowed the acquaintance of laws relating with women. The Constitution provides *equality before the law and equal protection of the laws*<sup>4</sup>;

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<sup>1</sup> RGNUL, Patiala, *Laws on violence against Women- A critique*, available at: [www.law-projects.blogspot.in](http://www.law-projects.blogspot.in), Last accessed on 10<sup>th</sup> October, 2014.

<sup>2</sup> See *Essay on role of Women in society*, available at: [www.sanjran.wordpress.com](http://www.sanjran.wordpress.com), Last accessed on 15<sup>th</sup> November, 2014.

<sup>3</sup> See *Status of women in India* available at: [www.womenempowermentinindia.com](http://www.womenempowermentinindia.com), Last accessed on 17<sup>th</sup> October, 2014.

<sup>4</sup> See Article 14 of Constitution of India, 1950: *Equality before law*.

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*prohibition of discrimination on certain grounds including sex<sup>5</sup>; equal opportunity in matters of public employment<sup>6</sup>; equal pay for equal work between men and women<sup>7</sup>*. Apart from these the Constitution in the part third itself empowers the state to take affirmative action to protect and improve the conditions of women<sup>8</sup>. The Constitution gives special protection to women to realize their interests effectively. Extraordinary laws were sanctioned to anticipate hostile representation of women in the media and sexual harassment in workplaces. The law additionally gives women equivalent rights in the matter of selection, maternity advantages, equivalent pay, great working conditions and so on.

It worth saying that the women is the maker of the world as well as gives birth to a child and tends to the wellbeing, education and so forth. Considering her importance seminars are held at national and international level to discuss about her well-being<sup>9</sup>.

At the international level, the UN Charter, the Universal Declaration of Human Rights and Convention on Elimination of All Forms of Discrimination against Women (CEDAW) tried to ensure better lawful status to women. It has been passed by United Nations and signed by India.

Nonetheless, certain contentious issues like the Jammu and Kashmir Permanent Resident (Disqualification) Bill 2004 (which denied a woman of the status of permanent residency of the State in the event that she wedded an outsider) and the Supreme Court judgment in Christian Community Welfare Council of India (in a claim over the Judgment of the High Court, Mumbai). The recent has allowed, under

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<sup>5</sup> See Article 15 (1) of Constitution of India, 1950: *State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.*

<sup>6</sup> See Article 16 (1) of Constitution of India, 1950: *Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.*

<sup>7</sup> See Article 39 (d) of Constitution of India, 1950: *State shall direct its policy toward securing that there is equal pay for equal work for both men and women.*

<sup>8</sup> See Article 15(3) of Constitution of India, 1950: *Nothing in this article shall prevent the state from making any special provisions for protection and improvement of the conditions of women and children.*

<sup>9</sup> DR. ANJANI KANT, LAW RELATING TO WOMEN & CHILDREN, (3<sup>rd</sup> ed. 2012), 1-3.

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particular conditions, the arrest of a woman even without woman police and whenever in the day or night<sup>10</sup>. These examples have at the end of the day brought to the cutting edge the customary male domination.

### **1.1 POSITION OF WOMEN IN PRE-INDEPENDENCE PERIOD**

It is very important to know the historical contextual, if we are to make a education of position of women in India. It is not comfortable to find responses for questions like when did women start losing their status or who was answerable for this situation. The position that women were in the medieval and later the colonial period is of utmost importance. Women were never kept on high pedestal in the Shastras.

#### **1.1.1 Status of Women in Vedic Period:**

Women in Vedic Period participated in all spheres equally in the matter and enjoyed a fair amount of freedom and equality. Since education was looked upon important, they studied in Gurukulas and enjoyed high status in the society.

The evidence of women scholars like Gargi, Atreyi, Ghosa, Apala, Lopamudra etc., were accomplished in art, music, dance and even warfare. Women had the freedom to remain single as well as freedom to choose their life partners. As regards to property rights both husband and wife were joint owner of property. And a daughter retained her right of inheritance and would substitute a son. Vedas often used the word Dampati which characterizes both wife and husband. Since the wife has been called as root of dharma, prosperity and enjoyment, no man was allowed to perform religious duties without his wife.

Hence, Vedic period can be termed as the feminine glory in Indian history as the status of women during Vedic period was based on liberty, equality and co-operation.

#### **1.1.2. Position in Post-Vedic Period:**

In later Vedic period with the classification of the society in caste hierarchy, a rigid social order was formed. The status of women suffered a setback in education was

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<sup>10</sup> See Section 46 of Code of Criminal Procedure, 1973: *Arrest how made*.

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denied to women resulting in losing their equal status with men. This decline dates back to the period of Manusmriti when it is stated that, “by a girl, by a young woman, or by an aged, nothing must be done independent even in her home”.

Thus women were completely attained a dependent status due to restriction imposed on women rights and privileges particularly denial of access to education.

It cannot be clearly said that whether equal rights between men and women prevailed or not during the Vedic period. But available sources show that generous attitudes and practices relating to women did exist. Women were enthusiastically involved in religious and social matters. They had some freedom to choose their spouse in marriage and a widow was allowed to remarry<sup>11</sup>.

As India started taking steps towards development, social discrimination amplified. Jainism and Buddhism appeared as powerful religious reform movements. According to Buddha, women’s spiritual abilities were equal to men’s. “*Buddhism initiated as a religion that treated women as equal to men in their capacity for personal spiritual development.*”<sup>12</sup> “The universal prejudices against women, who are said to be fragile minded, fickle, unfaithful and impure are shared by the Jains and expressed in several passages of the canon and in the form of maxims.”

The high status that women enjoyed during early Vedic period gradually started deteriorating in the late Vedic period. Lineage began to be traced in the male line and sons were the sole heirs to family property. As the economic and social status of sons began to rise, the position of women saw a steep decline.

### **1.1.2. Medieval India**

The status of women in India deteriorated during the medieval period with the entrance of the Muslims. Several evil practices such as female infanticide, sati and child marriage were practiced during this period.

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<sup>11</sup> Heinrich Boll Foundation, *Status of Women in India: Problems and concern*, available at: [www.csss-  
isla.com](http://www.csss-<br/>isla.com), Last accessed on 10<sup>th</sup> October, 2014.

<sup>12</sup> See Janaki Nair, *Women and Law in Colonial India: A Social History*, NLSIU (1996).

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During the middle ages, Seclusion or Purdah was added to the existing subordinate and subservient status of women and in course of time, later life became restricted within four walls of the home. Social evils like Sati, Polygamy, child marriage, female infanticide and the prevention of widow remarriage arose as they were treated as chattels. Apart from that, evil of dowry seemed to have prevailed especially in Rajasthan.

But medieval period has witnessed eminent and brilliant personalities like Chandbibi, the heroic queen of Ahmeda Nagar, Gulbadan Begum wrote Humayunama, Mumtaz Mahal excelled in cultural field, Rupmati and Padmavati brought significant changes in socio-cultural fields etc. But inspite of few brilliant women, the fact remained that there was steady deterioration in position and status of women in society that continued until the beginning of 19<sup>th</sup> Century.

### **1.1.3. Modern India**

During the British period the later half of 18<sup>th</sup> century, the position of woman was considerably deteriorated. In this period, education played a significant role for social change. The social reforms of the 19<sup>th</sup> century tried to use education to awaken the consciousness of the nation to the evils of child marriage, sati, Polygamy and enforced widowhood, dowry system etc. In this period, reformers like Raja Ram Mohan Roy, Iswar Chandra Vidyasagar, M.G. Ranade etc., raised their voice against the sati, ill-treatment of widows, the ban on widow marriage, polygamy, child marriage, demand of property rights and education to women. The movement for national independence which drew a large number of women to political activity but also generated strength and confidence among women to improve their status by making prominent efforts in the field of education and health. The formation of the All Indian Women's Conference 1927, was a crucial event in women's march towards equality.

Thus, during the British period our society has made spectacular progress of women to eradicate social evils by passing legislations. Thus, there was a drastic difference between the statuses of women during the Vedic period as that of in medieval age.



## **2. ROLE OF WOMEN IN INDIA**

Women in India constitute nearly half of its population. As per 1991 census, there were 40.6 crores of women as against 43.7 crores of men. Generally, there are 929 women for every 1000 men<sup>13</sup>.

Man considers woman to be delicate and weak by nature. She is shorter and fragile compared to the strongly fabricate man. Anyhow man forgets that a woman is made so, so to play a particular fro in nature which a man can't play, that is the part of the mother. In intelligence both are equivalent. Man is aggressive and emotional. A woman is patient, quiet and responsive. She can bear more agony and has more tolerance than a man. She is stronger in conviction and in diligence. Yet women throughout the world are playing a secondary role only.

The position in India is the same. Women were worshiped in epics and puranas, for their facility to their men. Serving a father to start with, besides a spouse, and later serving her kids and grandchildren, had been her part. Puranas notice the names of Seeta, Savitri and Anusuya and laud them for their dedicate administration to their spouses. They even say that a woman can without much of a stretch get salvation by serving her spouse.

After Independence the Constitution of India gave equivalent rights to men and women in varying backgrounds. However, even today one can't say that all women in India appreciate equivalent rights with men in all matters.

There are numerous reasons behind this:

- 1) the customs and traditions predominant for centuries,
- 2) The high rate of lack of education among women,
- 3) Ignorance of their rights,
- 4) Patriarchal Society,
- 5) Economic framework,

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<sup>13</sup> M. Sangeeta, *Essay on the Role of Women in India*, available at: [www.preservearticles.com](http://www.preservearticles.com), Last accessed on 25<sup>th</sup> March, 2015.

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- 6) Acceptance of the hypothesis of Karma or pessimism,
- 7) Unchecked male domination in all kinds of different backgrounds.

Despite all these issues said over, one could see that the state of India women has enhanced a lot. There are presently sufficient educational facilities for girls and women. Special motivators and reservations are there to urge them to study. Indeed in employment there are special reservations.

We can now see women employed in all fields in clerical employments as well as in I.A.S., I.P.S. also, Indian Air Force. There are reservations in governing bodies moreover. There are Chief Ministers who are women. We had a woman Prime Minister. These are considered as special cases as the women society, especially in the country regions, are yet to leave their servitude. To empower the rustic women too to join in legislative issues in a huge manner, the Central Government has presented a bill in Parliament holding 33% of the seats in Parliament and other chose bodies for ladies.

The year 1995, was proclaimed as the International Year for Women all through the world. The ladies were made aware of their status and place in the public arena. There have been numerous developments in our nation and in different nations for the progression of ladies. As of late there was a world meet of ladies at Beijing, the capital of China. Ladies are presently no more in sleep. They are alert and moving quick. They are stating their rights. The extent that India is concerned, it has consented to regard ladies as equivalent with men in all regards the distinction, whatever now exists, is certain to vanish the nearing decades when ladies likewise get just as instructed and free themselves from superstitions and silly conventions.

A man and a lady are similar to two wheels of a cart. The cart can move quick and securely as well, when both of them draw it in the same course and with equivalent quality. Consequently no creating nation or society can stand to overlook the part of ladies, in the event that they are to advance.

When we consider social modernisation and financial modernisation, the enormous thing that jumps out is the part of ladies. A general public that does not regard ladies is under-

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using a large portion of its work power. We would expect to see a causal impact of greater equality of women upon growth.<sup>14</sup>

We in India are infrequently jaded about the part of ladies in India. India is acclaimed for having ladies in leadership parts.

*"A lady is the full Circle. Inside her is the ability to make, support and change"*- Diane Mariechild.

Historically, ladies in India were respected and the conception of a young lady was broadly accepted to check the entry of Lakshmi- the Goddess of riches and wealth. Ladies have been considered 'janani', i.e., the ancestor and "ardhanigini" i.e., 50% of the body. Ladies are likewise thought to be an epitome of Goddess Durga.

A worldwide survey led by Thomson Reuters in 2012 evaluated India as the "fourth most unsafe nation" universally for ladies, and the most exceedingly bad nation for ladies among the G20 nations.

Sex separation is unjust as well as hampers the advancement of the country. Apparently no nation can maintain its advancement in the event if it under uses its ladies, who constitute a large portion of the populace.

Regardless of some essential changes in the status and part of ladies in the general public, no general public regards its ladies and its men. Subsequently, ladies keep on suffering from differing hardships from kitchens to consoles, from the support to the grave across countries.

Furthermore, their entrepreneurial part in urban communities, Indian ladies contribute altogether to agricultural activities, crafted works, town craftsmanship and artworks.

Components blocking the headway of ladies incorporate absence of access to housing and basic services, lacking support administrations and innovations for diminishing drudgery

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<sup>14</sup> Ajay Shah, *'The changing role of women in India'*, available at: [www.ajayshahblog.blogspot.in](http://www.ajayshahblog.blogspot.in), Last accessed on 25<sup>th</sup> March 2015.

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and occupational health hazards and for improving their productivity. This requires concocting of a wide based key activity arrangement for the acknowledgment of equivalent association of men and ladies in all circles of life and financial movement.

Hillary Clinton, previous First Lady of the United States effectively saw: “In country after country ladies have shown that when given the devices of chance- instruction, human services, access to credit, political interest and legitimate rights- they can lift themselves out of destitution, and as ladies understand their potential, they lift their families, groups and countries also”.

Valid, there are some striking instances of breaking the discriminatory constraint. The names of Meera Kumar, Speaker of the Lok Sabha; Sushma Swaraj, Leader of the Opposition in the Parliament; Chanda Kocchar, Chairperson, ICICI Bank; Shikha Sharma, Chairperson, Axis Bank; Kalpana Morarka, India Head, JP Morgan and Sudha Sharma, Chairperson, CBDT effortlessly ring a bell. At the same time as one swallow does not make a midyear, the reality of a few ladies involving top positions does not make the advancement process wide based, evenhanded and comprehensive. Plainly, considerably more needs to be carried out.

The gross under-representation of ladies and the attitudinal inclination against ladies is strikingly reflected in a few zones of work like the police, the judiciary and the law, and so on. The revision of this miserable circumstance requires centered mediation focusing on instruction, preparing, kid care, wellbeing, sustenance, credit, job, welfare administrations backing and lawful shields. In the battle for autonomy, it was focused on that political opportunity should at last prompt liberation of ladies by wiping out deficiencies as far as training, sustenance and wellbeing. In any case this goal is yet to be figured it out. Putting resources into ladies' capacities and engaging them is the most ideal approach to progress monetary development and general advancement.

The Indian political framework has additionally been portrayed by concern with ladies' status and rights. This is reflected in different constitutional provisions. At the same time strong gender laws need to be adequately implemented.

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Laws relating to marriage, separation, support and legacy have not been completely powerful on account of their intrinsic issues. Consequently, endeavors to provide de jure equality to women must be conveyed to their sensible decision. This requires harder laws, stricter enforcement and exemplary punishment.

According 2011 Census, there are 940 women for every 1000 men in India. Female literacy in India is 65.46% as against male literacy of 82.14%. As at end-March 2011, 21% of aggregate bank deposit accounts constituting simply 12% of aggregate deposits were held by women. Likewise, women availed only 18% of the aggregate small credit from banks in 2011.

Ladies constitute around 25% of the formal vocation in India though 84 % of rustic ladies keep on being occupied with agricultural creation. Subsequently, there must be a movement from restricted welfare measures to wide based improvement. The Finance Minister rightly focused in his Budget Speech “There is no bank that only serves ladies. Will we have a bank that lends cash to ladies and ladies run organizations; that backings Self Help Group’s and ladies’ livelihood; that utilizes pre-dominantly ladies; and that addresses gender orientation related parts of strengthening and monetary consideration? I think we can”. We are presently during the time spent beginning “India's first ladies bank as an open public sector bank” with a starting venture of Rs. 1000 crores.

There is unquestionably a case for economy and available credit to ladies by open public sector banks. Be that as it may this idea of a ladies driven bank has now and again been seen as a great instance of incorporation by avoidance.

There has likewise been a more noteworthy attention to the requirement for inculcating confidence among ladies, creating awareness about their rights and benefits and preparing them for financial action and occupation. The profits of improvement must stretch out to ladies both subjectively and quantitatively.

Gender-specific strategies with prominence on exercises and assets gainful to ladies may help in giving more prominent open doors in light of the injustice against ladies. At the same time what is needed is governmental policy regarding minorities in society in

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territories, for example, education, wellbeing and welfare to overcome dug in discrimination brought on by sex predisposition, disavowal of chances, absence of managers' trust in their capacities and fear about not getting a reasonable arrangement.

The national approach for strengthening of ladies burdens strategies, projects and frameworks to guarantee mainstreaming of ladies' viewpoints in all formative courses of action, both as specialists and recipients.

The time is now, time now for us to have any kind of effect and impact a mentality change in the onerously male-driven plan of things and achieve genuine financial strengthening of ladies across regions, districts and classes. We can-and we should do this. In any case gender incorporation and advancement of a strong social structure obliges dynamic interest of all partners in the improvement methodology, including the general public everywhere, government, instructive organizations, chief mechanical foundations, willful orgs, approach creators and ladies themselves.

The journey of emancipation of women has crossed many milestones. But affirmative action is required for women to play their rightful role in the society. The task ahead may be long and tortuous. But let us make a beginning immediately.<sup>15</sup>

From once worshiped as divine and pure creatures, to the medieval part of child bearing and rearing, and now to the contemporary depiction of force and resistance, the women in India have changed countless social roles over the past. Nonetheless, the social vicinity of Indian ladies has got substantially more worthiness in today's creating times. Where until recently, they were shadowed by patriarchal strength, the contemporary ladies in India have moved past all social limits to develop as triumphant pioneers of tomorrow. Not only has She taken up courageous roles in society, her own individuality as a 'woman' has now got an extemporized importance.

The world has changed for females in India now. The girls are seeking after fruitful desire in the male ruled corporate situation and mothers are taking up strategic scheduling

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<sup>15</sup> See *Changing Role of Women In India*, available at: [www.freepressjournal.in](http://www.freepressjournal.in), Last accessed on 24<sup>th</sup> March, 2015.

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occupations to showcase their excellent administrative ability. Today, our ladies have ventured out to end up bread workers of the family. Despite the fact that the pattern is yet growing in India, there are numerous families who pick for the men to stay back at home and oversee family while their female partners take up difficult expert parts. The IT-BPO area is turning into a female commanded industry in India with a critical number of proficient and qualified female workforce conveying excellent exhibitions at the corporate level. Accommodation, Retail and Financial areas are likewise not lingering behind in such evolving situations. Women constitute an important economic force for the country and suitable enabling provisions must be made to harness their abilities to benefit the economy<sup>16</sup>.

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<sup>16</sup> See *From Bread Bakers to Bread Earners- The changing roles of Indian Women*, available at: [www.projecteve.com](http://www.projecteve.com), Last accessed on 27<sup>th</sup> March, 2015

### **3. WOMEN UNDER CONSTITUTION**

According to a report of the United Nations published in 1980- “Women constitute half of the world population, perform nearly two-thirds of works hours, get one tenth of the world income and own less than one hundred per cent of world’s property.”<sup>17</sup>

In view of the Supreme Court as observed in *Madhu Krihnan v. State of Bihar*<sup>18</sup>, women form half of the Indian population. Women have always been discriminated against men and have suffered denial and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all kinds of inequalities indignities, incongruities and discrimination<sup>19</sup>.

The Constitution of India, 1950 has particular provisions relation to women. It makes distinct provisions for the treatment and advancement of women in every sphere of life<sup>20</sup>.

#### **The Preamble-**

The preamble is the key to the Constitution. The Preamble starts by saying that we, the people of India, give to ourselves the Constitution. The source of the Constitution is thus traced to *the people, i.e. men and women of India*, irrespective of caste, community, religion or sex. The makers of the Constitution were not satisfied with mere territorial unity and integrity. It does not discriminate men and women but it treats them alike. The framers of the Constitution were well aware of unequal treatment meted out to the fair sex, from the time immemorial. In India, the history of suppression of women is very old and long which is responsible for including general and special provisions for upliftment and development of the status of women. Certain provisions are specifically designed for the benefit of women<sup>21</sup>.

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<sup>17</sup> DR. S.C. TRIPATHI AND VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN, (4<sup>th</sup> ed., 2010), 5-21.

<sup>18</sup> (1956) 5 SCC 148.

<sup>19</sup> See *Supra n. 17*.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*



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Certainly, the preamble attached to the Constitution of India, 1950 contains various goals including “the equality of status and opportunity” to all citizens. This goal has been embedded with the perspective to give equal status to men and women in terms of the opportunity.

### 3.1. FUNDAMENTAL RIGHTS

Part III of the Constitution of India deals with the fundamental rights. The provisions regarding fundamental rights have been enshrined in **Articles 12 to 35**, which are applicable to all the citizens irrespective of sex. However, certain provisions protect the rights of women<sup>22</sup>. The framers of the Constitution were aware of the unequal treatment and segregation allotted to the fairer sex from time immemorial and thus included certain general as well as specific provisions for the upliftment of the status of women.

Justice Bhagwati in *Maneka Gandhi v. Union of India*<sup>23</sup> said:

*“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.”*

According to Article 15(3) of the Constitution, discrimination on grounds of religion, race, caste, sex or place of birth shall not prevent the state from making any special provisions for women. Under the Constitution the state has been given power to make laws relating women but such laws shall not be violative of Article 15 of the Constitution. Article 15(1) prohibits gender discrimination. Article 15(3) lifts that ignominy and permits the state to positively discriminate in favour of women to make special provisions to ameliorate their social, economic and political condition and accord them parity<sup>24</sup>.

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<sup>22</sup> See *Supra n. 17*.

<sup>23</sup> AIR 1978 SC 597.

<sup>24</sup> See *Supra n. 17*.

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Article 15(3) of the Constitution makes special provisions for women and children. It empowered the state to make legislation in this regard. The Courts have always approved the validity of such special legislation rather special measures. These women and children oriented beneficial legislations can be seen in the ambit of the Criminal law.

It is to be noted that the Constitution of India guarantees all the rights to women which are given to men. The special features of fundamental rights are as under:

### **1. Right to Equality (Article 14 and 15 of Constitution)-**

It means the equality of opportunity, equality before law, equal protection in the laws, not discriminating against any person on grounds of sex, religion, caste and place of birth and no discrimination in the matters of public employment on the grounds of sex only as provided under Article 16 of the Constitution.<sup>25</sup>

### **2. Right to Freedom-**

Article 19 to 22 of the Constitution deal with the right to freedom. It includes right to freedom of speech, protection in respect of conviction for offences, protection of life and personal liberty and protection against arrest and detention, etc<sup>26</sup>.

### **3. Right against exploitation-**

According to Article 23 of the Constitution traffic in human beings and forced labour is prohibited. Employment of children is prohibited under Article 24 of the Constitution<sup>27</sup>.

### **4. Right to freedom of Religion-**

Articles 25 to 28 of the Constitution deal with the right to freedom of religion. It means professing, practicing and propagating religion freely<sup>28</sup>.

### **5. Cultural and Educational Rights-**

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<sup>25</sup> DR S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 15-31.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

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The interest of minorities is protected under Article 29 of the Constitution. Further Article 30 of the Constitution provides the right of minorities to establish and administer educational institutions<sup>29</sup>.

### 6. Right to Constitutional Remedies-

Every citizen has been provided the right to Constitutional Remedies. Article 32 to 35 deal with the right to Constitutional remedies. Every citizen of India has the right to constitutional remedies, who is approaching Courts for enforcing its fundamental rights<sup>30</sup>.

#### 3.1.1. EQUALITY OF STATUS

Article 14 of the Constitution of India enunciates the general principle of right to equality and prohibits the State from denying to any, “equality before law or the equal protection of the laws”<sup>31</sup>.

“Equality before law” finds a place in almost all the written Constitutions that guarantee fundamental rights. Both the expressions have also been used by the Declaration of Human Rights. This term has been adopted from the English Constitution and implied absence of special privilege in favour of any person. The term “equal protection of the law” is of American origin and is a more positive concept. It implies “equality of treatment in equal circumstances”, i.e., application of the same law alike and without discrimination to all persons similarly situated<sup>32</sup>. Both the expressions, taken together, aim at establishing “the equality of status” as has been envisaged by the preamble of the Constitution<sup>33</sup>. The underlying principle of Article 14 of the Constitution of India is that “like should be treated alike and not that unlike should be treated alike.”<sup>34</sup>

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<sup>29</sup> See *Supra n. 25*.

<sup>30</sup> *Id.*

<sup>31</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 929.

<sup>32</sup> *Jagannath Prasad v. State of U.P.*, AIR 1961 SC 1245.

<sup>33</sup> DR. ANJANI KANT, LAW RELATING TO WOMEN AND CHILDREN, (3<sup>rd</sup> ed.), 89-145.

<sup>34</sup> V.N. SHUKLA, CONSTITUTION OF INDIA, (7<sup>th</sup> ed. 1982), 30.

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The Supreme Court of India, the protector and guardian of the Fundamental rights has always been the champion in maintaining and elaborating the concept of “Equality of Status”- particularly when the discriminatory laws were made by the State against women. In the very first year of its working, a women- Champakam Dorairajan for claiming equality of status came before the Supreme Court and got the G.O. of the Madras Government declared unconstitutional and violative of Article 14 (Right to Equality) and Article 15 (Discriminatory Legislation).<sup>35</sup> Article 14 of the Constitution against any violation of this principle.<sup>36</sup>

Article 14 of the Constitution recognizes “Women” as a class. The Court has declared that women as a class were different from men as a class; and for this, the legislature had merely removed the disability attached to women by passing the Hindu Succession Act, 1956<sup>37</sup>. This Act has declared in unequivocal term that the limited rights in property of a female will now be held by her as an absolute owner, which clearly shows departure from the Shastric Law.<sup>38</sup>

### 3.1.2. EQUALITY AND EMPLOYMENT

#### 3.1.2.1 A Woman shall not be denied a job merely because she is a woman-

In case of *Air India v. Nargesh Meerza*<sup>39</sup>, Nargesh Meerza filed a writ petition, In this case, the air-hostesses of the Air-India International Corporation had approached the Supreme Court against, again, discriminatory service conditions in the Regulations' of Air-India. The Regulations provided that an air-hostess could not get married before completing four-years of service. Usually an air-hostess was recruited at the age of 19 years and the four-year bar against marriage meant that an air-hostess could not get married until she reached the age of 23 years. If she

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<sup>35</sup> *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

<sup>36</sup> *See Supra n. 33.*

<sup>37</sup> *Kaur Singh v. Jaggar Singh*, AIR 1961 Punj. 489 followed in *Jogindra Singh v. Kehar Singh*, AIR 1965 Punj. 407.

<sup>38</sup> *See Supra n. 33.*

<sup>39</sup> AIR 1981 SC 1829.

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married earlier, she had to resign and if after 23 years she got married, she could continue as a married woman but had to resign on becoming pregnant. If an air hostess survived both these filters, she 'continued to serve until she reached the age of 35 years. It was alleged on behalf of the air-hostesses that those provisions were discriminatory on the ground of sex, as similar provisions did not apply to male employees doing similar work.

The Supreme Court upheld the first requirement that an air-hostess should not marry before the completion of four years of service. The court held that:

*"It was a sound and salutary provision. Apart from improving the health of the employee it helps a great deal in the promotion and boosting up of our family planning programme."*

However, this argument given by the Court came in for criticism that as the requirements of age and family planning were warranted by the population policy of the State and once the State had fixed the age of marriage, i.e. 18 years, the reasoning advanced for upholding the rule was a camouflage for the real concern.

The Supreme Court **struck down the Air-India Regulations relating to retirement and the pregnancy bar on the services of Air-hostesses** as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. **The impugned Regulation 46 provided that an air hostess would retire from the service of the corporation upon attaining the age of 35 years or on marriage**, if it took place within 4 years of service, or on first pregnancy, whichever occurred earlier. Under Regulation 7, the Managing Director was vested with absolute discretion to extend the age of retirement prescribed at 45 years. Both these regulations were struck down as violative of Art. 14, which prohibits unreasonableness and arbitrariness. The Apex Court has held that a

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woman shall not be denied employment merely on the ground that she is a woman as it amounts to violation of Art. 14 of the Constitution.<sup>40</sup>

### 3.1.2.2. Denial of Seniority promotion on the Ground of sex-

In case of *C.B. Muthamma v. Union of India*,<sup>41</sup> a writ petition was filed by Miss Muthamma, a senior member of the Indian Foreign Service, complaining that she had been denied promotion to Grade I illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women. At the very threshold she was advised by the Chairman of the UPSC against joining the Foreign Service. At the time of joining she was required to give an undertaking that if she married she would resign from service. Under Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, it was provided that no married woman shall be entitled as of right to be appointed to the service. Under Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, **a woman member of the service was required to obtain permission of the Government in writing before her marriage was solemnised.** At any time after the marriage she could be required to resign if the Government was confirmed that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service. On numerous occasions the petitioner had to face the consequences of being a woman and thus suffered discrimination, though the Constitution specifically under Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth and Article 14 provides the principle of equality before law<sup>42</sup>.

The Supreme Court through V.R. Krishna Iyer and P.N. Singhal, JJ. Held that:

*“This writ petition by Miss Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 and 16*

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<sup>40</sup> See Chapter 4: Constitutional Provisions, available at: [www.shodhganga.inflibnet.ac.in](http://www.shodhganga.inflibnet.ac.in), Last accessed on 27<sup>th</sup> March, 2015.

<sup>41</sup> (1979) 4 SCC 260.

<sup>42</sup> See *Supra n. 40*.

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*belong to myth or reality. The credibility of the Constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievance of Miss Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess.”*

Commenting further on the discriminatory rules the Court said<sup>43</sup>:

*“Discrimination against woman, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries. The same risk is run by government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties, a similar situation may arise in the case of a male member. In these days of nuclear families, intercontinental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species.”*

Expressing its opinion on Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, the Court observed<sup>44</sup>:

*“At the first blush this rule is defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-à-vis half of India's humanity, viz. our women, is a sad reflection on the distance between Constitution in the book and Law in action. And if the executive as the surrogate of*

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<sup>43</sup> See *Supra n. 40*.

<sup>44</sup> *Id.*

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*Parliament makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable.”*

Striking down the rules as violating the principle of quality, it was said:

*“We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable the rule of equality must govern.”<sup>45</sup>*

In *Sarita Samvedi v. Union of India*<sup>46</sup>, the Supreme Court held invalid a provision of the Railway Board Circular dated 27th December, 1982 **which restricted the eligibility of a married daughter of a retiring official for out-of-turn allotment of a house**, to situations where such a retiring official had no son or where the daughter was the only person prepared to maintain the parents and the sons were not in a position to do so. This was held to be discriminatory on the ground of sex<sup>47</sup>.

### 3.1.2.3. Discrimination in Favour of Women and Article 14

Article 14 of the Constitution of India prohibits class legislation but permits reasonable classification. The classification must be based on some *“intelligible differentia”* and should have a “rational nexus” with the object sought to be achieved by the act or legislation in question. Having in view classification and object of legislation “women” can be treated as a class and special laws can be made in their favour. Various provisions have been declared valid and within the framework of the Constitution of India, where women have been given a special treatment. Such provisions of law have been declared by the Courts as “permissive

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<sup>45</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1028.

<sup>46</sup> 1996 (2) SCC 380.

<sup>47</sup> See *Supra n. 40*.



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classification” not violating the principle of equality under Article 14 of the Constitution provided the classification is not arbitrary<sup>48</sup>.

Section 354 of the Indian penal Code which makes **assault or use of criminal force with intent to outrage the modesty of any women**<sup>49</sup> (and does not include “man” within the proction of the section), is not invalid as being a violative of the equal protection clause<sup>50</sup>. The classification made in favour of wives and that too those deserted by their husbands is also not arbitrary. Because the classification made under Section 488 of Criminal Procedure Code, 1898 (now section 125 of Criminal Procedure Code, 1973<sup>51</sup>) aims at preventing starvation of wives deserted by their husbands and provides for right to maintenance. This cannot be questioned on the ground that the section provides for maintenance of wife and contains no similar provision in favour of men as against wives<sup>52</sup>. It is not inconsistent with the principle of equality. Though, contrary view has been expressed by Hon’ble Madras High Court. The High Court observed that a jobless husband is entitled for maintenance from his well to do wife. The wife filed special leave petition before the Hon’ble Supreme Court. During pendency of the case in the Apex Court, one of the litigating parties died, thus the matter became infructuous<sup>53</sup>.

The Allahabad High Court made it clear that special provision for women as a class can be made, but not to benefit an individual woman<sup>54</sup>. Exclusive reservation of

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<sup>48</sup> See *Supra n. 33*.

<sup>49</sup> See Section 354 of IPC, 1860: *Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

<sup>50</sup> *Girdhar Gopal v. Sate*, AIR 1953 Mad. Bharat 147.

<sup>51</sup> See Section 125 of Cr.P.C., 1973: *Order for maintenance of wives, children and parents.*

<sup>52</sup> *Thansee Goudan v. Kanni Ammal*, AIR 1952 Mad. 529.

<sup>53</sup> See *Supra n. 33*.

<sup>54</sup> *Savitri v. K.K. Bose*, AIR 1972 All. 305.

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posts in reservation offices of Railways for women alone is violative of Articles 14 and 16 of the Constitution of India<sup>55</sup>.

### 3.1.3. EQUALITY OF OPPORTUNITY

Another Specific example of equality is the right to equality of opportunity for citizens of India provided under Article 16<sup>56</sup> of the Constitution of India.

Reservations of seats for women in local bodies or in educational institutions have been upheld<sup>57</sup>. The Supreme Court in *Government of Andhra Pradesh v. P.B. Vijayakumar*<sup>58</sup>, held that **reservation to the extent of 30% made in the State Services** by the Andhra Pradesh Government for women candidates was valid. The Division Bench of the Supreme Court emphatically declared that the power conferred upon the State by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State. The power conferred by Article 15(3) is not whittled down in any manner by Article 16.

In the case of *T. Sudhakar Reddy v. Government of Andhra Pradesh*<sup>59</sup>, the petitioner challenged the validity of Section 316(1)(a) of the Andhra Pradesh Co-operative Societies Act, 1964 and Rule 22C, 22A(3)(a) of the Andhra Pradesh Co-operative Societies Rules 1964. These provisions provide for nomination of two women members by the Registrar to the Managing Committee of the Co-operative Societies, with a right to vote and to take part in the meetings of the committee. The Andhra Pradesh High Court quashed the petition and upheld these provisions in the interest of women's participation in co-operative societies and opined that it will be

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<sup>55</sup> *Ambujam v. Union of India*, AIR 1980 Mad. 214.

<sup>56</sup> See Article 16, Clause (1) of the Constitution of India, 1950: "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

<sup>57</sup> See *Supra n. 40*.

<sup>58</sup> 1995 (4) SCC 520.

<sup>59</sup> AIR 1994 SC 544.

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in the interest of the economic development of the country<sup>60</sup>. The Supreme Court upheld the validity of these provisions on the ground that Article 15(3) of the Constitution permitted the making of special provisions for women.<sup>61</sup>

At this juncture, it is also noteworthy to mention the case of *Associate Banks Officers Association v. State Bank of India*<sup>62</sup>, wherein the Apex Court held that women workers are in no way inferior to their male counterparts, and hence there should be no discrimination on the ground of sex against women<sup>63</sup>. Recently, in *Air India Cabin Crew Association v. Yeshaswinee Merchant*<sup>64</sup>, the Supreme Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour. The Constitution does not prohibit the employer to consider sex while making the employment decisions where this is done pursuant to a properly or legally chartered affirmative action plan<sup>65</sup>. Further, in *Vijay Lakshmi v. Punjab University*<sup>66</sup>, it has been observed that Rules 5 and 8 of the Punjab University Calendar, Vol. III providing for appointment of a lady principal in a women's or a lady teacher therein cannot be held to be violative of either Article 14 or Article 16 of the Constitution, because the classification is reasonable and it has a nexus with the object sought to be achieved. In addition, the State Government is empowered to make such special provisions under Article 15(3) of the Constitution. This power is not restricted in any manner by Article 16. In this way, the Indian Judiciary has played a positive role in preserving the rights of women in the society.<sup>67</sup>

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<sup>60</sup> Dr. Alok Chantia, *Gender Justice: The Constitutional Perspectives and The Judicial Approach*, available at: [www.academia.edu](http://www.academia.edu), Last accessed on 28<sup>th</sup> March, 2015.

<sup>61</sup> DR. S.C. TRIPATHI, *WOMEN AND CRIMINAL LAW*, (1<sup>st</sup> ed. 2010), 21.

<sup>62</sup> AIR 1998 SC 32.

<sup>63</sup> *See Supra n. 60.*

<sup>64</sup> AIR 2004 SC 187.

<sup>65</sup> *See Supra n. 60.*

<sup>66</sup> AIR 2003 SC 3331.

<sup>67</sup> *See Supra n. 60.*

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In *Madhu Kishwar v. State of Bihar*<sup>68</sup>, the Supreme Court dealt with the validity of the Chotanagpur Tenancy Act, 1908 of Bihar which denied the right of succession to Scheduled Tribe women as violative of the right to livelihood. The majority judgment however upheld the validity of legislation on the ground of custom of inheritance/succession of Scheduled Tribes. Dissenting with the majority, Justice K. Ramaswamy felt that the law made a gender-based discrimination and that it violated Articles 15, 16 and 21 of the Constitution. In his dissenting judgment he said<sup>69</sup>:

*“Legislative and executive actions must be conformable to and for effectuation of the fundamental rights guaranteed in Part III, Directive Principles enshrined in Part IV and the Preamble of the Constitution which constitute the conscience of the Constitution. Covenants of the United Nations add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order.”*

### 3.1.4. Article 19(1)(g): Freedom for Trade and Occupation.

Article 19(1)(g) of the Constitution guarantees that *all citizens have the right to practice any profession or to carry on any occupation or trade or business*<sup>70</sup>. The right under Article 19(1)(g) must be exercised consistently with human dignity. Therefore, sexual harassment in the exercise of this right at the work place amounts to its violation. In the case of *Delhi Domestic Working Women’s Forum v. Union of India*,<sup>71</sup> relating to rape and violence of workingwomen, the Court called for protection to the victims and provision of appropriate legal representation and assistance to the complainants of sexual assault cases at the police station and in Courts<sup>72</sup>. To realize the concept of “gender equality”, the Supreme Court has laid

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<sup>68</sup> (1996) 5 SCC 145.

<sup>69</sup> See *Supra n. 40*.

<sup>70</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1128.

<sup>71</sup> (1995) 1 SCC 14.

<sup>72</sup> See *Supra n. 60*.

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down exhaustive guidelines in the case of *Vishaka v. State of Rajasthan*<sup>73</sup>, to prevent sexual harassment of working women at their workplace. The Court held that it is the duty of the employer or other responsible person to prevent sexual harassment of working women and to ensure that there is no hostile environment towards women at their working place. These guidelines were framed to protect the rights of working women to work with dignity under Articles 14, 19 and 21 of the Constitution. The Court also observed<sup>74</sup>:

*“Each incident of sexual harassment of women at workplace results in violation of fundamental rights of ‘Gender Equality’ and the Right to Life and Liberty.”*

### 3.1.5. Article 21: Protection of life and personal liberty.

Article 21 states<sup>75</sup>:

*“No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

This short one sentence in which Article 21 has been couched has made long strides due to the judicial interpretation received at the deft hands of judges of the Apex Court. Article 21, though couched in negative language, confer on every person the fundamental right to life and personal liberty and it has been given a positive effect by judicial interpretation. “Life”, in Article 21, is not merely the physical act of breathing. This has been recognized by the Courts. The Rig Veda gives a subtle description of the mundane activity of speech. The soul (which, in the Rig Veda, is compared to a bird soaring high in the heavens) inspires or fills up the mind with speech. The “Gandharva” (the mind) carries it to the heart; and then, the luminous inspired speech takes shape in words that can be heard. One can pursue this imagery further. While the external mundane activities of life have their own place, they are the manifestations of an inner, unseen, unperceived activity which

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<sup>73</sup> AIR 1997 SC 3011.

<sup>74</sup> See *Supra n. 60*.

<sup>75</sup> M.P. JAIN. INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1179.

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indeed is the real “life” that a human being lives; it is true that judicial decisions on Article 21 do not embark upon such an analysis in depth. But the judiciary does take note to deal with the wide approach of the right to life.

In view of the global developments in the sphere of human rights the judicial decisions from time to time have played a vital role towards the recognition of an affirmative right to basic necessity of life under Article 21. In the case of *State of Maharashtra v. Madhukar Narayan Mandikar*,<sup>76</sup> the Supreme Court has held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. This Article has also been invoked for the upliftment of and dignified life for the prostitutes. The Supreme Court has placed emphasis on the need to provide to prostitute opportunities for education and training so as to facilitate their rehabilitation<sup>77</sup>. Sexual harassment at workplace is a violation of Article 21 of the Constitution and hence, the Apex Court of the Country, in the case of *Vishaka v. State of Rajasthan*,<sup>78</sup> has laid down detailed direction and guidelines on the subject which are to be strictly observed by all employers, public or private. Right to life is recognized as a basic human right<sup>79</sup>. It has to be read in consonance with the Universal Declaration of Human Rights, 1948, the Declaration on the Elimination of Violence against Women and the Declaration and Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights to which India is a party having ratified them. The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women<sup>80</sup>.

### **Women’s right to make reproductive choice:**

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<sup>76</sup> AIR 1991 SC 207, 211.

<sup>77</sup> *Gaurav Jain v. Union of India*, AIR 1997 SC 3021.

<sup>78</sup> *See Supra n. 73.*

<sup>79</sup> *See Supra n. 60.*

<sup>80</sup> *Bodhisattwa Gautam v. Subhra Chakraborty*, AIR 1996 SC 922; *Chairman, RailwayBoard v. Chandrima Das*, AIR 2000 SC 988.

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The Supreme Court in *Suchita Srivastava & Anr. v. Chandigarh Administration*,<sup>81</sup> observed that a women right to make reproductive choice is also a dimension of “personal liberty” under Article 21 of the Constitution of India, 1950. However, reproductive choice can be exercised to procreate as well as abstain from procreating. There should be no restriction whatsoever on exercise of reproductive choices such as a woman’s right to refuse participation in sexual activity or alternatively the instances on use of contraceptive methods. The Court ruled that reproductive rights include a woman’s entitlement to carry a pregnancy to its full term, to give birth and subsequently raise children. Further, the Medical Termination of Pregnancy Act, 1971 can also be viewed as reasonable restrictions that have been placed on exercise of reproductive choices<sup>82</sup>.

### 3.1.5 Article 23: Right against Exploitation and prohibition of traffic in human beings.

For centuries women have been humiliated, exploited, tortured and harassed in all walks of life- physically, mentally and sexually<sup>83</sup>. To safeguard and protect women against exploitation, Article 23 (1) of the Constitution of India prohibits traffic in human beings, begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”<sup>84</sup> “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.<sup>85</sup>

In *Gaurav Jain v. Union of India*,<sup>86</sup> the condition of prostitutes in general and the plight of their children in particular was highlighted. The Court issued directions for a multi-pronged approach and mixing the children of prostitutes with other children

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<sup>81</sup> 2009 (9) SCC 1.

<sup>82</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 19.

<sup>83</sup> See *Supra n. 60*.

<sup>84</sup> M.P. JAIN, INDIA CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1303.

<sup>85</sup> *Raj Bahadur Singh v. Legal Remembrancer*, AIR 1953 Cal 522.

<sup>86</sup> 1997 (8) SCC 114.

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instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society.

To curb the deep rooted social evil of prostitution and to give effect to this Article, the Parliament has passed **The Immoral Traffic (Prevention) Act, 1956**.<sup>87</sup> This Act protects the individuals, both men and women, not only against the acts of the State but also against the acts of private individuals and imposes a positive obligation on the State to take all measures to abolish these evil practices. Another evil practice of the Devadasi system, in which women are dedicated as devadasis to the deities and temples, was abolished by the State of Andhra Pradesh by enacting the Devadasis (Prohibition of Dedication) Act, 1988. The Supreme Court has also held that traffic in human beings includes devadasis and speedy and effective legal action should be taken against brothel keepers<sup>88</sup>. Similar evil practices are prevalent in India such as selling the female infants and girls to foreigners under the guise of inter-country adoption and marriages. The Supreme Court accepted a letter as a writ petition<sup>89</sup>, complaining of mal-practices indulged by non-government organizations and orphanages engaged in the work of offering Indian children, more specifically, female infants, in adoption to foreign parents. The Courts observed that in the guise of adoption, Indian children of tender age were not only exposed to the long dreadful journey to distant foreign countries at great risk to their lives, but in case they survive, they were not provided proper care and shelter and were employed as slaves and in the course of time they become beggars or prostitutes for want of proper care and livelihood. As there are no specific legislative provisions to regulate Inter-country adoptions, the Court laid down certain principles and norms which should be followed in determining- Whether a child should be allowed to be adopted by foreign parents. Further a direction was given to the Government to

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<sup>87</sup> Formerly known as the Suppression of Immoral Traffic in Women and Girls Act, 1956.

<sup>88</sup> *Vishal Jeet v. Union of India*, AIR 1990 SC 1412.

<sup>89</sup> *Laxmi Kant Pandey v. Union of India*, AIR 1984 SC 469.



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enact a law regulating inter-country adoptions, as it is their constitutional obligation under Articles 15 (3), 23, 24 and 39 (c) and (f) of the Constitution<sup>90</sup>.

### 3.2. DIRECTIVE PRINCIPLE OF STATE POLICY

However Directive Principles of State Policy are not enforceable in any court of law they are essential in the governance of the country and provide for the welfare of the people, including women. These provisions are contained in **Part IV** of the Constitution. Fundamental Rights furnish to individual rights while the Directive Principles of State Policy supply to social needs<sup>91</sup>.

#### 3.2.1. Article: 39 certain principles of policy to be followed by the state<sup>92</sup>.

The State shall, in particular, direct its policy towards securing-

- (a) That the citizen, men and women equally, have the right to an adequate means of livelihood<sup>93</sup>;
- (b) That there is equal pay for equal work for both men and women<sup>94</sup>;
- (c) 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.

Article 39(a) directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood. The Apex Court in *Randhir Singh v. Union of India*<sup>95</sup>, has expressed the opinion

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<sup>90</sup> See *Supra n. 60*.

<sup>91</sup> See *Supra n. 40*.

<sup>92</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1497.

<sup>93</sup> *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

<sup>94</sup> *Randhir Singh v. Union of India*, AIR 1982 SC 879; *Mackinnon Mackenzie and Co. Ltd. v. Andrey D Kosta*, AIR 1987 SC 1281; *State of M.P. v. Pramod Bhartiya*, AIR 1993 SC 286.

<sup>95</sup> *Id.*

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that the principle of “equal work” is not declared in the constitution to be a fundamental right but it is certainly a Constitutional goal<sup>96</sup>.

(d) directs the State to secure equal pay for equal work for both men and women.

The doctrine of ‘**Equal pay for Equal work**’ is equally applicable to both men and women, even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work<sup>97</sup>. Similarly, in *State of Haryana v. Rajpal Sharma*,<sup>98</sup> the Supreme Court has held that the teachers employed in privately managed aided schools in the state of Haryana are entitled to the same salary and dearness allowance as is paid to teachers employed in Government schools. If the kind of work is not identical then it does not matter if men are paid more. But, in case of work is of same type both men and women should be paid equally without any discrimination<sup>99</sup>. The State in furtherance of this directive passed the Equal Remuneration Act, 1976 to give effect to the provision.

(e) specifically directs the State not to abuse the health and strength of workers, men and women.

### 3.2.2. Article 39-A: Equal justice and free legal aid.

The state shall ensure that the operation of legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid by appropriate legislation or schemes or in any other way to ensure the existence of opportunities for securing justice<sup>100</sup>.

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<sup>96</sup> See *Supra n. 25*.

<sup>97</sup> *Daily rates Casual Labour v. Union of India*, (1988) 1 SCC 122.

<sup>98</sup> AIR 1997 SC 449.

<sup>99</sup> See *Supra n. 25*.

<sup>100</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1505.

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On several occasions, it has been held by the Apex Court that legal aid and speedy trial have now been treated as fundamental rights under Article 21 of the Constitution available to all prisoners and enforceable by the courts. The state is under a duty to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the court<sup>101</sup>.

### 3.2.3. Article 42: Provision for just and humane conditions of work and maternity relief.

The State shall make provision for securing just and humane conditions of work and for maternity relief<sup>102</sup>. Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

### 3.2.3. Uniform Civil Code

#### **Article 44: Uniform civil code for the citizens.**

The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India<sup>103</sup>. Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has recognised the necessity of uniformity in the application of civil laws relating to marriage,

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<sup>101</sup> *A.M. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548; *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR 1979 SC 1322.

<sup>102</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1508.

<sup>103</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1510.

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succession, adoption, divorce, maintenance, etc. but as it is only a directive it cannot be enforced in a court of law.<sup>104</sup>

In a Landmark Judgment in *Sarla Mudgal v. Union of India*<sup>105</sup>, the Supreme Court has passed direction to the Central Government to take a fresh look at Article 44 of the Constitution which enjoins the state to secure a Uniform Civil Code which, according to the Court is imperative for both protection of the oppressed and promotion of national unity and integrity. The above direction was given by the court while dealing with the case where the question for consideration was whether a Hindu husband married under Hindu Law, converted to Islam, without dissolving the first marriage, after he can solemnize a second marriage. It has been held by the Supreme Court that such a marriage will be illegal and the husband can be prosecuted for bigamy under Section 494 of Indian Penal Code, 1860<sup>106</sup>. In the present case, the Court further held that a Hindu marriage continues to exist even after one of the spouse converted to Islam. There is no automatic dissolution of Hindu Marriage. It can only be dissolved by a decree of divorce on any of the ground mentioned in Section 13 of the Hindu Marriage Act. Accordingly, the second marriage of a Hindu after his conversion to Islam was void in terms of Section 494, IPC and the husband was liable to be prosecuted for bigamy.<sup>107</sup>

### 3.3. FUNDAMENTAL DUTIES

**Parts IV-A** which consist of only one **Article 51-A** was added to the constitution by the **42nd Amendment, 1976**. This Article for the first time specifies a code of eleven fundamental duties for citizens<sup>108</sup>.

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<sup>104</sup> See *Supra n. 33*.

<sup>105</sup> (1995) 3 SCC 635.

<sup>106</sup> Marrying again during lifetime of husband or wife- "*Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*"

<sup>107</sup> See *Supra n. 17*.

<sup>108</sup> See *Supra n. 40*.

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### Spirit of Harmony and Dignity of Women

Some further thought needs to be given to clauses (e) and (f) of Article 51A. Article 51-A(e) desires<sup>109</sup>:

*“It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women.”*

It is couched in broad terms but it should be clear that attacks on minority communities or minority opinions are frowned upon. Respect for both are essential and the wording lends support to a broad humanism to cover such differences as may exist or better still, co-exist.

The Constitution also casts upon us the Fundamental Duty of ensuring that all practices derogatory to the dignity of women are renounced. This again should come normally to a country where it is an aphorism that Gods reside where women are worshipped.

Two thoughts can be distilled. The first is that the objective will not be reached unless there is a determined effort to restrict religious practices to the home on the justified premise that one's religion is a personal matter and is not conducive to mass assertiveness. The other is the status of women.

Lip service is being paid to the doctrine of gender equality. The fact remains that generally women are still regarded as inferior both home and workplace although the Commission has noticed an improvement, however dissatisfied it may be with the degree of the improvement. It is necessary to separate religious precepts from civil law. Civil law as the name implies is a matter for society not for religious leaders and it would seem to us to be axiomatic that in matters of civil rights, laws of property and inheritance and marriage and divorce, although practices may differ,

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<sup>109</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6<sup>th</sup> ed. 2011), 1521.

## **POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES**

legal rights that accrue must be the same. For example, a marriage may be solemnised according to religious or social custom but the rights of a woman in the case of divorce must be the same no matter what her religion is.

Clause (e) of article 51A also seems to cover the need to regard all human beings equally. In this connection, it is necessary to consider the question of the upliftment of the Scheduled Castes and other disadvantaged sections of our society. The scourge must be eradicated. The Constitution gave us ten years to do the job; the provision has been extended to fifty years and we are in our sixth ten-year period but we are no nearer the goal. The discrimination is two-fold. It is economic-condemning whole sections of our society numbering millions to menial jobs as part of the evil of treating them as sub-human. We have provided for reservation of jobs to these people, we have even given them separate constituencies to represent them. It has created a vested interest in backwardness. The other adverse result is that it has had no effect on their status in society, which continues to be determined by birth and not human worth and human personality. It is this social stigma which still plagues our people and the struggle to restore to them basic human dignity has made no significant progress. While the Commission appreciates the context in which affirmative action became necessary, it feels that reservation of jobs and seats in the legislatures will not help this aspect of the matter.

It is quite clear to the Commission that the disease of considering human beings as high or low based on the accident of birth is a disease rooted in the mind and it is in the mind that the defences of a society based on human dignity and equality must be constructed. Logically this leads directly to the conclusion that the key lies in education. The time to begin training our young people to respect the National flag and sing the National anthem, to respect women, to hold all religions equal and deserving of as much respect as one's own, to accept that all human beings are born equal and are entitled to equal treatment are among principles best taught by examples when the child is too young to understand but not too young to obey. The focus must, therefore, shift to education which has suffered from serious neglect. Schools restrict admissions on unacceptable criteria; teachers themselves are

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untrained and often politicised, as is the curriculum. Despite these hardships, many of our young people have done well<sup>110</sup>.

### 3.4. RESERVATION OF SEATS

The Parliament has succeeded in its efforts to provide for reservation of seats for women in election to the Panchayat and the Municipalities<sup>111</sup>. **Reservations of seats for women in Panchayats and Municipalities have** been provided in **Articles 243D and 243T** of the Constitution of India. **Part IX and IX A have been added to the Constitution by the 73rd and 74th Amendment** Acts with Article 243, 243A to 243D, 243P, 243 ZG.<sup>112</sup>

#### 3.4.1. Article 243 D: Reservation of seats<sup>113</sup>.

1) *Seats shall be reserved for-*

(a) *the Scheduled Castes; and*

(b) *the Scheduled Tribes,*

*In every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.*<sup>114</sup>

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<sup>110</sup> See *Fundamental Duties*, available at: [www.civildserviceindia.com](http://www.civildserviceindia.com), Last accessed on 28<sup>th</sup> March, 2015.

<sup>111</sup> See *Supra n. 60*.

<sup>112</sup> The Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992 popularly known as the Panchayat Raj and Nagarpalika Constitution Amendment Acts.

<sup>113</sup> 73<sup>rd</sup> Amendment of the Constitution- w.e.f. 1-6-1993.

<sup>114</sup> See *Supra n. 40*.

## **POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES**

- 2) *Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.*
- 3) *Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.*
- 4) *The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:*

*Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State.*

*Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women.*

*Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.*

- 5) *The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than **the reservation for women**) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.*
- 6) *Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.*



## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

### 3.4.2. Article 243 T: Reservation of seats<sup>115</sup>.

- 1) *Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.*
- 2) *Not less than one-third of the total number of seats reserved under clause (1) **shall be reserved for women** belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.*
- 3) *Not less than one-third (including the number of seats **reserved for women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.*
- 4) *The offices of Chairpersons in the Municipalities **shall be reserved** for the Scheduled Castes, the Scheduled Tribes and **women** in such manner as the Legislature of a State may, by law, provide.*
- 5) *The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the **reservation for women**) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.*
- 6) *Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.*

### 3.4.3. Article 243 G: Powers, authority and responsibilities of Panchayats<sup>116</sup>

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<sup>115</sup> 74<sup>th</sup> Amendment of the Constitution- w.e.f. 1-6-1993.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to-*

*(a) The preparation of **plans for economic development** and social justice;*

*(b) The **implementation of schemes for economic development** and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.*

### 3.5. CONSTITUTION AND SPECIAL PROVISION

#### 3.5.1. Constitutional validity of Section 497 of Indian Penal code, 1860:

In the offence of adultery Section 497 of the Indian Penal Code, 1860 punishes only the male counterpart and exempts the woman from punishment. The Constitutional validity of Section 497, IPC<sup>117</sup> was challenged on the ground that it is violative of article 14 and 15(1) of the Constitution. In *Abdul Aziz v. State of Bombay*<sup>118</sup>, Apex Court upheld the validity of the provision on the ground that the classification was not based on the ground of sex alone. The Court relied upon the mandate of Article 15(3) of the Constitution to uphold the validity of the said proviso of the code. However, in the present case the petitioner contended that even though the woman

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<sup>116</sup> Read with Eleventh Schedule of the Constitution of India, 1950: *Provisions for Panchayat*.

<sup>117</sup> See Section 497 of IPC: Adultery- “Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.”

<sup>118</sup> AIR 1994 SC 321.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

may be equally guilty as an abettor, only the man was punished, which violates the right to equality on the ground of sex<sup>119</sup>.

### 3.5.2. U.P. Court of wards Act, 1912: Proprietorship relating to property

In *Ram Raj Rajeswani Devi v. State of U.P.*<sup>120</sup> wherein the issue related to a discriminatory provision in a statute was adjudicated under the U.P. Court of Wards Act, 1912. According to this Act a male proprietor could be declared incapable in managing his property only on one of the five grounds mentioned therein and that too after giving him an opportunity of showing cause as to why such a declaration should not be made, a female proprietor could be declared incapable to manage her property on any ground and without giving her any show cause notice. The Allahabad High court held that this provision was bad because it amounts to discrimination on the basis of sex which is violative of Article 15(1) of the Constitution of India, 1950<sup>121</sup>.

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<sup>119</sup> See *Supra n. 25*.

<sup>120</sup> AIR 1954 All. 608.

<sup>121</sup> See *Supra n. 25*.

**4. LEGAL AND JUDICIAL PERSPECTIVE ON POSITION OF WOMEN**

4.1 THE INDIAN PENAL CODE, 1860

4.1.1. **Dowry Death**

Unnatural death of a married woman where motive for want of dowry is existing and such death is taking place within **7 years from the date of marriage** is called dowry death<sup>122</sup>.

Dowry Death under **Section 304-B** of IPC<sup>123</sup>-

(1) *“Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.*  
**Explanation-** *For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).*

(2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”*

4.1.2. **Abetment of Suicide**

**Section 306** deals with Abetment of suicide<sup>124</sup>.

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<sup>122</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 32-109.

<sup>123</sup> RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, (33<sup>rd</sup> ed., 2012), 616.

<sup>124</sup> RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, (33<sup>rd</sup> ed. 2012), 631.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*If any person commits suicide, whoever, abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.*

The expression “abetment” has been defined in Section 107 of the Indian Penal Code, 1860.<sup>125</sup>

In *Gurubachan Singh v. Satpal Singh and Others*<sup>126</sup>, wherein the evidence of the prosecution witnesses clearly testified to the greedy and lusty nature of the accused in that they persistently taunted the deceased and tortured her for not having brought sufficient dowry from her father. It is also in evidence that they also taunted her for carrying an illegitimate child. All these tortures and taunts caused depression to her mind and drove her to take the extreme step of putting an end to her life by sprinkling kerosene oil on her person and setting fire. Circumstantial evidence as well as the evidence of the prosecution witnesses clearly prove beyond reasonable doubt that the accused persons instigated and abetted the deceased in the commission of the offence by committing suicide by burning herself. Thus, it can be said that the instigation and abetment are two aspects of the offence under Section 306 of the Indian Penal Code. To constitute the offence under the said section it is necessary that either of the aspect must exist.<sup>127</sup>

### 4.1.3. The causing of miscarriage and of injuries to unborn children

**Section 312 to 318** of IPC, 1860 deal with the commission of causing of miscarriage, of injuries to unborn children, of the exposure of the infants and of the concealment of births.<sup>128</sup> The causing of miscarriage is not a penal offence if it is done with the consent of the victim and in certain circumstances.

Section 312 of the Code deals with causing of miscarriage:

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<sup>125</sup> RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, (33<sup>rd</sup> ed. 2012), 181.

<sup>126</sup> 1989 (3) Crimes 526: 1989 (4) JT 38 (SC).

<sup>127</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 52.

<sup>128</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 68- 72.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*“Whoever voluntarily causes a woman with child to miscarry, shall if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

The expression miscarriage connotes premature expulsion of the child or foetus from the womb of mother before the period of gestation. No offence is committed if the miscarriage is conducted for the purpose of saving life of the woman and the same is caused in good faith<sup>129</sup>.

### Section 313: Causing miscarriage without woman's consent

*“Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

### Section 314: Death caused by act done with intent to cause miscarriage.

*“Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;*

***If act done without woman's consent-*** *If the act is done without the consent of the woman, shall be punished either with imprisonment for life, or with the punishment above mentioned.”*

### Section 315: Act done with intent to prevent child being born alive or to cause it to die after birth

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<sup>129</sup> *Id.*

## **POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES**

*“Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.”*

### Section 316: Causing death of quick unborn child by act amounting to culpable homicide

*“Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

### Section 317: Exposure and abandonment of child under twelve years, by parent or person having care of it

*“Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

### Section 318: Concealment of birth by secret disposal of dead body

*“Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

#### **4.1.4. Intention to outrage the modesty of women**

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

An assault short of rape is punished under **Section 354** of the IPC<sup>130</sup> which reads as under:

*“Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

The Orissa High Court in *Baldev Prasad Singh v. State*<sup>131</sup> observed that the petitioner accused entered into the house, caught hold of the house wife and while embracing squeezed her breasts and held that the accused petitioner is guilty of offence under Section 354 of the Code.

The Supreme Court in *Union of India v. Himmat Singh Chauhan*<sup>132</sup>, observed that a naval officer was sentenced in Court martial proceedings for the offence under Section 354 of the Code. In the present case, the respondent challenged the conviction before the trial court and it was held by the High Court that:

“After a meticulous examination of the record and particularly the evidence of Mrs. Nirmala Sharma (complainant) that the credibility of the evidence is such that the charge cannot be said to have been brought home on the basis of this material.” Hence, conviction quashed.

However, in criminal appeal before the Apex Court the question was raised whether the High Court justified in quashing the conviction and sentence passed in court martial proceedings. The Apex court has held that the High Court overstepped its jurisdiction in trying to re-appreciate the evidence of complainant, thus the respondent has been rightly found to have committed the offence in the court martial proceedings.<sup>133</sup>

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<sup>130</sup> RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, (33<sup>rd</sup> ed. 2012), 713.

<sup>131</sup> 1984 Cr. L.J. (NOC) 122 (Orissa).

<sup>132</sup> AIR 1998 SC 1980.

<sup>133</sup> See *Supra n. 128*.



## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

### 4.1.5. Kidnapping, Abduction or Inducing woman to compel her marriage etc.

Under IPC, kidnapping, abducting or inducing woman with the intent to compel her for marriage is an offence. **Section 366** of the Code deals with such offence<sup>134</sup>.

*“Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid”*

### 4.1.6. Procurement of Minor Girl

For the purpose of prostitution the procurement of minor girl from one part of India to another part is an offence under **Section 366-A** of the Indian penal Code, 1860.

*“Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”*

### 4.1.7. Importation of girl from foreign country

Importing a girl below 21 years of age from outside India for the purpose of prostitution is an offence under **Section 366-B** of IPC. It reads as under:

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<sup>134</sup> *Id.*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*“Whoever imports into India from any country outside India or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”*

### 4.1.8. Sexual offences

#### Section 375: Rape

*A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-*

*First- Against her will.*

*Secondly- Without her consent.*

*Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*

*Fourthly- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

*Fifthly- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

*Sixthly- With or without her consent, when she is under sixteen years of age.*

**Explanation-** *Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

**Exception-** *Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.*

### Section 376: Punishment for rape

*(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:*

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.*

*(2) Whoever,-*

*(a) being a police officer commits rape-*

- i. within the limits of the police station to which he is appointed; or*
- ii. in the premises of any station house whether or not situated in the police station to which he is appointed; or*
- iii. on a woman in his custody or in the custody of a police officer subordinate to him; or*

*(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or*

*(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or*

*(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

- (e) commits rape on a woman knowing her to be pregnant; or*
- (f) commits rape on a woman when she is under twelve years of age; or*
- (g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:*

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.*

**Explanation 1-** *Where a women's is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.*

**Explanation 2-** *“Women's or children’s institution” means an institution, whether called and orphanage or a home for neglected women or children or a widows’ home or by any other name, which is established and maintained for the reception and care of women or children.*

**Explanation 3-** *“hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.*

Section 376-D: Intercourse by any member of the management or staff of a hospital with any woman in that hospital

*“Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.”*

### 4.1.10. Unnatural offences

**Section 377** deals with unnatural offence:

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

### 4.1.11. Commission of offences relating to marriage

**Section 493 to 498** of IPC deal with the offence relating to marriage etc.<sup>135</sup>

Section 493 deals with the co-habitation caused by a man deceitfully inducing a belief of lawful marriage.

*“Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

Section 494: Marrying again during the life time of husband or wife.

*“Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

**Exception-** *This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place,*

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<sup>135</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 90-95.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”*

### Section 495: Same offence with concealment of former marriage from person with whom subsequent marriage is contracted

*“Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

### Section 496: Marriage ceremony fraudulently gone through without lawful marriage

*“Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

#### 4.1.12. Cruelty

**Section 498-A** deals with the offence regarding husband or relative of husband of a woman subjecting her to cruelty:

*“Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.”*

#### 4.1.13. To insult the modesty of a woman

**Section 509** of IPC deals with the offence regarding words, gesture or act intended to insult the modesty of a woman<sup>136</sup>. It reads as:

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<sup>136</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 108-109.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*“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.”*

### 4.2. THE CODE OF CRIMINAL PROCEDURE, 1973

Like IPC, the Criminal Procedure Code has also provided some provisions in favour of women. These special provisions have been made in view of the special social and cultural background of women in India and keeping in view the constitutional protective discrimination<sup>137</sup>.

#### 4.2.1. Provisions under the code and the protection provided thereunder:

(a) **Section 47(2)** provides that if any person or police officer has reason to believe that the person to be arrested has entered into or is residing in the house, he can enter into the house and arrest him. But section 47(2) provides that if such place is in the actual occupancy of a female (not being the person to be arrested) and who, according to custom, does not appear in public, the police officer shall before entering into the apartment give notice to female that she is at liberty to withdraw and shall afford reasonable opportunity to withdraw then he can enter or break open the apartment, otherwise he cannot enter into the apartment.

(b) **Section 52(2)** provides that where a female is arrested by the police officer, she can be searched only by another female with strict regard to decency and not by a policeman. It is a mandatory provision.

(c) **Section 53(2)** provides that if a female is arrested and medical examination is necessary as to afford an evidence of commission of crime, such examination shall be made only by or under the supervision of a female registered medical practitioner. Such examination and obtaining of evidence, therefrom, is not

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<sup>137</sup> DR. ANJANI KANT, LAW RELATING TO WOMEN & CHILDREN, (3<sup>rd</sup> ed. 2012), 138-145.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

violative of Article 20(3) of the Constitution of India which grants protection against self-incrimination<sup>138</sup>.

### 4.2.2. Section 125: Order for maintenance of wives, children, and parents

*(1) If any person having sufficient means neglects or refuses to maintain-*

- (a) his wife, unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) his father and mother, unable to maintain himself or herself,*

*A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

*Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband or such minor female child, if married, is not possessed of sufficient means.*

*Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:*

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<sup>138</sup> *State of Bombay v. Kathi Kaluoged*, AIR 1961 SC 1808.



## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.*

**Explanation-** *For the purpose of this chapter.-*

*(a) "Minor" means a person who, under the provisions of the Indian Majority Act, of 1875 (9 of 1875), is deemed not to have attained his majority;*

*(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried;*

*(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding , as the case may be.]*

*(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:*

*Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:*

*Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

**Explanation-** *If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.*

*(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*

*(5) On proof that any wife in whose favor an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.*

According to a pronouncement of the Supreme Court of India<sup>139</sup>, Hindu mother can demand maintenance from a married daughter, putting sons and daughters at par as far as Section 125 of the code is concerned. Though this section is equally applicable to persons of all religions; it has nothing to do with conjugal rights of the spouses but only and exclusively deals with the maintenance aspect.

It was held by the Supreme Court that<sup>140</sup>:

“It is a matter of regret that though Article 44 of the Constitution provides that “the State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India” but there is no evidence of any official activity for framing a Common civil Code. A Common Civil 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

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<sup>139</sup> *Vijay Manohar Arbat v. Arbat Kashirao Sawai*, AIR 1987 SC 1100.

<sup>140</sup> *See Supra n. 137.*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

Constitution of India is to have any meaning.”<sup>141</sup> It is also worth-mentioning that now “The Muslim women (Protection of Rights on Divorce) Act, 1986” has been passed to provide special privileges to Muslims.

Under the Muslim Women (Protection of Rights on Divorce) act, 1986, a divorced Muslim woman is entitled to claim maintenance from her former husband. She is entitled to such maintenance from the persons referred to in Section 4 of the said Act.<sup>142</sup> It, however, seems that in appropriate cases the provisions of sections 125 to 128 of the CrPC are applicable all the same.<sup>143</sup> The husband is bound to maintain the wife even if she has sufficient means to maintain herself.<sup>144</sup>

Thus, this section reiterates the basic human right of women to maintenance and puts a statutory duty on husband/son/father to maintain the wife/mother/unmarried daughter, infirm and minor children of the family. One who neglects or refuses to maintain violates a duty provided under the Act<sup>145</sup>.

### 4.2.3. Exemption from Attendance

**Section 160 (1)** requires the witnesses to attend the place or thana as is required by the investigation police officer. But clause (2) thereof provides an exemption from such requisition, for women and male person i.e. male child under the age of fifteen years. The investigating police officer has to go to the place of residence where the woman resides to gather information from her. Thus, a woman cannot be compelled to come to police station as a witness.

### 4.2.4. Postponement of Capital Sentence on Pregnant Women.

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<sup>141</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945; *Mst. Zohara Khatoon v. Mohd. Ibrahim*, (1986) 1 SCC 938.

<sup>142</sup> *Smt. Shabeeh Zehra v. Syed Sarwar Husain Rizvi*, 1991 LCD (9) All (Lko. Bench) 214 (219).

<sup>143</sup> *Suanu Saira Banu v. A.M. Abdul Gaffar*, AIR 1987 SC 1103.

<sup>144</sup> *Sayed Ahmed v. Sultan Bibi*, AIR 1943 Resh. 73.

<sup>145</sup> *See Supra n. 137.*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

**Section 415** of the code empowers the High Court to postpone the execution of death sentence in case the convicted woman is pregnant. No other court is empowered to exercise such powers. This Section further provides that if the High Court thinks it fit, it can commute the sentence from death sentence to imprisonment for life.

### 4.2.5. Bail of Woman offender in Non-Bailable offences.

**Section 437** of Cr.P.C. provides an exception where a woman may be released on bail even if the offence charged is punishable with death or imprisonment for life. It is a special provision in favour of woman.

### 4.3. INDIAN EVIDENCE ACT, 1872

#### **Section 113A: Presumption as to abetment of suicide by a married woman.**

*“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.”*

**Explanation-** *For the purposes of this section, “cruelty” shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).*

#### **Section 113-B: Presumption as to dowry death.**

*“When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”*

**Explanation-** *For the purposes of this section, “dowry death” shall have the same meaning as in section 304B, of the Indian Penal Code, (45 of 1860).*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

**Section 113-A and 113-B** of the Evidence Act deals with the presumption as to abetment of suicide by a married woman. The Legislatures with the view to deal with evil of dowry death incorporated Sections 304-B and 498-A in the IPC and these provisions relate to dowry death and cruelty by husband or relatives of husband. In order to tackle this evil, legal presumptions relating to abetment of suicide and dowry death were provided in the present Evidence Act, so that the perpetrator cannot take advantage of legislative incompetency for want of proof because the offence as to dowry death has certain peculiarity as it is usually committed inside the matrimonial home<sup>146</sup>.

When once there is a demand for dowry and harassment against the deceased, and death occurs within 7 years of the marriage, the other things automatically follow due to statutory presumption contemplated under Section 113-A of the evidence Act<sup>147</sup>.

The Supreme Court in *Ramesh Kumar v. State of Chattisgarh*,<sup>148</sup> observed that this provision was introduced by Criminal Law (Second) Amendment Act, 1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. The provisions contained in Section 113-A show that to attract the applicability of Section 113-A it must be shown that:

- i. the woman has committed suicide,

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<sup>146</sup> See *Supra n. 25*.

<sup>147</sup> *Vemuri Venkateswar Rao v. State of A.P.*, 1192 (1) Cri. L.C. 576 at 584, 585; *State of M.P. v. Ashok and Anr.*, 1993 (1) D.M.C. 243; *Hira Choudhary v. State of West Bengal*, 1992 (1) Cr. L.C. 156; *Ayyala Rambabu v State of A.P.*, 1993 (2) Crimes 562.

<sup>148</sup> 2001 (7) SLT 356.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

- ii. such suicide has been committed within a period of 7 years from the date of her marriage,
- iii. the husband or his relatives, who are charged has subjected her to cruelty.

On existence and availability of the above said circumstances, the court may presume that such suicide had been abetted by her husband or by such relative of her husband.

The provisions of the section are applicable to the pre-amendment cases. The Supreme Court in *Gurubachan Singh v. Satpal Singh*,<sup>149</sup> observed that these provisions do not create any new offence (or any substantive) right, but merely a matter of procedure and as such are retrospective and applicable to the present case. “The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence, on the contrary, the provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.”

### 4.4. WOMEN UNDER PERSONAL LAWS

#### 4.4.1. Hindu Marriage Act, 1955<sup>150</sup>

##### **Section 10: Judicial Separation**

*(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.*

*(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the*

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<sup>149</sup> AIR 1990 SC 209.

<sup>150</sup> DR. S.C. TRIPATHI AND VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN, (4<sup>th</sup> ed. 2010), 157-186.

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*statements made in such petition, rescind the decree if it considers it just and reasonable to do so.*

By the Marriage (Amendment) Act, 1976 which amended Sections 10 and 13 of the Hindu Marriage Act, now a Hindu wife may invoke special grounds exclusively available to her for seeking decree of judicial separation<sup>151</sup>. These are under:

- (i) Remarriage by husband,
- (ii) Husband found guilty of rape, sodomy or bestiality,
- (iii) Cohabitation between the parties has not been resumed for one year or upwards,
- (iv) That her marriage (whether consummated or not) was solemnized before she attained the age of 15 years and she has repudiate the marriage after attaining that age but before attaining the age of 18 years. This provision is called option of puberty.

### Section 13: Divorce

*(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—*

- (i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or*
- (ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or*
- (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or*
- (ii) has ceased to be a Hindu by conversion to another religion; or*
- (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an*

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<sup>151</sup> See *Supra* n. 17.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*extent that the petitioner cannot reasonably be expected to live with the respondent.*

**Explanation-** *In this clause,*

- (a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;*
- (b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or*
  - (iv) has been suffering from a virulent and incurable form of leprosy; or*
  - (v) has been suffering from venereal disease in a communicable form; or*
  - (vi) has renounced the world by entering any religious order; or*
  - (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;*

**Explanation-** *In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.*

*(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-*

- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or*



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- (ii) *that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.*
- (2) *A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,*
- (i) *in the case of any marriage solemnised before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner:*

*Provided that in either case the other wife is alive at the time of the presentation of the petition; or*

- (ii) *that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or bestiality; or*
- (iii) *that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) [or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or*
- (iv) *that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.*

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

**Explanation-** *This clause applies whether the marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).*

By the Marriage Laws (Amendment) Act, 1976 the “cruelty” has been made a ground of divorce. Before the said amendment cruelty was a grounds for judicial separation. Although, the expression “cruelty” has not been defined under Hindu Marriage Act, 1955.

The concept of cruelty was elaborately considered by the Supreme Court in *Shobharani v. Madherkar Reddi*,<sup>152</sup> and the court gave a new dimension to the concept of cruelty. Explanation to Section 498-A of the Indian Penal Code, 1860 provides that any wilful conduct which is of such a nature as is likely to drive woman to commit suicide would constitute cruelty. Any wilful conduct which is likely to cause grave injury and danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where such harassment is with a view to coercing her any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty. The cruelty as a ground for dissolution of marriage, if not admitted requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases.

**Section 24** provides a relief by way of maintenance and litigation expenses to a spouse who is unable to maintain itself during the pendency of the proceedings.

### **Section 24: Maintenance *Pendente lite* and expenses of proceeding**

*“Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regards to*

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<sup>152</sup> AIR 1988 SC 121.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable:*

*Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.*

As far as maintenance *pendente lite* and expenses of proceedings are concerned, no distinction has been made under section 24 of the Act relating to right of a wife for maintenance preferred under section 12 or 13 of the Act.<sup>153</sup>

### **Section 25: Permanent alimony and maintenance.**

- (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant 56 [, the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.*
- (2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.*
- (3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual*

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<sup>153</sup> Sandeep Kumar v. State of Jharkhand, AIR 2004 Jhar 22.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*intercourse with any woman outside wedlock, 57 [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.*

### 4.4.2. Hindu Adoptions and Maintenance Act, 1956<sup>154</sup>

#### **Section 18: Maintenance of wife.-**

- (1) *Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.*
- (2) *A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-*
  - (a) *if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her.*
  - (b) *if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband.*
  - (c) *if he is suffering from a virulent form of leprosy.*
  - (d) *if he has any other wife living.*
  - (e) *if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere.*
  - (f) *if he has ceased to be a Hindu by conversion to another religion.*
  - (g) *if there is any other cause justifying living separately.*
- (3) *A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.*

#### **Section 19: Maintenance of widowed daughter-in-law**

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<sup>154</sup> DR. S.C. TRIPATHI AND VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN, (4<sup>th</sup> ed. 2010), 186-200.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law.*

*Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance-*

*(a) from the estate of her husband or her father or mother, or*

*(b) from her son or daughter, if any, or his or her estate.*

*(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.*

### 4.4.3. Hindu Succession Act, 1956

The new Hindu Succession (Amendment) Act of 2005<sup>155</sup> is an attempt to remove the discrimination as contained in the amended **Section 6** of the Hindu Succession Act, 1956 by giving **equal rights to daughters in the Hindu Mitakshara coparcenary property** as to sons have.

#### **Section 6: Devolution of interest in coparcenary property**

*(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-*

*(a) by birth become a coparcener in her own right in the same manner as the son;*

*(b) have the same rights in the coparcenary property as she would have had if she had been a son;*

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<sup>155</sup> See 174th Report of the Law Commission of India on “Property Rights of Women: Proposed Reform under the Hindu Law”.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

*(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,*

*and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:*

*Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.*

*(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.*

*(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-*

*(a) the daughter is allotted the same share as is allotted to a son;*

*(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and*

*(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.*

## **POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES**

**Explanation-** *For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.*

(4) *After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:*

*Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-*

*(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or*

*(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.*

**Explanation-** *For the purposes of clause (a), the expression “son”, “grandson” or “great-grandson” shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.*

(5) *Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.*

**Explanation-** *For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.*

## **POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES**

### **Section 6A: Equal rights to daughter in coparcenary property**

*Notwithstanding anything contained in section 6 of this Act-*

- (a) in a joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights in the coparcenary property as she would have had if she had been a son inclusive of the right to claim by survivorship and shall be subject to the same liabilities and disabilities in respect thereto as the son;*
- (b) at a partition in such a joint Hindu family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:*

*Provided that the share which a predeceased son or a predeceased daughter would have got at the partition if he or she had been alive at the time of the partition, shall be allotted to the surviving child of such predeceased son or of such predeceased daughter:*

*Provided further that the share allottable to the predeceased child of a predeceased son or of a predeceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such predeceased child of the predeceased son or of such predeceased daughter, as the case may be;*

- (c) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (a) shall be held by her with the incidents of co-parcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;*
- (d) nothing in clause (b) shall apply to a daughter married prior to or to a partition which had been effected before the commencement of Hindu Succession (Karnataka Amendment) Act, 1990.*



## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

According to **Section 14** of the Hindu Succession Act, 1956, any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

### **Section 14: Property of a female Hindu to be her absolute property**

*(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*

**Explanation-** *In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.*

*(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.*

**Section 23** of the Act as disentitles the female heir to ask for partition in respect of dwelling house wholly occupied by a Joint Family until male heirs choose to divide their respective shares therein was omitted by this Amending Act.

### 4.5. WOMEN UNDER INDUSTRIAL LAWS

Under the Industrial Laws the women have given the special position in the view of their exceptional characteristics, physically, mentally and also biologically. There are important legislations covering the women involved in industrial activities which among are as follows:

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1. Equal Remuneration Act, 1976
2. Maternity Benefit Act, 1961
3. Factories Act, 1948

### 4.5.1. Equal Remuneration Act, 1976

The DPSP of the Constitution of India, namely **Article 39** directs the states to secure *equal pay for equal work for both men and women*. To realise this constitutional mandate the Parliament legislated the Equal Remuneration Act, 1976<sup>156</sup>. According to the Apex court, this Act provides for equal remuneration to men and women workers for the same work or a work of a similar nature and for the prevention of discrimination on the basis of sex.<sup>157</sup>

### 4.5.2. Maternity Benefit Act, 1961

**Article 42** of the Constitution of India, 1950 imposes obligation upon the State to make provision for *securing just and humans conditions of work and for maternity relief*. The Parliament has passed the Maternity Benefit Act, 1961 to regulate the employment of women in organisation or institution for certain period before and after the child birth and to provide for maternity and other benefit<sup>158</sup>.

### 4.5.3. Factories Act, 1948

#### 1. Latrines and Urinals:

Section 19(2) of the Act provides that in every factory wherein more than two hundred and fifty workers are employed, all latrine and urinal accommodations shall be prescribed.

Section 19(3) of the Act lays down that the State Government may prescribed the number of latrines and urinals to be provided in any factory in proportion to the number of male and female workers ordinarily employed therein and provide for

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<sup>156</sup> DR. S.C. TRIPATHI AND VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN, (4<sup>th</sup> ed. 2010), 254-256.

<sup>157</sup> *Dharwada Dist. PWD Employees Assn. v. State of Karnataka*, 1990 (2) SCC 396.

<sup>158</sup> *See Supra n. 156*.

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such other matters in respect of sanitation in factories, including the obligation of workers in this regard, as it considers necessary in the interests of the workers employed therein<sup>159</sup>.

### 2. **Prohibition of employment of women and children Sean cotton opener:**

Section 27 of the act provides that no women or children shall be employed to any part of a factory for pressing cotton in which a cotton opener is at work.

### 3. **Washing facilities:**

Section 42(1) of the Act provides that every factory separate and adequately screened facilities shall be provided for the use of male and female workers.

### 4. **Creches:**

Section 48(1) of the Act provides that in every factory wherein more than thirty women workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

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<sup>159</sup> DR. S.C. TRIPATHI AND VIBHA ARORA, LAW RELATING TO WOMEN AND CHILDREN, (4<sup>th</sup> ed. 2010), 267, 268.

## **5. WOMEN UNDER INTERNATIONAL LAW**

The advancement of women has been a focus of the work of United Nations since its creation. The Preamble of UN Charter sets as a basic goal to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.

UN support for the rights of women began with the Organization's founding Charter. Among the purposes of the UN declared in Article 1 of its Charter is

*“To achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”*

Within the UN's first year, the Economic and Social Council established its Commission on the Status of Women, as the principal global policy-making body dedicated exclusively to gender equality and advancement of women<sup>160</sup>.

### **5.1. Universal Declaration on Human Rights, 1948**

It was adopted by the General Assembly on 10 December 1948, reaffirms that “All human beings are born free and equal in dignity and rights” and that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, birth or other status.”

The preamble of the UDHR, 1948 declares the UDHR as a common standard of achievement for all peoples and for all nations, with the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and educating promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and

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<sup>160</sup> See *Global Issues, women*, available at: [www.un.org](http://www.un.org): Last accessed on 30<sup>th</sup> March, 2015.

## **POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES**

effective recognition and observance, both among the people of member States themselves and among the people of territories and their jurisdiction<sup>161</sup>.

### **Article 2 of UDHR:**

Everyone is entitled to all the rights and freedom set forth in this Declaration without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status. Therefore, no discrimination shall be made on the basis of the political, jurisdictional status of the country to which a person belongs”.

### **Article 16 of UDHR:**

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.<sup>162</sup>

## **5.2. Declaration on Elimination of Discrimination against Women, 1967**

The General Assembly of United Nations adopted the Declaration on the Elimination of Discrimination Against Women on December 7, 1967.

The Preamble of this Declaration states that despite the existence of various conventions protecting the right of women the discrimination against women continues. This Declaration is pledged to eradicate the discrimination<sup>161</sup> against women

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<sup>161</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 5-14.

<sup>162</sup> See *Universal Declaration Human Rights*, available at: [www.un.org](http://www.un.org), Last accessed on 30<sup>th</sup> March, 2015.

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in any form. It reaffirms the principle of equality of right of women in the worldwide scenario<sup>163</sup>.

**Article 10 of DEDAW, 1967** states that all adequate measures shall be undertaken to ensure equality of married or unmarried women with men in the social and economic fields and specifically:

- (i) The right without discrimination on grounds of marital status or any other grounds to receive vocational training to work, to free choice of profession and employment;
- (ii) The right to equal pay/salary with men;
- (iii) The right to equal treatment relating to work of similar nature;
- (iv) The right to receive family allowance on equal terms with men;

As the international feminist movement began to gain momentum during the 1970s, the General Assembly declared 1975 as the International Women's Year and organized the first World Conference on Women, held in Mexico City. At the urging of the Conference, it subsequently declared the years 1976-1985 as the UN Decade for Women, and established a Voluntary Fund for Decade.

### 5.3. Convention on the Elimination of All Forms of Discrimination against Women

To achieve the provisions incorporated in Articles 1, 2 and 55 of the Charter of the United Nations the DEDAW, 1967 was adopted by the General Assembly of the United Nations which consequently paved the way to the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 which is often described as an *International Bill of Rights for Women*. In its 30 articles, the Convention explicitly defines discrimination against women and sets up an agenda for national action to end such discrimination. The Convention targets

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<sup>163</sup> See *Supra n. 161*.

## POSITION OF WOMEN IN SOCIETY: LEGAL & JUDICIAL RESPONSES

culture and tradition as influential forces shaping gender roles and family relations, and it is the first human rights treaty to affirm the reproductive rights of women<sup>164</sup>.

By means of the said convention it was reiterated that the State Parties to the International Covenants on Human Rights are under obligation to provide equal rights to men and women in civil, political, social, economic and also cultural field. The specialized agencies have to be established in order to achieve the fundamental objectives of the Conventions and the efforts should be made to root out all the forms of discrimination between men and women, as discrimination of any kind is a sure obstacle to the participation of women with men.

The State parties to the convention were fully convinced that discrimination is an important factor causing obstruction in the development and advancement of women with men at national and international level. It was realized that to achieve equality of women with men it is indispensable most in the present scenario.

Five years after the Mexico City conference, a Second World Conference on Women was held in Copenhagen in 1980. The resulting Programme of Action called for stronger national measures to ensure women's ownership and control of property, as well as improvements in women's rights with respect to inheritance, child custody and loss of nationality.

In 1985, the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, was held convened in Nairobi. It was convened at a time when the movement for gender equality had finally gained true global recognition, and 15,000 representatives of non-governmental organizations (NGOs) participated in a parallel NGO Forum. The event which many described as *“the birth of global feminism”*. Realizing that the goals of the Mexico City Conference had not been adequately met, the 157 participating governments adopted the Nairobi Forward-looking Strategies to the Year 2000. It broke ground in declaring all issues to be women's issues.

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<sup>164</sup> See *Supra n. 160*.

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An early result of the Nairobi Conference was the transformation of the Voluntary Fund for the UN Decade for Women into the UN Development Fund for Women (UNIFEM, now part of UN Women).

The Fourth World Conference on Women, held in Beijing in 1995, went a step farther than the Nairobi Conference. The **Beijing Platform for Action** asserted women's rights as human rights and committed to specific actions to ensure respect for those rights. According to the UN Division for Women in its review of the four World Conferences:

*"The fundamental transformation that took place in Beijing was the recognition of the need to shift the focus from women to the concept of gender, recognizing that the entire structure of society, and all relations between men and women within it, had to be re-evaluated. Only by such a fundamental restructuring of society and its institutions could women be fully empowered to take their rightful place as equal partners with men in all aspects of life. This change represented a strong reaffirmation that women's rights were human rights and that gender equality was an issue of universal concern, benefiting all."*

### 5.4. Declaration on the Elimination of Violence against Women

The General Assembly of the United Nations through its resolution adopted the Declaration on the Elimination of Violence Against Women in 1993.<sup>165</sup>

The Declaration contained "a clear and comprehensive definition of violence against women and a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms". It represented "a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women"<sup>166</sup>.

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<sup>165</sup> DR. S.C. TRIPATHI, WOMEN AND CRIMINAL LAW, (1<sup>st</sup> ed. 2010), 11-12.

<sup>166</sup> See *Supra n. 160*.



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In 2007, the theme of the International Women's Day was "Ending Impunity for Violence against Women and Girls". And on 25 February 2008, Mr. Ban Ki-moon launched "The Secretary-General's Global Campaign UNITE to End Violence Against Women". In opening the multi-year global campaign, he called violence against women an issue that "cannot wait".

International Women's Day is observed on 8 March. The theme of the 2009 observance was "Women and men united to end violence against women and girls". The International Day for the Elimination of Violence against Women is observed on 25 November.

### **5.5. UN Women, 2010**

In July 2010, the United Nations General Assembly created UN Women, the **United Nations Entity for Gender Equality and the Empowerment of Women**.

UN Women merges and builds on the important work of four previously distinct parts of the UN system, which focused exclusively on gender equality and women's empowerment: Division for the Advancement of Women (DAW), International Research and Training Institute for the Advancement of Women (INSTRAW), Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI) and the United Nations Development Fund for Women (UNIFEM).<sup>167</sup>

The main roles of UN Women are:

- To support inter-governmental bodies, such as the Commission on the Status of Women, in their formulation of policies, global standards and norms.
- To help Member States to implement these standards, standing ready to provide suitable technical and financial support to those countries that request it, and to forge effective partnerships with civil society.

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<sup>167</sup> See *The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women)*, available at: [www.unrol.org](http://www.unrol.org): Last accessed on 30<sup>th</sup> March, 2015.

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- To hold the UN system accountable for its own commitments on gender equality, including regular monitoring of system-wide progress.

For many years, the UN has faced serious challenges in its efforts to promote gender equality globally, including inadequate funding and no single recognized driver to direct UN activities on gender equality issues.

UN Women was created to address such challenges. It will be a dynamic and strong champion for women and girls, providing them with a powerful voice at the global, regional and local levels.

Grounded in the vision of equality enshrined in the UN Charter, UN Women, among other issues, works for the:

- elimination of discrimination against women and girls;
- empowerment of women; and
- achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security.

## **6. WOMEN UNDER NATIONAL LAW**

### **6.1. National Commission for Women**

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc<sup>168</sup>.

### **6.2. Reservation for Women in Local Self-Government**

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

### **6.3. The National Plan of Action for the Girl Child (1991-2000)**

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

### **6.4. National Policy for the Empowerment of Women, 2001**

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

### **6.5. National Mission for empowerment of Women, 2010**

The launch of the National Mission for Empowerment of Women in March 2010 is an important development that will provide the much required fillip to a coordinated assessment of current government interventions and aligning future programmes so as

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<sup>168</sup> See National Legal Research Desk, *Constitutional and Legal Provisions for Women in India*, available at: [www.nlrld.org](http://www.nlrld.org), Last accessed on 30<sup>th</sup> March, 2015.

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to translate the MPEW prescription into reality. The Mission was operationalized during 2011-12.

## **7. VERMA COMMITTEE REPORT**

A three-member Commission, headed by former Chief Justice of India, Justice J.S. Verma which was assigned to review laws for sexual crimes submitted its report to the Government during January 2013<sup>169</sup>. The Commission has recommended comprehensive changes in criminal laws to deal with crimes and atrocities against women which are as under:

1. **Amendment to Section 100 of the IPC:** Section 100 of the IPC extends the right of private defence of the body to causing death in certain circumstances. The circumstances enumerated therein should also extend to the right of private defence in case of an Acid Attack, which was made an offence under Section 326A as per the Criminal Laws (Amendment) Act, 2013.
2. **Insertion of Section 166A in the IPC:** It recommended the insertion of Section 166A to the IPC, imposing a maximum punishment of Rigorous Imprisonment for two years in case if any Public Servant knowingly disobeys a direction of Law, which includes refusal to record information given regarding offences committed under Sections 354, 354A, 354B, 354 C(2), 376(1), 376(2), 376(3), 376A, 376B(1), 376B(2), 376C, 376D or 376F of the IPC which punish offences of sexual nature against women.
3. **Punishment for other sexual offences:** The panel recognised the need to curb all forms of sexual offences and recommended- Acid attacks would be punished by up to seven years if imprisonment under **Section 326A and 326B of IPC; Section 354A** making Sexual Harassment a punishable offence, Voyeurism be punished with up to seven years in jail under **Section 354C**; Stalking or attempts to contact a person repeatedly through any means by up to three years under **Section 354D**; trafficking will be punished with imprisonment for seven to ten years under **Section 370**.
4. **Punishment for Rape:** The panel has not recommended the death penalty for rapists. It suggests that the punishment for rape should be rigorous imprisonment or

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<sup>169</sup> The Criminal Laws (Amendment) Act, 2013.

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RI for seven years to life. It recommends that punishment for causing death or a "persistent vegetative state" should be RI for a term not be less than 20 years, but may be for life also, which shall mean the rest of the person's life. Gang-rape, it suggests should entail punishment of not less than 20 years, which may also extend to life and gang-rape followed by death, should be punished with life imprisonment.

5. **Registering complaints and medical examination:** Every complaint of rape must be registered by the police and civil society should perform its duty to report any case of rape coming to its knowledge. "Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed," the report says. The protocols for medical examination of victims of sexual assault have also been suggested. The panel said, "Such protocol based, professional medical examination is imperative for uniform practice and implementation."
6. **Marriages to be registered:** As a primary recommendation, all marriages in India (irrespective of the personal laws under which such marriages are solemnized) should mandatorily be registered in the presence of a magistrate. The magistrate will ensure that the marriage has been solemnized without any demand for dowry having been made and that it has taken place with the full and free consent of both partners.
7. **Amendments to the Code of Criminal Procedure:** The panel observed, "The manner in which the rights of women can be recognised can only be manifested when they have full access to justice and when the rule of law can be upheld in their favour." The proposed Criminal Law Amendment Act, 2012, should be modified, suggests the panel. "Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality the provisions have to be cognizant of the same," it says. A special procedure for protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons, the panel said was an "urgent need."
8. **Bill of Rights for women:** A separate Bill of Rights for women that entitles a woman a life of dignity and security and will ensure that a woman shall have the right to have complete sexual autonomy including with respect to her relationships.

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Review of the Armed Forces Special Powers Act: The panel has observed that the “impunity of systematic sexual violence is being legitimized by the armed forces special powers act.” It has said there is an imminent need to review the continuance of AFSPA (Armed Forces Special Power Act) in areas as soon as possible. It has also recommended posting special commissioners for women's safety in conflict areas.

9. **Police reforms:** To inspire public confidence, the panel said, “police officers with reputations of outstanding ability and character must be placed at the higher levels of the police force.” All existing appointments need to be reviewed to ensure that the police force has the requisite moral vision. The panel strongly recommended that “law enforcement agencies do not become tools at the hands of political masters.” It said, “Every member of the police force must understand their accountability is only to the law and to none else in the discharge of their duty.”
10. **Role of the judiciary:** The judiciary has the primary responsibility of enforcing fundamental rights, through constitutional remedies. The judiciary can take *suo-motu* cognizance of such issues being deeply concerned with them both in the Supreme Court and the High Court. An all India strategy to deal with this issue would be advisable. The Chief Justice of India could be approached to commence appropriate proceedings on the judicial side. The Chief Justice may consider making appropriate orders relating to the issue of missing children to curb the illegal trade of their trafficking etc.
11. **Political Reforms:** The Justice Verma committee observed that reforms are needed to deal with criminalisation of politics. The panel has suggested that, in the event cognizance has been taken by a magistrate of a criminal offence, the candidate ought to be disqualified from participating in the electoral process. Any candidate who fails to disclose a charge should be disqualified subsequently. It suggested lawmakers facing criminal charges, who have already been elected to Parliament and state legislatures, should voluntarily vacate their seats.

## **8. CONCLUSION**

The issue of “gender justice” has been making strides in numerous a region for a few centuries. Despite the fact that the customary perspective of gender injustice bad form has been given very much an end and regarded as an occasion of past days, yet the ailment still remains, here and there jumping with ungenerous evil giving a free play to the inferior endowments of nature in man in this way making the entire idea a ridicule anesthetizing the whole building implicit the most recent couple of decades.

The ruthless exploitation of women not just displays how such treatment in an hellish cursedness to the idea of gender justice but additionally uncovered the internment of the thought that is obliged to be sustained, loved and accepted with a profound conviction and kept up with a cheerful determination. It is understood that notwithstanding the constitutional safeguard and the dynamic legal backing towards the reason for women, changes in social disposition and institutions cannot be achieved quickly. Notwithstanding, it is important to quicken this methodology of progress by planned and arranged endeavors so that the vindictive social evil of gender inequality is covered somewhere down in its grave. Laws written in highly contrasting are insufficient to battle the insidiousness.

The role of Courts and judges expect more prominent significance and it is normal that the Courts would manage cases identifying with women in a more reasonable way. A socially delicate judge is indeed a better statutory shield in instances of unlawful acts against women than the long conditions of reformatory provisions, containing complex exemptions and stipulations.

Awakening of the collective consciousness is the need of the day. An issue as multifaceted as women’s self-actualization toward oneself is so imperative it would be impossible is left to a solitary segment of the general public. This obligation must be imparted by the State, group associations, legislators who frame the laws and the judiciary which interprets the Constitution and different laws so as to give a fillip to the legitimate change in the field of gender justice and to introduce the new sunrise of flexibility, pride and opportunity for both the genders similarly.



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To conclude, notwithstanding many legislations, International agreements, advancement policies and programs that aimed at empowerment of women (which is the center issue in deciding the status of women), gender disparity shows itself in different structure.

Nonetheless, there still exists a wide gap between the objectives articulated in worldwide and national responsibilities on one hand and the situational reality of the status of women in India, on the other. As a general rule, women do not impart just as to men in the opportunities, advantages and obligations of citizenship and improvement. It is clear in the infringement of equity and mankind right from the womb as there is pattern of consistent decrease in the number of inhabitants in female proportion most recent four decades.

Further victimization against girl children, adolescent girls and women holds on in parts of the nation. This is because of gender insensitivity and absence of legitimate proficiency leap the fulfillment of the target identified with empowerment of women. Thus, it is proposed that of every last one of needs in the battle of equality, the fundamental priority is the fairness of access to method for creating basic human capacities, the uniformity and chance to take part at each level in all parts of monetary, social and political in decision making process and if there is any gap between the projects of women empowerment and its execution, women specific interactions should be undertaken to bridge these gaps.

Only legislation and law enforcement agencies cannot prevent the incident of crime against women. There is need of social awakening and change in the state of mind of masses, so due appreciation and equivalent status is given to women. It's a time when the women need to be issued her due. This awakening can be brought by training campaign among youth making them aware of existing social evil and the means to eradicate same.

Mass media can play an active role here as in the present days it has come to each corner of the country. Different NGOs can consider a responsible position here by relegating them with the job of highlighting socio-economic causes leading to such crimes and by disseminating information about their catastrophic effect on the womanhood and the society at large.

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Efforts are on over the globe to give, secure and advance human rights for women. A few measures have been taken in India in this respect including the rights allowed under the Constitution, criminal law, labour laws and other social welfare legislations. Anyhow the occasions like the Jammu & Kashmir Bill and the Supreme Court decision in Christian Community case and additionally the deformities in the Domestic Violence Bill reflect the age-old male dominance.

To conclude I would like to say that Indian women has made a ton of progress and demonstrate that she is fit for doing anything and equivalent accomplice in the development and prosperity of the country. Women are one of the pillars of the society and it would be exceptionally hard to envision society without the presence of women. Now it is high time for all of us to understand the power of women. Indeed our legal and council has likewise acknowledged the way that ladies are a standout amongst the most vital components of society and their misuse would not be acknowledged at any expense.

There is one platitude that behind every successful man there is a lady. This idiom is sufficient to demonstrate that man and women both are essential component of society. Women assume distinctive part in her life which is not a simple assignment. Amid her life she goes about as girl, wife, sister and mother at distinctive phases of life. So we must issue them due consideration and regard and comprehend their endeavors towards welfare of the general public on the loose. Through I attempted my best to cover all the protected, legal and legislative privileges of women against the unlawful acts which they are confronting from a long while now. I hope this will help us to comprehend that rights of women are exceptionally essential and Indian law is sufficiently solid to shield her from any sort of harassment and torture.

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