

ENDORSEMENT OF GENDER JUSTICE BY
JUDICIARY: A CRITICAL ANALYSIS

Dissertation submitted to National Law University and Judicial Academy, Assam
in partial fulfilment for award of the degree of
MASTER OF LAWS/
ONE YEAR LL.M. DEGREE PROGRAMME

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2021-22

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July, 2022

ACKNOWLEDGEMENT

It is indeed a privilege for me to be able to appreciate all those, far and near, whose help, encouragement, suggestions as well as constructive criticism helped me in completing this phenomenal task of preparing a dissertation.

I sincerely thank Prof (Dr.) V.K Ahuja, Vice-Chancellor, National Law University and Judicial Academy, Assam for allowing me to carry out the study in this institution.

I am grateful to Dr. Indranoshee Das, ACS, Registrar, National Law University and Judicial Academy, Assam and Dr. Nandarani Choudhury, Assistant Registrar, National Law University and Judicial Academy, Assam for their priceless and untiring support.

I express my sincere thanks to the Examination Section of the University for the constant and vigorous assistance.

I shall always be indebted to my guide Dr. Gitanjali Ghosh, Assistant Professor of Law, National Law University and Judicial Academy, Assam, who apart from her constant guidance and valuable suggestions throughout the period of this study, will always be fondly remembered as an affectionate teacher who is a constant source of inspiration.

I also take this opportunity to express my sincere thanks to all my teachers Dr. Diptimoni Boruah, Mr. Saheb Chowdhury, Mr. Thangzakhup Tombing, Mr. Himangshu Ranjan Nath, for their encouragement and for sharing their rich knowledge and expertise.

I express my sincere thanks and gratitude to Dr. Kankana Baishya, Assistant Librarian, National Law University and Judicial Academy, Assam and the Library Section for their invaluable help in carrying out my dissertation study.

I am also grateful to the Administrative Section, Finance and Accounts Section, Engineering Section, Health and Counselling Centre, Hostel facilities, IT Section for their valuable support throughout the study.

I am thankful to all the staff members of the University for their valuable help.

I sincerely thank my parents for their constant support in every step of my life which enabled me to carry on and complete my work. Finally, I submit to the Almighty without whose blessings this endeavor would not have been possible.

A handwritten signature in black ink, enclosed in a thin black rectangular border. The signature is written in a cursive style and appears to read "Gurjans".

CERTIFICATE

This is to certify that GUNJAN CHANDAVAT has completed her dissertation titled **“ENDORSEMENT OF GENDER JUSTICE BY JUDICIARY: A CRITICAL ANALYSIS”** under my supervision for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

Date: 11.07.2022

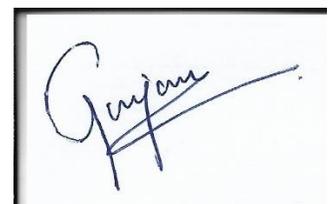
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DECLARATION

I, GUNJAN CHANDAVAT, do hereby declare that the dissertation titled **“ENDORSEMENT OF GENDER JUSTICE BY JUDICIARY: A CRITICAL ANALYSIS”** submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.

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LIST OF ABBREVIATIONS

1. AC - Appeal Cases
2. AIR - All India Reporter
3. Art. – Article
4. CAD - Constituent Assembly Debates
5. Cal - Calcutta
6. CAW - Crime Against Women
7. CCEA - Cabinet Committee on Economic Affairs
8. CEDAW- Convention on the Elimination of All Forms of Discrimination against Women
9. CJ- Chief Justice
10. CrLJ - Criminal Law Journal
11. CSO - Civil Society Organization
12. CSR - Child Sex Ratio
13. CSWI - Committee on the Status of Women in India
14. DEDAW - The Declaration on the Elimination of Discrimination against Women
15. ECOSOC - United Nations Economic and Social Council
16. FC - Federal Court
17. GBV - Gender-Based Violence
18. GDI- Gender Development Index
19. ICCPR - The International Covenant on Civil and Political Rights
20. ICDS - Integrated Child Development Services
21. ICESCR - The International Covenant on Economic, Social and Cultural Rights
22. ICPRW - The Convention on the Political Rights of Women
23. ICPS - Integrated Child Protection Scheme
24. ILI - Indian Law Institute
25. ILJ - Indian Law Journal
26. ILO - International Labour Organisation
27. ILO - International Labour Organization
28. ILR -Indian Law Reporter

29. IPC - Indian Penal Code
30. MWCD - Ministry of Women and Child Development
31. NALSA - National Legal Services Authority of India
32. NCRB - National Crime Records Bureau
33. NCW - National Commission for Women
34. SC - Supreme Court
35. SCC - Supreme Court Case
36. SCW - Supreme Court Weekly Report
37. SRB - Sex Ratio at Birth
38. UK - United Kingdom
39. UN - United Nations
40. US - United States
41. v. - Versus
42. VAW - Violence Against Women

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CHAPTER 1

INTRODUCTION

Research Background:

Gender Justice has been debated at various forums since long, even then the debate finds its relevance in the present scenario. There has been various suggestions and approaches given by scholars to eliminate the differences that exist but unfortunately the problem still subsists. In order to comprehend the problem, it is essential to dive deep into analyzing its roots. The concept of gender equality was present in the UN Charter¹ and subsequently in UDHR² it was made a human right which was notable step. Thereafter, organs of the UN i.e UN Economic and Social Council established a Commission responsible for promoting gender equality.³ These instances marked the recognition of gender equality at the International Scenario after World War II. There were other developments that have taken place in the international regime which will be discussed later in this paper.

It is pertinent to look at the Indian Scenario post- independence, though there have been significant events relating to women's rights prior to independence, for this dissertation we are concerned only with scenario post-independence. Constitution of India created a path through which gender equality was envisaged by the framers. Article 14, 15 and 16 of the Indian Constitution became the basis for a number of policies and laws for gender equality. Article 39 mentions the principles to be followed by the state while framing its policies, which mentions that both men and women have equal right to livelihood and equality of pay irrespective of gender. Further, fundamental duty was also inserted where in it mentioned that practices derogatory to women should be renounced [51 A(e)]. Though DPSP and Fundamental Duties are not enforceable in the court but even then, these act as guiding force for the government as well as for the people.

¹ Charter of United Nations (1945) art 1.

² Universal Declaration of Human Rights (adopted 10 December 1948 art 1.

³ Sanjit Kumar Chakraborty, 'Women's Rights in India: A Constitutional Insight' <<https://ssrn.com/abstract=3688004>> accessed 2 March 2022.

To enforce the principles written down in the Constitution it is the duty of Legislature and Executive. Judiciary acts as defender of the rights guaranteed under the Constitution and hence it has played an active role in securing women's right after independence. Through this paper researcher will try to put forth the analysis of various judgments concerning women's right in the area of marriage and family, employment, property rights and offences against women. Judiciary as a third pillar has a duty to protect what has been enshrined in the Constitution and this paper will give some insight as to Judiciary's approach while dealing with women's rights.

Statement of Problem:

Women's rights have been advocated since long, but still there lingers issues of either implementation or interpretation of colonial legislations. Judiciary has long been proponent of gender justice but its response has been different for different women rights. Hence it is pertinent to analyze the Judiciary's response and contribution in promoting gender justice. Also, it will give a clear picture of Judiciary's contribution in molding the concept of gender justice as it exists today.

Literature Review:

Gokulesh Sharma⁴ has discussed about the Indian feminist movement started off with an optimistic reliance on the power of the law to deliver social reform and is now in danger of rejecting any meaningful engagement with the law. In either case there is an unnecessarily narrow conception of the nature of law. What exactly is meant by the concept of nature of law is more or less the question at the centre of this book. There is no one universally accepted answer to this question but it is important to consider whether any one conception is better than another. A failure to justify any particular conception of law leads to relativism and the consequential situation where it is not possible to pursue any common goals.

⁴ Gokulesh Sharma, *Feminine Jurisprudence in India* (Deep & Deep Publications Pvt. Ltd).

Catharine A. MacKinnon⁵ “in the article speaks about granting equality rights through family law to women of underrepresented religious minority in accordance with the Indian Constitution and international law. The prevalent global legal equality model, which is based on similarity and difference, is questioned. By discussing the jurisprudence of the Supreme Court of India, an alternative model addressing dominance and subordinate ordinal hierarchy is established and shown. It is noted that they failed to adapt this paradigm to family law, and a fresh approach is suggested to the challenging issue of ensuring Muslim women’s sex equality rights under India’s personal laws.

Shampa Dev⁶ mentions in her article that “a perusal of the criminal laws and personal laws reveal that laws adopt a protectionist and paternalistic approach for empowering and providing autonomy to women. This paper initiates a discussion on issues at the core of gender justice. It questions the man-woman dichotomy and asserts that if men and women are fundamentally different as categories, then a single yardstick for measuring justice is wrong. And, if they are not class wise different, and evince only personal traits, then the whole idea of gender justice based on the dichotomy is flawed. This paper further argues that social conditioning restricts the possibility of autonomous decisions. In conclusion, it is argued that laws need to create just social conditions and institutions that guarantee freedom from socially imposed disabilities, and subsequently, strengthen autonomy in decision making”.

Dr. Jane Wambui⁷ talks about Techniques for acquiring data are known as research methods, and they can either be quantitative or qualitative. Methodology has allegedly been gendered since quantitative approaches are typically linked to concepts like positivism, science, objectivity, statistics, and masculinity. Comparatively, qualitative approaches are typically linked to interpretivism, non-science, subjectivity, and femininity. Some feminist academics have criticised or even rejected the quantitative

⁵Catharine A. MacKinnon, ‘Sex equality under the Constitution of India Problems, prospects and personal laws’ (2018) 4 I-CON <10.1093/icon/mol001> accessed 4 March 2022.

⁶Shampa Dev, ‘Gender Justice in India: A Feminist Jurisprudential Perspective’ (2018) 10 Tattva-Journal of Philosophy < <https://doi.org/10.12726/tjp.19.5>> accessed 5 March 2022.

⁷Dr. Jane Wambui, ‘An Introduction to Feminist Research’(2013) 2 University of Nairobi < <https://www2.unb.ca/parl/research.htm>> accessed 4 June 2022.

approach because of these linkages, claiming that it is in direct opposition to the goals of feminist. Researchers who support gender equality have accused quantitative positivism of excluding and disregarding women as well as adding female expertise to that of men. Due to the context-stripping aspects of traditional techniques, women's experiences, especially those of women, are lost (which include surveys, questionnaires, psychological tests and experiments, and even interviews). Feminists have frequently emphasised the importance of social context by insisting that feminist approaches be contextual or avoid focusing on the person in isolation, cut off from interactions and relationships with other people.

M.P. Jain⁸ provides detailed information on the Constitution of India with recent Constitutional developments and amendments. The book deals with the whole of Indian Constitution giving in depth knowledge of all the provisions and the changes recently made along with recent judicial pronouncements of the Supreme Court.

S.K. Kapoor⁹ he discussed in his book that human rights form a major cornerstone in the modern-day democratic constitutions. The inhuman atrocities torturous treatment to dissidents and political activities are perpetrated in many forms and manners in many countries. At the culmination of second world war many conventions and covenants like International Covenant on Civil and Political Rights, Universal Declaration of Human Rights, United Nations character etc. came into effect mainly from the auspices of united nations. This book deals all the topics mentioned above.

Nomita Aggarwal¹⁰ she has discussed in her book various legislations concerning women passed in India every now & then and related cases taken up by the courts.

Surinder Mediratta¹¹ draws attention to the issue which have a critical bearing on employment for women. Though women have a large presence in the workplace, it is still not on an equal footing with that of men. This book seeks to find the reasons for

⁸ M.P. Jain, *Indian Constitutional Law* (8th edn Lexis Nexis 2018) 378.

⁹ S.K. Kapoor, *International Law & Human Rights* (11th Edition Central Law Academy 2018) 267.

¹⁰ Nomita Aggarwal, *Women and Law in India* (Women's Studies and Development Centre, 2002) 456.

¹¹ Surinder Mediratta, *Handbook of Law, Women, and Employment Policies, Issues, Legislation, and case Laws* (1st edn Oxford University Press 2009) 543.

this state of affair, while also examining in detail the efforts made by the State through legislation and Policies to address various problems.

Monica Chawla¹² has explained in her book Special laws made for women and protection given to women under different laws.

Chief Justice A.S Anand¹³ in his book explained various case laws relating to women's rights and different articles relating to how human rights form inalienable part of women's rights, how justice has been secured to women through the various legislations being enacted from time to time. Explaining various challenges Judiciary faces as an institution in securing gender justice.

Aims:

The aim of this dissertation is to bring forth a clear analysis of judgments post-independence which have made landmark changes on the way to gender justice. Further, analyzing the impact created by these judgments through the lens of feminist jurisprudence which have developed in India by way of various instances in the history.

Objectives:

The above- mentioned aim is to be achieved by the following objectives:

1. To examine the development of women's rights post-independence in India.
2. To analyze the impact on women right created by Indian Supreme Court as the third pillar of government.
3. To analyze how Indian Constitution has aided in realizing gender justice and
4. To suggest reforms that will create meaningful impact on the way to achieve gender justice.

Research Questions:

In order to achieve the aims and objectives of this dissertation, following questions have been framed by the researcher.

¹² ibid 11.

¹³ Chief Justice A.S Anand, *Justice for Women concerns and expression* (3rd Edition Universal Law Publication, 2008) 342.

1. What does the word gender justice entail and how has the word evolved in Indian scenario?
2. How has Constituent Assembly debates impacted the aspect of women's right under the Constitution?
3. What has been the approach of Hon'ble Supreme court in different cases relating to women's rights?
4. How has gender justice evolved in India vis- à-vis International Instruments?

Research Methodology:

In this paper feminist research methodology has been used in order to analyze the cases and other literature present.

Feminist research tends to be different from any other method from the very inception as feminist researcher looks at the prevailing situation as not adequate to solve the existing gender inequalities. With the passage of time the concept of feminism has been changing. The researcher has adopted postmodern qualitative feminism approach¹⁴ for this paper because of the following reasons:

- Firstly, this approach view women not as a single homogenous group but as individuals with different needs and aspirations, thus it is important to view the differences among women and take corrective measures accordingly. Unlike the traditional feminist which categorized women under one group *i.e.*, every woman has similar needs therefore changes can be advocated for women as a group.
- Secondly, it sees equality not only between male and female but also between women who are differently situated, this can be explained by an example wherein two girls in the same college have different social and financial background as one can be from upper class financially sound family and the other can be from scheduled class lower income group and therefore these cannot be objectively dealt under one group, they have to be represented subjectively.

¹⁴ *ibid* 7.

- Thirdly, addressing the women's question which is not only confined to assessing their position in the family or society, but putting forth every aspect that affects them ranging from the conventional issues to the unconventional ones.

The doctrinal method will be employed by the researcher throughout the paper, to study and analyze the women's question which has been either addressed or left unaddressed by the Judiciary or Legislature. To trace down the impact of judgments on women's life also to analyze International Instruments and how it has impacted in shaping global gender equality.

A Uniform mode of citation has been adopted throughout the dissertation. The Oxford University Standard Citation of Legal Authorities Fourth Edition has been adopted.

Sources of Data: Primary and Secondary sources have been used in writing this dissertation. Primary includes Indian statutes, International Instruments, Supreme Court cases. Secondary includes books, articles, online journals and other internet sources.

Scope and Limitations:

This dissertation covers studying the rationale of the judgments delivered by Indian Supreme Court since independence *i.e.* after 1950 which have in anyway impacted the lives of women and further to study international instruments which deal with women's right.

The major limitation of this dissertation is that there have many cases which deal with women's right but not all have been dealt here, the researcher has selected few cases from each domain of women's right and presented the same.

Chapterisation:

Chapter 1: Introduction

This chapter provides an introduction to the paper and contains the research methodology, aims, objectives and research questions in addition the background of the paper has been established aptly.

Chapter 2: Concept of gender justice and its origin

This chapter provides on how the concept of justice has evolved overtime in India and how has government responded to the raising questions of gender justice.

Chapter 3: Analysis of Supreme Court cases after Independence

This chapter entails detailed study of the various Supreme court and High court cases and how these have impacted the women's question pertinent at that point of time. These cases majorly revolve around four broad themes:

1. Violence against Women
2. Marriage and Family
3. Employment
4. Property Rights

Chapter 4: Women's Right under International Instruments

This chapter lays down various International Instruments on gender justice enacted from time to time also looking at how other countries have incorporated those into their national laws as required by international mandate.

Chapter 5: Conclusion And Suggestions

This chapter succinctly concludes the analysis done in above chapters along with giving relevant suggestions for the paper.

CHAPTER 2

CONCEPTIONALIZING GENDER EQUALITY UNDER INDIAN CONSTITUTION

“A feminist is anyone who recognizes the equality and full humanity of women and men.”

– Gloria Steinem”

The concept of gender equality is so commonly used by everyone, but still it is hard to define what it actually means as it is a dynamic concept which has developed multi-dimensionally. Gender equality is mostly spoken in reference to human rights at the global scenario. It has always been seen through the lens of fairness and justice in all aspects between men and women.

In India women’s rights had been advocated even before independence i.e during the British era there have been significant moves that had taken place for e.g. abolition of sati system, right to education, discouraging child marriage etc. During the freedom struggle even, women had played an active role, which led to raising women’s concerns on the national forum. In 1917 women delegation met at Pune to raise concern over political rights of women (right to vote)¹⁵.

In 1920s, Indian leaders felt a need for framing an indigenous Constitution and not merely accepting a constitution framed by the Britishers. Annie Besant took up this responsibility of drafting, wherein a National Convention comprising of 255 members was set up for this purpose. This convention came up with the Commonwealth of India Bill 1925 which was to function as the Constitution. The bill was very meticulously drafted and it represented the constitutional vision of leaders at that time. Non-discrimination on the basis of sex was made a fundamental right.¹⁶

¹⁵ Jogendra Kr Das, ‘Reflections On Human Rights And The Position Of Indian Women’ (2003) 64 IJPS 2003 < <https://www.jstor.org/stable/41855782?seq=1> > accessed 3rd March 2022.

¹⁶ *ibid.*

Annie Besant had mapped out to get this bill passed in British Parliament through a political party, but that did not come into power and hence this bill went into cold storage, but it influenced Nehru Report 1928 which led to contribution in Constitution drafting.¹⁷

The Women's Association led by Annie Besant started publishing *Stri-Dharma* wherein it gave voice to women through its articles that were published in the magazine.¹⁸

An article named as “*Women's Place in the Future Constitution of India*” was published in which were laid down some aspirations and principles of a future constitution:¹⁹

- Both sexes to be accorded similar treatment when contesting an election.
- Reservation of fixed seats for women in each provincial council.
- Equal voting rights for men and women.
- No discrimination on the ground of marriage for casting vote.
- No discrimination on the ground of sex into the public services.

Equal voting rights, reservations in legislatures, the de-linking of women's franchise from their marital status and a non-discrimination clause; For the time, these were quite remarkable and bold articulations of constitutional arrangements that were intended to protect and promote the rights of Indian women.²⁰

Drafting of Constitution of India is not a standalone document where women rights were laid down. Even before that in the Nehru Report, 1928 and “Shriman Narayan Agarwal's written Gandhian Constitution for Free India,1946”, such rights find a mention. Nehru Report was drafted because Simon Commission which was assigned work to first to review Govt. of India Act,1919 and to suggest reforms in the constitutional structure for smooth functioning did not any Indian member and in response to this a resolution was passed in

¹⁷Rajesh Kumar, 'Equality for Women: The Constituent Assembly Debates and the Making of Equality Jurisprudence by and for Women' (2022) SC <<https://journals.sagepub.com/doi/abs/10.1177/00490857211040255>> accessed 3rd March 2022.

¹⁸ Gautam Bhatia, 'Women and the Constituent Assembly – II: The Framing of the Non-Discrimination Clause' <<https://indconlawphil.wordpress.com/2015/09/04/guest-post-women-and-the-constituent-assembly-ii-the-framing-of-the-non-discrimination-clause/>> accessed 5 May 2022.

¹⁹ *ibid* 17.

²⁰ *ibid*.

session of Indian National Congress to prepare a draft which will act as a guiding document in governing the people.²¹ The major highlights of the report are as follows:

- India to be a self- governing state.
- Fundamental Rights like freedom to speak, equality, to profess religion etc. finds a mention.
- Right to free education was a notable feature.
- Right to vote was given to every person.
- Muslims were given reservation where they were in minority and not otherwise.

The “Shriman Narayan’s written Gandhian Constitution” was based on the principles which Gandhi Ji advocated. The reason for its drafting was that Constitution of any country has to be reflective of the aspirations of its people and therefore it is the local people who should be writing it down instead of foreigners as they are fully aware of the positives and the negatives of the country. Its noteworthy features are enlisted below:

- Panchayats played a pivotal role in governance of the country and hence were given powers ranging from administrative to judicial.
- Fundamental Rights and Duties both were made equally important.

Deliberations did take place regarding incorporating the above features in the Constitution but it did not make it to the final draft. However, later by way of an amendment new schedule regarding panchayats and municipalities was added.²²

The next draft which is not much spoken about is the Sapru Committee Report,1945²³ which had made a number of recommendations some of it were a solution to the existing communal problems soaring at that point of time. The committee comprised of individuals

²¹Arif, R, ‘Remembering the women of the Constituent Assembly (Opinion)’ Hindustan Times (2020, March 10) <<https://www.hindustantimes.com/analysis/remembering-the-women-of-the-constituent-assembly-opinion/story-W0qCZfynjxdrTGUeaTYaCN.html>> accessed on 7 May 2022.

²²Awasthi, ‘Hansa Jivraj Mehta: Freedom fighter, reformer; India has a lot to thank her for’ Indian Express <<https://indianexpress.com/article/gender/hansa-jivraj-mehta-freedom-fighter-reformer-india-has-a-lot-to-thank-her-for-5034322/>> accessed 5 May 2022.

²³Crawford, *Transformations: Women, gender and psychology* (3rd edition McGraw-Hill Education 2018) 220.

who were not from major political parties functioning at that point of time. The key recommendations of the report are summarized below:²⁴

- Representation from both Hindu and Muslims should be there while drafting the Constitution.
- It proposed for reservation in case of minorities.
- It also contained various fundamental rights and divided it under two heads as justiciable and non- justiciable, though nothing significant was proposed in this regard.

Next is the Karachi Resolution, 1931, which was passed in the middle of political chaos. Therefore, it laid emphasis on independence and list of rights for the people which resembled the Directive Principles of State Policy currently existing in the Indian Constitution. Hence, by way of this resolution some basic rights were written down.²⁵

Thereafter the next in line is Constitution of Free India,1944, written by M.N.Roy wherein a Constitutional framework was laid down for India, though reflection of this draft cannot be felt much in our Constitution but it recognized women's rights much more than its counterparts. Following are the women's rights recognized in the draft:²⁶

- Maternity leave for women to the tune of 3 months
- Equal treatment of men and women in matters of citizenship.
- Voting rights to everyone above 18 years irrespective of gender.

The last document for consideration before analyzing the Constitution is the Socialist Draft Constitution of India,1948. This was prepared at the same time of Constitution drafting, but it was wholly based on a socialist ideology and therefore it was not much referred by the Constituent Assembly. It provided for special treatment for women and children and

²⁴ E Houlihan, 'Support to women Constitution makers and gendered Constitution-building' < <https://www.idea.int/news-media/news/support-women-constitution-makers-and-gendered-constitution-building> > accessed 8 May 2022.

²⁵ K Kannabiran, 'Judicial meanderings in patriarchal thickets: Litigating sex discrimination in India' (2014) SAGE Publications < http://www.mcrg.ac.in/Development/P_writing/Kalpana1.pdf > accessed 3rd March 2022.

²⁶ *ibid* 23.

also prohibited women and children from working in factories which is injurious to their health.²⁷

Constituent Assembly Debates and Constitutional Provisions Relating to Women

After independence the real test was incorporating these rights in the Constitution so that the government is able to take steps to further these rights in form of legislations and policies. In order to know the stand of Constitution drafters in relation to women's rights, Constitution Assembly Debates have to be looked at. The first shock while looking at the composition of the Constituent Assembly is that there were only 15 women members out of total of 296 members which clearly points out towards under representation.²⁸ Once an issue was raised about women representation when three women members of the Constituent Assembly had taken an exit, then it was proposed by Purnima Banerjee to replace them with women members so that the total representation is not decreased, but this proposal was not acted upon.²⁹

Though the representation of women was less that does not mean there was no participation by them in the debates, they have vociferously debated about rights in the debates whether it was accepted by the Assembly or not is a separate question. Hansa Jivraj Mehta was a member of committee on fundamental rights. She along with other members of Constituent Assembly namely Rajkumari Amrit Kaur advocated for UCC and fundamental right to marriage. their efforts were partially successful on inclusion as UCC in DPSP.³⁰

Another member of the Constituent Assembly was Dakshayani Velayudhan who was the sole Dalit woman and youngest member in the Assembly. She advocated for the protection and empowerment of the Scheduled Castes and prohibiting forced labour. Purnima Banerjee was an active member of the Congress Socialist Party who frequently advocated for stronger socio-economic and civil liberty protections in the Constitution. She was in favour of including DPSP so as to strengthen the social transformative function of the Constitution. On the topic of preventive detention, she vehemently proposed for imposing

²⁷ibid 26.

²⁸ibid.

²⁹CAD Deb 8 November 1948 vol 6.

³⁰CAD Deb 28 November 1948 vol 7.

a time limit on the period of detention. Although her proposal was not accepted in its entirety, however, other members supported who were equally concerned about the potential for misuse.³¹

Some scholars have argued that the Assembly was representative of Indian people because it was, one of the few constituent assemblies to include women. The discussions surrounding the women members of the Assembly have majorly focused on the number and not so much on their valuable contributions to the Assembly. The above elaboration makes it aptly clear that women not only were present in, but also actively participated in the debates in the Assembly and influenced some of the key provisions in the Constitution.³²

There were few revolutionary proposals that were floated in the Constituent Assembly, but did not see the light of the day. They were regarding abolition of the devadasi system, removal of discrimination between legitimate and illegitimate children, reform of personal laws and equality in the sphere of marriage. The nationalist sentiment was at its peak during that time and therefore issues concerning women's rights and their distinctive needs, could not be elaborately discussed.³³

There are countless instances where women are denied their rights and privileges and face various forms of discrimination, despite a women's movement for these rights and benefits. The prevalence of gender discrimination and violence against women calls for special attention. Even though there are numerous legislative safeguards for women's rights and dignity, the current state of affairs is worrying.³⁴

Women's rights synonymous with Human Rights

Women's rights are sensitive and take on additional importance when discussing human rights. Women continue to be a vulnerable group in a male-dominated culture because they are frequently denied their rights.³⁵

³¹G. Rajasekharan Nair, *Gender Justice under Indian Criminal Justice System* (2nd edn Eastern Law House 2011) 145.

³²ibid 29.

³³ibid 30.

³⁴M. C. Nussbaum, *India sex equality, and constitutional law* (Cambridge University Press 2004) 454.

³⁵V.V. Devasia Leclamma Devasia, *Women, Social Justice and Human Rights* (APH Publishing 2000) 203.

“Women’s rights and equity have to be looked with renewed vigour and vision so as to supplement the larger goal of human rights and humanity. The human rights of women and of the girl-child are an inalienable, part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.”
– “The Vienna Declaration and the Program of Action”

The above discussed scenario is with regard to Indian Constitutional History, but during the same time in the international scenario, women’s rights were termed as basic human rights which form inalienable part of human existence. This is evident from many international instruments, viz and inter alia the UN Charter spells down that to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. This clearly indicates that basic human rights are integral and hence every state shall strive towards its fulfillment.³⁶

The first principle on which human rights are based is the principle of inherent dignity and worth of every individual and the need to secure to each person an equal and inalienable right to live in freedom to enjoy equality, to be treated justly and to live in peace. But, though universally accepted, human rights are yet to be realized in the daily lives of a majority of ordinary men and women. Human beings are found in chains everywhere, denied basic human rights because they are tied down by inequitable systems of governance, by traditions cultures and beliefs based on unjust or inequitable distinctions between men and men, or grown-ups and children.³⁷

The recognition of women’s human rights has come very lately. From the days of Magna Carta, the rights of an individual to be protected against the might of the state was well accepted. This right was known as civil and political rights. Social, economic and cultural rights took a longer time to be accepted as basic human rights. However, the Universal Declaration of Human Rights 1948, has unequivocally included all these rights as basic human rights and everyone is entitled to all rights set forth in the Declaration without distinction of any kind such as race, colour, sex language, religion and international level

³⁶ibid.

³⁷V. R Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India; Yesterday, Today and Tomorrow* (Eastern law House Private Ltd 1999) 378.

and eradication of all forms of discrimination on grounds of sex are the priority objectives of the international community”.³⁸

But the fact is that women hardly have succeeded in bettering their status throughout the world and achieve relatively less equality than the men”. The following Articles present in UDHR clearly spell down its vision for the states to follow:³⁹

- Article 16(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.
- Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
- Article 23: Everyone, without any discrimination, has the right to equal pay for equal work.

In all the fields of the society, including politics, civil services, commerce, industry, women are inadequately represented and not only in the contemporary world, women's representation is microscopic and highly disproportionate. And if occasionally any women make it to the top of a profession, it becomes a big news headline. This clearly reveals that it is an exception rather than a rule for women to make it to the top.

Women's fundamental rights is one of the aspects of human rights. Human rights had their origin in the natural and inalienable rights of man expressed in the seventeenth and eighteenth centuries. In the nineteenth century a few liberal reformers and radical Utopians proposed the extension of these rights to women, and thus it generated the first moves for female emancipation, which in their second wave in the mid-twentieth century became a movement for women's liberation.⁴⁰

Women, everywhere, face the harsh reality of life both in home and outside and are sometimes denied the freedom for their very existence. Entrenched structures and practices

³⁸ *ibid.*

³⁹ *ibid* 23.

⁴⁰ V.K. Dewan, *Law Relating to Offences Against Women* (2nd edn Orient Law House, 2000) 290.

such as caste, customary laws, the family, religion *etc.* continue to discriminate against women. The concept of human rights is never directly applied to situations of this category but its frequent application is seen only in unlawful imprisonment, detention, torture, and custodial deaths. The implications of human rights lie in the right of human beings everywhere to a minimum standard of living and to a dignified existence free from exploitation.⁴¹

Protection of Women's rights and against exploitation is now a Herculean task for the State. Effective and expeditious measures have to be taken in order to establish parity between the gender been achieved, process should be initiated to guarantee the human rights of ever. The modern age civilization guarantees certain degree of rights to every individual, along with certain duties. These rights are inherent to every individual and for this reason it is called human rights. Human rights are very much essential for a good and qualitative human survival. It gives various freedoms and security to the individual so as to develop his/her personality and to facilitate his/her existence in the society.

Human rights are coterminous to rights, the latter being a broad and to an extent a relative term. Rights are given to an individual but there might be certain conditions attached to it, be it social, economic, political, educational etc. but when we speak of human rights, we mean a certain type of universal phenomenon having no limitations in its applicative aspects. To a lay person, human rights may appear to be a vague concept but it has a deeper meaning and wider ramifications when analysed in the proper sense. It gives a person a free space in order to shape his ident⁴²

Constitutional Safeguards for women:

Constitution of India has provided with ample safeguards for women. There are articles mentioned in the Constitution which provides for specific rights to women. This forms the basis of many legislations and policies of the government. Hence it is essential to have a look at these provisions.⁴³

⁴¹Shailaja Nagendra, *Women and Human Rights* (ABD Publishers 2008) 398.

⁴²ibid 26.

⁴³S.R. Myneni, *Law Relating to Women* (Asian Law House 2013) 89.

The Preamble being the first instance where the ideals to be abided by are mentioned. Looking at the starting line which says “We The People of India”, this reflects that it is the people who are collectively referred rather than any person or group. It further reflects on basic “principles of Justice (social, economic & political) and equality (status & opportunity)” which in turn is reflected in the Articles.⁴⁴

Even through several constitutional amendments various rights of women have been secured. It is through the 73rd and 74th constitutional amendment that seats were reserved for women at Panchayats and Municipalities. The Legislature has from time-to-time enacted laws which improves the position of women in the society eg. on domestic violence, labour legislations and other personal laws amendments etc. However, there are various reasons for enacting. The reasons can range from uplifting women’s position to public pressure to directions given by the Constitutional courts. Therefore, going through various judgments in the next chapter will give more clarity as to the activism of Legislature and Judiciary in the field of women’s rights.⁴⁵

Securing women’s rights by guaranteeing them basic fundamental rights forms the backbone which gives them much needed support for claiming other ancillary rights. Article 14 of the Constitution guarantees to every person equality before law and equal protection of law. The language used in the Constitution is gender neutral and wherever necessary to emphasize it is done by particularly using it. Looking at Articles 39(a), (d) and (e) it can be said that both men and women find a mention.⁴⁶

Article 19(1)(g) of the Constitution States that all the citizens have the right to practice any profession or to carry out any business. The right assured under Article 19(1)(g) must be exercised with human dignity. So if the woman employee is harassed at the work place sexually or mentally it will amount to violation of this rule.

Perusing the debates, it can be found that the core issue of how to bring about gender equality does not find much mention but issues of women trafficking and forbidding

⁴⁴ibid.

⁴⁵Anjani Kant, *Law Relating to Women and Law* (Central Law Publications 2006) 550.

⁴⁶ O.P. Mishra, *Law Relating to Woman and Child* (Central Law Agency 2014) 178.

employment of women in mines & hazardous place were discussed at length.⁴⁷ The debates revolve around the fact that women have been socially oppressed system and in order to improve their situation Constitution has to provide a protectionist provision for them. This clearly points that there was no discussion about substantive equality between the men and women and also how to strengthen the position of women which had undergone severe erosion from the pre-independence era.⁴⁸

But the other articles of the Constitution also had an effect on women though not deliberated from the lens of women rights and those are right to equality, right against non-discrimination and right to life and personal liberty. These Articles have been time and again used by the Judiciary in securing women's right as many rights fall under the garb of these umbrella rights.⁴⁹

Gender equality is one of the basic principles of our Constitution if the word 'after' will be read to mean that a mother can be a guardian only after the death of father, then it would lead to discrimination between men and women. Normally the rule of interpretation is that all Acts should be in harmony to the Constitution as it is the supreme law of land. The father cannot be given right over the mother on the subject of guardianships just because of his domination position as both fall under the same category hence the word after should be interpreted in the such a way that it remains in harmony with Constitutional safeguards.⁵⁰

⁴⁷ *ibid.*

⁴⁸ *ibid* 32.

⁴⁹ *ibid.*

⁵⁰ *ibid* 34.

CHAPTER 3:
ANALYSIS OF SUPREME COURT CASES AFTER INDEPENDENCE

Our Constitution is the fundamental legal document in a democratic society. It sets down the principles for the governance of a country. It aims at creating legitimate standard, economic values, which are to be made effective by creating balance between individual rights and rights of society to attain the desired community goals. All the laws have to conform to it, and any enactment, inconsistent with it, is void. The Constitution aims at creating legal norms, social philosophy and economic values which are to be affected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals.

The Constitution recognized the principal of gender justice and contains a variety of provisions, which provide for equal rights and opportunities for both men and women. The role of Judiciary is to uphold all these constitutional rights being the third pillar of democracy. Following cases have been studied in order to arrive at the conclusion as to what extent these principles been upheld till date.

1. Bombay Labour Union v. International Franchise Pvt. Ltd. (1965)⁵¹

The respondent's concern has a service requirement that requires single women employed in a particular department to quit upon getting married, and this is the only issue that is challenged in this appeal by special leave. The appellant union complained about this requirement on behalf of the workers, and the matter was submitted to the Maharashtra Industrial Tribunal under the following conditions: The existing requirement that women leave the Company's service after getting married should be lifted.

The argument advanced by the respondent in this regard was that "The only reason given for enforcement of this Rule in this department is that the workmen have to work in teams in this department and that requires that they should be regular and that this cannot be expected from married women for obvious reasons, and that there is greater absenteeism

⁵¹1966 SCR (2) 477.

among married women then among unmarried women or widows against whom there is no bar of this kind.”

2. B Shah v. Presiding Officer, Labour Court (1977)⁵²

In this instance, a pregnant employee at Mountain Stuart Estate was given permission to take maternity leave. The employee earned compensation equal to 12 weeks of work, but Sundays were not included in the computation because the employer regarded them as unpaid rest days. The employee complained to the Labour Court over this payment because she felt that the benefits she was receiving for her maternity leave should also cover the 12 Sundays. The firm was ordered to pay the claimant for the 12 Sundays after the court ruled in her favour. The Court of Madras sided with the business when the verdict was appealed.

The claimant challenged this decision after being dissatisfied with it, and the court that heard the case decided in her favour. The business challenged the ruling once more to the Supreme Court, which had to consider whether Sundays should be factored into the computation of maternity benefits in light of the Law on Maternity Pay (Law LIII of 1961). When beginning its investigation of the case, the Court noted section 5 of Law LIII, which states that a woman may be entitled to maternity pay for a total of 12 weeks, divided into two periods of six weeks before and six weeks following the birth.

The Court then conducted a linguistic analysis of the word week, looking at its different dictionary definitions, and came to the conclusion that the disputed weeks indeed include Sundays. On these grounds, the Court determined that the statute would have been written differently if the legislator had wanted maternity pay to exclude Sundays. The Court included the following as well:

“The interpretation placed by us on the phraseology of sub-sections (1) and (3) of section 5 of the Act appears to us to be in conformity not only with the legislative intendment but also with Paragraphs 1 and 2 of Article 4 of Convention No. 103 concerning Maternity Protection Convention (Revised), 1952.”

⁵²1978 SCR (1) 701.

3. **V. Tulasamma & Ors v. Sessa Reddi (Dead) By L. Rs (1977)**⁵³

The appellant claimed maintenance out of the joint family property in the hands of the respondent who was her deceased husband's brother. The husband had died in 1931. The claim was decreed and in execution of the decree, a compromise was arrived at allotting certain properties to the appellant for her maintenance and she was only given a limited interest in those properties without any power of alienation. The appellant continued to be in possession and after the Hindu Succession Act, 1956, she leased out the properties. The respondent filed a suit for declaration that the alienations were not binding on him and could remain valid only till the lifetime of the appellant. The appellant claimed that she had become the full owner under Section 14(1) of the Act, but the trial court decreed the suit on the ground that her interest was not enlarged in view of Section 14(2). The first appellant court reversed the decree, but the High court in second appeal restored the decree in the respondent's favour.

Supreme Court allowed the appeal and held that Section 14(1) is wide in its scope and ambit. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act shall be held by her as full owner. The words 'any property' are large enough to cover any kind of property and the explanation says that property would include both movable and immovable property acquired by a female Hindu by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person whether a relative or not." "The word possessed of mean the state of owing or having in one's hand or power. It need not be actual or physical possession or personal occupation of the property but it may be possession in law provided that she has not parted with her rights and is capable of obtaining possession of the property".

Since the properties were acquired by the appellant under the compromise in lieu or satisfaction of her right to maintenance it is sec.14(1) and not sec.14(2) which would be applicable. The appellant must be deemed to have become full owner of the properties notwithstanding that the compromise prescribed a limited interest in the properties.

⁵³1977 SCR (3) 261.

4. CB Muthamma v. Union of India (1979)⁵⁴

Writ Petition was filed by Ms. Muthamma, a senior member of Indian Foreign Service regarding her being denied promotion to Grade I of the service is illegal and unconstitutional. The petitioner after filing this petition had been promoted, therefore the issue does not subsist. However Supreme Court had made observations that government need to examine the service rules and get rid of all the sex discriminating clauses.

Rule 8(2)⁵⁵ was manifestly discriminating wherein it was stated that after marriage of women she may be asked to resign if the government is convinced that her domestic affair is likely to thwart her efficiency as a member of the services. Further Rule 18⁵⁶ also contains a similar language wherein it is stated that no married women shall be entitled as of right to be appointed to the service. These rules are blatantly in contravention with Article 14 and 16 of the Constitution.

5. Air India v. Nargesh Meerza (1981)⁵⁷

Air India v Nergesh Meerza dealt with the constitutionality of Regulations 46 and 47 of the Air India Employee Service Regulations. The regulations provided that Air Hostesses(AHs) had to retire on attaining the age of 35 extendable to 45 years at the discretion of the Managing Director, on marriage if it was within four years of service, or on first pregnancy. Parallel conditions did not exist for Air Flight Pursuers (AFPs). Notably, only women were appointed as AHs while only men were appointed as AFPs.

This disparity was challenged under Articles 14, 15 and 16 of the Constitution of India. Article 14, under the classification test, guarantees like treatment to likes. By implication, differential treatment of those not alike does not amount to inequality. To determine whether the AHs and AFPs were alike, the Court looked at their service conditions, such as the qualifications required for the posts of AFPs and AHs, their grades of pay, the total number of such posts, and their entitlement to retirement benefits.

⁵⁴AIR 1979 SC 1868.

⁵⁵Indian Foreign Service (Conduct and Discipline) Rules 1961.

⁵⁶Indian Foreign Services (Recruitment, Cadre Seniority and Promotion) Rules 1961.

⁵⁷AIR 1981 SC 1829.

Given the vast difference between the conditions of employment of AFPs and AHs, the Court came to the “irresistible” inference that “the AHs form an absolutely separate category from that of AFPs in many respects having different grades, different promotional avenues and different service conditions.”⁵⁸ This is despite the Court having observed the similarity in the work performed by AHs and AFPs: a perusal of the job functions which have been detailed in the affidavit, clearly shows that the functions of the two, though obviously different overlap on some points but the difference, if any, is one of degree rather than of kind.⁵⁹ Yet, the different terms of employment were deemed sufficient to render the classification between AHs and AFPs with respect to their retirement conditions, as reasonable under Article 14.

6. Mackinnon Mackenzie & Co. Ltd vs Audrey D’Costa & Anr (1987)⁶⁰

This case majorly involves the question of equal compensation to both men and women for same or similar kind of work. The petitioner company in this case was availing the services of respondent as stenographer, she was terminated from service. Thereafter, she filed complain that during the time she was engaged with the petitioner company she had been denied equal compensation as that of male stenographer. The petitioner contended that the respondent was doing not doing similar or same work as that of male stenographer as her duty was as confidential stenographer working under Senior Executives.

Male stenographers were classified as “Clerical and Subordinate Staff” under the 1975 settlement. Unquestionably, the terms referred to in the settlement regarding the fitment to lady stenographers in the A grade or B grade are less favorable to them, and the same circumstances were permitted to stay in effect even after the Act came into force. Even if they have put in the same amount of service time and are assigned to the same tier of pay, the fact that lady stenographers are paid less and handled differently from the clerical and subordinate workers suggests discrimination. In light of section 4 of the Act⁶¹, it is unacceptable to continue the discrimination caused by the settlement conditions based only

⁵⁸ibid.

⁵⁹ibid 58.

⁶⁰1987 SCR (2) 659.

⁶¹The Equal Remuneration Act 1976.

on the employee's sex. Like the work of flight hostesses, the Confidential Lady Stenographer's work cannot be claimed to be based on sex.

There is no tradition or law that states only women can work as confidential stenographers. If there are only women employed as confidential stenographers, it is because management prefers that way. Women are neither specifically qualified to operate as confidential stenographers nor are they prohibited from performing the duties given to male stenographers due to their gender. Even if it is customary for the organisation to use women as confidential stenographers, this cannot be the basis to deny them equal compensation.

The Act prohibits management from paying a group of its employees who perform the same or similar work for less money in violation of section 4(1) of the Act only because it is unable to provide equal compensation at all. The Act's applicability is independent of the management's financial capacity to provide equitable compensation.

7. State of Maharashtra & Anr. v. Madhukar Narayan Mardikar (1990)⁶²

In reviewing the case history, the Supreme Court observed that there was substantial evidence and justification for the order of removal, noting that it was improbable that Banubi, who had a bad reputation, would file a false complaint against a police officer and provoke the fury of the force. They concluded that additional evidence supported Banubi's testimony, and that the Respondent's case was flawed in a number of ways, including the contradictory testimony of the two police officers who were reportedly with him throughout the raid. The Court also took into account the fact that no significant defect could be revealed during the cross-examination of Banubi and her husband.

Therefore, the Court disagreed with the High Court's conclusion that the evidence presented did not support the Respondent's guilt. The Supreme Court also determined that despite being outside of their purview, the High Court had engaged in a review of the facts presented to them.

Regarding the issue of privacy and the weight to be given to an assault victim's evidence, the Court stated that even a woman of "easy virtue is entitled to her privacy" and that it

⁶²AIR 1991 SC 207, (1991) 1 SCC 57.

would not be acceptable for anybody to intrude on her personal space. Banubi's testimony was rejected by the High Court because it believed she was an unchaste woman, but the Supreme Court disagreed with that conclusion and upheld the order of dismissing the respondent from service.

8. Mrs. Neera Mathur v. LIC (1991)⁶³

In this instance, the Supreme Court upheld a woman employee's right to privacy. The LIC appointed Neera without being aware of her pregnancy. She applied for maternity leave soon after starting her job, and when she returned, she was given a termination notice. When she questioned why she had been fired, the LIC said that she had given them the information they had requested from her via a questionnaire. The Supreme Court judges were astonished to learn from the questionnaire that it asked for details regarding past pregnancies and the times of the women's menstrual cycles.

The Supreme Court noted that such investigations amounted to an invasion of someone else's privacy and were therefore prohibited. Since the right to privacy was recognized here, it was included in the guarantee of personal liberty provided by Article 21 of the Constitution. The information that the LIC was requesting in this particular situation amounted to breaking into Neera's personal space. After closely reviewing the case, the Supreme Court determined that Neera's termination was caused by a false statement she made about her previous menstrual cycle in an effort to conceal her pregnancy. The Supreme Court ruled that she could not be held accountable for making a false statement during her medical examination as the doctor had been in the panel decided by the Corporation and she was reinstated.

9. Uttarakhand Mahila Kalyan Parishad v. State of UP (1995)⁶⁴

A complaint has been made in this petition under Article 32 of the Constitution that female teachers and other employees in the educational field conducting administrative work for the State of Uttar Pradesh are subject to discrimination because, despite being required to

⁶³1992 SCC (1) 286.

⁶⁴AIR 1992 SC 169.

perform the same tasks as their male counterparts (teachers and officials), they are paid less and do not have access to the same opportunities for advancement.

Supreme Court had opined that, under the constitutional “arrangement”, there is no justification for treating male instructors and employees and female teachers and employees in the education department differently when they are doing the same duties. There is also no reason for giving male teachers preferential treatment when it comes to providing them with opportunities for promotion. While mandamus was issued to the State of Uttar Pradesh equalize wage scales beginning on October 1st, 1991.

10. Delhi Domestic Working Women’s Forum v. Union of India & Ors. (1994)⁶⁵

At the request of the petitioner Delhi Domestic Working Women the Punjab University calendar Vol. III, which called for the appointment of female superintendents for the women’s dormitories as well as female principals, teachers, and doctors for women's institutions, was disputed. The court determined that such a preference for hiring women does not contravene Article 14. According to the court, unless it is unreasonable, arbitrary, or contrary to the constitution, the state's policy should not be interfered with by the courts. This public interest litigation has been filed utilizing the benevolent provision of Article 32 of the Indian Constitution to advocate for the pitiful position of four domestic workers who were the victims of obscene sexual abuse by seven soldiers.

According to the Honorable Supreme Court, rape violated Article 21 of the Constitution's fundamental right to a life of dignity. The National Commission of Women was ordered by the court to cull out a plan for the rehabilitation of rape victims and to establish a board for victim compensation. The Indian government was ordered by the top court to take the necessary actions as soon as possible to put the plan into effect. The court also described the wide guidelines for helping rape victims. For the first time, the supreme court made its decision with the interests of rape victims in mind.

The Court set forth new guidelines for police dealing with rape victims, including those victims receive legal representation, psychiatric counselling, or other medical assistance,

⁶⁵1995 SCC (1) 14, JT 1994 (7) 183.

that the victim be informed of all of her rights prior to being questioned, and that the victim's identity be protected during the course of the trial.

11. Madhu Kishwar & Ors. v. State of Bihar & Ors. (1996)⁶⁶

The “Chota Nagpur Tenancy Act of 1908, which provides for land inheritance in the male line, was challenged in the petition under Article 32 of the Constitution on the grounds that it discriminates against women and is therefore unconstitutional due to the Constitution’s equality provisions. A two-member bench was set to hear the case. It was revealed that the State of Bihar had established a committee to evaluate the viability of relevant legislative changes and a thorough investigation of the situation. The judgement was not pronounced as the Committee's report was still awaited. Later, the state government suggested for no changes in the Act as it will tend to disturb the tribal set-up which had been in place for long and hence the court decided that as long as the female descendants of the last male holder have the right to subsist, Sections 7 and 8 of the Act’s exclusive right of male succession must be suspended. As a result, the Court ruled that the petition will be dismissed together with the above relief for the female descendants.

The State of Bihar was instructed by the Supreme Court: “to comprehensively examine the question on the premise of our constitutional ethos and the need voiced to amend the law and to examine the question of recommending to the Central Government whether the latter would consider it just and necessary to withdraw the exemptions given under the Hindu Succession Act and the Indian Succession Act at this point of time in so far as the applicability of these provisions to the Scheduled Tribes in the State of Bihar is concerned.”⁶⁷

12. Vishaka & Ors. V. State of Rajasthan & Ors. (1997)⁶⁸

This Writ Petition had been brought to enforce the fundamental rights of working women under Articles 14, 19, and 21 of the Indian Constitution. The endeavour to prevent such violations has increased along with knowledge of and emphasis on gender justice; indignation toward instances of sexual harassment is also growing. The purpose of the

⁶⁶ AIR 1996 5 SCC 125.

⁶⁷ibid.

⁶⁸(1997) 6 SCC 241.

current petition, which has been filed as a class action by a number of social activists and NGOs, is to draw attention to this social anomaly and help identify workable solutions for achieving the genuine meaning of “gender equality”.

Since domestic law is not currently occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the content of international conventions and norms is significant for the purpose of interpreting the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g), and 21 of the Constitution, and the protections against sexual harassment implicit therein. In order to broaden the reach of these provisions and advance the objective of the constitutional guarantee, any international treaty that does not contravene and respects the spirit of the fundamental rights must be adopted.

Article 51(c) already implies this, and the Parliament has the power to enact laws to put international treaties and norms into effect through Article 253 when read in conjunction with Entry 14 of the Union List in the Seventh Schedule of the Constitution. Also significant is Article According to this provision, the executive authority of the Union shall embrace all matters concerning which Parliament may adopt legislation. Therefore, unless the parliament makes clear legislation specifying the steps needed to put a stop to the problem, the executive power of the Union is accessible.

Section 2(d) of the Protection of Human Rights Act, 1993 was referred to while the guidelines for sexual harassment at workplace was held by the Judiciary. The guidelines laid down by the SC were made binding on all workplace intended to be covered by those guidelines until a legislation replaces those guidelines.

13. Gaurav Jain v. Union of India & Ors. (1997)⁶⁹

The petitioner in this case, an attorney, filed a Public Interest Litigation (PIL) with the Supreme Court of India. After reading the article “A Red Light Trap: Society gives no chance to prostitute’s offspring” that appeared in the July 11, 1988 issue of the magazine “India Today,” the petitioner decided to file it. In the petition, he had asked for the issuance of a proper writ ordering the establishment of special educational facilities for children of

⁶⁹AIR 1997 SC 3021.

prostitutes, or “fallen women” as the Court referred to them throughout the judgement, up to the age of sixteen, in order to keep them from becoming involved in the depraved and unethical lifestyle.

On November 15, 1989, the Court did issue a directive, nonetheless. According to the judgement, the Apex Court believed that establishing various educational facilities and hostels would isolate the children of prostitutes, which would be detrimental to both their wellbeing and the welfare of society as a whole. Although the Court rejected the request for separate hostels and schools, it did indicate that sufficient housing in reformatory homes and hostels was required to aid in the separation of prostitute’s children from their mothers.

A committee made up of four attorneys and three social workers was formed by the Supreme Court to investigate the situation and recommend the best course of action. The Committee examined how government organisations operated under the leadership of Shri V. C. Mahajan. The Committee's report is provided below:

- Both locations with red light recognition and those without it were given attention.
- Families were sending their children to be prostitutes because of poverty, the report claimed.
- According to the report, the primary reasons why the women were unwilling to stop prostitution were poverty, social intolerance, family traditions, bad health, isolation, and a lack of alternative means of income.
- The need of NGOs in resettling and educating the children of prostitutes was also emphasised.

Most often, the poor and illiterate members of society are the ones who fall prey to prostitution since they are the ones the powerful and wealthy target. As a result, one’s human rights are being violated because this is a type of discrimination. The children of prostitutes also have a right to equality, dignity, and equal chances. They also require protection, care, and inclusion in society. Additionally, while society is to blame for the misery of these women, it must also take action to stop women trafficking and rescue the victims. The State has a responsibility to see to it that the victims are rescued, treated, and given the means to support themselves.

After this judgment, a review petition was filed and the petition was transferred to a three-judge bench, which was larger than the bench in the original case. The first judgement concerning the guidelines created for the abolition of prostitution was overturned by the decision in the review petition. But the guidelines formulated for the prostitute's children in the first case were upheld in the review petition also.

14. Shayara Bano vs Union of India (2017)⁷⁰

The "Triple Talaq Case," also known as Shayara Bano v. Union of India, delivered India a landmark ruling that deemed the Triple Talaq custom to be unconstitutional. The Triple Talaq ruling is largely recognised as a defence against social ills across India. Instantaneous Triple Talaq was finally outlawed in India as a result of the persuasive and well-founded arguments made by the Supreme Court's majority bench.

The contested Triple Talaq practice is a means by which a marriage can be dissolved at the husband's desire without any attempt at saving it. As a result, this type of talaq is against Article 14 and could be abolished. A practise is referred to as "essential religious practice" in Article 25(1), which only safeguards such practises, if eliminating it results in a major change in religion. The rights listed in Article 25(1) will be violated if the state usurps religious practises, but not if the state usurps incidental or optional practises.

Triple Talaq is not one that will be seen as an essential religious practise, as evidenced by the fact that the majority of Islamic nations have abandoned the practise. In this case, the majority bench cited the judgement in Shamim Ara v. State of UP⁷¹ (2002), citing Article 13(1), which states that any law in effect at the time the current Constitution went into effect (including the 1937 Act) is invalid if it conflicts with the fundamental rights guaranteed by the Constitution. Because it was decided that Talaq-e-biddat is not a fundamental aspect of Islam, the SC ruled that it is not protected by the exception outlined in Article 25. The Hanafi School does so, but it is immoral in it, according to the court, which supported its stance. Triple Talaq is against Shariah since it goes against the

⁷⁰ 2017 9 SCC 1.

⁷¹ Case Appeal No (crl) 465 of 1996.

fundamental principles of the Quran; therefore, what is evil in theology cannot be beneficial in law.

15. Ms. Gita Hariharan & Anr. v. Reserve Bank of India & Anr. (1999)⁷²

The petitioner Ms. Githa Hariharan, wed Dr. Mohan Ram in 1982, and in July 1984, their son Rishab was born. In the name of their minor son Rishab, they submitted an application for a 9 percent Relief Bond to the Reserve Bank of India. In her letter of petition, the petitioner indicated that she would serve as the child's legal guardian in her capacity as a mother. As the father is the natural guardian, the Reserve Bank of India officials sent the application back with a recommendation that she submit it signed by him. Alternatively, the bank requested that she produce a certificate of guardianship that was signed in her name by the appropriate authority. RBI had stated that father will be considered the natural guardian considering the existing legislation.

The Supreme Court interpreted the word "after" in the provision supplied under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, relying on the principles of gender equality enshrined in the Indian Constitution, and affirmed the constitutionality of the provision. The mother is not the natural guardian solely after the death of the father as that would be discriminatory not only to the mother but also against the welfare of the child. It was decided that the father and mother are both the natural guardians of a minor Hindu child.

This significant ruling on guardianship-related issues is part of Indian legal history. A natural guardian can be either a mother or a father, whoever cares for the child's welfare and is interested in the child's best interests, according to this judgement, which interpreted and established that Section 6(a) of the Hindu Marriage and Guardianship Act, 1956, does not mean that the mother is the guardian of the minor child only after the death of the father.

16. Municipal Corporation of Delhi v. Female Workers (Muster Roll) (2000)⁷³

The Municipal Corporation of Delhi (also known as "the Corporation") employed female workers (muster roll) who made a request for maternity leave that was made available only

⁷² 2 SCC 228.

⁷³ AIR 2000 SC 1274.

to regular female employees but was denied to them on the grounds that their services were not regularised and, as a result, they were not entitled to any maternity leave. The Delhi Municipal Workers Union, often known as the Union, advocated for their case, and as a result, the Secretary (Labour), Delhi Administration referred the following issue to the Industrial Tribunal for resolution:

“Should women who work on the Muster Roll receive any maternity benefits? What guidelines are required in this area, if so?”

Due to their status as temporary workers, female employees who had been employed by the Municipal Corporation of Delhi for years on a daily wage were refused maternity leave. This practise was abolished by the Supreme Court. “Using the fundamental rights guaranteed in Articles 14 and 15, the Directive Principles of State Policy reflected in Articles 39, 42, and 43 of the Indian Constitution, as well as India’s obligations under Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Court held that all female workers must be provided with the facilities to exercise their rights to equal pay and benefits regardless of the nature of their duties, their vocation, and the location of their workplace.

17. Daniel Latifi v. Union of India (2001)⁷⁴

The Supreme Court’s ruling in Mohd. Ahmed Khan v. Shah Bano Begum appeared to be overruled by the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRDA, 1986). According to a first reading of the MWPRDA, 1986, a Muslim husband had a limited duty to support his divorced wife during the iddat period before passing that responsibility to the woman's family. When the constitutionality of the MWPRDA, 1986 was contested in this case on the grounds that the law was discriminatory and in violation of the right to equality given by Article 14 of the Indian Constitution, the issue arose before the Supreme Court.

It was also asserted that the regulation violated the right to life provided by Article 21 of the Indian Constitution because it would render Muslim women penniless. The MWPRDA, 1986 was maintained as constitutional by the Supreme Court based on a creative

⁷⁴ Writ Petition (Civil) 868 of 1986.

interpretation. It was decided that a Muslim husband is responsible for providing for his divorced wife's future, even after the iddat time has passed. The word "provision" in the MWPRDA, 1986, which states that "at the time of divorce the Muslim husband is obligated to ponder the future needs [of his wife] and make preliminary measures in advance for addressing those needs," was the foundation for the Court's interpretation.

18. Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India (2003)⁷⁵

A 2003 landmark case concerning the correct application of the PNDT Act and the punishment of prenatal sex discrimination in order to end the practise of killing female infants In order to enforce the Pre-Natal Diagnostic Techniques (Prohibition of sex selection) Amendment Act, 2003, the Centre filed a PIL for Enquiry Into Health and Allied Themes and Others. This was done in response to an alarming fall in India's sex ratio that could be seen in the 2001 census. Additionally, this case serves as the best illustration that while enacting a legislation is necessary, its application and execution are equally crucial.

In this case, the Supreme Court served as a watchdog over the Indian government and demonstrated that passing legislation alone is insufficient; further steps such as implementation and enforcement are also required. The drop in the sex ratio, which was alarmingly low at 933 males for every 1000 females in the 2001 census, was clearly visible. This case serves as a reminder that whenever a new modern technology is introduced into society for the benefit of its citizens, legislation must be passed, adopted, and carried out to prevent misuse of the technology.

The public is now aware of the gender discrimination that still exists in Indian society as a result of this case and the enactment of the PNDT Act, 2003. The sex ratio in India in 2011 was 943 females for every 1000 males, a significant improvement over the sex ratio in 2001.⁷⁶ However, it can be said that on the whole, the public appears to be aware of the negative effects of sex determination methods, and society as a whole has been made more conscious of the problem.

⁷⁵ (2003) 8 SCC 412.

⁷⁶Ministry of Health and Family Welfare, 2013 *Sex Ratio* (PIB, 2013).

19. Vijay Lakshmi v. Punjab University & Ors. (2003)⁷⁷

The Punjab University called for the appointment of female superintendents for the women's auberge as well as female principals, teachers, and doctors for women's institutions, was disputed. The court determined that such a preference for hiring women does not contravene Article 14. According to the court, unless it is unreasonable, arbitrary, or contrary to the constitution, the state's policy should not be interfered with by the courts.

Given the young age of the female children to be taught, the court in this instance stated that providing priority to women in women's colleges and hostels is a sort of preventative, protective, and precautionary action based on public morals. Given the unique circumstances, it does not appear that the preference given to women in this context is capricious and unwarranted. Also, if the rules requiring the hiring of women as staff for women's colleges or hostels are legitimate, then separate schools or colleges for girls are justifiable as well. According to Black's Dictionary, discrimination refers to differential treatment, particularly a failure to treat all people equally when there is no discernible difference between those who are favoured and those who are not favoured.⁷⁸

However, discrimination has a neutral connotation according to the definition, although the phrase is currently used in politics in a negative, non-neutral way. declared that discrimination has a comparative meaning. It has two edges. To prejudice against one is to discriminate in favour of another, yet the measure of comparison is ingrained in the concept of discrimination itself. Sex discrimination, in this sense, refers to unequal treatment favouring one sex over the other. However, discrimination against women based only on sex is typically referred to as sexual discrimination or gender discrimination.

20. Anuj Garg & Ors v. Hotel Association of India & Ors. (2007)⁷⁹

The Act was a pre-constitutional law, protected by Article 372 of the Constitution, and the Court noted at the outset that its legitimacy may be contested under Articles 14, 15, and 19. Given the "changed social psyche and expectations, (which are) important factors to consider in the upkeep of law," it also noted the possibility of invalidating a law that had

⁷⁷Appeal (Civil) 13393 of 1996.

⁷⁸Brian A. Garner, *Black's law dictionary* (10th edn, Thomson Reuters 2014).

⁷⁹AIR 2008 SC 663.

previously been deemed valid, adding that “primacy to such transformation in constitutional rights analysis would not be out of place.”

By analysing its own rulings, the Court examined how foreign feminist legal precedent influenced the creation of Indian law. It referenced the case of *Githa Hariharan v. Reserve Bank of India*⁸⁰, which dealt with sex-based discrimination and held that a mother’s rights as the child’s natural guardian could only be recognised after those of the father. The Court held that “domestic courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws when there is no inconsistency between them,” citing the Beijing Declaration and the Convention on the Elimination of All Forms of Discrimination Against Women, both of which were adopted in 1979.

In addition, the court determined in *Randhir Singh v. Union of India and Ors.*⁸¹ that “non-observance of the principle of ‘equal pay for equal work’ for both men and women under Article 39(d) of the Constitution amounted to violation of Article 14 and 16 and recognised that the principle was expressly recognised by all socialist systems of law, including the Preamble to the Constitution of the International Labour Organization.”

The Court stated that when the original Act was enacted, the concept of equality between two sexes was unknown” while reviewing the contested provision on the basis of equality. However, Articles 14 and 15 of the Constitution were written with the purpose of implementing equality for men and women in all aspects of life. Therefore, it would be the responsibility of the State to demonstrate that the law ensures gender equality when its legality was challenged on the basis of the equality clauses found in Articles 14 and 15. The South African Constitutional Court’s decision in *Bhe and Ors. vs. The Magistrate, Khayelisha and Ors.* (2004) 18 BHRC 52), was cited by the court.

The Court also talked about current conditions, specifically how the hospitality sector is growing. In addition, a “logical corollary of such a wide restriction would be that even if service of liquor is made permissible in the flight, the employment of women as air-hostesses may be held to be prohibited.” It was noted that the impugned provision provides for wide restrictions” and that because “liquor is permitted to be served even in rooms, the

⁸⁰ *ibid* 73.

⁸¹ 1982 SCR (3) 298.

restriction would also operate in any of the services, including housekeeping, where a woman has to enter into a room,” it would in light of this, the Court highlighted how the contested clause would affect both men and women enrolled in graduate-level hotel management courses.

It was highlighted that the clause would deprive these men and women of their right to employment, which, while not a fundamental right in and of itself, is guaranteed by both Articles 14 and 16 to everyone in a comparable situation. Any prejudice or exemption made in this regard must be justified and consistent with societal norms at the time it is made. The Court determined that it was unfair to prevent many qualified women and men from finding employment. As a result, it was decided that the State cannot use the “*res extra commercium*” theory to support the selection of qualified individuals or defend the contested clause using *parens patriae* power.

21. Suchita Srivastava & Anr. v. Chandigarh Administration (2009)⁸²

The court made decisions regarding whether the High Court can provide permission to terminate a pregnancy without the woman's consent and, if so, under what conditions it should utilise its “*Parens Patriae*” authority.

By examining Section 3 of the MTP Act, which emphasises the significance of the woman's agreement to termination, and the right to liberty in the Indian Constitution, the Court concluded that forcible termination would violate the Appellant’s rights to liberty and reproductive choice. The Court emphasised that a woman’s freedom rights included access to reproductive health care, and it linked these rights to her right to life and liberty under Article 21 of the Constitution. The Court further stated that one’s reproductive rights included the ability to bring a pregnancy to term.

The Court considered the Expert Body’s recommendations and noted that the Appellant was eager to have the baby and was aware of her pregnancy. The Court did point out that the appellant was unable to comprehend the implications of having a child and the significant life changes that would follow. The Expert Body determined that the Appellant was unable to care for the kid on her own and would require supervision and social support,

⁸²(2009) 14 SCR 989.

the Court further remarked. The Appellant's capacity to assent was also determined by the court because she was not a minor and her intellectual disability did not make it necessary to disregard her consent.

The court ruled that individuals with intellectual disabilities who are older than the age of majority is "obviously respected" by the MTP Act. The Court discovered a legal distinction between intellectual disabilities and mental illness after reviewing mental disability legislation. Under the MTP Act, a guardian may represent a person who has a mental illness but not a person who has an intellectual disability. The woman's consent, which the Court claims is a vital requirement under the MTP Act, cannot be diluted since doing so would "amount to an arbitrary and unreasonable restriction on the victim's reproductive rights," according to the Court. These findings led the Court to the conclusion that the Appellant's consent is necessary for the termination.

Although a woman had total control over her body, the Court found that the nature and scope of her reproductive rights only gave her a "limited right to abortion". Because there was a "compelling state interest" in protecting the future child's life, the court decided that this right was limited. The MTP Act included conditions or reasonable restrictions on the use of the privilege. The Court also invoked the right to equality as expressed in the United Nations Declaration on the Rights of Mentally Retarded Persons to defend personal autonomy in the context of intellectual disability and the MTP Act (1971).

The Court disagreed with the High Court's application of a "substituted judgement test" using the *Parens Patriae* common law doctrine. Given the Expert Body's findings, the Court applied the best interest test since a delay in intellectual development varied from mental illness. The High Court's decision to permit the termination, the Court further determined, was not in the appellant's best interests. The court determined that because the appellant had not granted her consent and the pregnancy was in its 19th week, forcing the termination would be risky and could cause the appellant considerable emotional distress. The Court ordered a stay of the ruling from the lower court in order to effectively reject the termination.

22. D.Velusamy v. D.Patchaiammal (2010)⁸³

The Apex Court went on to define the phrase “connection in the nature of marriage” in light of the fact that the 2005 Act’s⁸⁴ provisions were not invoked by the petitioner and that the bigamous or adulterous relationship issue needed to be taken into consideration. The judges in this case were aware that there are numerous types of personal partnerships that fall under the category of live-in relationships. The justices unequivocally said that “not all live-in partnerships will amount to a relationship in the form of marriage to enjoy the benefit of the Act of 2005,” drawing a distinction between live-in relationships and relationships in the nature of marriage.

When describing the various kinds of live-in partnerships, the justices made it clear that “one-night stands, relationships for sexual services, keepers, and concubines cannot be deemed relationships in nature of marriage.” It is analogous to a common law marriage in accordance with the court’s meaning of the phrase relationship in the essence of marriage. Common law couples must meet the following requirements even though they are not legally married:

- (a) they must appear to others as being similar to spouses;
- (b) they must be of legal marriageable age;
- (c) they must live together;
- (d) they must have voluntarily cohabited for a substantial amount of time; and
- (e) they must be otherwise qualified to enter into a legal marriage.

A relationship that qualifies as marriage under the 2005 Act must also meet the criteria listed above, as well as the condition that the parties have shared a home as described in Section 2(s) of the Act. A relationship is not considered to be "domestic" if two people only hang out on the weekends or have a one-night stand.⁸⁵

⁸³(2010)10 SCC 469.

⁸⁴ Protection of Women from Domestic Violence Act 2005.

⁸⁵ibid.

The court acknowledged that its definition would “exclude many women who have had a live-in relationship from the benefit of the 2005 Act” and that “not all live-in partnerships will amount to a relationship in the type of marriage.” Though they were of the opinion that “Parliament has used the language relationship in the nature of marriage and not live-in relationship,” the judges nonetheless found themselves forced to accept a limited definition of the term relationship in the form of marriage. The judges ruled that the Court cannot amend the meaning of the Act under the guise of interpretation.⁸⁶

23. Kakali Ghosh v. Chief Secy. A&N Administration (2014)⁸⁷

In the above case the question for consideration by Hon’ble SC was whether a woman employee of the Central Government can ask for continuous 730 days of Child Care Leave under Rule 43-C of the Central Civil Services (Leave) Rules, 1972.

It is clear from reading the circulars and Rule 43-C that a female government employee who has minor children under the age of 18 may use CCL for a maximum of 730 days, or for the full-service tenure, to care for up to two children. Care for children includes not only raising the younger child but also attending to any of their requirements, such as medical attention for an exam or other ailment. Government employees who are women are permitted to combine CCL with any other type of leave under Rule 43-C’s Subrule (3).

In accordance with Sub Rule (4) of Rule 43-C, a woman government employee may apply for and be awarded leave of the kind that is due and admissible to her, including commuted leave that isn’t longer than 60 days and leave that isn’t due for up to a year (1). It is obvious from a simple reading of Subrules (3) and (4) of Rule 43-C that a CCL may be granted even after 730 days has passed by combining other leave that is due. The High Court’s conclusion is not supported by either Rule 43-C or Central Government directives. The Tribunal was right to order the respondents to closely abide by the directives issued by the Indian government and Rule 43-C.

In this instance, the appellant requested 730 consecutive days of CCL in order to guarantee her son’s performance in the upcoming secondary/senior (10th/11th standard)

⁸⁶ibid 83.

⁸⁷Civil Appeal No. 4506 of 2014 (arising out of SLP (C) No 33244 of 2012).

examinations. There is no question that the son was a juvenile under the age of 18 when she registered for CCL. This is clear from the fact that the competent authorities granted the appellant 45 days of CCL. The competent authority hasn't provided any justification for not permitting the remainder of the leave term, nevertheless. No reasons were found by the SC for refusing the continuous leave asked by the appellant. Therefore, she was granted the leave.

24. Shamima Farooqui v. Shahid Khan (2015)⁸⁸

It is really difficult to imagine that the respondent could survive on less than Rs. 2,000 a month having regard to the current prevailing situation. When a woman is forced to leave the marital home, she shouldn't be permitted to feel like she's fallen from grace and start moving around looking for food. She has the legal right to live in a manner comparable to how she would have in her husband's home. If the wife is determined to be eligible for maintenance under the guidelines of Section 125 of the Code of Criminal Procedure, it must be sufficient to allow her to live with the same dignity as she would have in her marital home.

The husband makes the argument that he lacks the financial resources to make the payment since he is unemployed or his firm is struggling. These are only flimsy justifications that are not admissible in court. The husband has a responsibility to support his wife. As long as he is able to earn a living, he cannot claim that he is unable to support his wife owing to financial difficulties. There was no reason to cut the maintenance by 50% just because the husband had retired. The wife wasn't given a significant sum of money therefore, it didn't merit decrease. It merely reflects the absence of mental effort. The orders passed by the High Court in this regard were set aside by the Supreme Court.

25. Roxann Sharma v. Arun Sharma (2015)⁸⁹

In this case, the Hon'ble Supreme Court rendered a landmark decision that stated that a kid younger than five years old should be handed to the mother unless the child's father establishes that if the custody is given to the mother, it would interfere with the child's

⁸⁸Criminal Appeal No 564-565 of 2015.

⁸⁹2015(2) RCR (Civil) 93.

development. In addition, the court noted that the word “ordinarily” employed in section 6(a) of the 1956 Hindu Minority and Guardianship Act is a presumption in favour of the mother with a provision for rebuttal.

26. Danamma @ Suman Surpur v. Amar (2018)⁹⁰

Given that daughters in India did not, until recently, have an equal claim to inherited property, this historic ruling obviously enhances women's property rights and gender equality. According to the ruling, daughters now have the same rights as sons with relation to jointly owned property divided following the change to the Hindu Succession Act (Act), regardless of when they were born. This legal position is anchored in the 2005 amendment to the Act. As a result, lesser courts are less likely to misread the pertinent legal requirements.

27. Joseph Shine v. Union of India (2018)⁹¹

Joseph Shine filed a writ petition under Article 32 contesting the legality of Section 497 of the IPC read with Section 198 of the CrPC. since it violates Articles 14, 15, and 21. This was first filed as a PIL for adultery. The petitioner argued that the law's definition of adultery was arbitrary and biased against women. According to the petitioner, a law like that destroys a woman's dignity. The petition will be heard by the five-judge constitutional bench.

The Supreme Court ruled that Section 198(2) of the CrPC was unconstitutional to the degree that it applied to Section 497, IPC, and that Section 497 of the IPC was invalid because it violated Articles 14, 15, and 21 of the Constitution. Several earlier rulings maintaining the crime of adultery were overturned by this decision.

The Court determined that Section 497 was antiquated and unconstitutional because it violated a woman’s autonomy, dignity, and right to privacy. It claimed that by endorsing a view of marriage that undermined actual equality and applying sanctions to a gender-based approach to a man and a woman’s relationship, the impugned clause violated a woman’s right to life and personal liberty. It claimed that placing an excessive amount of emphasis

⁹⁰(2018) 3 SCC 343.

⁹¹AIR 2018 SC 4898.

on the aspect of the husband's complicity or permission translated to the woman's subjugation. The Supreme Court upheld the Constitution's basic right to sexual privacy.

Additionally, it was determined that Section 497 ignored substantive equality because it upheld the notion that women were not equal partners in marriages and that they were incapable of giving their own consent to sexual acts in a culture and legal system that viewed them as the sexual property of their spouses. As a result, it was determined that this Section broke Article 14. The courts concluded that Section 497 violated Article 15 anti-discrimination clause since it was based on gender stereotypes.

It was also determined that it violated Article 21 since it deprived women of their fundamental rights to privacy, autonomy, and the enjoyment of their own sexuality.

Although adultery was no longer a crime, the court recognised that it was nonetheless a civil wrong and a viable reason for divorce. It was said that while adultery belonged within the category of personal difficulties, criminal offences were committed against the society as a whole. The Court ruled that by criminalising adultery, the State had intruded into people's private affairs. The Court also ruled that when an adultery has occurred, the husband and wife should be free to decide together based on their own judgement.

28. Federation of Obstetric and Gynecological Societies of India (FOGSI) v. Union of India & Ors (2019)⁹²

The legislation in question was PCPNDT⁹³. The petition challenged the constitutional validity of section 23 of the Act. At the moment, every clerical error with regard to Form F carries the same penalty as performing an illegal sex determination. This is what the FOGSI petition aimed to alter.

Supreme Court turning down the petition held that "dilution of the provisions of the Act or the Rules would only defeat the Act's purpose to prevent female foeticide, and relegate the right to life of the girl child under Article 21 of the Constitution to a mere formality," the Supreme Court declined to amend the sections that were being challenged.

⁹²Writ Petition (Civil) No 129 OF 2017.

⁹³The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994.

In relation to the Form F, the Court drew attention to a number of cases in which the forms had typographical errors, such as improper phone numbers, inaccurate identification and address proofs, missing identity proofs, and even inaccurate obstetric and abortion histories. One instance lacked the patient's signature. The court added, The wholesome social legislation would be defeated in case Form is not filled which is sine qua non to undertake tests/procedures, before concluding, thus, the non-filling of information cannot be termed to be clerical error, but in case it is kept vague that itself facilitates an offence. Without this prerequisite, no such procedure may be carried out, and weakening the rules would be against gender fairness.

The Act aims to stop the harm caused by female foeticide and India's dwindling sex ratio, the court declared. "The mischief sought to be remedied is grave, and the effort is being made to meet the challenge to prevent the birth of the girl child," she continued, highlighting the severity of the problem of female foeticide. "When such is the objective of the Act and the Rules and mischief which it seeks to prevent, violation of the rights under Part III of the Constitution is not found." It is a serious problem if society should favour male children.

The same violates Article 39A and disobeys Article 51A(e), which imposes a responsibility on citizens to repudiate actions that are demeaning to women's dignity. When sex selection is forbidden by virtue of Section 6 restrictions, it is evident that the legitimacy of the Acts other intertwined provisions to stop the trouble must be supported.

29. The Secretary, Ministry of Defence v. Babita Puniya & Ors. (2020)⁹⁴

The Hon. Supreme Court of India made its ruling. By granting female officers in the Indian Army, Indian Air Force, and Indian Navy Permanent Commissions, this verdict paved the path for gender equality in the armed forces.

- Should women be allowed to serve in the Indian Army under PC?
- Should the Ministry of Defence's notification from February 15th, 2019 be implemented?

⁹⁴ Civil Appeal Nos 9367-9369 of 2011.

Ministry of Defence (MoD) issued a notification giving PC to SSC female officers in 8-arms or services in the Army. However, it was also stated that female officers would only be engaged in “different staff appointments” after receiving a PC.

Supreme Court laid down that the above situation is a clear violation of the fundamental freedoms protected by article 14 under the Constitution. It was observed that while Article 33 did permit limitations on fundamental rights in the armed services, it also stated that those limitations could only be imposed to the amount necessary to ensure the performance of responsibilities and the maintenance of discipline.

There were some conditions imposed by the court with regard to the notification in issue:

- All female officers currently employed by SSC are eligible for PC regardless of whether they have attained 14 or, if applicable, 20 years of service.
- When choosing the grant in PC, female officers must have access to all specialist possibilities on the same terms as their male colleagues.
- All female officers who qualify for and receive PC through the SSC should be provided all related benefits, such as pensions, promotions, and financial incentives.
- When it comes to the PC of female cops, some phrases like “in various staff appointments only” and “on staff appointments only” in the notification shouldn't be implemented.
- Benefits of staying in the service until reaching pensionable service shall also apply to all SSC female officers.
- Within three months after the Supreme Court's decision's announcement, the plaintiff must take the appropriate actions to comply with the ruling

30. Vineeta Sharma v. Rakesh Sharma (2020)⁹⁵

In this case, the Supreme Court's Bench cited a number of Hindu legal doctrines, both codified and customary, including Coparcenary & Joint Hindu Family, unobstructed & obstructed heritage, as well as a catena of judgments. After looking into these issues, the court declared shared Hindu family property to be unhindered legacy. The right to partition

⁹⁵(2020) 9 SCC 1.

in this type of property is absolute and is granted to a person by virtue of his or her birth. However, a separate property is impeded heritage in which the owner of the separate property's death obstructs the right to ownership and partition.

In cases of blocked heritage, ownership rights are determined by the death of the original owner rather than by birth. As the right to partition is based on the daughter's birth (unobstructed heritage), the Supreme Court determined that it does not matter whether the father co-parceler was alive or deceased on the day the amendment was passed. Because of this, the Court overturned *Phulavati v. Prakash's* decision and declared that the coparcenary rights transfer from the father to his surviving daughter rather than from a "living coparcener to living daughter."

The Court found that the provisions of Section 6 of the Act are retroactive in nature but neither prospective nor retrospective in nature, overturning the *Phulavati & Danamma* Judgment in the process. The implementation of retroactive legislation is depending on feature or incident that occurred in part or requirements that were extracted from a past event, according to the Hon. Supreme Court's explanation of the principles of prospective, retrospective, and retroactive law. According to the court, Section 6(1)(a) of the Act includes the definition of Mitakshara coparcenary's unobstructed heritage (conferred by birth), making it retroactive because the right is conferred by birth. As a result, the provision is applicable as of the date the Amendment Act was enacted.

The decision has resolved any remaining legal ambiguity and made it apparent that the Hindu Succession Act change that gives daughters the same right to inherit ancestral property will have a retroactive impact. The court further believed that it was against Article 14, which guarantees equality before the law, to base someone's inheritance rights on their gender. All the uncertainty that the *Phulavati* and *Danamma* case generated has been satisfactorily addressed by this decision.

CHAPTER 4

WOMEN'S RIGHTS UNDER INTERNATIONAL INSTRUMENTS

Without regard to any other factor, every person is entitled to a particular set of fundamental protections from the State or other public authorities just by virtue of his or her birth as a human being. Every individual acquires these rights the moment they become a human being, making human rights for women an integral and inseparable component of all other human rights. Due to the inclusion of gender injustice, all forms of gender discrimination become violations of human rights.⁹⁶

Taking the cognizance of this issue United Nation issued many instruments which concentrated on women's liberation with the object of enhancing the dignity of women all over the world. Despite the fact that the United Nation Organisation is mainly worried about maintaining international peace and security however restructuring of human rights is also an important UN agenda. UN has also promoted and ensured women's rights and has endorsed "common minimum standard" which is to be considered by all the member countries for evacuating gender discrimination.⁹⁷

The United Nations also requested that the research consider the position and status of women around the world, and it was deduced that in many regions of the world, women have consistently been denied equality in law and in practise, are forced to live in societies that are predominately male, and are subject to a variety of discriminations.⁹⁸ As a result various declarations and conventions have been incorporated by the United Nations from time to time for eradicating inequity against women and to attaining equal women rights all over the world. We can study in four progressive phases how UN worked to remove gender inequality.

From 1945 to 1962, in this period there were a lot of problems faced by women both legally and socially, which includes inequality in customary laws, laws related to marriage and family, similar education and opportunity was not given to women as men and not only

⁹⁶ Mamta Rao, *Law Relating to Women and Children* (Eastern Book Company, 2012) 129.

⁹⁷ *ibid.*

⁹⁸ S.C. Tripathi, *Law Relating to Women and Children* (Central Law Publication, 2015) 195.

this there was also gender pay gap, if we look in politics women were not given right to vote, she was not allowed to take part in politics. With the creation of the Commission on Human Rights and Commission on the Status of Women in 1946 and the ratification of the Universal Declaration of Human Rights in 1948, the UN began promoting the legal equality of women. The Commission on the Status of Women recognised the need for accurate information on actual discrimination against women before beginning work on codifying their legal rights. An extensive country-by-country report on the political and legal status of women was produced after the UN conducted a massive global investigation to ascertain the status of women. This report served as the foundation for the global standards that were incorporated into international law through a number of treaties and Conventions. While drafting these human rights instruments, close working partnerships started to form between the Commission on the Status of Women and other UN organisations, such as the International Labour Organization and the United Nations Educational, Scientific, and Cultural Organization (UNESCO).⁹⁹

In the second period from 1963 to 1975, many governments supported the UN by adopting laws and plan to guard women's rights. By adoption of the Declaration on the Elimination of Discrimination against Women in 1967 the UN covered, apart from codification of rights, the economic and social realities of women. Development was essential if the woman want to achieve equality so the UN increasingly started going ahead in structuring it development assistance programme to meet the challenges. With the declaration of 1975 as the International Women's Year, the battle for women's rights gathered force. The conference in Mexico was held on the status of women, which was based on three pronged theme; equality, development and peace which became the basis of the UN's work for women in the coming years".¹⁰⁰

The third phase from 1976 to 1985 can be said UN Decade for Women. The UN estimated that if any society want to progress then women's equality and rights should be taken care of. It plays a very important role in welfare of any society. It is an effect of underdevelopment that woman is underestimated, which is closely linked to other global

⁹⁹ibid 96.

¹⁰⁰ibid.

problems, such as poverty, overpopulation, illiteracy, undernourishment and poor health conditions”.¹⁰¹

Findings of the UN directly had a global impact and all these findings were incorporated in the Convention on Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) which is an International Bill of Human Rights for Women. In this decade series of programmes were generated which acknowledged the need to promote equality between both men and women”.¹⁰²

In the fourth (Current) phase which started from 1986 till date, the UN and its institutions have been strengthened, and the support for the rights of women have been woven into the mainstreams efforts of all the UN’s agencies and bodies; “The World Summit for Children, 1990; Earth Summit, 1992; The World Conference on Human Rights, 1993; International Conference on Population and Development, 1994; and the World Summit for Social Development, 1995; synthesised the accomplishment and recognising essential role of women in removing poverty and mending the social fabric.”¹⁰³

Besides UN Charter following are the other achievements of the UN in the field of women rights since 1945:

- Commission on status of women in 1946 was established for promoting social economic and political rights.
- Convention relating to Equal Remuneration for men and women workers was adopted by ILO in 1951.
- Convention on Political Rights of Women was adopted in 1952.
- Declaration on the Elimination of Discrimination against Women in 1967.
- First World Plan of Action and Proclamation of First World’s UN decade for Women: Equality, Development and Peace by the World Conference of Women in Mexico City in 1975.
- Implementation of CEDAW in 1979.
- Second World Conference on women at Copenhagen in 1980.

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ *ibid.*

- Third World Conference on Women at Nairobi in 1985.
- Fourth World Conference held at Beijing in 1995.
- Declaration of the International Year for the Empowerment of Women in 2001 etc.

International Labour Organisation, 1919

UN have many specialised agencies, out of one is the International Labour Organization it deals with work and workplace related problems, and connected rights and standards. Its main aim is to attain decent work for all so that everyone is benefited from the working conditions. International Labour Organisation work differently from any other specialised agency of United Nations, it has a tripartite governing structure consisting of Government, Employers and Workers. The basis of having this tripartite structure is the formation of free and open debate among government and its social partners.¹⁰⁴ ILO organises conference in month of June every year in Geneva where it passes Conventions and Recommendations on different subjects dealing with subject like Social Security, Basic Human Rights, Welfare Measures and Collective Bargaining. It is mandatory for every Country to incorporate its recommendations and suggestions in their respective labour laws as these recommendations and suggestions are considered as International Labour Standards, and labour laws of all the Countries must match these standards. In working towards this aim the ILO has four primary strategic objectives:

- To encourage and understand standards and fundamental principles and rights at work.
- To generate better opportunities for women and men so that they can secure respectable employment.
- To improve the coverage and effectiveness of social protection for all.
- To strengthen the relationship between workers, employers and government, and promote social conversation.

The ILO is the only existing major formation of the Treaty of Versailles, which established the League of Nations. It became the first specialized agency of the United Nations in 1946

¹⁰⁴ International Labour Organization <available <https://www.ilo.org/global/lang--en/index.htm> > accessed June 15, 2022.

and was given Noble prize for peace in 1969. International Labour Organisation held the following Conventions:

- The Underground World (Women) Convention, 1935.
- The Night Work (Women) Convention (Revised), 1948.
- The Equal Remuneration Convention, 1951.
- The Discrimination (Employment and Occupation) Convention, 1958.
- Workers with Family Responsibilities Convention, 1981.¹⁰⁵

Universal Declaration Of Human Rights, 1948

On December 10th, 1948, the General Assembly approved this declaration. The 30 articles that make up this statement are divided into two sections: social and economic rights are covered in Articles 22 to 27, while civil and political rights are covered in Articles 2 to 21. Through this declaration of human rights, which established a “common standard of success for all people and all nations,” women and men are entitled to all rights on an equal footing. Men and women were both included when the words no one and everyone were used. The following are some of the key papers discussed:

Article 2 of the Declaration states that “everyone is entitled to all the rights and freedoms laid down in the Declaration without distinction based on race, colour, sex, language, political or other opinion, national or social origin, property or other status.”¹⁰⁶

So, we can say that Article 2 states that no discrimination should be made between men and women both of them should be treated equally, not only this, Article 16 also lays down that both men and women of full age should have right to marry and form family without any discrimination.

¹⁰⁵‘ILO and Gender Equality’ < [https://www.ilo.org/gender/Aboutus/ILOandGenderEquality/lang-en/index.htm#:~:text=The%20four%20key%20ILO%20gender,and%20Maternity%20Protection%20Convention%20\(No.](https://www.ilo.org/gender/Aboutus/ILOandGenderEquality/lang-en/index.htm#:~:text=The%20four%20key%20ILO%20gender,and%20Maternity%20Protection%20Convention%20(No.)> accessed 18 June 2022.

¹⁰⁶ibid.

Articles 1 to 3 of the Declaration are most important. Article 1 provides that “all human being are born equal in dignity and rights, they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹⁰⁷

Article 3 of the Declaration provides that “everyone has the right to life, liberty and security of person”. Article 7 lays down that “all are equal before law and are entitled without any discrimination to equal protection of law.”¹⁰⁸

Hence, we can say that Universal Declaration of Human Rights allow us to challenge any system which discriminates between men and women, more over this declaration neither addresses to nations nor to member States of United Nation but to everyone. It is not compulsory for all the States who ratifies it to follow this Declaration as it is not a legal document and do not have any binding force but has a great impact as in International respect. Many States have incorporated these rights in their Constitution and India is one of them. The Preamble, Part III (Fundamental Rights), and Part IV (Directive Principle of State Policy) of the Indian Constitution all include the rights affirmed in the Universal Declaration of Human Rights.¹⁰⁹

Sometimes Indian Judiciary also applies the principles laid down under Universal Declaration along with corresponding Constitution provisions, for example in case of “Gaurav Jain v. Union of India”,¹¹⁰ the Supreme Court highlighted the relationship between Article 1, 2, 3, 4, 5, 6, 7, and 8 of the Declaration and Article 14, 21, 51A, of the Constitution of India.¹¹¹ “Other Civil and Political Rights are:

1. No one should be held in slavery and servitude.¹¹²
2. No one should be subject to torment or cruelty, brutal or demeaning treatment or punishment.¹¹³
3. Everyone has the right of reorganization everywhere as a person before law.¹¹⁴

¹⁰⁷ ibid 97.

¹⁰⁸ ibid.

¹⁰⁹ G. Rajasekharan Nair, *Gender Justice under Indian Criminal Justice System* (Eastern Law House, 2011) 234.

¹¹⁰ *Gaurav Jain v Union of India* AIR 1997 SC 3021.

¹¹¹ ibid 108.

¹¹² Universal Declaration of Human Rights art 5.

¹¹³ ibid art 5.

¹¹⁴ ibid art 6.

4. Everyone has the right to an effectual remedy by the competent national tribunal for acts violating the fundamental rights bestowed by the Constitution.¹¹⁵
5. No one shall be subject to arbitrary arrest, detention or exile.¹¹⁶
6. Everybody is permitted in full equality to a fair and public hearing by an independent tribunal.¹¹⁷
7. Everyone charged with a penal offence has the right to be presumed innocent until proved otherwise, according to law in public trial.¹¹⁸
8. No one shall be subject to arbitrary interference with his or her privacy, family, home or correspondence, nor to attacks upon his or her honour and reputation.¹¹⁹
9. Every person has right to freedom of movement and residence within the borders of each State.¹²⁰
10. Everyone has the right to seek and enjoy in other countries asylum from persecution.¹²¹
11. Everyone has the right to a nationality.¹²²
12. Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.¹²³
13. Everybody has the right to freedom of thought, conscience and religion.¹²⁴
14. Everybody has the right to freedom of opinion and expression.¹²⁵
15. Everybody has the right to freedom of peaceful assembly and association.¹²⁶
16. Everyone has the right to take part in government of his country.¹²⁷

¹¹⁵ibid art 8.

¹¹⁶ibid art 9.

¹¹⁷ibid art 10.

¹¹⁸ibid art 11.

¹¹⁹ibid art 12.

¹²⁰ibid art 13.

¹²¹ibid art 14.

¹²²ibid art 17.

¹²³ibid art 18.

¹²⁴ibid art 19.

¹²⁵ibid art 20.

¹²⁶ibid art 21.

¹²⁷ibid 93.

In addition to the above mentioned civil and political rights, there are certain social and economic rights which we can also study from Articles 22 to 27:

1. Under article 22 everyone is provided with right to social security.
2. Each person has been given the right to work, to freely choose the employment, to just and encouraging environment of work and to security against unemployment. Everyone, without any favoritism, has the right to equal pay for equal work (Article 23).
3. Everyone has the right to relax and leisure, together with reasonable limitation of working hours and paid periodic holiday (Article 24).
4. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family (Article 25).
5. Everyone has the right to education (Article 26).
6. Everyone has the right to freely participate in the cultural life of the community (Article 27).¹²⁸

International Covenant on Civil and Political Rights, 1966

This Covenant recognised that all human beings are born equal so they all have same rights, not only this it also imposes a mandate on States to make sure that all the persons should enjoy equal civil, political, economic, social and cultural rights and no discrimination should be made between them on the basis of sex.

Article 3 of the Covenant states that all the States parties to the present Covenant must accept and make sure the equal rights of men and women to the enjoyment of all civil and political rights set forward in the present Covenant.

Not only this further Article 6 of the Covenant also provides that every human being have some inborn rights to the life which he or she gets from day of his or her birth as human being, it is a duty of Law to protect these rights and nobody should be deprived of his life. There is a privilege given to minor and pregnant woman under Article 6 (5) of this Covenant, according to it if any offence is committed by the person who is below the age

¹²⁸ibid.

of eighteen years or by a pregnant woman death sentence shall not be imposed on them. It is mandatory for judiciary to take into consideration this Article of the Covenant while deciding the case.

This Covenant primarily focused on Equality before law and equal protection of law without any discrimination. Not only this the Covenant also ensured effective security against discrimination on the grounds of race, colour, sex, language and religion etc. As it is a legally binding treaty hence all the State parties have to give effect to the provisions of this treaty. The Government of India agreed upon this treaty and submitted its document to United Nation on 10th April 1979. Many of the Articles of this Covenant have already been incorporated in Constitution of Indian even before this Covenant was made, such as Article 14 which talks about “Right to Equality”, Article 21 which talks about “Right to Life and Personal Liberty” etc.

International Covenant On Economic, Social And Cultural Rights, 1966

Same as above discussed Covenant there is one more important Covenant which recognises the inborn rights of human beings which a person possess since from the day when he or she is born as a human being. It is International Covenant on Economic, Social and Cultural Rights. It was adopted by General Assembly on 16th December 1966.¹²⁹

Article 3 of the Covenant provides that State Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights set forth in the present Covenant.”¹³⁰

The Covenant have laid down number of Social, Economic, Cultural rights, such as paragraph of Article 6 of the Covenant provides that “The State Parties to the present Covenant to recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he or she freely chooses or accept, and will take appropriate steps to safeguard this right.”¹³¹

¹²⁹ *ibid* 97.

¹³⁰ *ibid*.

¹³¹ *ibid* 103.

Paragraph 1 of Article 10 provides that the widest probable safety should be provided to the family, as family is the fundamental unit of the society, particularly for its establishment and education and care of dependent children. Not only this also in paragraph 2, it has also laid down the provision for providing maternity leave for working women.¹³² This is read as:

Special protection should be accorded to mothers during reasonable period before and after childbirth. During such period working mother should be accorded paid leave with adequate social security benefit.¹³³

In India many provisions of this Covenant are already present in our Constitution such as Article 39(d) which talks about equal pay for equal work which relates with Article 7(a)(i) of the Covenant, Article 41 which talks about right to work, education and public assistance in certain cases relates with Article (6)(1) of the Covenant, Article 42 which talks about providing just and humane conditions of work and maternity benefit relates with Article 7(b) and 10(2), Article 43 which talks about providing living wages relates to Article 7(a)(ii) and (d) of the Covenant and likewise there are many more articles. Not only in our Constitution other laws are made to provide social security to workers such as Maternity Benefit Act, Equal Remuneration Act etc.

Declaration on The Elimination of Discrimination Against Women, 1967

This Declaration was adopted by UN General Assembly on 7 November, 1967. It was the antecedent to CEDAW, 1979. Some of the important articles of this declaration which are related to labour are equal remuneration, to equal rights in the field of economic and social life.

The Preamble to the Declaration states that in spite of various ranges of instruments for the protection of rights of women inequity against women continues to survive. It reminds that discrimination against women violates the principles of equality and respects for human dignity in the world scenario.¹³⁴

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ International Covenant on Civil and Political Rights art10.

Article 10(1) of the Declaration directs that all suitable measures shall be taken to make sure that women whether married or unmarried should be given equal rights with men in the field of economic and social life and in particular;

- The rights, without discrimination on ground of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;
- The right to equal remuneration with men and to equality of treatment in respect of work of equal value;
- The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work; and
- The right to get equal family allowances as men on equal terms”.¹³⁵

In order to prevent discrimination against women on account of marriage or maternity and to guarantee their effectual right to work, measures shall be taken; first of all to prevent their removal from office in the event of marriage or maternity secondly to provide them paid maternity leave with assurance of returning to previous employment and lastly to make available the essential social service, including childcare facilities. However further clause (3) of this Article provides that if the measures are taken to protect women from doing certain types of work for reasons natural physical body structure shall not be regarded as discriminatory.¹³⁶

In India Article 14 of the Constitution talks about Right to Equality and Article 15(3) prevents the State from making special provision for women, Not only this Maternity Benefit Act is also there which includes almost all the provisions laid down under Article 10 of this Convention.

Convention On The Elimination Of All Forms Of Discrimination Against Women, 1979

¹³⁵ ibid 97.

¹³⁶ ibid 93.

To accomplish the purpose stated in Articles 1, 2 and 55 of the UN Charter, the Declaration on the Elimination of Discrimination against Woman, 1967 was adopted which finally led to the adoption of CEDAW.¹³⁷

It was observed in the Convention that the state parties to the International Covenants on Human Rights have the compulsion to make sure that men and women to enjoy equal economic, social, cultural, civil and political rights, not only this there are also many more resolutions, declarations and recommendations adopted by UN and the specialised agencies for promoting equality of rights of men and women. Even though in spite of all these instruments, widespread discrimination continues to exist against women because of whom they are unable to show their full potential and their participation. And due to this political, social and cultural life of the country is going low.¹³⁸

Meaning of Discrimination Against Women

According to the Convention, the term “discrimination against women means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil or any other field.”¹³⁹

The Convention puts a mandate on the state Parties to denounce discrimination against women in all forms and to follow and promote policies which focus on promoting equality between men and women. For satisfying this objective Convention has prescribed certain measures under Article 2 of the Convention which are-

- All the State parties must incorporate principle of equality in their Constitution or other legislations.
- All the State parties must make laws in which provisions should be there to punish people or organisation which promote discrimination against women.

¹³⁷ CEDAW art 1.

¹³⁸ *ibid.*

¹³⁹ *ibid* 138.

- The Convention also requires that State parties also establish the tribunal and public institutions for protecting the legal rights of the women.
- All the State parties to the Convention shall not do any act or rehearsal of inequity against women.
- All the State parties to the Convention shall not engage itself in any act or practice of discrimination against women.
- The Convention also gives directions to the State who is part to it to take suitable actions against any person, organisation or enterprise which are required for elimination of discrimination against women.
- The Convention also imposes a mandate on the State parties to take all the needed actions to remove existing laws, customs, practices which are gender discriminatory.
- The Convention also required that the State parties should revoke all the national penal provisions which create discrimination towards women.¹⁴⁰

According to Article 11 of the Convention lays down that State party to the Convention shall take suitable measures to eradicate discrimination against women in the field of employment in order to ensure on the basis of equality of men and women, the same rights, in particular a right to:

- Work is an absolute right of human being;
- Equal employment opportunity;
- Free selection of occupation and service, job security, all benefits related to job and vocational training;
- Equal payment, equal behaviour in respect of work of equal value and equal treatment in assessment of excellence of work;
- Social security, mainly in case of retirement, unemployment, sickness, invalidity and old age and other incapacities to work as well as salaried holidays and
- Security of health and safe working conditions together with the right to reproduction.

¹⁴⁰ ibid 138.

Further this Article also provides that in order to guard discrimination against women on basis of marriage, maternity and to make sure their effectual right to work the State parties took suitable method:

- To prohibit removal of a women on ground of pregnancy, maternity leave or marital status;
- To initiate concept of maternity leave with pay without causing any loss of previous service, superiority or social allowance;
- To encourage the provisions of necessary supporting social service which will allow the parents to combine family obligations with work liability which will enhance their participation in public life;
- To provide women special protection in type of work assigned to them during pregnancy.

Protective laws relating to the matters covered in this Article shall be reviewed at regular intervals and shall be revised, repealed or extended as required.¹⁴¹ Article 12 and Article 13 further provides that State parties should also take all suitable methods to eradicate inequity against women in field of health care and in other areas of economics and social life respectively.¹⁴²

Article 14 deals with the eradication of discrimination against women in rural areas, by this article mandate is imposed on the State parties to take into account all the problems faced by the women of rural areas and should take appropriate steps to make sure that provisions of the Convention are properly implemented.

Not only the obligations were put on State parties but it was also emphasized that removal of all kinds of discrimination against women is important so that men and women can enjoy their full rights which in turn will only lead to the complete progress of a country, the welfare of the world and the cause of peace required to the maximum participation of women, on equal terms with men, in all fields.¹⁴³

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *ibid.*

Implementation of The Convention (CEDAW)

A committee for the eradication of discrimination against women must be established, according to the Convention. The fundamental reason for creating this committee was to ensure that the Convention would be implemented through reporting. Every State Party is required to submit a report to the Secretary General of the Committee detailing the actions they have taken, including legislative, judicial, and other measures, to carry out the provisions of the Convention. The report must also demonstrate the progress made in the year following the entry of the State in question, as well as at least every four years thereafter, and whenever the Committee so requests. Then the Committee will prepare its report on the basis of examining this submission made by the State parties and will send this report to the UN General Assembly through Economic and Social Council with such recommendations and submissions which it feels necessary, further this report will be submitted to the Commission on the Status of Women for its information through the Secretary General.¹⁴⁴

The Convention's execution is very slow and below average, as shown by the aforementioned requirements of the Convention, and this is because the Committee lacks the authority to compel the State Parties to comply with the Convention's rules. In order to properly establish this Committee, it can only provide ideas and recommendations to the State Parties based on an analysis of the report they have submitted; Adoption of the 1999 Optional Protocol to the Convention on the Elimination of Discrimination Against Women.¹⁴⁵

If we see the above mandates which are recommended by this Convention then we will find that India have implemented almost all the recommendations, for example in our Constitution Right to Equality is guaranteed through Article 14, Many laws have been made to protect gender discrimination out of which one recent law is The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, National Commission for Women is established, old traditions and customs such as Sati-

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

Pratha etc. have been abolished. Hence, we can say that India have implemented the mandates laid down by CEDAW in great extent.

Commission On the Status of Women

The Economic and Social Council formed the Commission on the Status of Women in 1946; it serves as a formal "Commission of the Economic and Social Council." When the Commission was first founded, there were only 15 members. Over time, the number of members expanded to 21, then 32, and finally 45. This means that the Commission now contains 45 representatives of UN members who have been chosen by the ECOSOC for a three-year term. In its three-year term, the Commission holds two meetings and delivers a report to the Council at the conclusion of each meeting. The following are the Commission's primary duties:

- To provide the ECOSOC with recommendations and reports on the advancement of women's rights in the domains of politics, business, civil rights, social issues, and education.
- To inform the Council of pressing issues pertaining to women's rights that require immediate attention in order to put the principle of equality between men and women into practise, and to offer proposals to give effect to such recommendations.¹⁴⁶

Follow-up to the Fourth World Conference on Women and to the 23rd Special Session of the General Assembly, entitled, "Women 2000: Gender Equality, Development and Peace for the 21st Century"

The Fourth World Conference on Women was a follow-up for checking the progress of strategic objectives, action taken in critical areas related to women, and other areas where actions and initiatives were needed and were examined:

- Women's admission to and participation in fields of learning, science, and technology, as well as their right to full employment and respectable employment.
- Eradication of all forms of discrimination and violence against girl child.

¹⁴⁶ ibid 123.

- Gender Equality and sustainable development.
- Eradication of avoidable maternal death and morbidity.
- Empowerment of women.¹⁴⁷

Actions Taken by the Commission on the Status of Women

- It was agreed to encourage participation of female in education, training, science and technology etc., it also includes equal right to full employment and decent standard of work;
- Promote the inclusion of women in climate change policies. If we look at principle 20 of the Rio Declaration on Environment and Development, we will find that it acknowledges the role of women in environment administration and that to advance further, it also laid down stress on the need to certify enjoyment of full human rights by the women and their effective contribution in decision-making. The Commission on the Status of Women reaffirms the commitment in the Beijing Platform for action to be taken on significant area of women and environment.¹⁴⁸

The conclusion which was agreed on women and the environment was recalled and was acceded by the “Commission on the Status of Women” at its 41st Session, on “environment management and the mitigation of natural disasters” at its 46th Session and the Hyogo Framework for Action 2005-2015. It acknowledged that gender perspectives should be included in all tragedy managing policies, strategy and judgment making processes, together with those related to risk evaluation, education training, and lots of stress was put on the bad effect of climate change on women and girls also special attention was given to ladies who are living below the poverty line which is aggravating day by day because of gender inequality and discrimination. The ladies who are living below the poverty line have very less opportunities to take part in training and access to information associated with all aspects of climate changes such as weather forecast etc.¹⁴⁹

It was underlined that gender equality and effectual involvement of women are unlimited on all aspects of climate change; The Cancun Agreement, which was approved at the 16th

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

¹⁴⁹ *ibid.*

Session of the Conference of the Parties to the UN Framework Convention on Climate Change and the Kyoto Protocol, was welcomed by the Commission and gave importance to this approach. In this regard, the subsequent assumed significance as the governments were asked to:

- Include the gender perspectives in their climate change policies and to offer sufficient remedies to make sure that women participate completely and equally in all the levels of decision making in matters related to environment,
- Should help in increasing the involvement of women in all aspects of life such as decision making, scientists, technical advisers, evaluators, planners, enlargement and execution of all aspects of climate change policies;
- Give women the same rights in the areas of education, media, information, communication, and technology, and encourage equal participation in capacity development and training for addressing and reversing climate change;
- Support rural women who work in agriculture and related fields and are crucial to maintaining the food security threatened by climate change, as well as their right to own land and other property, by increasing their access to and control over resources;
- Creating wakefulness between women and girls regarding their rights and available protection for them, and also to propagate awareness among the staff for them and their representative about gender balance and gender sensitivity;
- Make sure that all the projects are fulfilling gender viewpoint in their designing, implementation, and monitoring;
- Make sure that proper and regular reporting incorporates a gender component as the State parities do in their multilateral environmental agreements.¹⁵⁰

Working Group on Communication Reports on Issues Related to Women

Working groups on Communication have submitted their reports on the matters related to women to the Commission. These reports were considered by the Commission in 55th

¹⁵⁰ *ibid* 130.

session held from 22nd February to 4th March 2011. The following categories were made by the group in which the information had most commonly submitted to the Commission:

- Among the sexual abuse of women and girls include rape, gang rape, and the threat of rape.;
- Sexual harassment at workplace which also include harassment committed by private individual, and defence services;
- Domestic violence, injurious customary practices and all other forms of violence against women and girls;
- “Trafficking in women and children which also includes human trafficking for the reason of forced labour”;
- Abuse of authority by defence, security, and law enforcement officers, such as humiliation, improper procedure and delay in procedures, illogical arrest and detention, etc.
- Emotional and physical threat and stress on victims of violence;
- Cruel treatment and inadequate condition of women in imprisonment, as well as failure to supply satisfactory hygiene standards and access to medical care;
- Grave and logical violation of human rights which are inherent rights of women and girls and also failure of the State to take steps to stop such violation by taking proper action against the criminals.
- Coercion, annoyance detention and threats of life to women human rights protectors and their families who reports and bring such events to public with a intention to stop them from doing all these events. It also includes the negligence of the State to provide adequate protection to women human right defenders by investigating and punishing the persons who are doing such acts.
- Violation of the right to health, which also includes the sexual and reproductive health of women and girls, as well as the rights of people with disabilities who are born as a result of early marriages between girls and boys and a lack of knowledge about family planning techniques, which leads to a high rate of maternal and infant mortality and sexually transmitted diseases;
 - Inequality resulted from age old conventional practices and mind-sets in areas of education, employment and in media;

- Emphasis of law and traditions which discriminate women in the area of :
Citizenship, marital status, divorce, and personal status;
 - The right to inherit and possess assets; Employment and equal remuneration payment;
 - Education, including the right to education; Citizenship, marital status, divorce, and personal status;
 - The right to inherit and possess assets; The right to vote;
 - The right to participate equally in political and social life; The contribution of women in decision-making and in public life on an equal basis with men;¹⁵¹

All the way through during the interaction together with the response given by the government the working group showed their worry about:

- Exploitation of people and families who struggle for the protection of women's human rights, including rape and other sexual abuse, domestic violence, and other types of violence against women and girls;
- Injurious customary practices such as early and compulsory marriages which causes a bad effect on the health of the lady because of which she will not be able to enjoy her full fundamental rights;
- Infringement of right to health of women which also includes sexual and reproduction health; An increasing number of women and girls are being trafficked, including for internal forced labour, particularly domestic servitude, and for commercial sexual exploitation;
- Infringement of rights of women which also includes sexual abuse by law enforcing personals or persons who are in power;
- Negligent attitude of the State in taking steps, investigating the matter to stop these types of violence which are taking place against women and punishing the perpetrators and providing compensation to the victim and their families;

¹⁵¹ Working Group on discrimination against women and girls, <<https://www.ohchr.org/en/special-procedures/wg-women-and-girls>> accessed 24 June 2022.

- The perseverance conventional thoughts for women, it also includes the thought which are developed by the media;
- Progressing continuation of laws or practices which make discrimination against women not only that it also include those laws which have even effect of discrimination against women despite of having so many mandates in International Conventions and in our Constitution which prohibits discrimination;
- Unfairness and intolerable attitude towards specific group of women and girls, such as widows, especially able women and refugees.¹⁵²

Many labour statisticians and policy officials have become interested in the changes in men's and women's work trends. The International Labor Organization's goal for "decent work" is centred on socially imposed gender roles, biological variations between men and women, and how they interact in the workplace. These issues have been explored in numerous international forums. In 1995, the Beijing Platform for Action reaffirmed the commitment to advance women's economic independence, including employment, and to end the pervasive and growing burden of poverty on women by addressing structural needs and ensuring equal access for all women, including those living in rural areas.

Full and productive employment as well as dignified work for all have been reaffirmed as UN Millennium Development Goals. Despite these successes and developments in the implementation of programmes for gender equality and women's empowerment, much work remains. Only by taking firm, resolute actions to promote greater gender equality in the workplace and in society at large will the equality in rights and opportunities guaranteed by the various international instruments become a reality. A more inclusive growth and development of the country is required, even if numerous substantial legislative initiatives have been established and put into practise to far. Consistent efforts to ensure equality of opportunity and workplace rights for men and women are therefore crucial.

¹⁵² *ibid.*

CHAPTER 5

CONCLUSION AND SUGGESTIONS

In Indian literature women has been praised and honored and even considered next to God. But the actual reality is very different, when they come out of their homes, they are victim of mistreatment, discrimination, harassment as if they are the second-class community and they are not treated equivalent to men. However, gender inequality is not a recently developed issue but it remained always a debatable issue. In almost all sector women are mistreated or harassed and not considered equal to the men; one of such sectors is labour market. Labour market is a common place where women suffer multiple disadvantages in terms of economic opportunities as well as areas in which they would like to work in terms of working conditions to which they aspire. Even, there is still a glass ceiling which prohibits women to reach top level positions; such kind of passive discriminations are also prevalent in labour market.

Labour market remained always biased towards women despite of all the theories of economic rationality. The discrimination is reflected both in the choice of occupations and wages among men and women.

There are numerous theories which depicts these differences, for example, the status achievement model, a descendant of the economists human capital theory, that talks about the speculations that what an individual conveys to the commercial center to which he or she start working that is work related desires, instruction, qualities, values and resources which are the most critical things and influences the expectation for everyday comforts of the individual and help in accomplishment of high status.¹⁵³

Like any other developing country in India also discrimination against women existed to a large extent. If we look back in Indian history, in Vedic period the position of women was much better than what we normally expect to be. No doubt there are couples of signs to demonstrate that in this period brides were sometime sold in marriage or even taken away

¹⁵³ Sarabjeet Singh and Pankaj Dodh, *Gender Justice and Women Empowerment an Integrated Approach* (Regal Publications, 2014) 132.

by force. But gradually all these principles of the society had already begun to declare and approve these practices as unholy and unworthy. The best marriage of the Vedic period was a religious sacrament, which made the couple joint proprietor of the family, though in reality, she was considered as an inferior partner. Further girls were treated equal to men, maximum amount of freedom and equality was given to women in this period, and they were allowed to participate in all spheres of life same as men and were allowed to study in Gurukuls. They were also allowed to acquire competence in art, music and even warfare.¹⁵⁴

In rich and royal family's polygamy was prevalent to some degree, however commonly monogamy was the rule. A widowed wife was not required to climb her partner's funeral pyre. The *Sati* system was not popular at all, but the major disadvantage for women in this era was that they were not permitted to own or gain property. If we see the Rigveda, it is written that wife is blessed to live as queen in the house of her husband. From this it is evident that women were given not even equal but higher status.¹⁵⁵

Overall, we may conclude that the Vedic era can be referred to as a time of feminine splendor because of how well-positioned women were. However, during the Vedic era, women's standing deteriorated significantly and they faced several limitations, including being denied the right to an education.

The trend of sending young ladies to well-known educators or focuses of instruction came to be discouraged; It was laid out that exclusive close relations like father, the sibling or the uncle should teach them at home because of this obvious reason during this period girls were unable to attain religious and secular training. Ages of marriage, rights of the parties were more or less the same as they were in the earlier age. Women were treated equally to *shudras* because they were permitted to divorce and *shudras* were not allowed to participate in the rite that initiated a person into Vedic study. They were not allowed to take training in military, administration and fine arts.

The Medieval period ended up being exceptionally frustrating for the Indian women their status additionally weakened during this period. The Muslim intrusion of India altered the

¹⁵⁴ A.S. Altekar, *The Position of Women in Hindu Civilization* (Motilal Banarsidass Publishers 1956) 278.

¹⁵⁵ *ibid.*

direction of Indian history. The union of foreign invaders and *Bhramanic* press laws were the fundamental driver for such debasement of women.

Further in this period woman had to face many social that were practiced during this period, not only this Devadasi system and polygamy has already spread all over the country. But during the British period there was a drastic change in the Hindu society; two major movements which affected the position of women in this period were Social Reform Movement of 19th century and the Nationalist Movement of the 20th century. These were remarkable movements which raised the question of equality of status of women. Not only this; many other issues also attracted the attention of the reformers such as sati, ill treatment of widows, ban on widow remarriage, polygamy, denial of property right and education to women.

The Nationalist movement drew large number of women in political activities and motivated them, tried to make them confident so that they can develop courage to fight their own causes.

In 1927 All India Women's Conference was formed, it was one of the crucial events in women's march towards equality. Many laws were also passed during this period to do away with certain social evils such as Child Marriage Restraint Act, 1929 not only this many other social legislations were also passed to protect the working women such as limited hour of work in organised industries, prohibiting night work, restricting work in mine, establishment of crèches etc. So, in a nutshell, we can conclude that during British rule, laws were passed to support women and awareness was raised about the need to eradicate societal ills.

After India became Independent and when the Constitution of our country was drafted the framers of our Constitution were very well conscious about the problems faced by the women as before independence there were very few laws related to women. It was realised that equality is very essential for the evolution of any nation as women play a very important role in the progress of any nation without females any nation cannot progress as fifty percent of the population is women.

Law is an instrument for social change in all just societies. The constraint factor in every single such case is the Constitution, which not just sets down in addition to other things, the controlling standards for the administration of the nation, but in addition to it also lays down the framework for the social and economic development. Economic and social legislations is enacted for the betterment of the disadvantaged, ignored and misused class among all the other women is also one of them within this frame work. Not only this it also provides them protection against abuse of frail by strong and the general condition which should manage life in a sorted-out society. But enactment of law cannot do much as law cannot itself help those who are oppressed whether they are women or any other class till the time they themselves understand it. After Independence lots of social legislations have been enacted for the protection of women.

The ideals enshrined in the Preamble of the Constitution are to secure for all its citizens of the country. Justice, Social, Economic and Political; Liberty of thoughts and expression and the most important is equality of status and opportunity. As a result, if any of a woman's rights are violated, she may submit a complaint because all of the Constitution's provisions apply to both men and women equally.

Fundamental rights are guaranteed to the citizens under Part III of the Constitution some of these rights have also enjoyed by the non-citizens as well. These rights are so important that State cannot make any law which take away or abridge these rights if any such law is made by the State it would be declared as unconstitutional.

Apart from all the other provisions which find a mention in Part III two cardinal provisions which are related to women the first of which is Equality before law. Which is mentioned in Article 14, it secure equality before law and equal protection of law to every person. The phrase "equality before law" is further elaborated in Article 15(1) of the Constitution which states that State shall not discriminate any citizen on the ground of sex along with any other ground. Hence it is clear that all the laws are applied equally on both the sexes and there is an express ban on the State to discriminate on the ground of sex. But however, the State can make special provisions for women under Article 15(3) of the Constitution.¹⁵⁶ This

¹⁵⁶ *ibid* 154.

provision has enabled the State to make special provisions for women in various labours laws like Factories Act, Mines Act, Plantation and Labour Act etc.

The other important Provision which is an extension of the principle of equality is Article 16 which talks about equality in the matter of employment. The significance of Article 16 is that it states that a woman has the same right in the matter of employment as man. The State cannot practice any discrimination on this count.

Apart from rights guaranteed under Part III of the Constitution, in addition Part IV contains some special provisions relating to the welfare of the women. Even though the Directive Principles of State Policy are Unenforceable by the any Court. They are however Fundamental in the governance of the Country and State is duty bound to apply these principles while making laws.¹⁵⁷

In Article 38 to 51 of the Constitution which contains the Directive Principles, the social and monetary objectives have been set with a view to satisfy the essential need of the normal man. As women have been overlooked in the social and financial advancement of the nation before Independence hence the State has been exclusively called upon to investigate certain issues which tortured them. A climate must be created for them to be an equal partner in development with man, rather than being a merely recipient of development efforts, in order to empower and enable them to engage in the socioeconomic development of the nation.

The Directive Principles which are directly related to women are as follows:-

- Article 39(a) lays down that the citizens, men and women have the right to adequate means of livelihood. As of now nothing much has been done for the realization of this principle only one thing which is done is that to improve economic condition which may, gradually in course of time ensure adequate means of livelihood.
- Equal pay for equal work for both men and women is a principle directly related to status of women. In order to realise the ideal enshrined in this principle Equal Remuneration Act, 1976 was passed in 1976 which secure equal wages for men and women for same type of work.⁷

¹⁵⁷ *ibid.*

- Article 39(e) talks about that health and strength of workers men and women and tender age of children must not be abused.” Many provisions have been incorporated in different labour legislations for protecting health and strength of workers for example in Factories Act and many more legislations but not much progress has been made by the implementation of the ideals enshrined in the latter part of the Article. As legislation by itself cannot do much, it all depends upon the economic status of individual if an individual do not have any source of income he/she will join which ever job he/she will get without looking at the job whether it is suitable for his/her age or strength or not.
- Article 42 mentions about the duty of state “State shall make provisions for securing just and humane conditions of work and maternity relief.” In view to implement this provision of the Constitution Maternity Benefit Act 1961 was passed. This has encouraged women in taking up employment in organised sector. The just and human conditions of work have been secured by passing of number of labour legislations regulations employment in factories, plantation, mines etc.
- Article 43 talks about providing living wages to the workers. If we read Article 42 and 43 together, we can conclude that makers of the Constitution were having deep concern towards labours. In order to fulfil the mandate laid down under Article 43 the Minimum Wages Act 1948 was passed.

All the human rights which have been asserted in the UDHR are incorporated in the Preamble, Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) of the Constitution of India. Not only this for the promotion of the status of women in various fields and eradication of discrimination against women two organs have been established under United Nation System, *i.e.* Commission on the Status of Women, and the Committee on the Elimination of Discrimination against women.¹⁵⁸

Sexual harassment at workplace is such a menace that if a female worker is harassed sexually it runs all her career. The problem with sexual harassment at work place is that

¹⁵⁸ S.S. Chauhan and P.L. Mehta, ‘Philosophy of Human Rights Jurisprudence: A Study With Special Reference to Women under United Nation Charter’(2004) CMLJ < <https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-14-2.pdf>> accessed 3rd Jan 2022.

most of the sexually harassed women ignore it or think that it is just one incident and will not happen again or they do not want to lodge a complaint against the harasser because she knows that she will only be in trouble due to unhelpful nature of police and lengthy legal procedure.

Earlier sexual harassment at work place was not considered as specific crime but after the hon'ble Supreme Court delivered its landmark judgement in Vishakha case in which guidelines were laid down and directions were given to all the employers to have sexual harassment policy in the workplaces and consider sexual harassment as a grave offence. This judgment came in 1997 before 1997 sexual harassment was dealt under Section 509 and 354 of Indian Penal Code.¹⁵⁹ However there is a loophole that these sections does not define what amount to sexual harassment and was left to the discretion of the judge deciding the case.

After 16 years of passing this judgment, finally our legislature enacted Sexual Harassment of Women at Workplace Prohibition, Prevention and Redressal Act, 2013. This act covers a large variety of acts, behaviours which can make a woman uncomfortable and creates an unfriendly work environment. Actually the environment at every workplace should be like that every women should feel comfortable while working if any such act of sexual harassment occurs with them they should not feel hesitated in making the complaint, police should cooperate in recording the statement of the victim same question should not be asked from them again and again. Above all else, the most important thing is perception of males towards females should change. As gender justice is an issue which is related to each and every member of the society law alone cannot do much all the people of the society will have to come forward to remove this cause as without active participation of female in any field of life any nation cannot progress in its true sense.

The existing laws related to maternity benefit for women employee's covers only the women employees of organised sector. Maternity benefits should also be provided to the women of unorganised sector. The amendment made in Maternity Benefit Act, 1961 in 2017 is a very good initiative of Government by which maternity leave of 26 weeks is now

¹⁵⁹ *ibid.*

given to the women employee instead of 12 weeks. When a female employee joins office after her maternity leave childcare is an issue which she faces. One issue which is closely related to child care is breastfeeding, in Maternity Benefit Act there is only provision for giving two nursing breaks for the first fifteen months which is inadequate because of which most of the female quit the job. Hence legislature should look into the matter and make necessary changes in the Act.

In fact, if the female employees are unable to avail the benefits which are provided under the existing labour legislations then obviously a question arises that whether these laws are sufficient or not or are these laws outdated in the prevailing situation of globalized economy.

Legislature has taken a very good initiative lot many laws have been made for protecting the interest of female. But mere making laws in which there are provisions for safety, health and welfare provisions at work place, maternity protections, non- discrimination treatment are not enough unless all these laws are implemented genuinely and are ultimately motivated towards achieving the desired goal. Basically, the problem in our Indian society is that as it is a patriarchal society the mind set of all the individuals are like that, that they think problems related to women at workplace are very minor problems or the problems are created by the female employees themselves. Therefore, it becomes imperative to conduct gender sensitization programme to implement labour laws. Law enforcement authorities should not just work as the prosecutors, rather they should work vigilantly and should ensure that proper welfare facilities and protection should be given to the women for which they are entitled.

Despite the fact that so many laws and constitutional guarantees were brought forth long back, it is regrettable to see huge majority of women employees being still unaware about the provisions which are laid down in different laws for the protection of their rights. Law cannot do anything in changing the status of the women if the females are themselves not aware about their rights. So it is very important that women employees should be made aware about their rights which is guaranteed to them under the Constitution of India as well as indifferent labour laws through pamphlets, booklets, posters, by organizing awareness programmes in local language as well as in Hindi and English, not only this, government

should take necessary actions to spread awareness related on legal rights and facilities available to the women employees through electronic media and social media such as television, radio, internet *etc.*

Suggestions:

After going through the rationale of various Supreme Court judgments it can be stated that most of the times Judiciary has delivered judgments which were a reaction to the public sentiment prevailing at that point of time, this should not be the approach as Judiciary does not represent public sentiment but it is guardian of constitutional values. Further, the judge's personal experience and mindset do go a long way in influencing judgments. Therefore, firstly it is suggested that it is not only through the judgments alone that gender justice will be brought but an active involvement of other organs of government is required *i.e.* the legislature and executive.

Secondly, more women representation has to be there at Higher Judiciary so that women question can be dealt more nuancedly, it is not to say that male judges are not capable of handling such issues.

Thirdly, India being signatory to CEDAW should implement all its provisions in national law.

Fourthly, taking inspiration from Maputo Protocol India should also try to draft an instrument which will consolidate all women rights at single place. This will give judges a ready point of reference for adjudicating in favour of women's rights and not always drawing an inference from the Constitution.

Fifthly, women in India are targeted in the name of customs, hence it is the executive which has the responsibility to see that the statutes already existing are implemented properly. After a decision by Judiciary is given the women in remote areas have to be informed about it through various means so as to make them aware of their rights.

Lastly, Judiciary has at many instances done its function but in order to achieve gender justice holistic approach is required at national level.

BIBLIOGRAPHY

Aarathi, J, *Gender discrimination: A global phenomenon* Excel India publishers, New Delhi 2017.

Akhilesh, S, *Interventions for bridging the gender gap in education*, University News New Delhi 2010.

Andal N, *Women and Indian society* Rawat publications, Jaipur 2018.

Arif R, 'Remembering the women of the Constituent Assembly (Opinion)' Hindustan Times <<https://www.hindustantimes.com/analysis/remembering-the-women-of-the-constituent-assembly-opinion/story-W0qCZfynjxdrTGUeaTYaCN.html>> accessed on 7 May 2022.

Awasthi K, 'Hansa Jivraj Mehta: Freedom fighter, reformer; India has a lot to thank her for' Indian Express <<https://indianexpress.com/article/gender/hansa-jivraj-mehta-freedom-fighter-reformer-india-has-a-lot-to-thank-her-for-5034322/>> accessed 5 May 2022.

Basu DD, *Commentary on the Constitution of India Vol. 1* (Lexis Nexis Butterworths Wadhwa 2012).

Beasley C, *What is Feminism?* (Sage Publications 1999).

Bhat D, *Human Rights and Gender Issues: A Socio-Legal Perspective* Indian Bar Review 2000.

Bhatia G, 'Women and the Constituent Assembly – II: The Framing of the Non-Discrimination Clause' <<https://indconlawphil.wordpress.com/2015/09/04/guest-post-women-and-the-constituent-assembly-ii-the-framing-of-the-non-discrimination-clause/>> accessed 5 May 2022.

Bunch C and Frost S, *Women's Human Rights: An introduction*", Routledge International Encyclopedia of Women: Global Women's Issues and knowledge (Routledge, 2000).

Bunch C and Peters J, *Transforming Human Rights from a Feminist perspective*, Routledge London 1995.

Chakraborty S, 'Women's Rights in India: A Constitutional Insight' <<https://ssrn.com/abstract=3688004>> accessed 2 March 2022.

Chauhan S and Mehta P, 'Philosophy of Human Rights Jurisprudence: A Study With Special Reference to Women under United Nation Charter' Civil and Military Law Journal (2004).

Chiu B, 'Gender Inequality Harms Not Only Women and Girls, But Also Men and Boys' <<https://www.forbes.com/sites/bonniechiu/2019/05/28/gender-inequality-harms-not>> accessed 23 April 2022.

Constituent Assembly Debates vol 6 <<http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C18071947.html>> accessed 2 May 2022.

Constituent Assembly Debates vol 7 <<http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C08111948.html>> accessed 9 May 2022.

Das J K, 'Reflections On Human Rights And The Position Of Indian Women' The Indian Journal of Political Science July-December 2003 Vol. 64.

Dev S, 'Gender Justice in India: A Feminist Jurisprudential Perspective' Tattva-Journal of Philosophy 2018, Vol. 10.

Elati R, *Violence against women: When will it end?* Kurukshetra New Delhi 2008.

Fatima T, 'Gender Justice: A Conceptual Analysis' International Journal of Education and Research 2014.

Haig D, *The Inexorable Rise of Gender and the Decline of Sex: Social Change in Academic Titles* Maulana Azad Library 2008.

Houlihan E, 'Support to women Constitution makers and gendered Constitution-building' < <https://www.idea.int/news-media/news/support-women-constitution-makers-and-gendered-constitution-building>> accessed 8May 2022.

Human Rights < <http://ncw.nic.in/reports/publications/reports-published-by-the-commission>> accessed 15 Feb 2022.

International Labour Organization <available <https://www.ilo.org/global/lang-en/index.htm> > accessed June 15, 2022.

Kumar R, 'Equality for Women: The Constituent Assembly Debates and the Making of Equality Jurisprudence by and for Women. Social Change' January 2022.

MacKinnon C A, 'Sex equality under the Constitution of India Problems, prospects and personal laws' I-CON, Volume 4 <10.1093/icon/mol001> accessed 4 March 2022.

MacKinnon C, *Sexual Harassment: Its first decade in Court Feminism Unmodified: Discourses on Life and Law* 1994.

Martinez A G, 'Human Rights of Women' Journals of Law and Policy vol 5 (2001).

Ministry of Health and Family Welfare < <https://pib.gov.in/newsite/PrintRelease.aspx?relid=98466#:~:text=As%20per%20the%20Census%2C%20sex,of%20sex%20ratio%20are%20annexed>> accessed 6th May 2022.

Nair G R, *Gender Justice under Indian Criminal Justice System* (Eastern Law House, 2011).

National Commission for Women, 'The report on Towards Equality – The Unfinished Agenda – Status of Women in India' < <http://ncw.nic.in/reports/publications/reports-published-by-the-commission>> accessed 23 March 2022.

Pandey S, 'Property Rights of Indian Women' <https://www.womenslinkworldwide.org/files/gjo_article_India_caseC.%20Masilamani_en.pdf> accessed 19 March 2022.

Patricia K, 'Approaches to Gender and Development' Consultation for UNDP Gender Focal Points New York 1998.

Philips A, *Multiculturalism, Universalism, and the Claims of Democracy Gender Justice, Development and Rights* (Oxford University Press, Oxford, 2002).

Sharma G, *Feminine Jurisprudence in India* (Deep & Deep Publications Pvt. Ltd).

Singh S and Dodh P, *Gender Justice and Women Empowerment an Integrated Approach* 132(Regal Publications, 2014).

Wambui J, 'An Introduction to Feminist Research' <<https://www2.unb.ca/parl/research.htm>> accessed 4 June 2022.

Working Group on discrimination against women and girls, <<https://www.ohchr.org/en/special-procedures/wg-women-and-girls>> accessed 24 June 2022.

Yajnik A, 'Domestic Violence and Protection of Human Rights' <<http://www.legalservicesindia.com/article/415/Domestic-Violence-as-a-Human-Rights-Issue.html>\.> accessed 23 May 2022.