**RIGHT TO DEVELOPMENT AND EMPOWERMENT OF WOMEN UNDER INTERNATIONAL LAW WITH SPECIAL REFERENCE TO INDIAN DEVELOPMENTAL LAW**

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**1.1 Background of the study:**

Ever since the dawn of civilization social organization, political control, cultural mores and even religious prescriptions have remained tilted in favor of the man against the woman because of multiple factors. Thus, creating a balance between the rights and entitlements of men and women has remained the hallmark of the modern era. Empowerment of women and removal of inequality between men and women, be it professional inequality, ownership inequality, household inequality, basic facility inequality, natality inequality, (desire to have a male issue), as categorized by Nobel Laureate Amartya Sen,[[2]](#footnote-2) is a priority global issue. Even Universal Declaration of Human Rights adopted and proclaimed by General Assembly of United Nation envisages this in Article[[3]](#footnote-3) that "Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind." As the history tells us, International labor Organizations[[4]](#footnote-4) popularly known as ILO was the first major world organization having taken up the cause of women development. It was instrumental in getting the landmark Convention adopted in 1919 on the maternity protection and working hours during the night, forming thus a part of human rights."[[5]](#footnote-5)

The United Nations is actively engaged in promoting women rights as a long-term objective. Several conferences have been held not only during the UN-sponsored international women decade but prior to and thereafter. The women have been running from pillar to post to raise their voice against discrimination and non-equality. They had to travel all the way from Mexico to Copenhagen to build narrative on women issues in 1975 and the related conferences held thereafter[[6]](#footnote-6). According to this narrative, in different parts of the world male chauvinism in different degrees has led to gender injustice. In some developed countries women were accorded the right to vote very late.[[7]](#footnote-7) They had to launch a determinant struggle to secure the right of adult franchise. Even when women secured the right to vote, initially they did not receive in the legislature the recognition they deserved on the basis of their merit and ability. Convention for Elimination of all forms of discrimination against women[[8]](#footnote-8) (for short, 'CEDAW') was ratified by the UN on 18th December, 1979 and the Government of India has ratified it as active participant on 19th June 2003[[9]](#footnote-9). It acceded to CEDAW and reiterated that discrimination against women violated the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country. This discriminatory approach would otherwise make woman's role more difficult for the full development of potentialities of women in the service of the respective countries and of humanity. Thus, establishment of a new international economic order based on equality and justice would contribute significantly towards the promotion of equality between men and women.

After the commencement of the Constitution of India some positive governmental efforts (legislative and executive) have been made to uplift the socio-economic and political status and position of women. The principle of gender equality as enshrined in the Constitution forms the basis of human dignity, integrity and justice in India. The Constitution not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favor of women.

Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at advancement in different spheres, but their success depends upon their true spirit. The doctrine of protective discrimination, no doubt, express constitutional mandate and legislative intent in our legal system but its real efficacy lies in its live and dynamic interpretation of the facts and circumstances in individual cases and precedents; to co-ordinate the freedom and protection, discrimination and non-discrimination for the welfare of woman. It is interesting to see that the different interpretation of the principle of protective discrimination has come-in-being due to its application to different subject matters related to woman. The Indian Judiciary to certain extent has taken a lead in securing socio-economic justice to women depicted in Census of India and National sample survey organizations, the two main sources of data on development and empowerment of women though it shows that women development is not at par with men. India has also ratified various international conventions and human rights commitments to secure equal rights of women men[[10]](#footnote-10). The MDG targeted women empowerment as the primary objective under Goal 3 and 4 for overall women development. Much progress has been made through these development goals to ameliorate the socio-economic condition of woman at the universal level with its attendant impact in major economies of the world including India. But the objectives of developmental goals have to yet to be achieved as per the midterm survey report published during 2015 by United Nation Development Plan. Despite the realization of women development issues at the national and international level, the status of women development scenario at the local level becomes quite relevant for consideration.

**1.2 Women and Development: An International Scenario**

Historically women have remained as the baggage or appendage of men folk and there has been a constant struggle to achieve what may be called the equilibrium in gender equality. There have been umpteen numbers of UN Conventions/resolutions that specifically tried to fulfill the goal of women empowerment.[[11]](#footnote-11) Empowerment of women remains the ideal goal to achieve for every community even at present that mandates every nation to work for gender equality[[12]](#footnote-12). Empowerment of women and removal of inequality between men and women, be it professional inequality, ownership inequality, household inequality, basic facility inequality, mortality inequality, natality inequality (desire to have a male issue), as categorized by Nobel Laureate Amartya Sen, is a priority global issue.

Jawaharlal Nehru, the first Prime Minister of India once remarked, "You can tell the condition of a nation by looking at the status of its women." The Women empowerment aims to give everyone, regardless of gender, better access to education; employment etc., in order to boost growth in all sections and hastens the emergence of a fairer society. In other words, empowerment of women means equipping women to be economically independent and self-reliant in a society in which they act as economic providers and participate in all developmental activities like their fellow men. In that way, it is an act of endowing them with the necessary dosage of capacity to act, influence and decide.[[13]](#footnote-13) But in a male oriented and male dominated society, they can be the safe players only if their Human Rights against discrimination in every walk of life and sphere of activity punctuated by non-equality, sexual harassment, privacy intrusions, domestic violence etc., are fully guarded against. Besides, their right to empowerment- economic, social, cultural and political is not only recognized and highlighted but it is fully enforced and religiously implemented.

**2.2 Meaning and definition**

According to the report, World Bank and Empowerment, the word empowerment has been explained succinctly as under:

Empowerment is the process of enhancing the capacity of individual or groups to make choices and to transform those choices into desired actions and outcomes. Empowered people have freedom of choices and actions. This in turn enables them to better influence the course of their lives and the decisions which affect them.[[14]](#footnote-14)

Women Empowerment not only point towards their material development, but are oriented towards more economic growth which generally plays an important role in overall developmental strategy, as has been conceived of, in the case of other underprivileged classes. Women empowerment should be conceived as the overall development of their faculty of self-realization, self-image and identity and key, the economic development which holds the keys to their real development. The empowerment must underline the formation of a mature, critical and conscious approach towards one's own self and the world around. For the same, law is the only savoir against their historically sanctioned impoverishment that has thwarted rather scuttled their growth and development at various levels. Will man permit any legislation that would empower woman and release them from their subservience. The two marvels of men have been that of a taming horse and enslaving women. The former enabled him to control time and space, secure a thrill and identifying male roles, which has been nothing than controlling the aggressive forces or unlashing the same as and when need arose. The latter assured him comfort, pleasantries and better taste of life because women not only secure his comfort but also confirms his manhood at a minimal price. To sustain the stage and keep woman attached as an appendage, the man would take refuge/to cajolery and trickery to allure the woman.[[15]](#footnote-15)

“Where it failed, he would successfully take out the sharpest happen call and "love" from its armory to earn the sympathy of a woman. Where all modes failed man may keep her under awe. The male pretensions have proved the weapons of destruction for women because men knew that he could enslave women only through psychological warfare. In order to keep her in awe she thought of a trap woven with the most powerful stands of religion and consolidated its control through concocted assumptions like "Fall of Adam".[[16]](#footnote-16)

It would writ large, as a feeling it was, that man there after successfully constructed disappointing libel is against women and feminity, which later on swayed the whole accidental world'[[17]](#footnote-17). Elsewhere in the oriental world the position was never better, than rather different kinds of myths revolving around impurity of women were put afloat.

**2.3 History of women development:**

The Greeks were the first to rationalize the differentiation on the basis of sex as it was so cute that "difference between a man and a woman is on the physical functions. One begets, the other bears children". Apart from that, both can and should follow the same range of expressions and perform the same function as (though the men will on the whole perform better); they should receive same education to enable them to do so. In this way the society shall get the best value from both.[[18]](#footnote-18)

Instead of appreciating the arguments that women can perform better, the same was exploited by men to the disadvantage of women just to show her intellectual dwarfness that ultimately reduced her productivity, both within home and outside. At home she became subordinate to man who emerged as self-claimed master and began to control the movement of women beyond imagination, essentially causing her psychological impoverishment. This attack was so serious that women began to doubt her own ability and capacity to compete with man since docility had by now mixed with her blood resulting in shattering her self-confidence.[[19]](#footnote-19)

This argument not only depicted the silent protest vis-a-vis men but also displayed female indifference towards such use of authority; such act was a deliberate and well thought of ploy wherein women preferred sacrificing her own interest, to protect in turn the great interest of the society. She, according to a feminist, knew the reality, succinctly described by her as under:

It is not true that human activity can be released from all restraints. But its nature and the method of manifestation is different not only on itself but on other wings who consequently restrain and regulate it. The other being" points towards the public and their attitude because men have historically been the authors of norms and rules that invigorate discriminatory social patterns, which well normally is sufficient to ensnare women.[[20]](#footnote-20)

This phenomena has resulted in imposition of stereo-type roles on women folk, leading to stifling of the feminine quality of intuition, her desire of collaboration and inspiration for men while themselves remaining happy in their assumed roles, a pitiable one even than deliberately ignored by men as her disqualification. Women though understood the emotional instability of men, which she tried to makeup by her own sacrifice. This can be ascertained from the fact that man has hitherto failed to share and appreciate; that women is the loveliest and an aggressive helpmate. Instead of being mutinous, woman does neither insist on her share in his success, nor ask for her rights, only to preserve societal peace and forward march of human civilization on the road to development".[[21]](#footnote-21)

The failure to appreciate and understand female concerns by men proves their masculine intellectual poverty or their ignorance of feminine qualities, which men themselves like. This has been brought to attention when it is stated:

Women deserve the capacity of being productive and original but without entering into any competitive struggles. The ability of women to renounce their own achievements without feeling that they are sacrificing anything, and rejoice in the achievements of the companions, which they have often inspired are matchless. They are independent in their feelings and thinking directed in words. Their capacity for identification is not an expression of inner power but of inner wealth.[[22]](#footnote-22)

The inner wealth of women is trivialized and interpreted by men against her, so much so, to look inferior against men, which has an adverse impact on the institution of family itself. It may not tantamount two exaggerations that one of the major reasons behind dwindling of the institution of family has been not because of the greater emphasis on individualism and individual liberty but due to the failure of cultural norms and social instructions hitherto dominated by men and masculinity. Men's domination has become visible because the family as an institution has gradually begin to show major cracks. The unwed marriages and lesbian partnerships[[23]](#footnote-23) are reminiscent of the fact that women can no longer tolerate or bear the conventional rules and restrictions on their freedom. Notwithstanding the lecherous curiosity and violent insult associated with lesbianism yet it exists, especially for transvestite kind exists, which may be understood as revolt against the limitations of male role of passivity hypocrisy and indirect action as well as rejection of the brutality.[[24]](#footnote-24)

The persistent denial has emboldened women to plead that she could begin not by changing the world, but by assessing herself. As Ibsen put in his play[[25]](#footnote-25), to remind a woman of our duty towards husband and child, the women feels force it to demur, that:

I have another duty, just as scared..My duty to myself... I believe that before everything else. I am human being. Just as much as you are people would agree with you (Torvalds) and that would have a warrant or it in books; but I cannot be satisfied any longer with what most people say, and with what is inbox. I must think things out for myself and try to understand them.[[26]](#footnote-26)

The erosion of cultural norms that has appeared in the form of disintegration of conventional familial construct is a reaction against subordination of women to men. It's marked with a demand that partnership means assured fair deal to women at the familial level, which would be incomplete unless followed at other levels too. This would help in reconciling diametrically opposite forces like sub-ordination, estrangement, disempowerment and disharmony which have retrospectively been hostile to women and caused her impoverishment at all visible and invisible levels.[[27]](#footnote-27)

The social scientists[[28]](#footnote-28) for a while, has succeeded to project women as dwarf, both intellectually and psychologically, on the basis of unverifiable truths realizing least that by doing so, they established their own intellectual dwarfness.[[29]](#footnote-29) They failed to take note of the flip side of their personality, which makes them the epitome of strength and power. The lack of understanding and imagination of the social scientists lead them to construct preposterous theories about feminity and womanhood, instead of looking on women in male/female divide in its natural and evolutionary sense. These theories, by and large, revolved around shallow ideas and propositions aiming at establishing masculine superiority[[30]](#footnote-30)

The biological divide was exploited to the fullest extent, which being the most distinguishing feature of feminity became the popular theme and the qualification of women was projected by this social scientist without any recourse to her disqualification. As a result, elaborations where woven around masculine perception of biological divide which was not only preserved and promoted through stereotyping of roles, cultural conditioning and economic dependence of women on men but also to prove their inferior stature as against man.[[31]](#footnote-31) It is undeniable truth, so it is a natural reality that the woman possessed creative ability because it's women who shapes life in her womb. In order to negate and falsify this eternal truth i.e. superiority of women the Babylonian people[[32]](#footnote-32) .In 2300 BC attempted to reverse this trend on hypothetical assumptions to incarnate superiority of man over women.

The Babylonian hymn[[33]](#footnote-33) in this regard reveals that the "Great Mother" Tiamel who ruled the universe was slayed by rebellious male gods led by Marduk. Before being chosen the supreme, Marduk had to pass the test of destroying a garment by word of mouth and making it whole again by word of mouth. He did it and was declared supreme. This myth was interpreted to show that the man has overcome his inability for natural creation---a quality, which only the soil and female had.[[34]](#footnote-34)

Historically from here onwards was born the patriarchal male, which marked the beginning of a new era. Instead of eulogizing the importance of women and her biological superiority, ability and strength from the point of inception to death the same has been used against her existence. As a result, woman has been projected as pygmy in stature, against her towering status as evinced by the law of Nature. The scientific findings attest this phenomenon as being a verifiable truth. The most outstanding and startling fact that out of 48 chromosomes that form a zygote, only one is different between male and female, which surprisingly constitutes the basis of wholesome difference.[[35]](#footnote-35)

Scientific findings reveal the eternal truth that y chromosome, a male determinant shows its first weakness as compared with x chromosome (which is a female determinant) where the former fails suppress the mutant gene i.e., the career of infirmities, like hemophilia, and the color blindness follows the same pattern.[[36]](#footnote-36)

Does this not show that even in womb female is stronger than male? Why do females live longer and in every age group more males than females' die? Although the number of males conceived maybe between 10 to 30% more yet there is no explanation for the more frequent conception of males, for female producing spermatozoa which are in similar number as the male producing ones. It is tempting to speculate whether this might not be a natural compensation for the greater vulnerability of males.[[37]](#footnote-37)

t is why, some writers[[38]](#footnote-38) opine that the extreme variable tendency of man expresses itself in a larger percentage of genius, insanity and idiocy; where is women remains more nearly norm.[[39]](#footnote-39) Not-withstanding these scientific revelations that psychoanalysts have ventured to describe the women in most unpalatable language least realizing that "men are in fact women with their inside out[[40]](#footnote-40)", then women being described as castrated man. It is worth appreciating that the castration of women has been carried out in terms of masculine / family polarity, in which men have commandeered all the energy and streamlining it into an aggressive inquiring power thereby reducing all hitherto sexual contact to a sado-masochistic pattern. This has led to distortion of our concept of love. Beginning with celebration of an ideal, love proceeds to describe some of the cheap perversions, altruism, egoism and obsession. Freud under misconception ignores the worth and attributes of feminity by revolving his thesis around phallocentric criteria.[[41]](#footnote-41)

This has virtually imposed:

An artificial division where in women has been branded as masochistic person who to fight loneliness it is said makes herself part and parcel of another person who directs and protects her; who is her life and oxygen as it were. As a masochistic Person she does not have to make decision person.[[42]](#footnote-42)

This is something that male, forgetting the psychological self of a woman who sacrifices for a cause, exploits women by imposing stereotype roles on her which is further nurtured through cultural conditioning. In this regard Mill[[43]](#footnote-43) feels that:

We may safely assert that the knowledge men can acquire of women, even as they have been and are, without reference to what they might be, is wretchedly imperfect and superficial and will always be so until women themselves have told all that they have to tell[[44]](#footnote-44).

These issues ultimately become the theme of the international conferences on discrimination against women. The Mexico Conference that was subsequently followed by Beijing meet should be looked at in the light of afforested facts. The issue causes global ramifications since it involves the future generations of the world, though the same received attention of the people of the world, much earlier to these conferences. This trend continues to be the case in the post millennium era as well.[[45]](#footnote-45)

**2.4 Women Empowerment: Global Response:**

As the history tells us, International Labour Organization[[46]](#footnote-46), popularly known as ILO was the first major world organization having taken up the cause of women development. It was instrumental in getting the landmark Convention adopted in 1919 on the maternity protection and working hours during the night, forming thus a part of human rights.[[47]](#footnote-47) These Rights[[48]](#footnote-48) are the expressions of those traditions of tolerance in all cultures that are the basis of peace and progress. Human Rights, popularly understood and justly interpreted, are foreign to no culture and used to be prevalent in almost all nations. It is the universality to Human Rights that gives them their strength and indices them with the power to cross any border; climb any wall; define any force.[[49]](#footnote-49) They are global principles, rooted in international law and applicable to all societies. The problem of family violence, especially violence against women,[[50]](#footnote-50) is not a new one and evidence of such violations[[51]](#footnote-51) can be found in historical records of any culture. Based on the influence of numerous United Nations conferences over the past 25 years, the international women's movement has begun to highlight domestic violence as a Human Rights violation".

This phenomenon was espoused by the Constitution of India also by guaranteeing equality of opportunity and status to women and men.[[52]](#footnote-52) It directs the state to make provisions both general and special for the welfare of women. Despite the constitutional guarantees, women in India who constitute nearly half of the population are still subjected to many disadvantages, disabilities and inequalities in our male dominated society.[[53]](#footnote-53)

**2.5 Human Rights and Women**

Revolution in Human Rights occurred in 1948, when the United Nations adopted the Universal Declaration of Human Rights on 10th December. Two international convents were adopted in 1966 codifying the two sets of rights outlined in the universal declaration International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights.[[54]](#footnote-54) The Universal Declaration of Human Rights proclaimed that all human beings are born free and equal in dignity and everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. However, there exists a considerable discrimination against women because women face a multitude of constraints imposed by society. The major international instruments apart from above relating to women are:

1. Convention on the Political Rights of Women, 1953.[[55]](#footnote-55)

2. Convention on the Elimination of All Forms of Discrimination against Women, 1979[[56]](#footnote-56)

3. Vienna Convention on the Elimination of Violence against Women, 1993[[57]](#footnote-57)

4. Beijing Declaration.[[58]](#footnote-58)[[59]](#footnote-59)

The international instruments enumerated above not only recognize multiple Human Rights relating to women but also provide for specific legal rights of women like, right to property, right to privacy, right to equality, right against harassment, right against gender discrimination, right to economic empowerment etc. In modern times, right against domestic violence has also got recognition as a human right. Needless to assert here that Human are global principles, rooted in international law and applicable to all societies. These laws though international in character have been largely domesticated by enacting appropriate laws. There has been marked increase over the last few years of social movements that aim to apply Human Rights locally.[[60]](#footnote-60)

The United Nations is actively engaged in promoting women rights as a long term objective. Several conferences have been held not only during the UN-sponsored international women decade but prior to and thereafter".[[61]](#footnote-61) They have been running from pillar to post to raise their voice against discrimination and non-equality. They had to travel all the way from Mexico in 1975 to Copenhagen in 1980, to Nairobi in 1985 and to Beijing in 1995, where International Conventions on women issues were held from time to time.[[62]](#footnote-62)

In different parts of the world male chauvinism in different degrees has led to gender injustice. In some developed countries women were accorded the right to vote very late.[[63]](#footnote-63) They had to launch a determinant struggle to secure the right of adult franchise. Even when women secured the right to vote, initially they did not receive in the legislature the recognition they deserved on the basis of their merit and ability. If the social reform program is to be pursued vigorously certain attitudinal changes are urgently called for. These comprise change of context, change of relations and change of values. Without such a comprehensive change in the existing value judgments of the present consumerist culture the battle for gender justice cannot be won.[[64]](#footnote-64)

According to an eminent Jurist, K.D. Gour, in these days of globalizations[[65]](#footnote-65) the global picture of women is most ignoble and inequitable. Woman constitute 50% of the world population and account for 66% of the work done, but have only a share of 10% in the world income and own one per-cent of the world property.[[66]](#footnote-66)

In other words, women continue to be at the receiving end and at a fundamental disadvantage in a male dominated society. This is a gross violation of human rights. as these Rights are derived from the dignity and work inherent in the human person. Human Rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy development and respect for Human Rights and fundamental freedoms are independent and have mutual reinforcement. The Human Rights for women including girl child are therefore inalienable, integral and individual part of universal Human Rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth cultural, social and economic. Any form of discrimination on grounds of gender is violative of fundamental freedoms and Human Rights".[[67]](#footnote-67)

Convention for Elimination of all forms of discrimination against women[[68]](#footnote-68) (for short, 'CEDAW') was ratified by the UN on 18th December, 1979 and the Government of India has ratified it as an active participant on 19th June,[[69]](#footnote-69) 1993. Thus it acceded to CEDAW and reiterated that discrimination against women violated the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country. It hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity. Establishment of a new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc.[[70]](#footnote-70)

The UN charter[[71]](#footnote-71) envisaged respect for and observance of Human Rights without any discrimination on any ground including sex and gender equality. Preamble[[72]](#footnote-72) of the charter refers to the faith of this great organization in fundamental Human Rights and fundamental freedoms for all without distinction on account of sex, or other grounds. Following provisions of the Charter is a testimony to the desired goals:

Article 8: The United Nation shall place no restrictions on women to participate in any capacity and under conditions of equality in its principles and subsidiary organs.

Article 13(1) (b): The General Assembly has to initiate studies and make recommendations of fundamental freedoms for all without restriction on the basis of race, sex, language or religion.

Article 55: The UN shall promote universal respect for, and observance of Human Rights and fundamental freedoms for all without distinction.

**2.5.1 Universal Declaration of Human Rights (1948)**

Article 1 provides that all human beings are born free and equal in dignity and right. However, the real journey of explicitly of women rights begin with the adoption of Convention on the Political Rights Of Women, 1952,[[73]](#footnote-73) moved forward with the Declaration on the Elimination of Discrimination Against Women, 1967[[74]](#footnote-74); and reached at decisive stage with the Convention for elimination of all forms of discrimination against women, 1979 and got further strengthen with the Declaration On Elimination Of Violence Against Women 1993[[75]](#footnote-75) and followed up action to answer the provisions of the aforementioned UN documents.

In the intervening period, International labour organization (ILO) also adopted various Conventions Right To Work (Women) Convention (revised) 1948[[76]](#footnote-76), the Discrimination (Employment and Occupation) Convention, 1958,[[77]](#footnote-77) the Equal Remuneration Convention 1951[[78]](#footnote-78), and the Worker's Family Responsibilities Convention, 1981.[[79]](#footnote-79)

**2.6 World Conferences on Women Rights**

In the series of follow-up action, World Conferences were held at Mexico, Copenhagen, Nairobi and Beijing.

(a) The first Conference held at Mexico in 1975 highlighted the themes of equality of women and their contribution to development and peace;

(b) The second Conference held at Copenhagen in 1980 by widening its scope included three other subjects, education employment and health;

(c) The third Conference held at Nairobi in 1985 evolved forward-looking strategies for the advancement of women; and

(d) The Conference of Women of far greater significance was held at Beijing in 1995, being transformative and pragmatic in nature, adopted the platform for action plan between 1996 and 2001 for the upliftment and advancement of women.

**2.6.1** The Vienna Declaration and Program of Action 1993[[80]](#footnote-80) dealt with the subject of equal status and Human Rights of women and contained following details and resolutions in Para 36 to 44.

**Para 36:**

The world Conference on Human Rights ensures the full and equal enjoyment by women of all Human Rights and that it shall be the priority for the governments as well as the United Nations. The world Conference on Human Rights also underlines the importance of the integration and full participation of women both as agents and beneficiaries in the development process. The Convention reiterates the objectives established on Global Action for Women towards sustainable and equitable development as set forth in the Rio Declaration on Environment and Development.[[81]](#footnote-81)

**Para 37:**

The Equal Status of Women and the Human Rights of women should be integrated into the mainstream of United Nations system-wise activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote for the integration of objectives and goals between the Commission on the Status of Women, Commission on Human Rights, and the Committee for Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Program and other United Nations agencies. In this context, corporation and coordination should be strengthened between the Centre for Human Rights and the division for the advancement of woman.[[82]](#footnote-82)

**Para 38:**

"In particular, the world conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and eradication of any conflict which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights call upon The General Assembly to adopt the draft declaration on violence against women and urges states to combat violence against women in accordance with its provisions, especially violations of the Human Rights of women in situations of armed conflict or violations of the fundamental principles of international Human Rights and humanitarian law. All violations of this kind, including in particular murder, systematic rape, sexual slavery and forced pregnancy, require a particularly effective response.

**Para 39:**

The world conference on Human Rights urges eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all states of the Convention on the elimination of all forms of discrimination against women by year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged inter alia; the Committee on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with the International Treaty Law.

**Para 40:**

"Treaty Monitoring Bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuits of full and equal enjoyment of Human Rights and non-discrimination".[[83]](#footnote-83) New procedures should also be adopted to strengthen implementation of the commitment to women's equality and Human Rights of women. The commission on the status of women and the committee on the elimination of discrimination against women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the convention on the elimination of all forms of discrimination against women.[[84]](#footnote-84)

**Para 41:**

The world conference on Human Rights recognises the importance of the enjoyment by women of the highest standard of physical and mental health throughout their lifespan. In the context of the world conference on women and the convention on the elimination of all forms of discrimination against women, as well as the proclamation of Tehran of 1968[[85]](#footnote-85) the world conference on Human Rights reaffirms on the basis of equality between women and men, a women's right to accessible and adequate healthcare and the widest range of family planning services, as well as, equal access to education at all levels.[[86]](#footnote-86)

**Para 42:**

"Treaty Monitoring Bodies should include the status of a woman and the Human Rights of women in their deliberations and findings, making use of gender specific data. States should be encouraged to supply information on the situation of women de jure and de facto in the reports to treaty monitoring bodies. The world Conference on Human Rights notes with satisfaction that the commission on Human Rights adopted at its 49th session resolution 1993/46 of 8th March 1993 standing that rapporteur and working groups in the field of Human Rights should also be encouraged to do so. Steps should also be taken by the division for the advancement of women in cooperation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the Human Rights activities of the United Nations regularly address violations of women's Human Rights, including gender specific use. Training for United Nations Human Rights and humanitarian relief personnel to assist them to recognize and deal with Human Rights abuses particular to women and to carry out their work without gender bias should be encouraged.[[87]](#footnote-87)

**Para 43:**

The World Conference on Human Rights urges governments and regional international organizations facilitate the axis of women to decision making posts and their greater participation in the decision making processes. It encourages for the steps within the United Nations secretariat to appoint and promote women staff members in accordance with the charter of the United Nations and encourages other principal and subsidiary organs of the United Nations guarantee the participation of women under conditions of equality.[[88]](#footnote-88)

**Para 44:**

"The World Conference on Human Rights welcomes the World Conference on Women held in Beijing in 1995 and urges that Human Rights of women should play an important role in its deliberations in accordance with the priority themes of the world conference on women of equality, development and peace".[[89]](#footnote-89)

**2.7 UN Millennium Declarations (2000):[[90]](#footnote-90)**

UN Millennium Declaration contains a declaration to the effect that the heads of the states and government recognize that, in addition to their separate responsibility to their individual society, they have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders they have a duty, therefore, to all worlds' people, especially the most vulnerable and in particular the children of the world. Respect for Human Rights and fundamental freedoms, respect for the equal rights of all without distinction as to race, sex, language or religion.[[91]](#footnote-91) Heads of the state also considered certain fundamental values to be essential to international relations in the 21st century, for example,

• Freedoms. Men and women have the right to live their life and raise their children in dignity, free from hunger and from the fear of violence coercion or injustice. Democratic and participatory governance based on the will of the people best assures these rights.

• Equality. No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of men and women must be assured.

They also resolved to combat all forms of violence against women and to implement the convention on the elimination of all forms of discrimination against women.

**2.8 UN Global Agenda for Dialogue among Civilizations (2001)[[92]](#footnote-92)**

The Global Agenda too, inter alia, provides that for the pursuit of the objectives of the agenda the states shall enhance their collective commitment to the various principles enshrined in it. Article 3 of the agenda speaks of faith in fundamental Human Rights in the dignity and worth of human person in the equal rights of men and women and of nations large and small fulfillment in good faith of the obligations under the charter of the United Nations and the Universal Declaration of Human Rights; respect for fundamental principles of justice and international law and enhancement of participation by all individuals, people and nations in local, national and international decision making processes."[[93]](#footnote-93)

**2.9 The Convention for Elimination of All Forms of Discrimination against Women.[[94]](#footnote-94)**

CEDAW was adopted by the United Nations on 18th December, 1979, also known as 'women's bill of rights' or ' women's convention' that brings together provisions from existing Human Rights instruments concerning gender discrimination and extends them further by creating an internationally sanctioned method of redress for combating discrimination against women. Women themselves have right to live in dignity, in freedom from want and from fear. The convention is based on principles adopted in Declaration on Elimination of Discrimination against Women that are as follows:

• Denial or limiting the equality rights of women is fundamentally unjust and constitutes an offence against human dignity.[[95]](#footnote-95)

Abolition of existing laws, customs, regulations and practices which are discriminatory against women, and need for adequate legal protection for equal rights of men and women;

• Need for ratification or adoption of international instruments of united nation and specialized agencies relating to discrimination against women and their full implementation;[[96]](#footnote-96)

• Need to generate adequate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices derogatory to women hood:[[97]](#footnote-97)

• Need to ensure right to vote to women on equal terms with men and their eligibility for elections and right to hold public offices and exercise all public functions;[[98]](#footnote-98)

• Marriage to an alien should not automatically affect nationality of wife.[[99]](#footnote-99)

• Appropriate measures to be taken to ensure to ensure equality of rights to women in the field of economic and social life.[[100]](#footnote-100)

**2.10 UN Women:**

On July 2010 "UN Women" was created by United Nations general assembly for promotion of women empowerment and gender equality. This was a historic step by UN members for accelerating gender equality and empowerment of women through organizations. This came to be the landmark event in UN reform agenda from bridging resources and mandates of greater impact".[[101]](#footnote-101)

Grounded with vision beyond times, UN women works for the;

• Empowerment of women

• Elimination of discrimination against women and girls.

•Achievement of equality between women and men as partners and beneficiaries of development, Human Rights, humanitarian action and peace and security.

**2.11 The Sustainable Development Goals (SDG)**

Also known as the Global Goals, The SDGs came into effect in January 2016, and they will continue to guide UNDP policy and funding until 2030. These are a universal call to protect the planet, end poverty and ensure that all people enjoy peace and prosperity. These Goals are build on its successor the Millennium Development Goals, while including few new areas such as climate change, economic inequality, innovation, sustainable consumption, peace and justice, among other priorities. The goals are interconnected - often the key to success on one will involve tackling issues more commonly associated with another. SDG under its goal 5 talks about gender equality. Ending all discrimination against women and girls is not only a basic human right, it's crucial for sustainable future: it's proven that empowering women and girls helps economic growth and development. UNDP has made gender equality central to its work and we've seen remarkable progress in the past 20 years. There are more girls in school now compared to 15 years ago, and most regions have reached gender parity in primary education".[[102]](#footnote-102)

**2.12 Women development and Indian response**:

From above it become clear that at international level considerable efforts have been made but within our country the efforts are numerous and continuous since our struggle against the British Raj. Women emancipation was initiated during that period by some of the male reformers to improve[[103]](#footnote-103) their social, educational and health standards.

About 50% of the country's total population constituted Women, Mahatma Gandhi, therefore, involved women in the nation's liberation movement. This mass participation of women directly in the freedom struggle was having great impact in the history of women empowerment in India. In this way they shed age-old disabilities and shared the responsibility of liberation of their motherland with their counter parts. Thus in this way we can say freedom of India, became synonymous with the empowerment of women. So the date of India's political freedom (15th August, 1947) is a landmark in the history of women empowerment in India. It ushered an era of great consciousness in our society for human dignity. Accordingly every citizen of independent India was accorded equal treatment under the law. Accordingly Women organizations like All India Women's Conference (AIWC)[[104]](#footnote-104) and the National Federation of Indian Women (NFIW)[[105]](#footnote-105)" made their appearance to grapple with the issues relating to the scope of women's political participation, women's franchise, communal awards, and leadership roles in political parties. The Indian National Army" (INA)[[106]](#footnote-106), which was set up by Subhash Chandra Bose, is remarked as one of the most genuine and fearless movements undertaken by Indian men and women patriots. Around 1000 women for the Rani of Jhansi regiment[[107]](#footnote-107)" from different South East Asian countries were recruited by Netaji Subhash Chandra Bose. This regiment was led by Dr. Lakshmi Swaminathan,[[108]](#footnote-108) who was a medical practitioner by profession. The women in the regiment were given the same training as that was given to men. Even their uniform was similar to the men soldiers. The real impact of the INA may not have been in military terms, but it had a deep psychological impact on the women of India. A significant number of women patriots"[[109]](#footnote-109) stood by Gandhi and the Congress in the non-violent movement. In Lahore Students Union of Bhagat Singh and the Kakori case[[110]](#footnote-110) Women played a major role. In the The Mahila Rashtriya Sangha[[111]](#footnote-111) established by Latika Ghosh[[112]](#footnote-112) in the year 1928. Veena Das who shot at the Governor of Bengal, and Kamla Das Gupta and Kalyani Das were all active within the respective revolutionary groups. Women's actively participated in the processions and rallies conducted by the Indian political parties. They always fought for Hindu- Muslim unity. The contribution of women in freedom struggle of India is truly remarkable and is difficult to define in words. The women in freedom struggle of India excelled as speakers, marchers, campaigners and tireless volunteers. Their participation in the freedom struggle developed their critical consciousness about their role and rights in independent India, which resulted in the introduction of the franchise and civic rights of women in the Indian constitution.[[113]](#footnote-113) There is provision for women's up-liftment through affirmative action, maternal health and child care,[[114]](#footnote-114) provision (crèches)[[115]](#footnote-115), equal pay for equal work[[116]](#footnote-116) etc. Women in India did not have to struggle for basic rights as did women in the West. It is really a matter of concern that in independent India the women aren’t given their due credit and their participation in all the walks of life isn’t as remarkable as during those days of struggle. Many problems still remain which inhabit these new rights and opportunities from being fully taken advantage of for example India’s constitution also states that women are a “weaker section” of the population, and therefore need assistance to function as said equals. There are also many traditions and custom, religious laws and expectations or “Personals Laws’ enumerated by each specific religion that often conflict with Indian constitution. Elimination rights and powers that women legally should have, Indian society is highly composed hierarchy system within both families and communities. These hierarchies can be broken down into Age, Sex, ordinal position, Kinship, relationships within families, and caste, language, wealth, occupation and relationship to ruling power within the community. From birth girls are automatically entitled to less, from play time to food to education. Girls can expect to always be entitled to less than their brothers. Girls also have less access to their family’s income and assets which is exacerbated among poor, ruler Indian families. These traditions and ways of Indian life have been into an effect for so long, that this type of life style is what women expect and are accustomed to, Indian women don’t take full advantage of their constitutional rights because they aren’t properly aware or informed of them. Women aren’t informed about issues nor are they encouraged to become informed. There is a poor representation of women in the Indian work force. Female have a 10% higher dropout rate than males from middle and primary schools as well as lower level of literacy than men. Since unemployment is also high in India it is easy for employers to manipulate the law, especially when it comes to women, because it is part of Indian culture for women not to argue with men. Additionally labor unions are insensitive to women's needs. Women also have to settle for jobs that comply with their obligations as wives, mothers, and homemakers.

**2.13 Conclusion of Global Response and Approaches.**

Although, gender equality and development of women have always been a critical issue. The study specially focuses on various conventions like Convention on the political rights of women, 1953, Convention on the elimination of all forms of discrimination against women, 1979, Vienna convention on the elimination of violence against women, 1993, Beijing declaration to raise the status of women. even UN Millennium Declaration (2000) contains a declaration to the effect that the heads of the states and government recognize that, in addition to their separate responsibility to their individual society, they have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level, further they specifically promote gender equality and empowerment of women under its goal 3. On July 2010 "UN Women" was created by United Nations general assembly for promotion of women empowerment and gender equality. This was a historic step by UN members for accelerating gender equality and empowerment of women through organizations. This came to be the landmark event in UN reform agenda from bridging resources and mandates of greater impact. The Sustainable Development Goals (SDG) also known as the Global Goals, came into effect on January 2016, and they will continue to guide UNDP policy and funding until 2030. Under its goal 5 it talks about gender equality. Ending all discrimination against women and girls is not only a basic human right, it's crucial for sustainable future; it's proven that empowering women and girls helps economic growth and development. Despite tremendous progress made toward gender empowerment, significant challenges still face women throughout their lives. One major contributing factor is the system of patriarchy in society that places male and females in different and unequal positions. The gender system is reinforced through different aspects of life, such as interpersonal behavior, law, and politics. Nobel Lauret, Dr. Amartya Sen. emphasizes that the empowerment of women is one of the main issues in the process of development and more importantly, that the factors involved include women's education, their ownership pattern, their employment opportunities and the working of the labour market". In the same book he quotes, "since there is considerable evidence that women's empowerment within the family can reduce child mortality significantly". This clearly shows empowering alone can take care of so many issues that society faces. The economic empowerment will allow raising women's self-awareness, skill development, creative decision making and it may also lead to produce better citizens. While striving for women empowerment it must be kept in mind that empowering women doesn't mean empowering them in technical area only. The notion that women is being highly educated and employed are empowered, is a myth. Due to various types of crimes prevalent in society against women they are taught from very beginning of their life how to manage to survive and that continues throughout their life cycle i.e. from womb to tomb, thus they are made to live without dignity due to these adjustments. It only proves the point that the societies' mind-set is still against girl child. Even the educated and economically well off sections are not free from son preference attitude.' because of very strong society's cultural mooring, thousands of women suffer in silence. The abuse takes physical, mental, emotional and economic forms. For the sake of the society, women sacrifice a lot and bear a lot of mental, physical and emotional stress. Even if a Woman lives in an abusive domestic environment, she will hesitate to come out of marriage in spite of her economic independence. This situation is due to strong addiction to culture and tradition. Such patience is exercised not only for the sake of society and children, but also due to lack of confidence to live as a single woman and face the challenges of life. Women have to awake from deep slumber and understand the true meaning of empowerment. Despite tremendous progress made toward gender empowerment through international conventions, norms, laws, significant challenges still face women throughout their lives.

**Empowerment of Women in India: Constitutional Imperative**

**3.1 Introduction**

Empowerment may be described as a process which helps people to assert their control over the factors which affect their lives but this empowerment is a myth unless any section of society are conferred equality before law, Even Universal Declaration of Human Rights[[117]](#footnote-117) adopted and proclaimed by General Assembly of united Nation envisages this in Article 2 that "Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind". So a question that naturally arises is to what extent can law naturally promote empowerment to a developing nations like ours where in one hand women is worshiped (like Durga) but on other hand they are considered as chattels whose sole function is motherhood although this is not her only role. There are so many other roles for women to participate, as an active partner in the nation building. "When women move forward the family moves, the village moves and the nation moves.[[118]](#footnote-118)

**3.2 Early Societies and Responses**

In earlier Vedic period women had some what an equal status with men in social and

religious life. Women were considered to be honorable members of the society. There after they began to lose their power and authority in society. This happened everywhere in the world. The status and position of women deteriorated in Semitic and post-Semitic Era. Manu, the representative spoke man of Semitic Era considered woman unequal to man and quite dependent upon him. According to him she had no independent status of her own. He expressly States:

"A woman is under the subjugation of her father when a child, when married, under that of her husband, after her husband, under her sons, and if she has no sons then to her agnatic relation, because there is no woman what so ever who is fit to be independent."

Obviously this injunction clearly shows that woman was considered as a weak link fit to be protected and controlled. Thus, according to Manu throughout her life woman would be in the control of man and had no independent status and position apart from man. Later the women were declared to be unfit for Vedic studies. This ineligibility was due to their illiteracy and ignorance of their status and importance in the society. Whatever may be the general causes for the loss of equality and independence of woman, the need of the time required that woman should play a subordinate role otherwise integrated family would have been impossible. In spite of this she was respected and valued as better half of a human being, at least in theory because the practice was often determined by political conflicts, social conditions, moral degeneration, poverty, want and destitution. As a result of this women began to be taught that their birth is meant for the service of the family and that they have no say in the activities except household. The wife was taught that there husband is God for her even if he is vicious and devoid of any merit. She was also made to understand that after the death of her husband emulation with the husband's dead body is the greatest religious sacrifice in this world for her. The social evils like purdah system, child marriage, female infanticide, Sati Pratha, dowry system and prohibition of widow remarriage can be said to be the off shoots of this era, and were so deep rooted in our culture and life that social reformers like Raja Ram Mohan Roy, Swami Dayanand Saraswati and Ishwar Chander Vidyasagar had to struggle hard for upbringing the social status of women and for getting the laws enacted, by the then British Government in India. Due to lack of political will and social consciousness there form was not complete and the enactments did not prove so helpful in upbringing and ameliorating the position and status of Indian women. As a result of this, women hood which constitutes on behalf of the humanity, continued to remain dependent and overburdened and the women's status became analogous to that of a chattel and a slave. This is not the story of the cruelty of a man but the tale of the human civilization and history itself. The prospect was no better in the West.

In the early period of civilization the status of women in the West was also not encouraging. She was treated as a second class citizen and was not at par with her male counterpart in socio-economic and politico-cultural life.

With the progress of science and advancement of knowledge in the modern age of movement has started for the emancipation of women which did culminate in the form of women's liberation movement. This runs parallel to progress of democracy. and the establishment of republican form of governments, unmolding of the rule of law and also due to recognition of the essential human rights of the individual and responsibility of the State for the welfare of the whole society. A new human outlook in regard to woman has awakened human conscience where by a comprehensive reformative impulse has motivated legal doctrine and law reform in favour of woman throughout the civilized world.

At the international level in 1967 a declaration for the Elimination of Discrimination against Women was adopted which proclaims that:

The measures taken to protect women in certain types of works, for reasons in here not in their physical nature, shall not be regarded as discriminatory

Thus, this declaration paved the way for the preferential treatment to the women to bring them at par with their male counterpart. The United Nation's Organisation also celebrated 1975 as a Women Year to highlight that the position and status of women is not satisfactory and thus there is an urgent need for the efforts (legislative as well as executive) to uplift them, to make them socially equals. Fourteenth Amendment to the United States Constitution guaranteeing equal protection of laws to all the citizens of U.S. was not found sufficient to prevent social discrimination in various segments of the American-social and political life. This necessitated for the passing of TwentySeventh Amendment to the Constitution prohibiting discrimination on the ground of sex alone. Thus, in United States women have been accorded equal status to that of men. The United States Supreme Court also justified the regulations of working hours of women employees when it observed that:

The facts and circumstances of dynamics of social life about the position and status of women in society were very well stored in the minds of the framers of our Constitution. They were aware of the fact that even Fourteenth and Twenty Seventh Amendments to the United States Constitution guaranteeing equal Protection of laws to men and women was not found quite sufficient in the United States to prevent racial discrimination and discrimination of women based on sex.

**3.3 Women and constitutional History:**

Constitution of India is considered to be one of the most democratic and longest standing of any sovereign state today has. Sufficient thought was bestowed by framers of Indian constitution on position of women in India. Women in India shared the responsibility of liberation of their motherland with their counterparts. In this context the date of India's political freedom 15th august 1947 is a landmark in the history of women empowerment India. It brought its wake a great consciousness in our society for human dignity. It was realized that every section of independent India be accorded equal treatment under the law. To realize the vision of the freedom movement special attention was given by constitution framers. The framers of the Indian constitution bestowed sufficient thought on the position of women. This is evident from the provisions of the constitution which have not only sort equality between men and women but also provided specifically certain safeguards in the favour of women. While supporting the incorporation of provision for women empowerment in fundamental rights of our constitution, one of the members of the constituent assembly, Mrs. Hansa Mehta[[119]](#footnote-119) unshared these words, "it will warm the heart of many a woman to know that free India will mean not only equality of status but equality of opportunity. It is true that a few women in the past and even today enjoy her status and have received the highest honour that anyone can receive, like a friend, Mrs. Sarojini Naidu. But these women are few and far between. One swallow does not make a summer. These women do not give us a real picture of the position of Indian women in this country. The average woman in this country has suffered now for centuries from inequalities heaped upon her by laws, customs and practices of people, who have fallen from the heights of that civilization of which we all are so proud. There are thousands of women today who are denied the ordinary human rights. They are put behind the purdah, secluded within the four walls of their homes, unable to move freely. The Indian women has been reduced to such a state of helplessness that she has become an easy prey of those who wish to exploit the situation. In degrading women, man has degraded himself. In raising her man will not only raise him but rise the whole nation. Mahatma Gandhi's name has, been invoked on the floor of this house. It would be ingratitude on my part if I do not acknowledge the great debt of gratitude that Indian woman owe of Mahatma Gandhi for all that he has done for them. In spite of all these, we have nev never asked for privileges. The women's organization which I have the honour to belong has never asked for reserved. seats from coders or for separate electorates. What we have asked for is social justice, economic justice and political justice. We have asked for that equality which can alone be the basis of mutual respect and understanding and without which real cooperation is not possible between men and women. Women form one half of the population of this country and, therefore, men cannot go very far without the cooperation of women. This ancient land cannot attend its rightful place; i.e's a place in this world without the cooperation of women. I therefore welcome this resolution for the great promise which it holds and I hope that the objective embodied in this resolution will not remain on paper but will be translated into reality".

**3.4 Women and provisions in the constitution:**

The constitution of India is a basic document which provides for women empowerment within the framework of the planet provisions and the preamble. The courts always try to interpret the case which is detriment to women within the area of social justice with articles. The very concept of women empowerment is enshrined in basics of Indian Constitution be that preamble, Part III or Part IV or Part IV-A of it.

Preamble of Indian Constitution declares people of India have solemnly resolved to secure to all its citizens: justice, liberty, equality, fraternity, so we can say preamble seeks to establish what M.K. Gandhi described as India of my dreams.[[120]](#footnote-120)

Women are physically weak than men which became implicit cause for their exploitation due to which plight of women remain unheard and their social status became really bad. This fact was first acknowledged by US Supreme Court in case of Muller v/s Dregon.[[121]](#footnote-121) In this case, Court observed that women are at disadvantage in society due performance of maternal functions and their physical structure. Thus society, must implement special laws for them to bring them at par with men. This plight of women has very well being understood by makers of our constitution, thus providing provision which not only provide them a level playing field but also empowers state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them.

**3.4.1 Protection to Women: Under Part-III of Constitution:**

Fundamental rights, consisting of Article 12 to 35[[122]](#footnote-122) are most essential for attainment moral, spiritual and intellectual status of an individual i.e. they are considered as heart of constitution.

**3.4.1 (a) Article 14- Equally before Law:**

Article 14 of constitution states that state shall not deny to any person equality before law a equal protection of law within the territory of India which implies that not only equality to women is granted but it also empowers state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio, economic and political disadvantages faced by them.

Article 14 makes room for affirmative action and positive discrimination.[[123]](#footnote-123) It means equals must be treated equally and that unequal's may not be treated as equals which in itself creates positive discrimination by way of reservations in favour of weaker class of society.[[124]](#footnote-124) Yet under Article -14 classification based on sex is not permissible. In case of AIR *India v/s Nargesh Meerza.*[[125]](#footnote-125) Supreme Court struck down the Air India and Indian Airlines regulations on retirement and pregnancy bar on the services of Air Hostesses as unconstitutional on the ground that conditions laid down therein were entirely unreasonable and arbitrary.

The condition that services of Air Hostesses would be terminated on first pregnancy was most unreasonable and arbitrary provision and liable to be struck down, there was no reason why pregnancy should stand in the way of her continuing in services.

The termination of services of Air Hostesses in such circumstances is not only a callous and cruel act but an open insult to Indian womanhood, the most cherished and sacrosanct institution.

In landmark judgment of *Vishaka v/s State of Rajasthan* [[126]](#footnote-126) Supreme Court invoked Article 14 to prevent sexual harassment of working women in places of their work, in finding suitable methods for realization of true concept of 'gender equality'. Court also laid down that gender equality includes protection from sexual harassment and right to work with dignity which is universally recognized basic human right.

Article 14 also justifies equal pay for equal work. In *Randhir Singh v/s Union of India*[[127]](#footnote-127) the Supreme Court held although principle of equal pay for equal work is not expressly declared by our constitution to be fundamental right, but it's certainly a constitutional goal under Article - 14, 16 and 39 (C) of the constitution. Unequal pay for materially equal work can't be justified on basis of gender.

**3.4.1 (b) Article 15: Non-discrimination on grounds of Religion, Race, Case, Sex etc.**

Article 15 provides for a particular application of the general principle embodied in Article 14. When a law comes within the prohibition of Article 15 it cannot be validated by recourse to Article 14 by applying the principle of reasonable classification. It is when the discrimination is based upon one of the grounds mentioned in Article 15. The reasonableness of the classification will be tested under Article 14.

The guarantee under Article 15 is available to citizens only and not to every person whether citizen or non-citizen as under Article 14.

The first clause of Article 15 directs the State not to discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth or any of them. The second clause prohibits citizens as well as the States from making such discrimination with regard to access to shops, hotels etc, and all places of public entertainment of public resort, wells, tanks, roads etc. The first clause of Article 15 mentions the prohibited grounds in ay matter which is exclusively within the control of the State. The second clause prohibits both the State and the private individual, whosoever is in the control of the abovementioned places. The third clause empowers the State to make special provisions for the protection of women and children. The fourth clause which was added by the Constitution (1"Amendment) Act, 1951,[[128]](#footnote-128) enables the State to make special provisions for the protection of the interests of the Backward Classes of citizens and is therefore, an exception to Articles 15 and 29 (2) of the Constitution.

Clause (2) Article 15 (2) is a specific application of the general prohibition contained in Article 15 (1) Article 15 (2) declares that no citizen shall be subjected to any disability, restriction or conditions on grounds only of religion, race, caste, place of birth or any of them with regard to:

**a)** Access to shops, public restaurants, hotels and places of public entertainment, or

**(b)** The use of wells, tanks, baths, roads and place of public resort, maintained wholly or partly out of State funds or dedicated to the use of the general public. A 'place of public resort' means places which are frequented by the public like a public park, a public road, a public bus, ferry, public urinal or railway, a hospital, etc.

It is to be noted that while clause (1) of Article 15 prohibits discrimination by the State, clause (2) prohibits both the State and private individuals from making any discrimination. The object of Article 15 (2) is to eradicate the abuse of the Hindu social system and gender discrimination, So as to herald a united nation.

Clause (3) Special Provision for Women and Children - Article 15 (3) is one of the two exceptions to the general rule laid down in clauses (1) and (2) of Article 15. It says that nothing in Article 15 shall prevent the State from making any special provision for women and children. Women and children require special treatment on account of their very nature. Article 15 (3) empowers the State to make special provisions for them. The reason is that "women's physical-structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race. Thus, under Article 42,[[129]](#footnote-129) women workers can be given special maternity relief and a law to this effect will not infringe Article 15 (1).

Thus from the language of Article 15 (3) it becomes clear that it provides protective discrimination in favour of women and children. In fact those women are handicapped for centuries in India and therefore they can't participate fully in socio-economic activities of nation on footing of equality.

**3.4.1 (c) Article 16 Equality of Opportunity on Public Employment:** This article is application of general rule of equality before law laid down in Article 14. Article 16 (1) guarantees equality of opportunity for all citizens in matters of 'employment' or 'appointment' to any post under the State. Clause (2) says that no citizen shall on grounds only of religion race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of any employment or office under the State Clauses (1) and (2) of Article 16 lay down the general rule of equality of opportunity or appointment under the State and that no citizen can be discriminated against or be ineligible for any employment or office under the State on grounds only of religion, race, caste, sex, descent, place of birth or residence. Article 16 (1) and (2) applies only in respect of employment or office under the State. Clauses (3), (4), (4-A)[[130]](#footnote-130) 4, (4-B)[[131]](#footnote-131) of Article 16 provide four exceptions to this general rule of equality of opportunity.

In Govt. of *Andhra Pradesh v/s P. B Vijaya Kumar[[132]](#footnote-132)* Supreme Court held valid legislation made by Govt. of Andra-Pradesh providing 30% reservation of seats in educational institutions and local bodies for women. Court held power inferred by Article 15 (3) is so wide that it can make special provisions for women in respect of employment, education and thus not overriding Article 16 of constitution.

 In Vijay *Lakshmi v/s Punjab University* [[133]](#footnote-133) a Rule in Punjab university calendar Vol. III provided for appointment of lady principal in women's college or a lady teacher or lady superintendent. The court held that provision for appointment of lady teacher or lady superintendent in Girls College is not violative of Article 14 and 15(3) of constitution because the classification is reasonable and has nexus with object sought to be achieved, there can be classification between male and female for certain posts. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of young age of girl [students.in](http://students.in/%22%20%5Ct%20%22_blank) addition state government is empowered to make such provisions under Article 15(3) of the Constitution and Court cannot interfere in policy decision of state.

**3.4.1 (d) Article 19 (1) (g) Freedom of Profession, Occupation, Trade or Business:** Article 19(1) (g) guarantees that all citizens shall have the right "to practice any profession, or carry on any occupation, trade or business". However, the right to carry can under clause 6 of Article 19 make any law

**(a)** On this right Imposing reasonable restriction on this right in the interest of public'.

**(b)** Prescribing professional or technical training qualification necessary for practicing any profession or carrying on any occupation, trade or business.

**(c)** Enabling the state to carry on any occupation, trade or business to the exclusion of citizens wholly or partially.

In view of above Article we can say that sexual harassment at work place amounts to its violation.

*Vishaka v/s State of Rajasthan[[134]](#footnote-134)* the state government has laid excusive guidelines to prevent sexual harassment of working women in places of their work until legislation is enacted for this purpose. The petition was filed by social worker by way of public interest litigation for enforcement of rights of working women under Article 14, 19 and 21 of the constitution and in finding true methods for realization of concept of gender equality'. Gender equality includes protection from sexual harassment and right to work with dignity, which is universally, recognized basic human right. International conventions and norms are of great importance in the formulation of guidelines to achieve this purpose. The court has laid down following guidelines:

All employers or persons in charge of work place in public or private sector should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation he should take following steps:

* Express prohibition of sexual harassment, which include physical contact and advances, a demand or request for sexual favors, sexually colored remarks, showing pornographic or any other unwelcome physical, verbal, or nonverbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.
* The rules and regulations of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties against the offender
* As regard to private employees, the above prohibition should be included in the standing order under the Indian Employment (standing order) Act, 1946
* Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no women employee should have reasonable ground to believe that she is disadvantaged in connection with her employment.

Where such conduct amounts to specific offences, under Indian penal code or under any other law. The employer shall initiate appropriate action in accordance with law making a complaint with appropriate authority. The victim of sexual harassment should have option to seek transfer of perpetrator or their own transfer.

**3.4.1 (d) Article 21 of the Constitution:**

It says that, "No person shall be deprived of his life or personal liberty except according to procedure established by law". Prior to Maneka Gandhi's[[135]](#footnote-135) decision; Article 21 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive and not from legislative action. The State could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi's decision Article 21 now protects the right to life and personal liberty of citizen not only from the executive action but from the legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, first there must be a law and secondly there must be a procedure prescribed by that law provided that the procedure is just fair and reasonable.

The Fifth Amendment of the American Constitution[[136]](#footnote-136) also provided that 'no person shall be deprived of his life or personal liberty, except according to procedure established by law'. The Fourteenth Amendment imposes a similar limitation on the State authorities. The right guaranteed in Article 21 is available to 'citizens' as well as 'non-citizens[[137]](#footnote-137)

Judicial decisions from time to time in view of global development have played a pivotal role in interpretation of Article 21 to its widest possible connotation in fact in *State of Maharastra v/s Madhulkan Narain[[138]](#footnote-138)*, it has been held that the right to privacy is available even to a woman of easy virtue and no one can invade her privacy. A Police Inspector visited the house of one Bahubai in uniform and demanded to have sexual intercourse with her. On refusing he tried to have her by force. She raised a hue and cry. When he was prosecuted he told the Court that she was a lady of easy virtue and therefore her evidence was not to be relied. The Court rejected the argument of the applicant and held him liable for violating her right to privacy under Article 21 of the Constitution.

In *Surjit Singh hind v. Kanwaljit Kaur[[139]](#footnote-139)* the Punjab and Haryana High Court held that allowing medical examination of a woman for her virginity would amount to violation of her right to privacy and personal liberty enshrined under Article 21 of the Constitution. In this case the wife filed a petition for a decree of nullity of marriage on the ground that the marriage had never been consummated because the husband was impotent. The husband took the defense that the marriage was consummated and he was not impotent. In order to prove that the wife was not virgin, the husband filed an application for her medical examination. The Court held - Allowing the medical examination of a woman's virginity violates her right to privacy under Article 21 of the Constitution. Such an order would amount to roving enquiry against a female who is vulnerable even otherwise. The virginity test cannot constitute the sole basis, to prove the consummation of marriage.

**3.4.1 (e) Prohibition of "Traffic in Human Beings' and Forced Labour:**

Article 23 of the Constitution prohibits traffic in human being and beggar and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory services for public purposes provided that in making so it shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Traffic in Human beings' means selling and buying men and women like goods and include immoral traffic in women and children for immoral or other purposes.[[140]](#footnote-140) Though slavery is not expressly mentioned in Article 23, it is included in the expression traffic in human being".[[141]](#footnote-141) Under Article 35 of the Constitution Parliament is authorized to make laws for punishing acts prohibited by this Article. In pursuance of this Article Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act, 1956,[[142]](#footnote-142) for punishing acts which result in traffic in human beings.

**Article 23** protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of 'traffic in human beings' and begar and other similar forms of forced labour wherever they are found.

**Article 23** prohibits the system of 'bonded labour' because it is a form of force labour within the meaning of this Article. It is to be noted that the protection of this Article is available to both citizens as well as non-citizens.

Begar and other forms of forced labour' are prohibited by this Article. "Begar" means involuntary work without payment. What is prohibited by this clause is the making of a person o render serviced where he was lawfully entitled not to work or to receive remuneration of these services rendered by him. This clause, therefore, does not prohibit forced labour as a punishment for a criminal offence. The protection is not confined to beggar only but also to 'other forms of forced labour'. It means to compel a person to work against his will.

**3.5 Directive Principles of State Policy their role in protecting rights of women:**

Article 36 to 51 sets out aims and objectives to be taken up by the states in the government of the country. The idea of welfare state envisaged by our constitution can only be achieved if the states Endeavour to implement them with a high sense of moral duty.

**3.5.1 Social and Economic charter:**

Articles 38 and 39 embody Distributive Justice - Articles 38 and 39 embody the jurisprudential doctrine of "distributive justice”.[[143]](#footnote-143) The Constitution permits and even directs the State to administer what may be termed "distributive justice". The concept of distributive justice in the sphere of law-making connotes, inter alia, the removal of economic inequalities rectifying the injustice resulting from dealings and transactions between unequal in society.

**3.5.1 (a) Social order based on Justice:**

Article 38 (1) provides that the State shall strive to promote the welfare to the people by securing and protecting their interest as effectively as it can, This directive only reaffirms what has already been said in Preamble according to which the function of the Republic is to secure to all its citizens social, economic and political justice.

The Constitution (44th Amendment) Act,[[144]](#footnote-144) 1978 inserted a new directive principle in Article 38 of the Constitution which provides that the State shall in particular, strive to minimize inequalities in income and Endeavour to eliminate inequalities in status, and opportunities not only amongst individuals but also amongst groups of people residing in different area or engaged in different vocations. The new clause aims at equality in all spheres of life. It would enable the State to have a national policy and eliminate inequalities in various spheres of life.

In *Air India Statutory Corporation v. United Labour Union[[145]](#footnote-145)* a three Judges Bench the Supreme Court has explained the concept of social justice in Article 38 as follows:

"The concept of 'social justice' consists of diverse principles essential for the growth and development of personality of every citizen, "social justice" is then a part of justice in the generic sense. Justice is the genus of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the weak, dalits, tribals and deprived sections of the society and so elevate them to the equality to live a life with dignity of person. "Social justice" is not a simple idea of a society but is an essential part of complex social change to relive the handicaps, penury, to ward off distress etc. and to make their life liveable for good of the society at large. The aim of "social justice" is to attain substantial of social, economic and political equality which is the legitimate expectation and institutional goal. In a developing society like ours, where there is vast gap of equality in status and of opportunity, law is a catalyst, Rubicon to the poor etc. to reach ladder of social justice. The Constitution therefore mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice enables equality to favour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their equality. Rule of law, therefore is a potent instrument of social justice to bring about equality.

Article 39 Principles of Policy to be followed by the State for securing Economic Justice - Article 39 specifically requires the State to direct its policy towards securing the following principles:

1. Equal right of men and women to adequate means of livelihood
2. Distribution of ownership and control of the material resources of the community to the common good.
3. To ensure that the economic system should not result in concentration of wealth and means of production to the common detriment.
4. Equal pay for equal work for both men and women.
5. To protect health and strength of workers and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.
6. That children are given opportunities and facilities to develop in a healthy manner.

Parliament has enacted the Equal Remuneration Act 1976,[[146]](#footnote-146) to implement Article 39 (d). The Act provides for payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on grounds of sex. The Act also provided for setting up of advisory committees to promote employment opportunities for women. Provision is also made for appointment of officers for hearing and deciding complaints regarding contravention of the provision of the Act. Inspectors are to be appointed for the purpose of investigating whether the provisions of the Act are being compiled by the employer. Non-observance of the Act by government contractors has been held to raise question under Article 14.[[147]](#footnote-147)

Besides the principle of gender equality in the matter specifically embodied in Article 39 (d), the Supreme Court has extracted the general principle of equal pay for equal work by reading Articles 16 and 39(d).[[148]](#footnote-148) The Supreme Court has emphasized in Randhir Singh,[[149]](#footnote-149) referring to Article 39 (d), the principle of "equal pay for equal work" is not an abstract doctrine but one of substance. Though the principle is not expressly declared by the Constitution to be a Fundamental Right yet it may deduced by construing Article 14 and 16 in the light of Art. 39(d). The word 'socialist' in the preamble must at least mean "equal pay for equal work". The Supreme Court has observed in *Grth Kalyan Kendra v. Union of India*.[[150]](#footnote-150)

"Equal pay for equal work is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in Article 39 (d) of Constitution "equal pay for equal work" has assumed the status of Fundamental Right in vice jurisprudence having regard to the constitutional mandate of equality in Art. 14 and 16 of the Constitution.

The principle of equal pay for equal work' may properly be applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing different scales of pay do identical work under the same employer

The Supreme Court has explained the general principle as follows:[[151]](#footnote-151)

'We have interpreted and applied the doctrine even more widely to prevent discriminating pay scales within an organization which is owned by or is an instrumentality of the state provided that the different pay-scales exist in one organization, are applied to employees doing work of equal value, and there is no rational explanation for the difference'.

As to applying the doctrine between two different organizations, the Court has warned.[[152]](#footnote-152) "When the same principle is sought to be extended to compare pay-scales in one organization with pay-scales in another organization, although between employees doing comparable work, the stretching of the doctrine, if at all is done, must be done with caution lost the doctrine snaps".

The Court has held that differentiation in pay scales among government servants holding same posts and performing similar work on the basis of difference in the degree of "responsibility, ability and confidentiality" would be valid differentiation.[[153]](#footnote-153)

As the principle of equal pay for equal work emerges out of a combined reading of Article 14, 16 and 39 (d), whenever a question of infraction of his rule arises, "the concept of reasonable classification and all other rules evolved with respect to Article 14 and 16 come into play".[[154]](#footnote-154)

**Article 42** incorporates very useful provision for women welfare and well-being. It requires state to make provisions for securing just and human conditions of work, for maternity relief. Article 42 provide base for large body of labour laws in India like workmen's compensation Act, 1923,[[155]](#footnote-155) The Employees State Insurance Act, 1948,[[156]](#footnote-156) The Maternity Benefit Act, 1961,[[157]](#footnote-157) The Payment of Bonus Act, 1965.[[158]](#footnote-158)

In *Municipal Corporation of Delhi v/s Female Workers (Muster Roll)* [[159]](#footnote-159). The Delhi Municipal Corporation granted maternity leave to regular female workers but denied the same to female workers on muster roll on the ground that their service not having been regularized they were not entitled to any such leave. Invoking Art. 42 and the concept of social justice, Court has emphasized that in order to meet ends of justice leave cannot be denied to them as well.

Article 44 requires state to strive to secure for citizens of India a uniform civil code throughout India. This is intended to remove discriminatory characters in various personal laws and to treat all citizens equal. Article 44 requires the state to strive to secure for the citizens of India a uniform civil code throughout India.

An objection was taken to this provision in the Constituent Assembly by several Muslim members who apprehended that their personal law might be abrogated. This objection was met by pointing out:

1. That India had already achieved a uniformity of law over a vast area;
2. That though. there was diversity in personal laws, there was nothing sacrosanct about them;
3. The secular activities such as, inheritance, covered by personal laws should be separated from religion;
4. That uniform law applicable to all would promote national unity;
5. That no legislature would forcibly amend any personal law in future if people were opposed to it.[[160]](#footnote-160)

In this connection, reference may also be made to the discussion under Article 25 which guarantees freedom of conscience and profession, practice and propagation of religion. However, secular activity associated with religious practice is exempted from this guarantee. It could, therefore, plausibly be argued that personal laws pertain to secular activities and hence fall within the regulatory power of the state.

Sarla Mudgal cases[[161]](#footnote-161) a Hindu husband, married under Hindu Law, embraced Islam and solemnized second marriage. The question was whether the second marriage was without the first marriage having been dissolved, would be valid qua the first wife, who continued to be a Hindu.

There is no general matrimonial law in India. In the instant case, the Court ruled that the second marriage of a Hindu husband after his conversion to Islam would be a void marriage in terms of S. 494, I.P.C. There have been many such cases where Hindus have converted to Islam only to escape the consequences of bigamy. It was in this context that the Court pleaded for a uniform civil code "for protection of the oppressed and promotion of national unity and solidarity.

In public interest litigation, the Supreme Court was invited to declare certain aspects of Muslim Personal Law as void, e.g., polygamy etc. as being void under Art. 14 and 15. But the Court refused to do so saying that the issues raised were fit to be dealt with by the Legislature and not the courts

Constitution 42nd Amendment Act,[[162]](#footnote-162) 1976 ushered new era by introducing the innovative concept of fundamental duties of Indian citizens in constitution. For this purpose, a new part consisting of Art.52 (1) (A) has been added to constitution which imposes duly to renounce the practices derogatory to dignity of women.

**3.6 Reservation of Seats for Women in Local Bodies Election:** The 73rd and 74th Amendment Act[[163]](#footnote-163) is marked as Magna Carta for women empowerment in India where in parliament has succeeded in reserving seats for women in election to panchayats and municipalities. It has been incorporated under Article 243 (D)[[164]](#footnote-164) and Article 243[[165]](#footnote-165). According to it not less than one third (including the number of seats reserved for women belonging to schedule caste and ST) of number of seats, shall be reserved for women.

**3.7 Role of apex court in fashioning special trend of gender justice:**

The real progress of human civilization and culture lies in the development of ways and methods, so recognition and significant valuation of human being including male and female as an entity in himself and as a creator of better social order. But the trend and direction of civilization has been more towards establishing the dominance and authority of human male throughout the course of history of the world. In India also women have been governed by them throughout the ages. This process started in later Vedic period.

**3.7.1 Constitutional Matters and Responses:**

The founding fathers of our Constitution granted freedom, liberty and equality to woman but they were also pragmatic realists and knew that misuse and exploitation of liberal principles do frustrate its own aim and purpose which was the welfare of the woman. As such they read freedom a need for protection while prohibiting in justice of discrimination on the basis of sex which victimized woman. They could also see justice of discrimination when it protected the essential interest of woman. The Founding Fathers of our Constitutional so expressed the fear that discrimination will continue even after enacting Article 14, providing for equality before law and equal protection of laws to all citizens of India. They prohibited discrimination on the basis of religion, race, sex, caste or place of birth. They provided under clause (1) of Article 15 that:

"The state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them."

The framers were also conscious of the fact that the pitiable condition of Indian women cannot be improved by only prohibiting discrimination on the ground of sex. It can be improved by giving special protection in the form of discrimination to the women. Thus, they provide under clause (3) of Article 15 that:

"Nothing in Article 15 Clause (1) shall prevent the state from making any special provision for women and children."

This clause empowers the State to make laws in favour of women Thus; special care has been taken to provide socio-economic justice to women. Not only this, the framers of the Constitution of India also laid down clear guidelines for the future legislators to enact laws for providing socio-economic justice to women. The State is under an obligation to promote the welfare of the people including women by securing and protecting as effective as it may a social order in which justice, social, economic and political shall pervade all the institutions of national life.

**Article 39** of the Constitution runs like a golden thread Clause (a) provides that the State shall in particular; direct its policy towards securing adequate means of livelihood to men and women equally. Clause (b) enunciates that there shall be equal pay for equal work for both men and women; clause(c) directs that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter a vocation sun suited to their age or strength. It has been obligated upon the State to make endeavors to secure just and humane conditions of work and maternity relief by Article 42. At the same time the Constitution of India imposes fundamental duty upon every citizen of India to renounce practices derogatory to the dignity of woman.

Though Fundamental Rights grant perfect equality in matters of sex and rehabilitate woman and provide her all the legal Opportunities, powers and capacities to become a person in law, much remains still to be done to concretize and establish her equality in details and in facts of individual and social life.

The equity towards women is more important than the quantitative equality. Further the principle of equality is more negative in putting restraints upon legislators against enactment of laws discriminating against women and less positive incoming to the aid of women in special cases. Thus, it neither gives much positive help to woman nor does improve her lot which is full of many perpetrating in justices of individual and social circumstances. Therefore, the equity of consideration and conscientious interpretation is needed to level up the status of woman, which depends upon the healthy judicial intuition and interpretation as well as manifest legislative intent to and engineering skill to accomplish the task. The emergence of the principle of protective discrimination in favour of women is the cumulative product of the foresight of the legislators and pragmatic constructive approach of judiciary which has its fruitful source in the interdependence and cross relevance of Parts III and IV of the Indian Constitution to generate an integral view of our Constitution, A critical evaluation of law is necessary to mark the progress in this direction and also to provide a food for further development of law and constructive jurisprudence to provide flesh and blood resolve to our fundamental constitutional.

After the commencement of the Constitution of India some positive governmental efforts (legislative and executive) have been made to uplift the socio-economic and political status and position of women. Their success depends upon their true spirit. The doctrine of protective discrimination expresses constitutional mandate and legislative intent in our legal system but its real efficacy lies in its live and dynamic interpretation of the facts and circumstances of individual cases and precedents to coordinate the freedom and protection, discrimination and non-discrimination for the welfare of woman. It is interesting to see that the different interpretation of the principle have come-in being due to its application to different subject matters related to woman. The Indian judiciary to certain extent has taken a lead in securing socioeconomic justice to women.

During the recent years the Judiciary has recognized sex based discrimination constitutionally valid on the basis of peculiar conditions (Physical, Mental and Psychological) if it protects the interest of woman.

In *Mrs. Neera Mathur v. Life Insurance Corporation of India*,[[166]](#footnote-166) the Supreme Court recognized the right to privacy of female employee. Mrs. Neera had been appointed by the LIC without them knowing that she was pregnant. She applied for maternity leave and when she returned thereafter she was terminated. The reason given was that she had withheld information regarding her pregnancy when she had filled their questionnaire. The Supreme Court on perusing the questionnaire was shocked to find that it required women candidates to provide information about the date of their menstrual cycles and past pregnancies. It considered them to be an invasion of privacy. It, therefore, directed the LIC to reinstate Mrs.Neera and to delete those columns from its future questionnaires. In this case the petitioner drew the attention of the court to the equal remuneration Act (25 of 1976) section 4. The Supreme Court upheld her contention and stated that the employer was bound to pay the same remuneration to both male and female workers irrespective of the place they were working unless. It is shown that the women were not fit to do the work of the male stenographers.

**3.7.2: In Matters Relating to Admission:**

Education is a part of the development of the personality of a woman and is essential for her. In early cases some High Courts allowed discrimination in matters of admission to educational institutions on the ground of sex only. In *Anjali Roy vs State of West Bengal*,[[167]](#footnote-167) the petitioner, who passed her intermediate in second division applied for third year (B.A.) Class with honours in Economics, was refused admission by the Principal of the College, and requested the petitioner to gather self-admitted in the newly established women's college, and offered her the facilities for attending the Honours classes in that institution. Here it is pertinent to note that the women's College was giving instructions only in the pass courses. The petitioner contended that the refusal by the Principal was solely on the ground of sex and hence it is in contravention of Article 15 Clause (1) read with Article 29 Clause (2) of the Constitution of India.

The Court held that Article 29 (2) does not refer to the ground of sex. So this Article by itself does not invalidate any order of the State Government or of the Authorities of an educational institution of the type described by Article 29 (2) restricting the admission of women students. The Court pointed out that Article 15(3) which is of wider application than Article 29(2) prohibits discrimination on the ground of sex on all matters and so it includes discrimination in matters of admission to educational institutions. The result is that Article 15(3) should be construed as controlling Article 29(2) of the Constitution, and tested in this light the order complained of would be bad being in contravention of Article 15(1) of the Constitution. Bose J. Expressed the doubt about the construction of the word "special provision" for women and children in Article15 (3) has meaning in favour of and 'not against women and children. According to him the word "for" may mean women and children. He pointed out that if the framers would have intended for in favour of women there was nothing to prevent them to use, express or appropriate word such as in favour of in Article 15(3). He further observed that a special provision as contemplated by Article 15(3) has been made in the interest of and for the benefit of women and does not require that absolutely identical facilities as those enjoyed by males in similar matters must be afforded to Women also and justified the action of the College.

The petitioner filed an appeal against the above judgment of the High Court." In appeal the High Court observed that Article 15(3) really contemplates provision in favour of woman, although grammatically and etymologically for 'may mean' concerning' and although, theoretically it is possible to think of reasonable discrimination against women and children but the ordinary meaning of provision for is certainly provision 'in favour of and State may discriminate against males in favour of females. The court while justifying the refusal of admission by the college pointed out that Article 29(2) deals specifically with denial of admission into educational institutions maintained by the State and it may not be without significance that it does not mention 'sex as one of the grounds on which such a admission may not be denied. Although it has been linked up to a certain extent with Article 15 since Clause (4) has been added to Article 15, but since no such provision regarding educational institutions has been made in Article 15 in the case of the ground of sex, Article 29(2) in so far as it does not mention sex as a forbidden ground of discrimination in regard to admission into educational institutions, remains unaffected, and observed that Article 29(2) is controlled by Article 15(1) and the appellant has no case. At the same time the Court also pointed out that refusal to admit the appellant to a mixed college was not malafide or based solely on the ground that she was a woman, but because under a scheme of better organization of both male and female education at that place, which covered development of the women's college as a step towards the advancement to female education, hence there was no discrimination within Article 15(1). With due respect the judgment of the Court is erroneous on the following counts. Firstly, the Court put more emphasis on Article 29 clause (2) which is more or less deals with the educational rights of citizens in educational institutions managed by the minorities. Therefore, the interpretation of Article15 (3) in the light of Article 29(2) cannot be justified. Secondly, the observations of the Court that Article 29(2) is controlled by Article1 5(1), is also not correct. It is submitted that if the court would have taken into consideration Article 15(3) along with 29(2), the observations would have been otherwise. Thirdly, even if the observations made by the Court that, special provisions being made for the benefit of women and does not require that absolutely identical facilities as those enjoyed by males in similar matters must be afforded to women also, are taken to be true are cannot be used for denying those facilities in educational institutions for women, otherwise it will be a clear violation of Article 14 to which Article 15 is an exception. Fourthly, the Court justified the refusal to admission on the ground that it was not malafide. It is submitted that an unconstitutional order cannot be constitutional is on the ground that it was issued bonafidely or was not malafide. Fifthly, the Court should have taken into consideration that Article 15(3) enables the State to make special provisions favouring the women. It should not be interpreted in such a manner that it denies the rights already guaranteed to them under Articles 15(1) and 14. Lastly, the Court ignored the most important fact that Girls College was running pass course only whereas the appellant applied for honours (Economics) which was available only in the college for boys.

In *University of Madras vs Shanta Bai*,[[168]](#footnote-168) the respondent was refused admission to the College by the Principal in pursuance of the college. The respondent's contention is that these directions were opposed to section 5(1) of the Madras University Act, 1923 and that they were also repugnant to Article 15(1) of the Constitution in that they discriminate against her and therefore, void.

Three contentions were raised by the University in this appeal. These were

1. Article 15(3) prohibits discrimination only by the State, the University of Madras is not a State and its directions were, therefore, unaffected by the operation of Article 15 (1)
2. The right of a citizen to get admission into an educational institution is governed not by Article 15 (1), but by Article 29(2) and the Article does not prohibit any restriction based on the ground of sex.
3. The directions given by the University do not deny the right of women to be admitted into Colleges, but only regulates the exercise of that right and that having regard to the nature of the right, the restrictions are reasonable and not discriminatory.

The Court decided all the three contentions in favour of the University. The Court observed that:

Firstly, University is not a State, because it is not maintained by State.

Secondly, the combined effect of Article 15(3) and 29(2) is that while men students have no right to admission to women's colleges, the right of women's to admission into their colleges is a matter within the regulation of the authorities of those colleges. Article 29(2) is a special Article dealing with admission in educational institutions and is the controlling provision when the question relates to the admission to colleges. As in Article 29(2) word 'Sex has not been used, thus, State can deny admission to women in men's educational institutions. Thirdly, the direction of the University syndicate is based on the report of the University Commission, 1945 appointed by the State Government on the State of higher education and its progress in the State of Madras, which pointed out that there is no sufficient number of women's colleges to accommodate all those who want to receive higher education. Co-education has become inevitable and unless that is properly controlled, it might result in evil and not good. The syndicate of the University requires that colleges which seek permission to admit women students should provide the necessary facilitates for them. In fact, there is no regulation refusing admission to women students and it is the college that is refused permissions to admit women, when they do not provide sufficient facilities. Thus, it is difficult to see how these regulations can be regarded as discriminating against women.

With due respect the judgment is based on the following erroneous considerations:

Firstly, the High Court interpreted Article 12 in very restricted and technical sense. When it technically observed that University is a State aided institution and is not maintained by the State and the educational institutions will be within the purview of Article 15 (1) only if it is State maintained and not otherwise. Secondly; the Court by applying the rule of interpretation's special law should be preferred over general law gave over riding effect to article 29 (2) on the basis that it is a special Article relating to the admission to colleges. It is submitted that Constitution being the Grund norm, its provisions are special provisions and should be given equal weight age. Thirdly, the High Court justified discrimination keeping in view there report of fact finding body on which the rule made by the syndicate was based, cannot be a legal criteria for allowing discrimination. The Court should have looked into factual situation if the factual position reveals the fact of discrimination, the motive, object or the basis of the rule, however, sound it may be, it is unconstitutional. Fourthly, for want of adequate facilities, the Fundamental Right conferred on women cannot be denied, because State itself is responsible for this by creating facilities for male students and in failing to create equal facilities for women. It would have been better if the Court would have directed the State and University to create equal facilities for both male and female colleges. If the State fails to discharge its responsibility, citizen should not be asked to suffer.

In *P. Sagar vs State of Andhra Pradesh*,[[169]](#footnote-169) the Rules for election for admission to Medical Colleges in Andhra and Telangana Area (G.O. Ms 1135 and 1136, Health Housing and Municipal Administration Department dated 16-6-66, Rules 5 and 6, providing for reservation of 30 percent seats to women candidates was challenged on the ground that it is meant for those who cannot come up in open selection and that the procedure sought to be adopted by the Government in bringing all women candidates into their reservation quota without there being tested for open selection is uncalled for and unwarranted under rules and is, therefore, illegal. The High Court observed that the contention raised by the petitioner ignores the provisions of Article 15(3) which is an exception engrafted to clause (1) of the said Article. Thus, in view of Article 15(3) reservation for Women cannot be assaulted. Similarly, the reservation for women, sportsmen, etc. admit general categories and do not confine them to any particular class or caste or off end the provisions of Articles 15(1) and 29(2) of the Constitution.[[170]](#footnote-170)

In *Padmraj Samerendra and others vs State of Bihar and another[[171]](#footnote-171)* allotment of some seats for girl students in Medical Colleges was challenged on the ground that it is solely based on sex. The Court while justifying the allotment of seats for girl students observed that; firstly, allotment of seats is not a reservation in the strict sense of the term. It is an allotment of the source from which the seats have to be filled, secondly; keeping in view the requirement in the State of a large number of lady doctors and the mental aptitude and psychological background of lady patients for treatment of gynecological diseases and obstetric services by lady doctors, makes the allotment reasonable. Thus, it cannot be said to be discrimination on the ground of sex alone.

*Mohini Jain v. State of Karnataka*,[[172]](#footnote-172) a 1989 Supreme Court of India case, occurred when the Government of Karnataka issued a notification that permitted the private medical colleges in the State of Karnataka to charge exorbitant tuition fees from the students admitted other than the 'Government seat quota'. Miss Mohini Jain, a medical aspirant student filed a petition in Supreme Court challenging this notification. The apex Court raised an important question that 'whether right to education is guaranteed to the Indian citizen under the Constitution of India?'

The Supreme Court of India observed that mention of 'life and personal liberty' in Article 21 of the Constitution automatically implies some other rights, those are necessary for the full development of the personality, though they are not enumerated in Part III of the Constitution. Education is one such factor responsible for overall development of an individual and therefore, right to education is integrated in Article 21 of the Constitution.

**3.7.3 Political Matters and Responses:**

It was considered to be a matter of controversy whether provisions of Article 15(3) can be invoked for giving rights to women for securing political rights.[[173]](#footnote-173) The Supreme Court at the very beginning ruled that the general prohibition against discrimination in clause (1) of Article 15 also extends to political rights and therefore, the umbrella of protective discrimination can be used to secure political rights to the women 57. Thus, it is clear that sex is a valid ground for discrimination in favour of women and hence will not be violative of Article 15(1) keeping in view provisions of Article 15(3).

In *Dattatrays Motiram vs State of Bombay[[174]](#footnote-174)*, Bombay Municipal Borough Act, 1925 providing for reservation of seats for women in the election to the Municipality was challenged. It was argued on behalf of the petitioner that discrimination in favour of a particular sex is permissible provided it is not only on the ground of sex and should also be based on other considerations. It was also argued that Article 15(3) must be read to mean that only those special provisions for women are permissible which do not result in discrimination against men. The court while rejecting this argument observed that if that was the object of enacting Article 15(3), then Article 15(3) need not have been enacted at all as a proviso to Article 15(1). Therefore, as a result of the joint' operation of Article 15(1) and 15(3), the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women. Thus, the legislation does not offend against Article 15(1) by reason of Article 15(3). The Court also pointed out that even today women are more backward then men and it is the duty of the State to raise the position of women to that of men. It would be very difficult for women to be elected if there was no reservation in their favour and Government may well take the view that women are necessary in local authorities before they decide any question relating to them. The Assam High Court upheld the validity of Rule 3 of the Election Rules framed under the Assam Municipal Act, 1923, providing for separate voting facilities in favour of female voters. The Court observed that rule is not violative of Article 15(3) as from this exemption accorded to women, men stands benefited as otherwise social burden on men will increase in the matter of looking after children, household duties, etc., for which men is not fit.[[175]](#footnote-175)

In *Ram Chandra Mahton vs State of Bihar[[176]](#footnote-176)* the provisions of Bihar Panchayat Samiti Act and Zilla Parishads Act, 1961 providing for co-option of women to Panchayat Samiti where no women elected, was challenged. The Patna High Court while upholding the validity of the provisions observed:

"Conferment of the right is a special provision, so long as clause (3) of Article 15 stands as it is, there is no scope for the argument that any special right conferred upon women in the special circumstances prevailing in this country can be struck down as going against clause (1) of Article 15 as clause (3) operates in the nature of a proviso to clause (1)".

The Kerala High Court upheld the validity of Co-operative Societies (Amendment) Ordinance, 1985, providing for reservation of one seat for women in every society.[[177]](#footnote-177)

The Rajasthan Government has provided 30 percent of wards in Municipalities, Municipal Corporations, Gram Panchayats for women through an amendment in respective Acts[[178]](#footnote-178) to provide adequate representation to women in local bodies and Gram Panchayats.

In *Cracknell vs. State of U.P[[179]](#footnote-179)* The validity of the provisions of Court of Wards Act, 1912 was challenged. The Allahabad High Court while declaring the provisions unconstitutional held that the section classified female proprietors in an arbitrary manner and places them in a more disadvantageous position than male members without giving them any opportunity of being heard. The Court also observed that section 8(i) (b) of the Act discriminates against women solely on the basis of 'sex' which is against the very spirit of Article 15(1) and therefore, unconstitutional.

**3.7.4 Criminal Matters and Responses:**

In *Yusuf Abdul Aziz vs State of Bombay[[180]](#footnote-180)* provisions of section 497 of Indian Penal Code, 1860, providing that in case of adultery the wife shall not be punished as an abettor was challenged. The Supreme Court while upholding the validity of the section observed that sex is a sound basis for classification. Although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children by clause(3) of Article 15. Article 14 and 15 thus, read together validate the last sentence of section 497 of the Indian Penal Code which prohibits the women from being punished as an abettor of the offence of adultery. As wife cannot be punished under section 497 of the I.P.C. as an abettor, she cannot be punished for minor offence under section 498 of the Indian Penal Code.

The definition of Adultery under section 497 of Indian Penal Code was challenged by a wife on the ground that firstly section 497 confers upon the husband the right to prosecute the adulterer but, it does not confer any right upon the wife to prosecute the man with whom her husband has committed adultery, secondly, Section 497 does not confer any right on the wife to prosecute the husband who has committed adultery with another women; and thirdly, section-497 do not take into account the cases where the husband has sexual relations with unmarried women." The Supreme Court while upholding the constitutionality of the provisions observed that women are still the weaker sex and they should not be criminally prosecuted. The husband is given the right to prosecute the other man because that man was breaking up his home. The Court also pointed out that now under the amended Section (498-A) of I.P.C.; a women can prosecute an adulterous husband for cruelty; therefore, women are not totally helpless now. It is submitted that the Court has not taken into consideration that the reputation of wife is not always tagged with her husband. She has her reputation quite independent of her husband.

The provisions of Sections 497 and 498 of Code of Criminal Procedure, 1898 (now section 437 of the Code of Criminal Procedure, 1973) empowering the Court other than the High Court or Court of Session to release women and children on bail even if they are suspected to have committed an offence punishable with death or imprisonment for life, were challenged being violative of Article 15 (1) of the Constitution. The Rajasthan High Court while upholding the validity of the provisions observed that, it is open to the State to make laws containing special provision for women and children and provisions of Sections 497 and 498 are such provisions, therefore, they are not in-consistent with the provisions of Article 15 of the Constitution.

Provisions of Section 125 of the Code of Criminal Procedure, 1973 is meant to serve a social purpose. It is also projection of equality of sexes and provides protection to the weaker sections of the society i.e., neglected wives, discarded divorcees and abandoned children. The Constitutional validity of these provisions has been challenged before Courts. In *Gupteshwar Pandey vs Ram Piari.[[181]](#footnote-181)* The Patna High Court while upholding the constitutional validity of section 488 of the Code of Criminal Procedure, 1898 (now section 125 of the Code of Criminal Procedure, 1973) observed that the provisions are special provisions designed for the benefit or protection of a class of women or children. The Court pointed out that women are even called by the appellation weaker sex. They are as a class weaker than men cannot also be disputed, hence cannot be said to be arbitrary and therefore, constitutionally valid. The Supreme Court also uphold the provisions of section 125 of Cr.P.C. as constitutionally valid on the ground that it is especially enacted to protect women and children, and therefore, falls within the constitutional sweep of Article 15(3) re-enforced by Article 39 Constitution.[[182]](#footnote-182)

**3.7.5 Matrimonial Matters and Responses:**

Marriage is an important social institution and is as old as the dawn of civilization. According to Hindu culture it is the union of two souls. In all religions husband and wife are the two wheels of a chariot of life. Before enacting Hindu Marriage Act, 1955 the marriage among Hindus was sacramental. But after Hindu Marriage Act, 1955 provisions for restitution of conjugal rights and divorce were incorporated which were foreign to the Hindu culture. The provisions of Section 9 of the Hindu Marriage Act providing for restitution of conjugal rights were challenged before the Andhra Pradesh High Court in T. *Sareetha vs T. VenkataSubbaiah*.[[183]](#footnote-183) It was argued on behalf of the petitioner that the remedy of restitution of conjugal rights is barbarous, uncivilized and an engine of oppression against wife and therefore, it is violative of Articles 14 and 21 of the Constitution. Justice Choudhary while striking down the provisions of section 9 of the Hindu Marriage Act, 1955 as unconstitutional observed that a decree for restitution of conjugal rights constituted the grossest form of violation of any individual's right to privacy. It denied the woman her free choice whether, when and how and by whom various parts of her body are to be sensed and her body was to become a vehicle for the procreation of another human being. The learned Judge was of the view that a wife who was keeping away from her husband because of permanent or even temporary arrangement cannot be forced without violating her right to privacy. It has a tendency of degrading of human dignity and monstrous to human spirit.

In another cases[[184]](#footnote-184) Delhi High Court adopted the contrary view and upheld the validity of section 9 of the Hindu Marriage Act, 1955. Justice Avadh Behari Rohatgi observed that the object of restitution decree is to bring about cohabitation between the estranged parties so that they can live together in the matrimonial home in amity. The leading ideas of the section are to preserve the tie of marriage. The remedy of restitution aims at co-habitation and consortium and not merely physical sexual intercourse. Therefore, it is fallacy to think that there situation of conjugal rights constitutes the starkest form of Governmental invasion on marital privacy. Justice Rohatgi emphasized that introduction of constitutional law in the home is most inappropriate. It is like introducing a bull in a china shop. It will prove to be a ruthless destroyer of the marriage institution itself and will be a fruitful source of dissension and quarrelling. Therefore, in the privacy of the home and the married life neither Article 14 nor Article 21 have any place.

The Supreme Court in *Smt. Saroj Rani vs Sudershan Kumar Chadha[[185]](#footnote-185)* while supporting the observations made by Justice *Rohatgi in Harminder Kaur's case[[186]](#footnote-186)* upheld the validity of section 9 of the Hindu Marriage Act, 1955 observed that the purpose of decree for restitution of conjugal rights is to offer inducement for the husband or wife to live together in order to give the man opportunity to settle the matter amicably. Thus, it serves a social purpose as an aid to the prevention of breakup of marriage. Therefore, section 9 of the Hindu Marriage Act, 1955 is not violative of Article 14 or 21 of the Constitution. This shows that the Court has seen both light and shade of the restitution of conjugal rights and is prone to look at the doctrine a new. Whether wife has any right in deciding matrimonial home or not was considered by the Delhi High Court in *Mrs. Swaraj Garg vs K. M. Garg[[187]](#footnote-187)*. The Court observed that there is no warrant in Hindu law to regard the Hindu wife as having no say in choosing the place of matrimonial home. Any law which would give the exclusive right to the husband to decide upon the place of matrimonial home without considering the merits of the claim of the wife would be contrary to Article 14 of the Constitution. The Court further observed that due to the financial difficulties of the husband and comfortable position of the wife and also due to the discouraging conduct of the husband towards wife, the wife had a reasonable excuse for not resigning her job and for not coming to live with the husband.[[188]](#footnote-188) With these observations the Court dismissed the petition and plea of husband for granting decree for restitution of conjugal rights.

In *Maya Devi vs State of Maharashtra[[189]](#footnote-189)* Where the requirement of husband, consent for wife's application for public employment was struck down as an anachronistic obstacle to women's equality and economic justice, reflects this approach.

**3.7.6 Service Matters and Responses:**

Women constitute half of the population and no country can afford to ignore the contribution of women folk. After independence the role of women has enormously changed. They are working in offices, in organized and unorganized sector. They also work as labour to pull up their family. The present position is that one third of the labour force is composed of women. The working conditions and service conditions for women are not satisfactory. They are discriminated in the matters of employment, service conditions and payment of wages.

In Labour Union vs International Franchise,[[190]](#footnote-190) a service rule in the International Franchise Company requiring unmarried women in a particular department to resign on getting married was challenged. The Supreme Court rejected the writ petition on the ground that the company was not bound by Fundamental Rights because the company is not a State within the meaning of Article 12 of the Constitution. But at the same time Court held that the rule should be abrogated in the interest of social justice.

75 In C.B. Muthamma v/s Union of India's[[191]](#footnote-191) the validity of rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, requiring a woman member to marry only after obtaining the prior permission of the Government and entitled the Government to require a married woman member to resign if it was satisfied that the domestic commitments were likely to come in the way of efficient discharge of her duties was challenged by a senior member of the Indian Foreign Service. Justice Krishna Iyer, speaking for the Court observed that at the first blush, this rule is in defiance of Article 16. He advised the Government to remove Sex discrimination in service rules without waiting for writ petitions. The writ petition was dismissed after the assurance given by the Government that the rule will be deleted. It is submitted that before framing rules the Government at its level; should ensure that the rules framed are not violative of any of the Fundamental Rights conferred on the citizens. This will help in reducing the institution of litigation in courts. On the same lines *the Allahabad High Court*,[[192]](#footnote-192) has declared that the condition in service that a nurse, male or female, who married while in service was required to resign, is violative of Article 24 of the Constitution. The Patna High Court also, for ignoring the claim of woman officer, declared Rule 12 of Bihar Service Code 1952 as against Articles 14 and 16 of the Constitution.[[193]](#footnote-193)

Another important case which involved the issue of equality between men and women is *Air India v/s Nergesh Meerza's*.[[194]](#footnote-194) In this case the validity of Regulations 46 and 47 providing that an air hostess would be dismissed on the following contingencies; Firstly, on attaining the age of 35 years, secondly, on marriage if it took place within four years of service and thirdly on first pregnancy, made under AIR India Corporation Act, 1953, were challenged as unconstitutional. It was argued that an airhostess had to retire at the age of 35 years where as a male counterpart could work up to 58 years of age. An airhostess, however, could be continued by the managing director up to 45years of age.

It was argued on behalf of the Corporation regarding the age of retirement of the air hostess that a young and attractive airhostess is fable to cope up with the difficult and awkward situations more easily than an older persons. The Court while rejecting this argument observed that; Firstly, it was based on pure speculations and artificial understanding of the qualities of the fair sex, and secondly the Regulation conferred a wide and uncontrolled discretion Managing Director to extend the age of retirement by ten years. The Court while striking down the Regulation clarified that it is open to the management to frame new rules in this regard. It is submitted that after this judgment air hostess will now retire at the age of 45 years if found medically fit

Regarding the Regulation providing that Air Hostess should not marry within four years of the service failing which their services will have to be terminated. It was argued that this rule constituted an outrage on the dignity of the fair sex and therefore, unconstitutional. The Supreme Court while refusing to declare the regulation unconstitutional observed:

"According to the Regulation an Air Hostess starts her career at the age of 19, so there are very few who decide to marry immediately after entering the service. The Regulation permits an Air Hostess to marry at the age of 23 which is by all standards a very sound and salutary provision. A part from improving the health of the employee, it helps a good deal in the promotion and boosting up of our family planning programme,

It was pointed out by Corporation that if the ban of marriage within four years of service is removed then the corporation will have to incur huge expenditure in recruiting additional Air Hostesses either on a temporary or on an ad-hoc basis to replace the working Air Hostesses if they conceive. The Court while accepting the arguments put forth by the Corporation observed that keeping in view these arguments any period short of four years would be too little for the Corporation to phase out such an ambitious plan.

It is submitted that any discrimination against women should not be allowed to find justification in the name of family planning. If the family planning programme could be a justification for a baron the Air Hostess getting married within four years of service, it should equally ban the male employees from getting married within four years. Similarly the rule should not be justified on the ground of huge expenditure which the Corporation is required to incur in recruiting new Air Hostesses and for providing maternity relief to working Air Hostesses. It is submitted that keeping in view Article 42 it is the duty of every employer to grant maternity benefits to women. Therefore, the Court by drawing justification on the basis of huge expenditure on granting Maternity relief is wholly untenable and is clearly violative of Articles 14, 15(1), 15(3), 16(2) and 42 of the Constitution. On the contrary whenever the Court feels that the State has committed breach of duty by acting, enacting laws or framing rules, regulations and bye laws. Contrary to the Directive Principles of State Policy, the Court should categorically direct the State not to act, enact, or frame such rules Rather it is the duty of the Court, that if the State commits a breach of its duty by acting contrary to the Directive Principles, to prevent it from doing so. But while giving some concession to the employers court has not completely disregarded the interest of the women. So far as the Regulation which terminated the services of the airhostesses on first pregnancy is concerned the Corporation argued that the pregnancy led to a number of complications and to physical disabilities which might obstruct the efficient discharge of her duties. The Court while striking down the Regulation observed:

"It seems to us that the termination of the services of an A.H. (Air Hostess) under such circumstances is not only a callous and cruel act but an open insult to Indian women hood,-The most sacrosanct and cherished institution. It is a part from being grossly unethical smacks of a deep rooted sense of utter selfishness at the cost of all human values. Therefore, it is clearly violative of Article 14 of the Constitution.

In *Vijay lakshmi v/s Punjab University[[195]](#footnote-195)*, the division bench of supreme court comprising M.B. Shah and Dr. A.R. Lakshmanan JJ, held that Rules 5, 8, 10 an Punjab university calendar, volume III, providing for appointment or lady principal in women's college or a lady teacher therein, cannot be held to be violative of Articles 14 and 16 of the constitution, because classification is reasonable and it has a nexus with the object to be achieved. In addition, the State Government is empowered to make such special provisions under Article 15(3) of the constitution. This power is not restricted in any manner of Article 16. The court said: on the concept of equality enshrined in the constitution, it can be stated that there could be classification between male and female for certain posts. Such that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. Constitution, it can be state that there could be classification between male and female for certain post. Such classification cannot be said to be arbitrary or unjustified, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the your age of the girl students to be taught

 In *Uttarakhand Mahila kalian parishad v. State of Uttar Pradesh[[196]](#footnote-196)* the Apex court, very positively allowed the writ in favour of lady teachers and female officials, where they demanded equal remuneration as their male counter parts for the similar work carried out by them.

In a plethora of cases such as Peoples Union for *Democratic Rights v. Union of India*,[[197]](#footnote-197) *Randhir Singh v. Union of India*, *Sanjit Roy v. State of Rajasthan, Mackinnon Mackenzie and Co. Ltd. v. Andrey D' Costa*  the Supreme Court reiterated that "equal pay for equal work" enshrined in Article 39(a) is implicit in Article 14 and 16 of the Constitution and hence become enforceable in the court of law. In other words we can say that the court has brought the equal remuneration within the contours of fundamental right of equality.

**3.7.7 Labour Matters and Responses:**

The framers of the Indian Constitution were conscious of the practice of forced labour prevalent in the country. In their view it constituted an ugly and shame full feature of our national life. With a view to obliterate and wipe out this practice they incorporated Article 23 in the Chapter on Fundamental Rights. Article 23 intended to eradicate the practice of forced labour and is enforceable against any person indulging in such practice. Article 23 strikes all forms of forced labour. It includes in its sweep the exploitation of poor and weaker sections of the society including women by socially or economically powerful sections of the community.

In Sanjit Roy vs State of Rajasthan[[198]](#footnote-198) the Supreme Court while striking down section 3 of the Rajasthan Famine Relief Works Employees (exemption from Labour Laws) Act, providing for payment of less than minimum wages fixed under Minimum Wages Act, to workers including women employed in famine relief work, observed that State cannot be allowed to construct the road under famine relief work on the blood and soul of workers by giving less than the minimum wages.

There was a common belief even after independence that women are physically weak so they should be paid less than their male counterparts for the same piece of work. It was ensured by enacting Article 39 (d) of the Constitution that there is equal pay for equal work for both men and women. In order to implement Article 39 (d) Parliament enacted Equal Remuneration Act, 1976. The Act intended to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected there with. Equal pay for equal work for both men and women means equal pay for equal work for everyone as between the sexes.[[199]](#footnote-199) In People's Union for Democratic Rights vs Union of India[[200]](#footnote-200) the Supreme Court observed that the violation of the provisions of Equal Remuneration Act, 1976 results in the violation of right to equality enshrined in Article 14 of the Constitution, and directed Union of India and Delhi Administration to see that the provisions of the Act are not violated and they are observed faithfully. In Sanjit Roy vs State of Rajasthan,[[201]](#footnote-201) the Supreme Court directed the State Government not only to pay minimums wages but also to pay wages in accordance with the principle of equal pay for equal work to men and women workers engaged in famine relief work.

The land mark decision on the point was delivered by the Supreme Court in M/s Mackinnon Mackenize and Co. Ltd. Vs Audrey D' Casta,[[202]](#footnote-202) in this case the Company was paying to lady stenographer's remuneration at the rates less than the remuneration which was being paid to the stenographers of the male sex. It was argued on behalf of the Company that the different in pay scales was due to settlement between the Company and the Union of the Workers. The Supreme Court directed the Company that the lady Stenographers and male stenographers are entitled to the equal remuneration for doing the same work or work of similar nature. The Court pointed out that the settlement cannot be a ground of discrimination in matters of payment of wages. It was also argued on behalf of Company that it is not in a position to pay equal remuneration to all. The Court while rejecting this argument observed that the applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration. The Court also pointed out that a woman who works during day time cannot claim quality with a man on higher basic rate for working in nights. Similarly women cannot claim equality in pay for the works which women may not be able to undertake.

In Ram Bahadur Thakur (P) Ltd, v. Chief Inspector of Plantations" a woman worker employed in the pambanar Tea Estate was denied maternity benefit on the grounds that she had actually worked for only 157 days instead of the required 160 days.

In another judgment of far reaching consequence, the Supreme Court in Muncipal Corporation of Delhi v. Female Workers declared that the maternity benefit is applicable to casual workers and daily wage workers also. There is nothing in the maternity benefit Act, Which entitles only regular women employees to the benefit of maternity leave and not to those who are judiciary, has played an active role in enforcing and strengthening the constitutional goal of "equal pay for equal work.

**3.7.8 Family Matters and Responses:**

In succession matters the Supreme Court come to the rescue of women. It was argued before the Supreme Court that section 14 (1) of the Hindu Succession Act, 1956 confers full ownership over husband's property to widow. The Court while upholding the constitutionality of the provision observed that it was enacted to remedy to some extent the plight of a Hindu woman who could not claim absolute interest in the property.

The provisions of Travancore Christian Succession Act, 1892 providing that a widow is entitled to have only a life interest terminable at death or on remarriage and a daughter would be entitled to of the value of the share of her. She was not entitled to even this if Stridhan was provided or promised to her, was challenged before the Supreme Court. It was argued that this Act has been repealed by the Indian Succession Act, 1925. The Supreme Court observed that the Act of 1892 was repealed when the Indian Succession Act, 1925 was made applicable to the State of Kerala.

It is submitted that this judgment of the Supreme Court has brought a major victory for Indian women's fight for equality.

The Indian Judiciary has also shown its deep anxiety in improving the plight of women prisoners. In Sheela Barse vs State of Maharashtra, it was brought to the notice of the Supreme Court that woman prisoners are being harassed when they are confined in the police lock-up in the city of Bombay. The Supreme Court while ascertaining the fact that women prisoners had been subjected to any torture or ill-treatment directed the State Government to provide adequate protection to women prisoners. It was pointed out that the conditions of girls living in the Governmental Protection Home, Agra are abominable and they are being denied their right to live with basic human dignity. The Court issued directions ensuring decent and healthy standard of living girl inmates.

The judiciary has performed a constructive and creative role in interpreting laws and enactments related to woman in this regard. It has insisted upon looking to the principle of substantial Justice by examining discriminatory provisions in the light of peculiar facts and circumstances of the case. Time and again it has observed that discrimination in favour of women should not be solely based on sex. However, in some special circumstances which endanger honour and dignity of a woman or create breaches of peace and endanger security, discriminatory law may have their own justification while looking to the suitability of women for certain services it has struck down enactments which disturbed normal biological needs and social incidents like, marriage and procreation of children. Marriage can be delayed to some extent but it can never be denied on any ground to a woman employee. A balance has been struck between the principle of equality and the exceptional discrimination in favour of woman. This has made the doctrine of protective discrimination a dynamic and living concept. While condemning the decree of restitution of conjugal rights as barbarous and uncivilized method of enforcing union of man and woman, it has all the same recognized it as a best available means for preserving the wholeness of the home and a possible repair of breaches of marital peace and happiness. However, the Court has refused to compel the women physically to restore conjugal union against their will. At best Court can provide an opportunity to spouses but can never guarantee the physical and sexual act of cohabitation.

**3.7.9 Worship place and Responses:**

The demand for entering the sanctum of the temple or Dargah is not new. Decades ago, because of untouchability the Dalits were barred from entering the temple. And now women are disallowed from entering the sanctum of various places of worship in India for about 400 years. But the recent judgments of Supreme Court and High courts have changed the scenario.

Narendra Dabholkar, a popular rationalist dates back to the year 2000 protested, so that women as a matter of right can worship on the prohibited platform'. In Maharashtra the popular Shani Shignapur Temple has prohibited women from entering the sanctum sanctorum of the temple. Sanctum is the hold place where the idol is placed. This practice have now and then been criticized by different social reformists But in January 2016 this became controversial when mistakenly a women entered the sanctum and afterwards idol was bathed in milk, in order to purify the idol of God. This act degraded women and after this, Trupti Desai (a social activist) with her organization Bhumata Brigade' lead 1000 women activities and entered the temple forcefully as a gesture against the prevailing gender biased rules[[203]](#footnote-203).

In Indian young *Lawyers Association v. Union of India[[204]](#footnote-204)*  the Apex court, while taking cue from the Bombay High court decision on Shani Shignapur temple, held that no law or custom could justify the ban on entry of a woman to the temple. The court also criticized the 1991 Kerala High Court judgments Mahendran Vs the secretary, Travancore Devaswom Board, Thiruvananthapuram, in which the High court of Kerala upheld section 3 (b) of Kerala Hindu Places of public worship (Authorisation of entry)Rules. Until the year 2011, the level of discrimination was such that women were not even allowed to enter the temple's premises as well. The sad truth is that when these women activities were marching towards the temple, around 4000 people (including women) stopped them; the women in the shignapur believe that if they enter the alter, a disaster will follow. In Maharashtra Temple entry act, 1956 has banned women from entering the premises of temples as the Act did for Dalits.

Similarly in Noorjehan Niaz and Zakiasoman v/s state of Maharashtra (through secretary minority development board) and Haji Ali Dargah trust. A Bombay high court bench of justice of VM Kanade and Revati Mohite Dere had held that the ban on women entering the sanctum sanctorum of the Haji Ali Dargah of Mumbai, contravened Articles 14, 15 and 25 of the constitution. Women will now be permitted to enter the holiest of holy places inside the Dargah, just like men. But the decision did not come easily. The high court examined how that article was interpreted by the apex court previously. In the commissioner, Hindu religious Endowments, Madras v Sri lakshm Indra Thirtha Swamiar of Sri Shirur Mutt (1954), the supreme court had laid down the so-called essential function test (EFT). According to the EFT only those practices integral to a faith can get exemption from state intervention. The Article 26 words " its own affairs in matters of religion" were interpreted to suggest that there could be other affairs of a religious denomination, which are not strictly matters of religion, to which the protections of Article 26 (b) would not apply.

**3.8 Conclusion:**

Several provisions under the Indian constitution try to bring gender equality. In short Equality is the cardinal principle of the Constitution of India, which is evident from various cases discussed above. In protecting right of women the judiciary played a crucial role. Various laws have been enacted relating to prohibition of female infanticide, dowry, exposure of women in advertisements and films, female child marriage, atrocities and molestation, abduction and rape, maternity benefits, medical termination of pregnancy, in tune with constitutional aspiration of gender equality. With a view to afford better protection to women, the positive judicial activities, is stimulus for the India legislatures to enact several new laws or to bring about the changes in the existing ones with a view to afford better protection to women is a demand of the time wherein there is emphasis upon women's empowerment.

Unfortunately in this regard the vast bodies of decisional law of the subordinate courts where the build of women ordinarily seek justice are not available for review. Though in a precedent bound system, one available for review. Though in a precedent bound. system, one available for review, one can expect the decisions of superior courts to be the applicable law, it is common knowledge that approaches and attitudes towards facts and evidence of individual judges can make a lot of difference in the outcome of the case despite the law being common to all. In other words, evaluation of judicial decisions on gender justice can only give a partial not necessarily the true picture of judicial performance in this regard. Gender justice is a second yardstick for assessment of judicial performance in is the manner in which judges treat women in curt whether they appear them as litigants, witness, victims, lawyers or subordinate staff. This is where women develop perceptions of justice/injustice in the system and experience discrimination. This is a critical input in the assessment of the system in respect of gender justice. Looking to the political and social situation of the country the court has justified the reservation of seats in elections where women have not been elected, in favour of women. This helps women to participate actively in the democratic process of the country and to defend the right of women in parliament and public forum where there is a need to do so. The court has liberally interpreted the provisions regarding maintenance to woman in order to provide her social security. Though woman is physically weak in comparison to man; the court has condemned the discrimination on the basis of sex and has given new interpretation to the principle of equal pay for equal work. It has refused to consider as already said the quantum of physical of equal pay for equal work. It has refused to consider as already said the quantum of physical strength of a women, a standard for evaluation of work and pay.

The judiciary is playing a creative role in harmonizing and balancing the rights and interests of men vis-à-vis women. In addition to it, rights guaranteed protection to women as enshrined in Article 15 (3) of the constitution in certain cases including employment and service conditions. The Supreme Court rightly upheld that constitutional provisions enshrined in Article 14 or 21 should not be applied in martial life as it would create discord and disharmony rather to maintain happiness and matrimony.

1. Practicing Advocate at Jammu & Kashmir High Court Srinagar, National campaigner of Socio-Political Rights (All Indian Student Federation), BALLB, School of Law University of Kashmir, and Prospective LLM Scholar [↑](#footnote-ref-1)
2. Dreze. J. &Amartya S. (2002) India: Development and Participation. Oxford University press, New Delhi. [↑](#footnote-ref-2)
3. The Universal Declaration of Human Rights (UDHR (is a historic document that was adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 at the Palais de Chaillot in Paris, Grance. Of the then 58 members of the Unite Nations, 48 vote4d in favor, none against, eight abstained, and two did not vote [↑](#footnote-ref-3)
4. The international Labour Organization (ILO) is a United Nations agency that sets international labour standards and promotes social protection and work opportunities for all. The ILO has 187 member states: 186 of the 193 UN member states plus the Cook Islands are members of the ILO. [↑](#footnote-ref-4)
5. The Maternity Protection Convention 1919, established the norms of work for women, before and after child birth, including the question of maternity benefit. Besides the Convention concerning of employment of women during night 1919, prohibited women from performing industrial work during night. Available at: [http://en.m.wikipedia.org](http://en.m.wikipedia.org/)>wiki>conv. [↑](#footnote-ref-5)
6. Id [↑](#footnote-ref-6)
7. <http://www.unwomen.org/en/new/in-focus/commission-on-the-status-of-women-2012/facts> -and figures [↑](#footnote-ref-7)
8. India ratified it because Article 14 of the Indian constitution, Equality before Law, states, "the State shall not deny to any person equality before the law of the equal pro on of the laws within the territory of India". Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth (nothing in this article shall prevent the State from making any special provision for women and children. [↑](#footnote-ref-8)
9. [↑](#footnote-ref-9)
10. Government of India 2009 to employment and un employment in India NSSO, 66th round new Delhi. Key among them is the ratification of Convention on Discrimination of All Forms of Discrimination against Women (CEDAW) in 1993, The Millennium Development Goals (20002015),Sustainable Millennium Development Goal 2015-2030 [↑](#footnote-ref-10)
11. Convention on the Political Rights of Women, 1953; Convention on the Elimination of All Forms of fj Discrimination Against Women, 1979; Vienna Convention On The Elimination Of Violence Against Women, 1993; Beijing declaration, 1995, etc. [↑](#footnote-ref-11)
12. See for latest Goal 5 of sustainable Development Goals to achieve gender equality and empowerment of all women and girls., available at: <http://www.un.org/> sustainable development/ gender justice / [↑](#footnote-ref-12)
13. As per United Nations Population Fund Guidelines for Women's Empowerment [Online] available from <http://www.un.org/popin/unfpa/taskforce/guide/iatfwemp.gdl.html> [↑](#footnote-ref-13)
14. The World Bank on gender, the World Bank group, takes as its starting point that no country, community, or economy can achieve its potential or meet the challenges of the 21" century without the full and equal participation of women and men, girls and boys, available at: [http://www.worldbank.org](http://www.worldbank.org/) retrieved on 11th May 2019. [↑](#footnote-ref-14)
15. Women and Law: From Impoverishment to Empowerment - A Critique, 2011 ed. 1st [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. John Milton, Paradise Lost(2nd ed. 1989) [↑](#footnote-ref-17)
18. Plato, The Republic, 225(Tr. John-sparling &George Simpson, Wesco, 3: free presss1897) [↑](#footnote-ref-18)
19. Ibid [↑](#footnote-ref-19)
20. Emile Durkheim, Suicide, 252 (Tr. john. Spauling &George Simpson, Wenco,3:Free Press1897) [↑](#footnote-ref-20)
21. Helence Deutch, The Psychology of Women, Vol.1, 151(1946). [↑](#footnote-ref-21)
22. Ibid [↑](#footnote-ref-22)
23. A lesbian is a homosexual woman,for further details refer to <https://en.wikipedia.org/wiki/Lesbian>  [↑](#footnote-ref-23)
24. Ibid [↑](#footnote-ref-24)
25. Henrique Johan Ibsen; 20 March 1828- 23 May 1906) was a Norwegian playwright, theatre director, and poet. As one of the founders of Modernism in theatre, Ibsen is often referred to as "the father of realism" and one of the most influential playwrights of his time [↑](#footnote-ref-25)
26. Ibsen, A Doll's House, Act lii (N.D) [↑](#footnote-ref-26)
27. Ibid [↑](#footnote-ref-27)
28. Like Aruna Roy, Medha Patkar, Arundhati Roy, Kiran Bedi, Irom Sharmila  [↑](#footnote-ref-28)
29. Supra note 8 at 414  [↑](#footnote-ref-29)
30. Ibid [↑](#footnote-ref-30)
31. Robert Bierstedt, Social Order,359(1979) [↑](#footnote-ref-31)
32. [↑](#footnote-ref-32)
33. Babylon was a key kingdom in ancient Mesopotamia from the 18th to 6th centuries BC. The city was built on the Euphrates river and divided in equal parts along its left and right banks, with steep embankments to contain the river's seasonal floods. Babylon was originally a small Akkadian town dating from the period of the Akkadian Empire c. 2300 BC [↑](#footnote-ref-33)
34. Refer to Babylonian Hymns And Prayers And Selected Sumerian And Babylonian Texts (1919) by David W. Merman (Author), Henry Frederick Lutz (Author) [↑](#footnote-ref-34)
35. Eric Fromm, Anatomy Of Human Destruction,225,Cited In National Law School Of India United Nations Children's Fund, Rights Of The Child-Seminar Report,75(1990) [↑](#footnote-ref-35)
36. Humans have an additional pair of sex chromosomes for a total of 46 chromosomes. The sex chromosomes are referred to as X and Y, and their combination determine a person's sex. Typically, human females have two X chromosomes while males possess an XY pairing. This XY sex-determination system is found in most mammals, as well as, some reptiles and plants. See for details, Eqqqncyclopaedia of Animal available Kingdom, http://www.britannica.com>science<chromosomes/ [↑](#footnote-ref-36)
37. Ashley Montigu, The National Superiority Of Women, 76-81 (London 1954) [↑](#footnote-ref-37)
38. Like William I. Thomas in his book Sex and Society eBook online at [www.gutenberg.net](http://www.gutenberg.net/) [↑](#footnote-ref-38)
39. W.I. Thomas, Sex And Society,51(London 1907)  [↑](#footnote-ref-39)
40. The Workers Of Aristotle In Four Parts, 16( Uk 1822)  [↑](#footnote-ref-40)
41. Earnest Johnes, The Early Development of Female Sexuality, In Papers On Pychoanalysis,438(London 1948) [↑](#footnote-ref-41)
42. Erich Fromm, The Art Of Loving,20(1969)  [↑](#footnote-ref-42)
43. Harriet Taylor Mill, London, 8 October 1807, 3 November 1858 was a British philosopher and women's rights advocate. Her extant corpus of writing can be found in The Complete Works of Harriet Taylor Mill. [↑](#footnote-ref-43)
44. John Staurt Mill, The Subjection Of Women, (London 1869) [↑](#footnote-ref-44)
45. See supra note 2 for further details. [↑](#footnote-ref-45)
46. The International Labour Organization (ILO) is a United Nations agency that sets international labour standards and promotes social protection and work opportunities for all. The ILO has 187 member states: 186 of the 193 UN member states plus the Cook Islands are members of the ILO [↑](#footnote-ref-46)
47. The Maternity Protection Convention 1919, established the norms of work for women, before and after child birth, including the question of maternity benefit. Besides the Convention concerning of employment of women during night 1919, prohibited women from performing industrial work during night. Available at: <https://en.m.wikipedia.org/wiki>>conv... [↑](#footnote-ref-47)
48. Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination [↑](#footnote-ref-48)
49. Remarks of Dr. Kufi Anan (former Secretary General of UNO) [↑](#footnote-ref-49)
50. Prior to Protection of Women from Domestic Violence Act (PWDV) Act 2005, under the civil law, for acts of domestic violence a married woman can initiate proceeding for divorce/ judicial separation. However, this fails to provide any kind of immediate relief and protection to the woman. She remains at the mercy of her parents/ relatives. Also it leads to problems of costs and delays in litigation. Most commonly used provision of criminal law in dealing with cases of Domestic Violence is Section 498A of the Indian Penal Code. It makes cruelty to a wife by her husband or relatives an offence and attracts a maximum punishment of three years on conviction. Limitation of this provision is that it is not aimed at providing reliefs, namely maintenance, It is confined to the prosecution and possible conviction of the offender. [↑](#footnote-ref-50)
51. This trend started with special emphasis from the Beijing Conference 1995. [↑](#footnote-ref-51)
52. Under Article 14, 15,16 of the Constitution equality amongst the gender has been elaborately enunciated [↑](#footnote-ref-52)
53. For further details see Incidence of Crime Against Women in India, available at: [http://www.glo](http://www.glo/) balgiving.org-end-vioe. [↑](#footnote-ref-53)
54. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A (XXI), and came in force from 3 January 1976. It commits its parties to work toward the granting of economic, social, and cultural rights(ESCR) to the NonSelf-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of September 2018, the Covenant has 169 parties [↑](#footnote-ref-54)
55. The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly through GA. Resolution 2200A (XXI) on 16 December 1966, and in force from 23 March 1976 in accordance with Article 49 of the covenant. Article 49 allowed that the covenant will enter into force three months after the date of the deposit of the thirty-fifth instrument of ratification or accession. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of August 2017, the Covenant has 172 parties and six more signatories without ratification [↑](#footnote-ref-55)
56. The Convention on the Political Rights of Women was approved by the United Nations General Assembly during the 409th plenary meeting, on 20 December 1952, and adopted on 31 March 1953. The Convention's purpose is to codify a basic international standard for women's political rights [↑](#footnote-ref-56)
57. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. [↑](#footnote-ref-57)
58. The 1993 World Conference on Human Rights recognized violence against women as a human rights violation and called for the appointment of a Special Rapporteur on violence against women in the Vienna Declaration and Programme of Action. It contributed to the 1993 Declaration on the Elimination of Violence against Women. [↑](#footnote-ref-58)
59. The Beijing declaration and platform for Action is a global commitment to achieving equality, development and peace for women worldwide. It was adopted in September 1995 at the Fourth world Conference on Women. It builds upon consensus and progress made at earlier UN conferences, particularly the Conference on Women in Nairobi in 1985. [↑](#footnote-ref-59)
60. For the movements like. Save the Children, Doctors without Borders, vishaka ....campaigned to see international norms to be applied locally. [↑](#footnote-ref-60)
61. Ibid [↑](#footnote-ref-61)
62. Women's suffrage - the right of women to vote-has been achieved at various times in countries throughout the world. In many nations, women's suffrage was granted before universal suffrage, so women and men from certain classes or races were still unable to vote. Some countries granted suffrage to both sexes at the same time. This timeline lists years when women's suffrage was enacted. Some countries are listed more than once, as the right was extended to more women according to age, land ownership, etc. In many cases, the first voting took place in a subsequent year. Some women in the Isle of Man (geographically part of the British Isles but not part of the United Kingdom) gained the right to vote in 1881, Though it did not achieve nationhood until 1907, the colony of New Zealand was the first self-governing country in the world in which all women had the right to vote in, but not to stand for, parliamentary elections in 1893, followed closely by the colony of South Australia in 1894 (which, unlike New Zealand, allowed women to stand for Parliament), In Sweden, conditional women's suffrage was granted during the age of liberty between 1718 and 1772 [↑](#footnote-ref-62)
63. Prof Madhu Dandvate, former Finance Minister of India, delivered Besant lecture of Theosophical society Chennai on 27 December 2001 [↑](#footnote-ref-63)
64. Globalization implies the opening of local and nationalistic perspectives to a broader outlook of an interconnected and interdependent world wits free transfer of capital, goods, and services [↑](#footnote-ref-64)
65. Across national frontiers. However, it does not include unhindered movement of labor and, as suggested by some economists, may hurt smaller or fragile economies if supplied indiscriminately. Read more: [http://www.busienssdictionary.com/definition/globalization.](http://www.busienssdictionary.com/definition/globalization.html) [↑](#footnote-ref-65)
66. <http://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-andfigures> [↑](#footnote-ref-66)
67. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate such discrimination, for details see <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf> [↑](#footnote-ref-67)
68. <http://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-andfigures> [↑](#footnote-ref-68)
69. India ratified it because Article 14 of the Indian constitution, Equality before Law, states, "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article 15 Prohibits discrimination on grounds of religion, race, caste, sex or place of birth (nothing in this article shall prevent the State from making any special provision for women and children [↑](#footnote-ref-69)
70. Refer to sections [↑](#footnote-ref-70)
71. n 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the United Nations Charter. Those delegates deliberated on the basis of proposals worked out by the represen tatives of China, the Soviet Union, the United Kingdom and the United States at Dumbarton Oaks, United States in August-October 1944. The Charter was signed on 26 June 1945 by the representatives of the 50 countries. Poland, which was not represented at the Conference, signed it later and became one of the original 51 Member States. [↑](#footnote-ref-71)
72. The Preamble reads as follows:

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

.To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

.To regain 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, and

.To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

.To promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

.To practice tolerance and live together in peace with one another as good neighbours, and

.To unite our strength to maintain international peace and security, and

.To ensure, by the acceptance of principles and the institution of methods, that armed force shall

 .To employ international machinery for the promotion of the economic and social advancement of all peoples, [↑](#footnote-ref-72)
73. The Convention on the Political Rights of Women was approved by the United Nations General Assembly during the 409th plenary meeting, on 20 December 1952, and adopted on 31 March 1953. [↑](#footnote-ref-73)
74. The Declaration on the Elimination of Discrimination against Women is a human rights proclamation issued by the United Nations General Assembly, outlining that body's views on women's rights. It was adopted by the General Assembly on 7 November 1967. The Declaration was an important precursor to the legally binding 1979 Convention on the Elimination of All Forms of Discrimination Against Women [↑](#footnote-ref-74)
75. The Declaration on the Elimination of Violence against Women was adopted without vote by the United Nations General Assembly in its resolution 48/104 of 20 December 1993. Contained within it is the recognition of "the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings". The resolution is often seen as complementary to, and a strengthening of, the work of the Convention on the Elimination of All Forms of Discrimination against Women and Vienna Declaration and Programme of Action [↑](#footnote-ref-75)
76. The Conventions concerning Employment of Women during the Night are conventions drafted by the International Labour Organization (ILO) which prohibit women from performing industrial work during the night. The first convention was adopted in 1919 (as C04, shortened Night Work (Women) Convention, 1919) and revised versions were adopted in 1934 (C41, Night Work (Women) Convention (Revised), 1934) and 1948 (C89, Night Work (Women) Convention (Revised), 1948). A protocol (P89, Protocol to the Night Work (Women) Convention (Revised), 1948) to the convention was adopted in 1990 allowing for easing of the restriction under conditions. As of April 2011 the conventions had 27, 15, 46 (un-denounced) ratifications respectively. [↑](#footnote-ref-76)
77. The Convention concerning Discrimination in Respect of Employment and Occupation or Discrimination (Employment and Occupation) Convention (ILO Convention No.111) is an International Labour Organization Convention on anti-discrimination. It is one of eight ILO fundamental conventions. The convention requires states to enable legislation which prohibits all discrimination and exclusion on any basis including of race colour, sex, religion, political opinion, national or social origin in employment and repeal legislation that is not based on equal opportunities [↑](#footnote-ref-77)
78. The Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, or Equal Remuneration Convention is 100th International Labour Organization Convention and the principal one aimed at equal remuneration for work of equal value for men and women. States parties may accomplish this through legislation, introduction of a system for wage determination and/or collective bargaining agreements. It is one of 8 ILO fundamental conventions [↑](#footnote-ref-78)
79. Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (Entry into force: 11 Aug 1983) Adoption: Geneva, 67th ILC session (23 Jun 1981) - Status: Up-to-date instrument (Technical Convention).Convention may be denounced: 11 Aug 2023 - 11 Aug 2024 [↑](#footnote-ref-79)
80. In 1993, the World Conference on Human Rights was held in Vienna. It sought to review the status of the human rights machinery in place at the time. Women's rights activists mobilized to ensure that women's human rights were fully on the agenda of the international community under the rallying cry "Women's Rights are Human Rights." [↑](#footnote-ref-80)
81. See chapter 24 of Agenda 21, adopted by the United Nations conference on environment and development (Rio de Janerio, Brazil,3-14 June, 1992) [↑](#footnote-ref-81)
82. Vienna Declaration para 37 [↑](#footnote-ref-82)
83. Since 1993, some 35 countries have either adopted or worked on national action plans. Some have produced successor plans that aimed to build on earlier efforts. They include countries large and small, developed and developing, from all parts of the world. They include Brazil, South Africa, the Philippines, Ecuador, Indonesia, Kenya, Sweden, China and New Zealand. Australia has just released its third plan. further refer to <https://www.ishr.ch/sites/default/files/article/files/vdpa.pdf> [↑](#footnote-ref-83)
84. Over the past 20 years, the office of the High Commissioner for Human Rights and its mechanisms and human rights organizations have made considerable efforts to integrate gender perspectives into many other human rights issues. Ground was broken with the establishment of the International Criminal Court when the Women's Caucus got gender based persecution and a gender quota for judges included in the founding statute. Many advances in human rights over the last two decades reflect growing gender awareness in areas like sexual violence in conflict, maternal mortality, and sexual orientation and gender identity, pinioned by Charlotte Bunch - Founding Director and Senior Scholar of the Centre for Women's Global Leadership, Rutgers University [↑](#footnote-ref-84)
85. Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968). [↑](#footnote-ref-85)
86. o we can say that this International Conference on Human Rights., is affirming its faith in the principles of the Universal Declaration of Human Rights and other international instruments in this field, and urges all peoples and governments to dedicate themselves to the principles enshrined in the Universal Declaration of Human Rights and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare. See for details: INTERNATIONAL SERVICE FOR HUMAN RIGHTS 7, VIENNA DECLARATION AND PROGRAMME OF ACTION

 [↑](#footnote-ref-86)
87. See Collister ( Human Rights Officer with the International Service for Human Rights and an expert on LGBT rights) who succinctly declares: The growing visibility of the NGO movement in recent decades has been accompanied by an increase in attacks aimed at deterring NGOs from exposing human rights violations. Often those attacks are condoned or even orchestrated by States. The failure of States to protect in these instances undermines the call in the VDPA which urges that NGOs involved in the field of human rights should enjoy the rights and freedoms recognised in the Universal Declaration of Human Rights, and the protection of the national law'. ISHR is particularly concerned at the increasing level of attacks that defenders face when they engage with UN or regional human rights systems. These attacks have included media smear campaigns and death threats often from government officials. The reaction from the human rights systems has been weak, and States have not been held accountable to their obligation to protect. This failure from the human rights systems undermines the very standards they seek to promote. The call for protection in the VDPA must be seen as not only a call on States but also on the human rights systems, to step in and ensure that States are fully assuming their responsibility to protect, and that human rights defenders are able to fully and freely cooperate with the UN and regional human rights systems. Nevertheless women all over the world today are standing up for their rights. The Vienna conference and VDPA played a key role in advancing this human rights revolution. [↑](#footnote-ref-87)
88. Representation of women in the United Nations (UN), particularly at managerial and decisionmaking positions at the D-1 level and above, has been a United Nations General Assembly concern and goal since 1970. Since 1984, the Un secretariat, in order to achieve early Gender Equality, issued several five-year "Action Plans", including Strategic Plans, to improve the status of women in the Secretariat. These plans, however, did not have the desired impact, and progress in achieving gender parity remained slow. In December 1994, the UN General Assembly's "disappointment" that its Gender Equality target were not met urged the Secretary General to prioritize the recruitment and promotion of women to reach to 50/50 representation in D1 and above posts by 2000. In Feb 2004, gender Parity target for the secretariat was once again revised to 2015. In 2009, despite the plans, and GA resolutions, the representation of women in the UN Secretariat remained well below parity at 29.2 percent. For further details refer to UN Women. "Legislative basis for the UN Mandate on Representation of Women in the United Nations System: Commitments by the General Assembly to Gender Parity" [↑](#footnote-ref-88)
89. THEMATIC FOCUS an eminent jurist in one of his writings note that Vienna was a vital step forward in recognizing women's rights as human rights, many challenges remain in taking this awareness to effective action against such violations. Few governments pay more than lip service to these obligations. The political will and resources needed are sorely lacking. Impunity for violence against women still rages. Action on socio-economic aspects of sex discrimination languishes as does realization of most socio-economic rights. Backlash against women's claims to sexual and reproductive rights still blocks the realization of women's rights. Attacks on women's human rights defenders have increased as women are taken more seriously as agents of social change.(source HUMAN RIGHTS MONITOR QUARTERLY: ISSUE 1/2013)  [↑](#footnote-ref-89)
90. Millennium Development Goal 3 - Promote gender equality and empower women [↑](#footnote-ref-90)
91. SUSTAINABLE MILLENUM DEVELOPMENT GOAL 2015-2030 [↑](#footnote-ref-91)
92. The act of dialogue among cultures and civilizations faces multiple theoretical and practical questions. Fundamental questions regarding civilization and culture, and the intellectual and scientific preoccupations in this regard should not be underestimated. The main objective for this initiative of dialogue among cultures and civilizations is in fact to initiate a new paradigm in international relations and those among human beings in our contemporary world. This necessity will be clearer when we compare it with the other paradigms which currently form the basis of international relations. It is through a fundamental and NS structural critique of these paradigms that the raison d'être for this new paradigm is identified.  [↑](#footnote-ref-92)
93. The dialogue among civilizations make an improved awareness and understanding of the common values shared by all humankind, Recognizing that human rights and fundamental freedoms derive from the dignity and worth inherent in the human person and are thus universal, indivisible, interdependent and interrelated, and that the human person is the central subject of human rights and fundamental freedoms and, consequently, should be the principal beneficiary and should participate actively in the realization of these rights and freedoms [↑](#footnote-ref-93)
94. Article 1 [↑](#footnote-ref-94)
95. Ibid [↑](#footnote-ref-95)
96. Article 2 [↑](#footnote-ref-96)
97. Article 3 [↑](#footnote-ref-97)
98. Article 4 [↑](#footnote-ref-98)
99. Article 5 [↑](#footnote-ref-99)
100. Article 10 [↑](#footnote-ref-100)
101. Headquartered at the United Nations in New York, UN Women promotes women's empowerment, rights and gender equality globally, as well as within and among individual countries through a network of sub-regional, country and liaison offices [↑](#footnote-ref-101)
102. Alongside strides in school enrolment, India is also close to gender parity in the classroom, notes UNESCO's Education for All Global Monitoring Report, 2015. India is, however, behind in goals set for quality of learning outcomes, adult illiteracy and checking the mushrooming of private schools in urban slums. The girls-to-boys ratio in primary classes is already 1.02 while that in secondary school is 0.94. "In fact, India is predicted to be the only country in South and West Asia to have an equal ratio of girls to boys in both primary and secondary [↑](#footnote-ref-102)
103. Raja Ram Mohan Roy remembered for his relentless efforts in abolishing the practice of Sati Pratha, Swami Dayananda started campaign against Untoucha bility, Child Marriage etc., Ishwar Chandra Vidyasagar was one of the most remarkable social reformers of 19th century. He persuaded the British government to make a law legalizing widow remarriages; thus the Widow Remarriage Act, 1856 [↑](#footnote-ref-103)
104. The All India Women's Conference (AIWC) is a non-governmental organization (NGO) based in Delhi. It was founded in 1927 by Margaret Cousins in order to improve educational efforts for women and children and has expanded its scope to also tackle other women's rights issues. The organisation is one of the oldest women's groups in India and has branches throughout the country [↑](#footnote-ref-104)
105. National Federation of Indian Women is a women's organisation. It was established in 1954 by several leaders from Mahila Atma Raksha Samiti including Aruna Asaf Ali [↑](#footnote-ref-105)
106. The Indian National Army (INA; Azad Hind Fauj; lit.: Free Indian Army) was an armed force formed by Indian nationalist Rash Behari Bose in 1942 in Southeast Asia during World War II. Its aim was to secure Indian independence from British rule. It formed an alliance with the Empire of Japan in the latter's campaign in the Southeast Asian theatre of WWII.The army was first formed in 1942 under Ras Behari Bose ,Mohan Singh, by Indian PoWs of the British Indian Army captured by Japan in the Malayan campaign and at Singapore [↑](#footnote-ref-106)
107. The Rani of Jhansi Regiment was the Women's Regiment of the Indian National Army, the armed force formed by Indian nationalists in 1942 in Southeast Asia with the aim of overthrowing the British Raj in colonial India, with Japanese assistance. It was one of the very few all-female combat regiments of the Second World War on any side [↑](#footnote-ref-107)
108. Like sarojni naidu, Aruna Asaf Ali [↑](#footnote-ref-108)
109. Sarojini Naidu, K. Hurshedbehn, Mirdula Sanuthai, Hansa Metha, Avabtujgavau Gokhale, Shantabai Vengsantan, Durgabai, Lilavathi Munshi, Captain Sisth Perinbehn, Goshibehn, Avantikabai Gokhale, Jamkidevi, Lukanji, Anajuyabai Kale, were the prominent women leaders who led the Satyagraha in their own provinces [↑](#footnote-ref-109)
110. Kakori Conspiracy (or Kakori train robbery or Kakori Case) was a train robbery that took place between Kakori and, near Lucknow, on 9 August 1925 during the Indian Independence Movement against the British Indian Government. The robbery was organised by Hindustan Republican Association (HRA). [↑](#footnote-ref-110)
111. The Mahila Rashtriya Sangha (MRS, and also known as the Mahila Rashtriya Sangh) was the first organisation established in India with the aim of engaging women in political activism. It was formed in Bengal Presidency, British India, in 1928 by Latika Bose upon the instigation of Subhas Chandra Bose, a prominent Indian nationalist leader. Believing that improvement of the status of women and achievement of self-governance for India were inseparable aims, the MRS was a empowerment institution body that placed much emphasis on education as a means to achieve its goal. [↑](#footnote-ref-111)
112. Latika Ghosh was the Oxford educated niece of Arubindo Ghosh. She started the Mahila Rashtriya Sangha (MRS) in Chiitagong in 1928 at the behest of Net [↑](#footnote-ref-112)
113. Right to vote has been prescribed under Article 326 of the Indian Constitution, which guarantees right to vote to every citizen above age of 18 years. In 61st amendment in 1989 it was changed from 21 years to 18 yearsFurther, Section 62 of the Representation of People's Act, 1951 states that every person who is in the electoral roll of that constituency will be entitled to vote. [↑](#footnote-ref-113)
114. Article 42 of india constitution provides for securing just and humane conditions of work and for maternity relief. [↑](#footnote-ref-114)
115. Article 45: envisages that the state shall endeavor to provide early childhood care and education children until they complete the for age of six years. Read more at: <https://www.examrace.com/Current-Affairs/NEWS-Constitutional-Provisions-ofChildren-Who-is-a-Child-Hausla-2017-for-Children-Important.htm> Copyright © [www.www.examrace.com](http://www.www.examrace.com/) [↑](#footnote-ref-115)
116. Article 39d states. The state shall, in particular, directs its policy towards securing - that there is equal pay for equal work for both men and women. [↑](#footnote-ref-116)
117. The Universal Declaration of Human right (UDHR) is a historic document that was adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 at the Palais De Chaillot in Paris, France. Of the then 58 members of the united nations, 48 voted in favor, none against, eight abstained, and two did not vote. [↑](#footnote-ref-117)
118. Quoted by Pandit Jawaharlal Nehru 1951. These words are often repeated because it is an accepted fact, that only when women are in the main stream of progress, then any economic and social development be meaningful. Source <https://books.google.co.in/books?isbn=8176254797> [↑](#footnote-ref-118)
119. Hansa Jivraj Mehta 93 July 1897 - 4 April 1995) was a reformist, social activist, educator, independence activist, feminist and writer from India. [↑](#footnote-ref-119)
120. India Of My Dreams By: Krishna Kripalani compiled: R. K. Prabhu with a foreword by: Dr. Rajesdra Prasad ISBN 81-7229-002-0 Printed and published by: jitendra T. Desai Navajivan Publishing Hourse, Ahemadabad-380 014, India. Navajivan Trust, 1947 [↑](#footnote-ref-120)
121. 208 us 412 (1908) [↑](#footnote-ref-121)
122. Articles 12-35) Part III of the Indian constitution talks about Fundamental Rights. The fundamental rights were included in the constitution because they were considered essential for the development or the personality of every individual and to preserve human dignity. All people, irrespective of race, religion, caster or sex, have been given the right to move the Supreme Court and the High courts for the enforcement of their fundamental rights. There are seven categories of Fundamental rights which are covered from articles 12-35. [↑](#footnote-ref-122)
123. Marc Galanter points out that the many name for affirmative action in India are similar to the different name used in the U.S. for affirmative action such as "reverse discrimination". Other names that describes India's affirmative action programs include "special treatment", "protective discrimination," "special provision, "etc. [↑](#footnote-ref-123)
124. Mackinnon Mackenzie and co. Itd v/s Audrey D' Coste, 1987 AIR SC 1281 Govt. A,P v/s P.B Vijaya Kumar AIR 1995 SC 1648. [↑](#footnote-ref-124)
125. AIR 1981 SC 1829. [↑](#footnote-ref-125)
126. AIR 1997 SC 3014. [↑](#footnote-ref-126)
127. 1982 AIR 879, 1982 SCR (3) 298 [↑](#footnote-ref-127)
128. The First Amendment of the constitution of India, enacted in 1951, made several changes to the Fundamental Rights provisions of the constitution. It provided against abuse of Freedom of speech and expression. Validation of Zamindari abolition laws, and clarified that the right to equality does not bar the enactment of laws which provide "special consideration" for weaker sections of society. [↑](#footnote-ref-128)
129. It provides provision for just and humane conditions of work and maternity relief. The state shall make provision for securing just and humane conditions of work and for maternity relief. [↑](#footnote-ref-129)
130. Art. 16(4A) nothing in this article shall prevent the state from making provision for reservation in matters of promotion, with consequential seniority, to any class of posts in the services under the state in favour of the scheduled castes and the scheduled Tribes which, in the opinion of the state, are not adequately represented in the services under the state. This clause does not affect the decision as regards other backward classes but make it inapplicable to the scheduled castes and the scheduled tribes Justifying reservations for the scheduled castes and scheduled Tribes candidates in promotion, the court had at one point held that ever their of the general class candidates. (4A) Nothing in this article shall prevent the state from making provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the service under the state in favour of the scheduled castes and the scheduled Tribes which, in the opinion of the state, are not adequately represented in the services under the state. This clause does not affect the decision as regards other backward classes but makes it inapplicable to the scheduled Tribes candidates in promotion, the court had at one point held that even their seniority acquired by promotions of the general class candidates could not be affected by subsequent promotion of the general class candidates [↑](#footnote-ref-130)
131. Via the 81st Amendment, the government had inserted Article 16 (4B). [↑](#footnote-ref-131)
132. AIR 1995 SC 1648 [↑](#footnote-ref-132)
133. AIR 2003 SC 3331 [↑](#footnote-ref-133)
134. AIR 1997 SC 3014 [↑](#footnote-ref-134)
135. 1978 AIR 597, 1978 SCR (2) 621, Bench: Beg M. Hameedullah (cj), Chandrachud, Y.V., Bhagwati, P.N., Krishnaiyer, V.R. &untwalia, N.L., Fazalali, S.M, &Kailasam, P.S. [↑](#footnote-ref-135)
136. It was ratified in 1971 as part of the Bill of Rights. The Fifth Amendment applies to every level of the government, including the federal state, and local levels, as well as any corporation, private enterprise, group, or individual, or any foreign government in regards to a US citizen or resident of the US. The Supreme Court furthered the protections of this amendment through the Due Process clause of the Fourteenth Amendment [↑](#footnote-ref-136)
137. The Fundamental Rights guaranteed by Article 14,20, 21, 21, 22, 23, 24, 25,26, 27 and 28 are available to all persons whether citizens foreigners. [↑](#footnote-ref-137)
138. AIR 1991 SC 207, 1991 (61) FLR 688, JT 1990 94) SC 169, (1991) IILLJ 269 SC, 1990 92) SCALE 849, 91991) 1 SCC 57, 1991 (1) UJ 109 SC, Bench: K J Shetty, A Ahmadi [↑](#footnote-ref-138)
139. AIR 2003 P&H 353 [↑](#footnote-ref-139)
140. Raj Bahaduar v. Legal Remembrancer, Air 1953 Cal, 522. [↑](#footnote-ref-140)
141. While the constitution of India does not define forced labour, the supreme court of India has read his provision expansively, and provided specific guidance on the definition. In the case of People's union of Democratic Rights vs. Union of India and others, 1982, the supreme court of India determined that forced labour should be defined as any labour for which the worker received less than the government-stipulated minimum wage: "ordinarily no one would willingly supply labour or service to another for less than the minimum wage... [unless] he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive.." [↑](#footnote-ref-141)
142. Now "The immoral Traffic (prevention) Act, 1956 [↑](#footnote-ref-142)
143. Distributive justice is a concept that addresses the owner ship of goods in a society. It assumed that there is a large amount of fairness in the distribution of goods. Equal work should provide individuals with an equal outcome in terms of goods acquired or the ability to acquired goods. [↑](#footnote-ref-143)
144. Amendment of the Constitution came in the year 1978 [↑](#footnote-ref-144)
145. (1992) 94 BOMLR 238, (1995) IIILLJ 443 Bom, Bench: K Sukumaran, B Srikrishna [↑](#footnote-ref-145)
146. This Act 25 of 1956 was amended by Act 49 of 1987. [↑](#footnote-ref-146)
147. Peoples union for democratic Right v. union of India, AIR 1982 SC 1473. For discussion on this case, see supra, Chs, XXIII [↑](#footnote-ref-147)
148. Supra Section C [↑](#footnote-ref-148)
149. AIR 1982 Sc 879: (1982) 1 SCC 6181 [↑](#footnote-ref-149)
150. AIR 1991 SC 1173, 1176 (1991) 1 SCC 619 [↑](#footnote-ref-150)
151. Associate Banks officers Association v. State Bank of India, AIR 1998 Sc32; (1998) 428. [↑](#footnote-ref-151)
152. Ibid. [↑](#footnote-ref-152)
153. Federation of All India Customs and Central Excise Stenographers (Recognised) v. India AIR 1988 SC 1291: (1988) 3SCC 91. Also see, state of Haryana v. Jasmersingh 11 SCC 77: AIR 1997 [↑](#footnote-ref-153)
154. State of Madhya Pradesh v. Pramod Bhartiya, AIR 1993 Sc 286: (1993) 1 SCC 539. [↑](#footnote-ref-154)
155. It came into force on First day of July 1924. [↑](#footnote-ref-155)
156. Act No. 34 of 1948, 19th April, 1948 An Act to provide for certain benefits to employees in case of sickness, maternity and employment injury' and to make provision for certain other matters in relation thereto. [↑](#footnote-ref-156)
157. The maternity benefit Act 1961 protects the employment of women during the time of her maternity and entitles her a maternity benefit- i.e. full paid absence from work- to take care for her child. [↑](#footnote-ref-157)
158. hey payment of Bonus Bill have been passed by both the Houses of Parliament, received the assent of the president on 25th September, 1965. It came on the status Book as THE PAYMENT OF BONUS ACT, 1965 (21 of 1965) [↑](#footnote-ref-158)
159. . AIR 2000 SC 1274: (2000) 3 SCC 244. [↑](#footnote-ref-159)
160. Legal experts say that the Supreme Court missed an opportunity to decide on the issue in 2017 when it outlawed triple talaq without addressing the core issue: whether personal law practices should prevail over the fundamental right of life, dignity and non-discrimination. The Constitution bench of the court to take suomotu cognizance of the discriminatory practices against Muslim women. This Bench pointed out that it had been 30 years since the court, in the Shah Bano case, urged the government to frame a common code to "help in the cause of national integration." The constitution Bench's judgment came about a year after the law commission, in a novel move in October 2016, published a "questionnaire" to test the waters on the UCC. It wanted to see whether the nation was ready for it. The questions included "what measures should be taken to sensitize society to a common code or codification of Personal Law," and would the UCC ensure "gender equality." In the Shah Bano case, the court lamented that Article 44 remained a "dead letter". Chances are that it may continue to remain so. In its consultation, the law commission chose codification of personal laws over the UCC as a way to end discrimination within religious. Codification of various practices and customs would make them 'law' under Article 13 of the constitution. Any laws' that comes under Article 13 should be consistent with the fundamental rights, the Law commission has reasoned. This would protect the plurality of religions, too, and may be the way forward for the near future. In fact, the law commission has suggested in no uncertain terms that the UCC is "neither necessary nor desirable at this stage in the country." It said a unified nation does not necessarily need to have "uniformity." [↑](#footnote-ref-160)
161. AIR 1995 SC 1531 [↑](#footnote-ref-161)
162. The 42nd amendment to constitution of India, officially known as the constitution (Forty-second amendment) Act, 1976, was enacted during the Emergency (25 June 1975-21 March 1977) by the Indian national congress, government headed by Indira Gandhi. It laid down the Fundamental Duties of India citizens to the nation. This amendment brought about the most widespread changes to the constitution in its history, and is sometimes called a "mini constitution" or the "constitution of India" [↑](#footnote-ref-162)
163. 3rd and 74th constitutional Amendments were passed by parliament in December, 1992.... The Acts came into force as the constitution 73rd Amendment) Act, 1992 on April 24, 1993 and the constitution (74th Amendment) Act, 1992 on June 1, 1993. [↑](#footnote-ref-163)
164. Article 243D in the constitution of India 1949 243D. Reservation of Seats (1) Seats shall be reserved for (a) the scheduled castes; and (b) the scheduled Tribes, in every panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total number of seats to be filled by direct election in this panchayat as the population of the scheduled castes in that Panchayat area or of the scheduled Tribes in that Panchayat are bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a panchayat. (2) Not less than one third of the total number of seats reserved under clause (1) shall be reserved for women belonging, to the scheduled castes or, as the case may be, the scheduled Tribes. (3) Not less than one third (including the number of seats reserved for women belonging to the scheduled castes and the scheduled Tribes) of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a panchayat. [↑](#footnote-ref-164)
165. 43T. Reservation of Seats

(1) seats shall be reserved for the scheduled castes and the scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the scheduled castes in the Municipal area or of the scheduled tribes in the municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one third of the total number of seats reserved under clause 91) shall be reserved for women belonging to the scheduled castes or, as the case may be, the scheduled Tribes. (3) Not less than one third (including the numbers of seats reserved for women belonging to the scheduled castes and the scheduled Tribes) of the Total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by in a municipality rotation to different constitution.

(4) The offices of chairpersons in the municipalities shall be reserved for the scheduled castes, the scheduled Tribes and women in such manner as the legislature of a state may, by law, provide. (

5) The reservation of seats under clauses (1) and (2) and the reservation of offices of chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration specified in article 334

of

(6) Nothing in this part shall prevent the legislature of a state from making any provision for reservation of seats in any Municipality or offices of chairpersons in the Municipalities in favour of backward class of citizens. [↑](#footnote-ref-165)
166. 1992 AIR 392 [↑](#footnote-ref-166)
167. AIR 1952 Calcutta 822 [↑](#footnote-ref-167)
168. AIR 1954 Mad 67, (1953) ILLMLJ 287 Bench: Rajamannar, V Ayyar [↑](#footnote-ref-168)
169. AIR 1968 AP 165 Bench: P J Reddy, Venkatesam [↑](#footnote-ref-169)
170. Sukhdeo vs government of Andra Pradish, 1966-1 Andra W R 294 [↑](#footnote-ref-170)
171. AIR 1979 pat 266 Bench: S S Ali, M M Prasad, L M Sharma, S Jha, B P sinha [↑](#footnote-ref-171)
172. 1992 AIR 1858 [↑](#footnote-ref-172)
173. Nainsukh vs State of U.P, 1953 SCR 1184 [↑](#footnote-ref-173)
174. AIR 1953 BOM 311, (1953) 55 BOMLR 323, ILR 1953 Bom 842 Bench: Chagla, Dixit [↑](#footnote-ref-174)
175. Benoy Bhusan Chakravarty Vs Govind Chandra Sharma, AIR 1955 N.U.C 1780 [↑](#footnote-ref-175)
176. AIR 1966 pat 214: Bench: Misra [↑](#footnote-ref-176)
177. KR Goinathan Nair vs Senior Insector cum secial sales officer of cooperative societies Ltd. AIR 1987,Ker 167 [↑](#footnote-ref-177)
178. The Rajasthan Muncipial Act and The Rajasthan Gram panchayat Act [↑](#footnote-ref-178)
179. AIR 1952 All 746:Bench: B B Prasad, Gurtu [↑](#footnote-ref-179)
180. 1954 AIR 321, 1954 SCR 930; Bench: Mahajan, Mehar Chand (cj), Mukherjea, B.K., Das, Sudhai Ranjan, Bose, Vivian, Hasan, Ghulam [↑](#footnote-ref-180)
181. AIR 1971 Pat 181 [↑](#footnote-ref-181)
182. Fuziunbi V. K. Khader Vali, AIR 1980 SC 1730 [↑](#footnote-ref-182)
183. AIR 1983 AP 635 [↑](#footnote-ref-183)
184. Smt. Harminder Kaur vs Harminder Singh Chaudhary, AIR 1984 Delhi [↑](#footnote-ref-184)
185. AIR 1984 SC 1526  [↑](#footnote-ref-185)
186. Supra Note 68 [↑](#footnote-ref-186)
187. AIR 1978 Delhi 296 [↑](#footnote-ref-187)
188. 303 [↑](#footnote-ref-188)
189. (1986) 1 SCR 743  [↑](#footnote-ref-189)
190. AIR 1966 SC 942 [↑](#footnote-ref-190)
191. AIR 1979 SC 1868 [↑](#footnote-ref-191)
192. 1973 1 Serv. L.R> 909 (All.) [↑](#footnote-ref-192)
193. 1975 lab.1.C 637 (part.) [↑](#footnote-ref-193)
194. AIR 1981 SC 1829 [↑](#footnote-ref-194)
195. Supra note 43 at 1851 [↑](#footnote-ref-195)
196. AIR 1992 SC 1695 [↑](#footnote-ref-196)
197. AIR 1982 SC 1473 [↑](#footnote-ref-197)
198. [↑](#footnote-ref-198)
199. AIR 1983 SC 328  [↑](#footnote-ref-199)
200. Randhir Singh vs Union Of India, AIR 1982 SC879  [↑](#footnote-ref-200)
201. Supra note 88 [↑](#footnote-ref-201)
202. ibid [↑](#footnote-ref-202)
203. Vidya Bal & Anr. ..Petitioners Vs.The State of Maharashtra & Ors., [↑](#footnote-ref-203)
204. AIR 2016 BOM 311 Writ Petition (Civil) 373 of 2006 scc [↑](#footnote-ref-204)