

Women and Law Notes for 8th Semester BA.LL.B
Paper Code: 412

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These notes will give the students a perspective of how the ground reality is with regard to the status in India as well as abroad with looking at the situation with a few specific indicators. These notes are research based on facts and figures. Discussions in class will be on the text from Women and Law by Prof Nomita Aggarwal.

Unit-1

Position of Women in India:

The position of women in ancient India has been a very complicated one because of the paradoxical statements in different religious scriptures and sometimes in the

same text at different places. Some have described their status as 'equals to men', while others have held not only in disrespect but even in positive hatred.

This is why it has presented many problems to sociologists while evaluating women's status in India. The cultural history of India reveals that in India theoretically women enjoyed the status of devi (goddess) as described in many religious texts of Hindus, the majority community in India.

Though woman enjoyed the theoretical importance which these texts outline for the wife who was defined ardhagini (better-half), but in practice she had a subservient position than man. She was regarded as a 'chattle' (a corporal moveable property) with no rights.

It was generally seen and believed that women had lower status with reference to power and influence than men in all spheres of life—family, community, religion and politics. Till recently, it was held that up to marriage, she is protected by her parents, during married life, she is looked after by her husband, and after the death of her husband, she was used to spend remaining years of her life under the roof of her children without any will or desire and rights in the family.

She was not allowed to decide how money would be spent or invested. She did not have any money at her disposal. She had to take permission to spend money from her elders—father, brother or husband or any other male or female elder person in the family.

In brief, she had no personality of her own. Some scholars have explained this inferior status of women as a result of patriarchal code of living. The rigid codes of behaviour as outlined for women in Brahmanical texts were also responsible for the low status of women in India. In the following paragraphs we will survey, in brief, the position of women in India from Rigvedic period to modern times.

Rigvedic Period:

It is generally upheld on the basis of the instances depicted in religious texts (e.g., Vedas, Upanishads, Smritis, epics like Ramayan and Mahabharat and other Dharmasastras) that in ancient India, especially in Rigvedic period, women enjoyed equal status with men.

They had an honourable place in the society. They were not secluded from men and freely participated in public life. They attended great assemblies and state occasions. They studied the Vedas and composed hymns. They also distinguished themselves in science and learning at their times. They were considered intellectual companions of their husbands, as the friends and loving helpers in the journey of life of their partners, in their religious duties and the centre of their domestic bliss.

In Vedic times, women were not treated as inferior or subordinate but equal to men in all matters of life. They were given education and had a voice in the selection of their husband. Marriage was regarded as a religious bond. Child marriage was

unknown. Often there were love marriages known as Gandharva Vivaha. Monogamy was a general rule. Polygamy was almost unknown.

Women enjoyed complete freedom in household matters. In the religious field, women enjoyed all rights and regularly participated in religious ceremonies. In fact, the performance of religious ceremonies was considered invalid without wife joining her husband as she was regarded as ardhagini (better-half).

The references in the Rigveda to the life of a widow are very few but it was not characterized by restrictions and austerities as in the post-Vedic days. Remarriage of widows was allowed. There are a number of references to the custom of Niyoga where a brother of the deceased husband/or any other person could marry the widow.

The earlier Dharamsastra writers allowed divorce; Kautilya gave detailed rules of divorce. As regards sati, burning of the widow, Shakuntala Rao Sastri writes that the Rigveda does not mention anywhere the practice of the burning or burial of widows with their dead husbands.

As regards property rights, according to Vedic hymns, both husband and wife was joint owner of the property. Women inherited and possessed property, but their rights were limited. As a daughter, she had no share in her father's property. Similarly, as a wife, a woman had no direct share in her husband's property.

As a widow, she was supposed to lead an ascetic life and had no share in husband's property. Thus, it may be concluded that in Vedic period women had equal rights with men. Their status was fairly high and they were treated as equals with men in almost all spheres of life.

Post-Vedic Period (Upanishads, Puranic and Smriti Periods):

The position enjoyed by women in Vedic period deteriorated in post-Vedic period. It was gradually degraded in the Puranic and Smriti periods. The description of position before BC 300 shows that she enjoyed a fairly high status, though not to the extent that she enjoyed in Vedic period.

It appears that several drastic changes that took place in the Indian society from about BC 300 to the beginning of the Christian era led to the curtailment of freedom of women. Imposition of Brahminical rules and code of conduct, rigid restrictions imposed by caste system and joint family system were the main reasons for lowering of status in this period.

A daughter began to be regarded as curse. They were denied the right of inheritance and ownership of property. Pre-puberty marriages came to be practised. She was forbidden to offer sacrifices and prayers and undertake pilgrimages. Practice of polygyny came to be tolerated.

Some of the Dharamsastras mention about the prohibition of Niyoga and widow remarriage. The widow was asked to devote herself to an ascetic life at home. Marriage became an irrevocable union as far as the wife was concerned.

The Smriti writers preached that the wife should look upon her husband as God. Widows were required to spend a life of penance and austerity. Sati had become popular by the 7th century AD. In this period, women were regarded just as a means of satisfying the physical desires of men.

Just to refer one instance of Mahabharata, it is said that 'there was no creature more sinful than man ... woman is the root of all ills'. This simple quotation is sufficient to prove that how disrespect was shown towards women. However, it is not out of place to mention here that Indian scriptures are full of paradoxical statements.

At one place, women were regarded as goddess, held in high esteem, where at other place in the same scripture, in some other context, they were regarded, no better than just slaves or chattels. Disregarding what was practised at any particular time, the ancient Indian scriptures and documents (Mahabharata, Ramayana, Vedic hymns, and various codes of the law of Manu) gave women a very high and protected place in their basic moral codes.

Husband and wife stood as equals before God. Up to this period purdah (veil) was not commonly observed by women. Divorce was, however, not permissible to them. But then, it was not permissible to men either. Their position was not one of complete disability but one dictated by justice and fairness. Women used to help their male members of their family in economic pursuits. They sometimes accompanied their husband or other members of the family in hunting and agricultural pursuits.

Medieval Period:

The period between 11th century to 18th century witnessed further deterioration in the position of women due to the impact of Muslim culture. In this period, female infanticide, child marriage, purdah system, sati and slavery were the main social evils affecting the position of women.

The birth of a female child began to be regarded as curse, a bad luck. They were almost confined to the doors of their homes. There was further curtailment of freedom of women in matters of education, mate selection, public appearances, etc.

Purdah system came to be rigorously followed. Women education was almost banned. More and more feeling of conservatism increased about women. She not only continued to hold low status in and outside home rather her position worsened in this period.

It is often said that in India the purdah (veil) system came into existence only after the arrival of Moghuls. A.S. Altekar, in his book. The Position of Women in Hindu Civilization (1962) writes: 'This for nearly 2000 years from BC 20 to 1800 AD, the

position of women steadily deteriorated though she was fondled by the parents, loved by the husband and revered by her children.

The revival of Sati, the prohibition of remarriage, the spread of Purdah and the greater prevalence of polygamy made her position very bad.' Thus, there was a vast difference between the status of women in the early Vedic period and the subsequent periods, stretching from post-Vedic to the medieval period. The dual standards of morality set by Manu Smriti and other Smritis continue to prevail right up to now though some changes are visible in urban educated women.

British Period:

During the period of British rule of about 200 years (early 18th century to the first half of 20th century) some substantial progress was achieved in eliminating inequalities between men and women in matters of education, employment, social and property rights and so forth.

Sati, purdah, female infanticide, child marriage, inheritance, slavery, prohibition of widow remarriage and the lack of women's rights in different fields were some of the problems which attracted the attention of British Raj.

Though the British rulers initially decided not to interfere with the traditional social fabric of Indian people (Hindus) and as such they took no steps to bring any change in the status of women in India. It is only in the latter half of the 19th century and the first quarter of the 20th century that they took some steps to abolish or change some social customs through legislative measures.

For such measures incentive was provided to them by some social reformers, such as Raja Ram Mohan Rai, Ishwar Chandra Vidyasagar, Dayanand Saraswati, Keshab Chandra Sen, Swami Vivekanand, Maharashi Karve, Justice Ranade, Mahatma Gandhi and others.

Through the efforts and the various movements launched by these great social leaders of the 19th century before independence, it had been possible to get many legislations passed and public opinion mobilized in favour of some issues of social reforms.

These steps have paved the way in removing the obstacles in the progress of women. Not only this, it had helped in eliminating inequalities between men and women and giving proper respect to the other-half of the society.

The most significant legislations relating to the problems faced by the Indian (Hindu) women passed during British period were as follows:

1. Abolition of Sati Act, 1813.
2. The Hindu Widow Remarriage Act, 1856.

3. Civil Marriage Act, 1872.
4. Married Women's Property Act, 1874.
5. The Child Marriage Restraint Act (Sharda Act), 1929.
6. Hindu Law of Inheritance Act, 1929.
7. Hindu Women's Rights to Property Act, 1939.
8. Hindu Marriage Disabilities Removal Act, 1946.

Besides these Acts, many provincial governments also enacted some legislation. In 1779, infanticide was declared to be a murder by the Bengal Regulation XXI. In 1804, this was extended to other parts of the country.

Another significant feature of the 19th century was the attempt made by social reformers to educate Indian girls. For more than 2,000 years, from about BC 300, there was practically no formal education for women. Only a few women of the upper castes and classes were given some education at home.

The ideas of imparting education in a formal manner first emerged during the British period. Christian missionaries took great interest to impart education to the girls. It was in 1824 when the first girl's school was started in Bombay (Mumbai). In 1882, girls were allowed to pursue higher education. Since then, to pursue there has been a continuous progress in the field of education of girls in India.

In the last decades of 19th century, a marked change took place in the outlook of both men and women about the education and employment of women as teachers, nurses, doctors, etc. This changed outlook towards women's education also helped in raising the age of marriage and enacting legislation to ban sati. Thus, the ground prepared by the 19th century social reformers and their untiring efforts led to the emancipation of women. This also helped them to take their rightful place in society.

After Independence:

In addition to the measures to uplift the status of women in India initiated by Britishers, many vigorous steps (legal, social, economic and political) have been taken by Government of India after independence by removing the hurdles put in their way by traditional past. The efforts of the social reformers and their movements launched in the pre-independence period also bore fruits. The Indian National Movement also led to the emancipation of Indian women.

The leaders of the national movement realized that the liberation of the country from the bondage of imperialism was impossible without the active participation of women who constituted half of the population of the country.

Most of the social reformers and thinkers of the 19th and 20th centuries were influenced by the tenets of the liberal philosophy of the West, which emphasized the principle of contract rather than status, a rational outlook of life and problems, freedom of speech, criticism of authority, questioning of accepted dogmas and finally the recognition of the value of the individual and insistence on the rights of man as opposed to his duties. They also got impetus from Upanishads and other Hindu scriptures.

The decades after independence have seen tremendous changes in the status and position of the women in Indian society. The Constitution of India has laid down as a fundamental right the equality of sexes.

But, the change from a position of utter degradation of women to a position of equality is not a simple case of the progress of women in the modern era. To uplift the status of women, many legislations pertaining to women were enacted after independence. These were mainly related to marriage, divorce, inheritance of property and employment.

Some of the important Acts are mentioned below:

1. The Hindu Marriage Validity Act, 1949.
2. The Special Marriage Act, 1954.
3. The Hindu Marriage Act, 1955 (amended in 1986 and 2010).
4. The Hindu Succession Act, 1956.
5. Immoral Traffic (Prevention) Act, 1956.
6. The Sati Prevention Act, 1987.
7. The Dowry Prohibition Act, 1961.
8. Indecent Representation of Women (Prohibition) Act, 1986.
9. Prohibition of Child Marriage Act, 2007.
10. Protection of Women from Domestic Violence Act, 2005.
11. Compulsory Registration of Marriage Act, 2006.

Besides, the Acts especially related to employment are:

1. The Factory Act, 1948.
2. Employees Insurance Act, 1948.

3. The Maternity Benefit Act, 1961.

4. The Equal Remuneration Act, 1976.

The above legislations and many other emancipatory actions of the social reformers have no doubt raised the status of women in India but still much is to be done in this field. The institution of bigamy (man marrying any number of women) has almost come to an end; if detected, it has become a punishable offence. Today, both sexes have the right to a civil marriage.

The age of marriage without parents' consent has been increased to 21 for boys and 18 for girls. Thus, monogamy along with facility of judicial separation, nullity and divorce (even on mutual consent), inheritance (equal share in paternal property), adoption, widow remarriage and sati abolition are some of the salient features of post-independence era which put men and women on equal footings from the point of view of legislative measures.

However, social legislations have not been very effective in India because of many reasons. One important reason is that most of the women are not fully aware of the measures adopted by the state for their upliftment and even if aware they do not use them because of the old social values that are still persisting. These traditions and values inhibit them to take any revolutionary steps.

Legal or legislative sanctions alone cannot bring any substantial change in the downtrodden position of women unless there is a marked change in their attitude and consciousness of men and women both. In this regard, their illiteracy is one of the great hindrances. According to the 2001 Census, 45.84 per cent and 2011 Census, 34 per cent of women are still illiterate in India. Even literate women also do not exercise their right of equality wherever it is required.

Thus, the status of women has been raised in the eyes of law, but they are still far from equal to men in every sphere of life. In practice, they continue to suffer discrimination, harassment, humiliation and exploitation in and outside home.

Theoretically, women might have been given more freedom but in practice, they still suffer many hardships, inhuman dignities and unworthy treatment everywhere. Within the home, she is still not treated at par with her male counterpart. Barring a few urban educated families, a baby girl is never welcomed with as much éclat and happiness as a baby boy.

Sometimes, the birth of a girl is regarded as a bad omen. They are not treated as equals to men, and not given due respect in the family (75 per cent women are in labour force but only 0.01 per cent has property rights). Male's roles as father and husband still dominate over both his children and wife.

The power to govern the home and the authority still rests in the hands of male head of the household. The dominant father model still persists in most of the middle and lower class families. Leaving aside a few, in the so-called modern families wives

have not become equal partners to their husbands even if they are well-educated or more educated to their husbands.

Most of the decisions of the household—from purchasing daily household items to decide about the education and marriage of their children—are taken by father/husband. There is no significant change in the attitude of the males even in the families where females are working outside the home.

Women as daughters or wives have to seek permission from their fathers/husbands for going outside home or for receiving higher education. In some families, it is seen that husbands do not allow their wives of the same caliber and education to take up any job assignment of the same status outside the home.

They prefer their educated wives should utilize their energies just in home management and rearing and caring of children or old parents. Women's lower status in Indian society contributes to early marriages, lower literacy, poor nutrition and high fertility and mortality levels, especially during the reproductive age.

In professional field their condition is also not better. Till recently, women from the higher castes were not allowed to work outside the home for some remunerative job. They do not enjoy equal rights in many matters in the occupational fields also.

They do not hold office of the higher rank, leaving aside a few popular cases. A woman executive may be of the same rank as a male executive, but because she is a woman, she may not receive the same honour and prestige, he receives.

The case of super cop Kiran Bedi is well known. She was superseded for the post of Delhi Police Commissioner by a man two years junior to her in service. Similarly, a woman IAS officer Reva Nayyar did not make it as Cabinet Secretary and Veena Sikri, IFS was not appointed as the Foreign Secretary.

There are still any numbers of other victims who wither unseen. Twenty-one years ago Wall street Journal had coined the term 'glass ceiling' to refer to apparent barriers that prevent from reaching the top hierarchy that still hold true, barring a few exceptional cases. Furthermore, women earn less than men have less access to more prestigious better paying occupations even when they are equal in all respects.

The best example is provided by the rural India, where in theory women are equated with goddess, but in actual practice, they are treated as drudges. The problems of inferiority, inequality, dependence and the exploitation experienced by women have not much changed in the villages, where most of the India lives, even after 65 years of independence.

Ill-treatment is coupled with no equal opportunity for social participation in spite of the immense amount of work which is expected of them in the home as well as in agricultural field or in some employment. One of the main characteristics of women is her multi-tasking dexterity. She is usually the one who handles home as well as occupational field or office.

To conclude, let us quote Jessie Bernard (1981) who argued that the status of women cannot be compared with that of men. It is generally said that men have higher status because they are usually better educated and have more organizational skills and experience than women.

In addition to these, women acquire their status from their husbands, that they are socialized to think themselves as inferior, and they are physio-psychologically conditioned, to use the modern term, they are programmed to be wives and mothers, non-competitive with men because they are less able to compete.

Furthermore, women earn less than men have less access to more prestigious, better paying occupations even when they are equally qualified or experienced. Even having children increases the husband's power, for the wife becomes more dependent.

STATUS OF WOMEN- ABROAD

According to a survey from Natwest International Personal Banking, 83 per cent of women who work abroad believe the experience will stand them in good stead for moving up the career ladder.

Having spent time working overseas is generally considered to demonstrate to future employers a number of important skills – such as a readiness to accept new challenges – while also allowing individuals to take advantage of career-advancing opportunities which might not have been available in their home countries.

Out of over 400 women interviewed by NatWest, over half (52 per cent) said that the experience of working overseas had exceeded their expectations.

Many participants admitted however that despite improved career prospects, working abroad could be difficult. Two-thirds said that they did not feel they were treated as "equal in status" to their male counterparts, with around a quarter complaining of male stereotyping (26 per cent) and of feeling left out from informal communication between colleagues (21 per cent). Nearly a fifth also agreed that they found the lack of influential mentors in their new home hard.

The country where women felt there was the most gender parity was Canada, followed by New Zealand, the US, and Australia. The place that came out worst – out of the 12 locations featured in the survey – was the UAE.

Introduction: Constitution of India and women

The status of women in India has been subject to many great changes over the past few millennia. From equal status with men in Ancient times through the law points of the medieval period, to the promotion of equal rights by many reformers, the

history of women in India has been eventful. In modern India, women have adorned high offices in India including that of the President, Prime Minister, Speaker of the Lok Sabha and leader of the opposition. However, women in India generally are still exposed to numerous social issues. According to a global study conducted by Thomson Reuters, India is the “fourth most dangerous country” in the world for women.

Women in India now participate in all activities such as education, sports, politics, media, art and culture, service sectors, science and technology etc. Indira Gandhi, who served as Prime Minister of India for an aggregate period of 15 years is a world’s longest serving woman Prime Minister. The Constitution of India guarantees to all Indian women equality under Article 14, no discrimination by the state under Article 15(1), equality of opportunity under Article 16, equal pay for equal work under 39 (d).

In addition, it allows special provisions to be made by the state in favor of women and children (Article 15(3)) renounces practice derogatory to the dignity of women (Article 51 (a)(e)). And also allows for provisions to be made by the state for securing just and human conditions of work and for maternity relief (Article 42).

Gender inequality:

Gender inequality is a form of inequality, which is distinct from other forums of economic and social inequalities and stems from pre existing gendered social norms and social perceptions. Further, gender inequality has adverse impact on development goals as it reduces economic growth. It hampers the overall well being because blocking women from participation in social, political and economic activities can adversely affect the whole society. Many developing countries including India have displayed gender inequality in education, employment and health. It is common to find girls and women suffering from high mortality rates and vast differences in education level.

A discussion of women in Islam and the western world:

The rise of fundamentalism in the Middle East has reinforced the idea that Islam is ubiquitous in culture and politics, that tradition is highly respected and women’s status is low. Legal issues and the status of women in the Middle East are quite different of those of women in the Western society. The social position of women in Muslim countries is worse than anywhere else, for example a woman can work and travel only with the written permission of her husband or male guardian, they can not obtain divorce without their husband’s cooperation who in contrast can obtain divorce simply by filling out a divorce form. Many Islamic fundamentalist are against any change regarding women’s rights that can undermine male domination with regards to family and society. Their goals are to setup special curricula to train girls for their role as housewives, to restrict their access to political life, remove them from the legal profession, and to impose a rigid dress code. Despite these inequalities between men and women, for many of these women freedom of expression and equality do not seem meaningful goals to obtain. The majority of

them see the Western culture as a danger for their native culture, bringing with it the disintegration of families and social breakdown.

If we look at Saudi Arabia, it is seen as the world's most repressive country when it comes to women's rights. The Wahhabi form of Islam requires women to submit to male guardianship all their lives, which means that men decide where women go outside their home, which school to attend, whom she marries, whether she works and even what medical treatments she takes. Saudi Arabia remains the only country that forbids women to drive.

Historically, Islam has resisted women's rights and modernization. Unjust laws, discriminatory constitutions, and biased mentalities that do not recognize women as equal citizens violate women's rights. A national, that is, a citizen, is defined as someone who is a native or naturalized member of a state. A national is entitled to the rights and privileges allotted to a free individual and to protection from the state. However, in no country in the Middle East or Northern Africa are women granted full citizenship; in every country they are second-class citizens. In many cases, the laws and codes of the state work to reinforce gender inequality and exclusion from nationality. Unlike in the West, where the individual is the basic unit of the state, it is the family that is the basis of Arab states. This means that the state is primarily concerned with the protection of the family rather than the protection of the family's individual members. The rights of women are expressed solely in their roles as wives and mothers.

Statistical report and discussion:

The reality of women's lives remains invisible to men and women alike and this invisibility persists at all levels beginning with the family to the nation. Although geographically men and women share the same space, they live in different worlds. The mere fact that "Women hold up half the sky"- does not appear to give them a position of dignity and equality. True, that over the years women have made great strides in many areas with notable progress in reducing some gender* gaps. Yet, 'the afflicted world in which we live is characterised by deeply unequal sharing of the burden of adversities between women and men'. Sprawling inequalities persist in their access to education, health care, physical and financial resources and opportunities in the political, economic, social and cultural spheres. 'Gender inequality holds back the growth of individuals, the development of nations and the evolution of societies to the disadvantage of both men and women'. Gender issues are not simply talking about women's issues. Understanding gender means understanding opportunities, constraints and the impact of change as they affect both men and women. The impact of inequality is reflected in the status of women worldwide and in India. *(The term "gender" is used to describe a set of qualities and behaviours expected from men and women by their societies. A person's social identity is formed by these expectations. These expectations stem from the idea that certain qualities, behaviour, characteristics, needs and roles are 'natural' for men, while certain other qualities and roles are 'natural' for women. Gender is not biological - girls and boys are not born knowing how they should look, dress, speak, behave, think or react. Their "gendered" masculine and feminine identities are constructed through the process of socialisation, which prepares them for the social

roles they are expected to play. These social roles and expectations differ from culture to culture and at different periods in history).

Women and Poverty 70% of the 1.2 billion people living in poverty are female
1 Women as Workers Women do more than 67% of the hours of work done in the world
Earn only 10% of the world's income And own only 1% of the world's property
2 The value of unremunerated work was estimated at about \$16 billion, from which \$11 billion represents the invisible contribution of women
3 Women are paid 30-40% less than men for comparable work on an average
4 60-80% of the food in most developing countries is produced by women
5 Women hold between 10-20% managerial and administrative jobs
6 Women make up less than 5% of the world's heads of state
7 Women and Education 60 % of the 130 million children in the age group of 6-11 years who do not go to school, are girls
8 Approximately 67% of the world's 875 million illiterate adults are women
3 out of 5 women in Southern Asia and an estimated 50% of all women in Africa and in the Arab region are still illiterate

Women and Health Women account for 50% of all people living with HIV/AIDS globally
10 In the year 2000, there were 80 million unwanted pregnancies
20 million unsafe abortions
5 lakhs maternal deaths
99% of these cases were reported in developing countries.

Child Sex Ratio (0_ 6 years) The child sex ratio has dropped from 945 females per 1000 males in 1991 to 927 females per 1000 males in 2001
12 The United Nations Children's Fund, estimated that upto 50 million girls and women are 'missing' from India's population because of termination of the female foetus or high mortality of the girl child due to lack of proper care
13 Women as Workers Female share of non-agricultural wage employment is only 17%
14 Participation of women in the workforce is only 13.9% in the urban sector and 29.9% in the rural sector
15 Women's wage rates are, on an average only 75 % of men's wage rates and constitute only 25% of the family income
In no Indian State do women and men earn equal wages in agriculture
16 Women occupy only 9% of parliamentary seats less than 4% seats in High Courts and Supreme Court less than 3% administrators and managers are women
17 Women and Education Close to 245 million Indian women lack the basic capability to read and write
18 Adult literacy rates for ages 15 and above for the year 2000 were female 46.4% male rate of 69%
19 Women and Health The average nutritional intake of women is 1400 calories daily. The necessary requirement is approximately 2200 calories
20 38% of all HIV positive people in India are women yet only 25% of beds in AIDS care centres in India are occupied by them
21 92% of women in India suffer from gynaecological problems
22 300 women die every day due to childbirth and pregnancy related causes
23 The maternal mortality ratio per 100,000 live births in the year 1995 was 440
24

Although efforts have been taken to improve the status of women, the constitutional dream of gender equality is miles away from becoming a reality. Even today, 'the mainstream remains very much a malestream'. The dominant tendency has always been to confine women and women's issues in the private domain. The traditional systems of control with its notion of 'what is right and proper for women' still reigns

supreme and reinforces the use of violence as a means to punish its defiant female 'offenders' and their supporters. Hence it is of no surprise when the National Crime Records Bureau (NCRB) predicted that the growth rate of crimes against women would be higher than the population growth rate by 2010. To elucidate the subject, let us take a look at some government data, from the NCRB, 2002 and research done by some non governmental organisations. However it is important to mention here, the data presented here is only a partial reflection of the extent of crimes against women as most incidents of violence go unreported.

Female Foeticide Female foeticide in India increased by 49.2% between 1999-2000 Source:NCRB 'Crime in India, 1999-2000' According to NCRB 'Crime in India, 2002' the following crimes were committed against women in India. Rape 16,373 women were raped during the year 45 women were raped every day 1 woman was raped every 32 minutes An increase of 6.7% in the incidents of rape was seen between 1997-2002 Incest 2.25% of the total rape cases, were cases of incest Sexual Harassment 44,098 incidents of sexual harassment were reported. 121 women were sexually harassed every day 1 woman was sexually harassed every 12 minutes An increase of 20.6% was seen in incidents of sexual harassment between 1997-2002 Importation of girls/Trafficking 11,332 women and girls were trafficked 31 women and girls were trafficked every day 1 woman or girl was trafficked every 46 minutes

Kidnapping and abduction 14,630 women and minor girls were kidnapped or abducted 40 women and minor girls were kidnapped every day 1 woman or minor girl was abducted every 36 minutes Dowry Related Murders 7,895 women were murdered due to dowry 21 women were murdered every day 1 woman was murdered due to dowry every 66 minutes Domestic Violence 49,237 women faced domestic violence in their marital homes. 135 women were tortured by their husbands and in-laws every day 1 woman faced torture in her marital relationship every 11 minutes Domestic violence constitutes 33.3% of the total crimes against women A steep rise of 34.5% in domestic violence cases was witnessed between 1997-2002 Suicide 12,134 women were driven to commit suicide due to dowry 1,10,424 housewives committed suicide between 1997-2001 and accounted for 52% of the total female suicide victims

Research Findings Child Sexual Abuse Out of 350 school girls 63% had experienced sexual abuse at the hands of family members 25% had been raped, forced to masturbate the perpetrator or forced to perform oral sex Nearly 33% said the perpetrator had been a father, grandfather or male friend of the family Source: A research carried out 1997-98 by Sakshi an NGO Sexual Abuse Out of 600 women respondents 76% had been sexually abused in childhood or adolescence Of OfOf the abusers 42% were 'uncle' or 'cousin' 4% were 'father' or 'brother' Source: research carried out 1997-98 by RAHI an NGO Domestic Violence Over 40% of married Indian women face physical abuse by their husband 1 in every 2 women faces domestic violence in any of its forms_ physical, sexual, psychological and/or economic.

Unit -2

Introduction to Directive Principles of state policy and status of women:

The Constitution of India aims to establish not only political democracy but also socioeconomic justice to the people to establish a welfare state. With this purpose in mind, our Constitution lays down desirable principle and guidelines in Part IV. These provisions are known as the Directive Principle of State Policy. In this lesson we will study about Directive Principles in detail. It is a well-established saying that rights have significance only when enjoyed in consonance with the duties. Therefore, the Fundamental Duties were inserted in Article 51A of our Constitution in 1976 by 42nd Amendment Act. In the original Constitution in 1950, there was no mention of these duties. It was expected that the citizens would fulfil their duties willingly. We will also learn about these duties in this lesson. Objectives After studying this lesson, you will be able to

- Understand the meaning of Directive Principles of State Policy
- Classify the Directive Principles into four groups i.e. economic and social, Gandhian, administrative and those related to international peace
- Recognize the role of Directive Principles in promotion of universalisation of education, abolition of child labour and improving the status of women
- Explain the Directive Principles which provide the framework of welfare state to be realised in practice in India
- Describe that the Directive Principles aim at the establishment of economic and social democracy
- Explain the role of government at different levels in implementing these principles
- Distinguish between Fundamental Rights and the Directive Principles of State Policy
- Appreciate the content of Fundamental Duties. I identify the Fundamental Duties given in the Constitution
- Appreciate the importance of Fundamental Duties despite their being non-justiciable.

Meaning of Directive Principles of State Policy

Directive Principles of State Policy are in the form of instructions/guidelines to the governments at the center as well as states. Though these principles are non-justiciable, they are fundamental in the governance of the country. The idea of Directive Principles of State Policy has been taken from the Irish Republic. They were incorporated in our Constitution in order to provide economic justice and to avoid concentration of wealth in the hands of a few people. Therefore, no government can afford to ignore them. They are in fact, the directives to the future governments to incorporate them in the decisions and policies to be formulated by them.

Classification Of The Directive Principles

Directive Principles of State Policy have been grouped into four categories. These are:

(1) the economic and social principles, (2) the Gandhian principles, (3) Principles and Policies relating to international peace and security and (4) miscellaneous. 7.2.1 The economic and social Principles The state shall endeavour to achieve Social and Economic welfare of the people by: (1) providing adequate means of livelihood for both men and women. (2) reorganizing the economic system in a way to avoid concentration of wealth in few hands. (3) securing equal pay for equal work for both men and women. (4) securing suitable employment and healthy working conditions for men, women and children. (5) guarding the children against exploitation and moral degradation. (6) making effective provisions for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement. (7) making provisions for securing just and humane conditions of work and for maternity relief. (8) taking steps to secure the participation of workers in the management of undertakings etc. (9) promoting education and economic interests of working sections of the people especially the SCs and STs. securing for all the workers reasonable leisure and cultural opportunities. (11) making efforts to raise the standard of living and public health. (12) providing early childhood care and education to all children until they complete the age of 6 years.

Universalisation of Education

The percentage of literate people at the time of independence was only 14%. Our government realized the importance of education and laid stress on the spread of literacy among the masses. Efforts have been made by the governments to raise this level. But a large section of our population is still illiterate. The foremost effort that is required in this field-is the spread of elementary education and its universalisation. Due to increased number of drop outs at the primary stage, the number of illiterates between 15 to 35 years of age has constantly increased. According to National Policy on Education, 1986, the government has launched National Literacy Mission, and 'Operation Blackboard' for the spread of mass literacy at primary stage. For those who were deprived of the benefits of education in their childhood, the government and many voluntary agencies are making special efforts to educate them by opening night schools and adult literacy centers. Many distance education programmes through correspondence courses, distance education and open learning have been started in different states. The National Institute of Open Schooling and several Open Universities have been set up to attain the goal of universalisation of education. The Directive Principles providing free and compulsory education for children upto the age of 14 years has been included through the 86th Amendment Act, 2002 in the list of Fundamental Rights under Article 21A. Though much has been achieved but still there is a long way to go to accomplish this objective of a welfare state.

Child Labour:

You have already read that one of the Directive Principles provides opportunities and facilities to children to develop in a healthy manner. You have also read about the Fundamental Right against Exploitation of children. Employment of children below the age of 14 years in mines and industries, which are hazardous to their health, is prohibited. In spite of these provisions, the desired results have not been

reached. In most of the cases, the parent's attitude is not conducive to the elimination of child labour. They force their children to do some sort of work to earn money and contribute to the family income. Poverty and social stigma are certain constraints on the path of eradication of this problem apart from the lack of will. All efforts by governments at various levels would prove futile unless the willingness and awareness to get rid of the social challenge comes from within. Dr. Abdul Kalam's 'dream of developed India 2020' can be achieved only when the children who are the future of the country are secured and protected from being exploited. The children should not be deprived of their right to enjoy childhood and right to education.

Status of Women:

Indian society basically is a male dominated society in which father has been head of the family and mother's position has been subordinated to him. The position of a woman in such a system is naturally weak. Women have been suffering a great deal on account of cruel social customs and religious practices like, pardah and dowry etc. Women as an integral part, account for 495.74 million and represent 48.3% of the country's total population as per 2001 census. Necessity of raising the status and education of women has already been stressed in our Constitution through Fundamental Rights and various Directive Principles of State Policy. They have been provided with the right to an adequate means of livelihood and equal pay with that of men for their work. Women workers have also been provided for health-care and maternity-relief. Even in the Fundamental Duties stress has been laid on the duty of every citizen of India to renounce practices derogatory to the dignity of women. Many laws and judicial decisions have restored the dignity of women. To protect their rights, measures have been taken to give them share in the family property. For their emancipation from cruel practices like bride burning for dowry, wife beating, sati etc. laws have been enacted. Prohibition of female infanticide, foetouscide, discrimination against girl child and child-marriage are some of the other measures that will help in improving the status of women. To empower women, reservation of one third of seats through the 73rd and 74th Amendment Act, 1991, 1992 for them has been made in the Panchayats and Municipalities. There is a similar proposal for reservation of seats for them in the Parliament and in the state Legislatures.

Critical Analysis Of Directive Principles:

Many critics have called these Directive Principles of State Policy as not better than 'New Year Greetings'. Even the rationale of inserting such high sounding promises has been questioned. It has been asserted that Directives are in the form of holy wishes having no legal sanction behind them. Government is not bound to implement them. Critics point out that they are not formulated keeping the practical aspect these ideals in mind. Despite all this, it can not be said that these Principles are absolutely useless. They have their own utility and significance. The Directive Principles are just like a polestar that provide direction. Their basic aim is to persuade the government to provide social and economic justice in all spheres of

life, keeping in view its limited material resources, at the earliest possible. Many of them have been implemented very successfully. Actually, no government can afford to ignore these instructions as they are the mirror of the public opinion and also reflect the basic spirit of the Preamble of our Constitution. Some of the steps taken in this direction are being listed below: (1) Land reforms have been introduced and Jagirdari and Zamindari systems have been abolished. (2) There has been rapid industrialization and tremendous increase in the agricultural production through Green Revolution. (3) National Commission for the Welfare of Women has been established. (4) Ceiling has been placed on land and property to fix the limit of person's holdings. (5) The privy purses of ex-princes have been abolished. (6) Life Insurance, General Insurance and most of the banks have been nationalised. (7) In order to reduce economic disparity, Right to Property has been deleted from the chapter on Fundamental Rights. (8) Subsidized public distribution schemes have been launched to help the poor people. (9) The rules require that both men and women are paid equal wages for equal work. (10) Untouchability has been abolished. Sincere efforts have been made for the upliftment of the SCs, STs and of other Backward Classes. (11) Through 73rd and 74th Amendments to the constitution, (1991 & 1992 respectively), Panchayati Raj has been given the constitutional status with more powers. (12) Small scale and village industries and Khadi Gram Udyog have been encouraged to bring prosperity to the rural areas. (13) India has also been actively co-operating with the U.N. to promote international peace and security. The above steps on the part of the central and state governments indicate that many Directive Principles of State Policy have been implemented to lay down the foundations of a secular, socialist and welfare state. However, still there is a long way to go to achieve all of them in full. There are many hindrances in the non-implementation of Directive Principles of State Policy. The main reasons are – (a) lack of political will on the part of the states, (b) lack of awareness and organized action on the part of the people and (c) limited material resources.

Need for a Uniform Civil Code?

The operation of separate personal laws for different religious communities in India is a legacy of colonial administration. Four religious communities, the majority Hindu, and the minority Muslim, Christian, and Parsi communities, have their own personal laws (other religious groups such as Sikh, Buddhist, Jain, and tribal and scheduled castes are subsumed under Hindu law). No one is exempt from or may opt out of a religious identity (Indians may choose, however, to be married under a nondenominational Special Marriage Act). Personal laws operate in matters relating to inheritance, marriage, divorce, maintenance, and adoption, which are regarded as "personal" issues, understood to be matters that relate to the family or "personal" sphere. Despite differences among them, the personal laws of all communities are discriminatory toward women.

Personal law, since it is envisaged as a means of securing community identity and respecting religious difference, operates therefore within rather than despite a constitutional commitment to the secularism of the Indian state. Any proposed reform or removal of personal laws becomes a fraught issue and is perceived as a threat to community identity and/or traditional patriarchal arrangements. Following the Shahbano case (which in 1986 resulted in passage of the regressive

Muslim Women's Protection of Rights on Divorce Act), a uniform civil code became an issue of moment in the Indian political scene. Since the BharatiyaJanata Party (BJP), subscribing to a *Hindutva* ideology and politics, came to power at the Center in 1998 with the promise of instituting such a code, it continues to be a prominent issue on the agenda of the Indian state.

Post-independence India followed a policy of cultural pluralism by maintaining systems of separate personal laws for Hindu, Muslim, and Christian communities, while concurrently assigning itself the goal of working towards a uniform civil code. Including a Declaration of Rights was very important to the early drafters. As Granville Austin noted: "India was a land of communities, of minorities, racial, religious, linguistic social and caste.... Indians believed that in their 'federation of minorities' a declaration of rights was as necessary as it had been for the Americans." 3 1 When addressing minority group safeguards in the Draft Constitution to the Assembly, Dr. B.R. Ambedkar, Chairman of the Drafting Committee, observed: I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of minorities to start with The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.³² The group rights granted to minorities, including restricting practices that were per se discriminatory against women, were not absolute, but rather were subject to state intervention. In sub-committee meetings, some members opposed allowing the free practice of religion and thought the definition of "practice" was too wide, since this could include such anti-social practices as devadasi,³³ purdah,³⁴ and sat.i³⁵ Due to protest by the sub-committee members, the Advisory Committee on Fundamental Rights altered the Minorities Sub-Committee's provisions, and in its own report instructed that the right to practice religion freely should not prevent the state from making laws providing for social welfare and reforms, including laws protecting the rights of women, a provision established in Article 15 of the Constitution.³⁶ Consequently, the drafters created fundamental constitutional rights with an explicit recognition of the need to protect group rights as well. Article 29, for example, protects the rights of groups to preserve their language, script, and culture and prohibits discrimination in access to public educational institutions based on religion, race, caste, or language.³⁷ Article 30 protects the right of religious and linguistic minority groups to establish educational institutions. 38 Other articles of the Constitution that guarantee certain fundamental rights to all citizens also operate as safeguards for groups, such as equality before the law (Article 14), freedom from discrimination on the basis of religion, race, caste, sex or place of birth (Article 15), and equal opportunity in public employment (Article 16). 3 9 Articles 29 and 30 bestow a positive right on groups to preserve their culture, whereas Articles 14 and 15 are couched in more individualistic terms, granting negative rights to individuals to protect them from excesses of the State. While the negative protections from discrimination based on cultural affiliation appear in the early articles, the possibility of a uniform civil code that would ensure all citizens' equal rights to freedom from oppression appears in Part IV of the Constitution. This Part, named

the "Directive Principles of State Policy," contains a range of directives to the state to seek economic, social, and cultural protections for Indian citizens. Article 41, for example, addresses the right to work, education, and public assistance. Article 38A addresses access to justice and free legal aid. Article 44 establishes the goal of a uniform civil code, though its language, like the language of the other articles in Part IV, is only exhortatory: "The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India." The drafters hoped that a civil code would ensure harmony between groups and strengthen the secular fabric of the country. Instead, contemporary India suffers from internal strife and communal violence. The goal of harmonious multicultural co-existence has not yet succeeded in India where manifestations of continued inter-group tensions include the demolition of the Babri Masjid by a Hindu mob in 1993, followed by the Bombay Riots, in which over 400 persons were killed; the murder of a Christian missionary and his two sons by a Hindu mob in 1999; the Best Bakery case, in which eleven Muslims and three Hindus were burned alive in March 2002 to avenge the death of fifty-eight people on a train carrying Hindu activists in February of the same year; and the attack by Muslim terrorists on a Hindu temple in Gujarat that killed thirty persons in September 2002. Moreover, Indian leaders have failed to prioritize gender justice within the governance system, leading to a lack of protection for women whose communities operate under the personal religious laws. More recently, support for the adoption of a uniform civil code has not been based on a recognition that women's rights might otherwise suffer under the personal laws. Rather, the support, especially from the Hindu Right, stems from a desire to limit the rights of cultural minorities. Ratna Kapur and Brenda Cossman have observed: It was this dichotomized discourse of the debate that inadvertently allied the women's movement with the Hindu Right and its vicious attack on minority rights. Despite the efforts of some feminist activists and organizations to distinguish their position, within the broader political discourse the positions were seen as one and the same. Feminist efforts to challenge the oppression of women within the private sphere of the family were appropriated, and transformed to support the communalist discourse of the Hindu Right.

As discussed above, the Indian Constitution exhorts the state to create a uniform civil code. Indeed, the idea of a uniform civil code predates the Constitution to the time of the British rule in India. Historians have noted that the institutionalization of separate laws reinforced the boundaries between minority communities and solidified identities along religious affiliations." Instead of moving toward a secular, equality-based legal system, the recognition of personal laws under the guise of protecting minorities from a dominant majority culture helped institutionalize patriarchal traditional practices that disadvantage Indian women. In particular, support for personal laws relating to polygamy, divorce, property inheritance, and maintenance, all of which directly impact the lives of women, lies at the center of the historical resistance to the implementation of a uniform civil code. At present, India does not have a uniform civil code that would apply to all citizens irrespective of their religious or cultural identity. However, all Indians can choose a civil marriage under the Special Marriage Act of 1954 irrespective of their religion. Should a couple register under this Act, they are bound by the Act's provisions, along with the provisions of the Indian Succession Act, which relates to the

succession of property, instead of their respective personal laws. 48 If a couple does not register under the Special Marriage Act, their respective personal laws apply. Thus the Special Marriage Act is an "opt out" provision for individuals who do not want to be bound to the marriage rules of their religious communities. Other examples of optional civil codes are the Guardian and Wards Act of 1890, 49 which allows civil courts to appoint a guardian for a minor. While the court is required to consider the minor's religion and governing personal laws, the minor's overall welfare is paramount. Also, the Medical Termination of Pregnancy Act of 197 150 permits any woman in India to have an abortion irrespective of her religious or cultural identity. Legislative reforms have followed different courses within the various religious communities. The first progressive legislation for women's rights related to restricting the practice of child marriages. Child marriage was a common practice among most Indians during the British rule, and various leaders attempted to abolish the practice. The first attempt was the Indian Christian Marriage Act of 1872, which proscribed marriage to girls under the age of twelve. 5 1 Due to this Act's social ineffectiveness, in 1891 the government passed the Age of Consent Act to prevent the consummation of marriages before the age of twelve.52 Despite different practices across the various religious communities and avowed dissatisfaction amongst orthodox Hindu and Muslim classes, all political parties ultimately accepted the legislation.5 3 Further, in 1929, the Child Marriage Restraint Act raised the minimum marrying age for girls to fourteen.54 The Muslim Personal Law (Shariat) Application Act of 193755 was the first women's-rights legislation targeted at Muslim communities. The Shariat Act clarified and codified civil marriage laws to ensure the protection of divorced Muslim women's inheritance rights.56 In support of the Bill, a Member of Parliament, Mr. Abdul Qaiyam, a Muslim himself, noted, "the Shariat Act [is] the result and the outcome of the great awakening that has taken place in the Muhammadan community in India... to restore all the rights which were granted by the Koran to Muslim women so as to put them on terms of absolute equality with men." 57 Another Member of Parliament, Mr. M.S. Aney from Berar, suggested doing away with the office of the qazis, which registers Muslim marriage deeds and conducts Muslim marriages, given that the Muslim community had turned to secular legislative remedies to this aspect of women's oppression. The Dissolution of Muslim Marriage Act of 1939, 5 8 giving Muslim women a right to unilateral divorce, was the last progressive legislation in favor of Muslim women in India. Previous to the passage of the Dissolution of Muslim Marriages Act, the Gazette of India noted: There is no proviso in the Hanafi Code of Muslim Law enabling a married Muslim woman to obtain a decree from the court dissolving her marriage in case the husband neglects to maintain her, makes her life miserable by deserting or persistently maltreating her or absconds leaving her unprovided for and under certain other circumstances. The absence of such a provision has entailed unspeakable misery to innumerable Muslim women in British India.59 The Act was compiled as an amalgamation of four different schools of jurisprudence under Islam, "picking the most liberal features from each of them."60 Civil legislation impacting the rights of women affected Muslim communities before addressing the rights of women under the Hindu personal laws. The second Hindu Law Committee appointed in 1944 to look into legislative reforms for a comprehensive code of marriage and succession submitted its recommendations for enacting a Hindu Code in 1947.61 Committee reports indicate that improving

women's status was the principle motivation for changes proposed to the Hindu Law in the draft code. 62 Accordingly, the Committee recommended allowing divorce and abolishing the traditional practice of polygamy. The Committee further recommended granting equal property rights to daughters and sons. Traditionalists opposed the Bill on many grounds, claiming that the grant of such rights to women impermissibly deviated from traditional Hindu practices. For example, the Shastra Dharma PracharSabha, a Hindu organization, distributed pamphlets during the debates on the Bill titled "Why Hindu Code Is Detestable," which proclaimed that the bill would allow inter-caste marriage, Sagotra marriage, 63 and free divorce, while criminalizing bigamy and giving married women rights to their father's property. This last consequence was especially alarming to Hindu traditionalists who saw women's property rights as a Muslim practice with no place under Hindu family law.

Sex Inequality in Inheritance:

In most Indian families, women do not own any property in their own names and do not get a share of parental property. Due to weak enforcement of laws of protecting them, women continue to have little access to land and property. The Hindu Personal Laws, 1956 gave women right to inheritance. However, the sons had an independent share in the ancestral property. While the daughters share were based on the share received by their father. Hence, a father could affectively disinherit a daughter by renouncing his share of the ancestral property, but the son would continue to have a share in own rights. After amendment of Hindu Laws in 2005, now women have been provided the same status as that of men. In 1986, the Supreme Court of India ruled that Shahbano, an old divorced Muslim women was eligible for maintenance and money. However, fundamentalist Muslim leaders, who alleged that the court was interfering in their personal law, vociferously opposed the decision. The Union government subsequently passed the Muslim Women's (Protection of Rights upon divorce) Act.

Guardianship:

The laws governing child custody in India are the Guardians and Wards Act 1890 and the Hindu Minority and Guardianship Act 1956. The Hindu Minority and Guardianship Act states that the 'natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property in the case of a boy or unmarried girl- the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother' (5). There are numerous connotations this can take, some of these are: that the law reflects our patriarchal social structure and that small children are always better off with the mother. A legal process that does not view legal guardianship to be co- terminus with physical custody of a child also complicates matters. In the United Kingdom only 8% of fathers function as single parents (6). In Germany local laws give sole custody to the mother unless she consents to joint custody. In at least one case the European Court of Human Rights has ruled this provision overtly

discriminatory (7); this has led to German lawmakers taking a re- look at their child custody provisions.

Unit-3

Criminal Laws and Women:

Adultery:

Section 497 of IPC says, "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to 5 years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor."

The concerned section was introduced into the Penal Code right at the time of enactment of the Code in 1860. It continued to function in the manner in which it was enacted till the advent of the Constitution of the Republic in 1950. Concerns whether the section would be at loggerheads with Article 14 of the Constitution, which guarantees the right to 'equality before law', on account of the fact that it leaves out the woman adulterer from the purview of punishment while punishing her male lover, arose. However, such concerns were laid to rest due to the presence of Article 15(3) of the Constitution, which states that, '*Nothing in this article (i.e. Article 15 as a whole) shall prevent the State from making any special provision for women and children*'. It is in furtherance of this principle enshrined in the Constitution that women continued to be left out from the purview of punishment for the commission of adultery.

Hence, as far as 'Adultery' is concerned, a case of adultery can't be filed against a woman even if she is guilty of having been involved in an extra-marital relation. However, unlike what the men's rights activists would like us to believe, section 497 'is not' in favour of women at all or at the most, it goes against women's interests more than it serves their interests.

No wife can bring to justice, the lover of her husband. But a husband can, with the help of this section, persecute his wife's lover.

If a married man is having an affair with an unmarried woman or a divorcee or a widow, it shall NOT be treated as adultery under this section. Even if a man is having an affair with a married woman, it shall not be treated to be a crime under this section, if the husband of the woman concerned, consents to it or if the affair is carried out with his connivance. This effectively means that husbands can freely indulge in having extramarital affairs with spinsters, widows, prostitutes or even married women whose husbands have consented to such a relation, directly or indirectly.

Women cannot file a case of adultery against their husbands under this section, even if he is having an extramarital affair with a married woman. On the other hand, the husband of an adulterer wife can not only file a case of adultery against his wife's

lover and bring him to justice, under this section, but can also file for a divorce from his wife, on the ground of adultery, if the charges brought under this section, are proved.

Last but not the least, the section does not even provide any provision which enables the court to hear the woman against whom the husband brings charges of having indulged in an extramarital affair. However, fortunately, in this case, the courts have already agreed that there is nothing in the section that prevents the concerned woman from being heard at the trial, if she makes an application to the court to that effect.

Basically, this section was enacted, solely and exclusively, to *protect the rights of the husbands*. Though the men's rights activists managed to portray this as a pro-women and anti-men provision of the Indian Penal Code, 1860, merely because of the fact that an adulterer wife is not punished for adultery and it is the man with whom she was committing the adultery, who goes behind the bars.

Law, as we know it, is an ever changing, dynamic subject. Any law, if it fails to keep pace with the changing times, becomes obsolete. Hence there is a need to revisit and review the present provision of the Indian Penal Code, dealing with adultery in India and make necessary changes, especially in the backdrop of the fact that other countries are increasingly doing away with adultery as a crime altogether, though, as had been rightly stated by the High Court of Bombay, 'Merely because adultery is not an offence in many countries and there is variance in quantum of sentence, Section 497 cannot be held as ultra vires to constitutional provisions.

A case under this section (i.e. section 497 of the IPC) can only be filed against the male with whom she enters into such a relation.

Rape:

"Rape is the highest in the class of all indignities, one which can never be fully righted and that diminishes all humanity."-Supreme Court of California in *M v. City of Los Angeles*

The above quotation doesn't even come close to the horror of a heinous crime like rape which tears the victim apart, both in physical and mental measure. The brutality of such an act is so sharp and deep that the victim is unlikely to completely shake off the trauma throughout their lives.

Rape is a type of sexual assault initiated by one against the other's consent with the purpose of forces sexual intercourse. In India, rape has been the subject of definition under Section 375 of the Indian Penal Code with its aggravated forms given under Section 376 of the I.P.C.

For a nation which reveres its women as goddesses, fresh crime statistics fail to reflect the very same. We have a case of rape every 29 minutes and a case of molestation every 15 minutes, which is inhuman to put it mildly for a divine nation such as ours.

However, it must be first understood that laws are only as good as the people who make them. In other words, the worldview and the very opinionated mind-sets of the society are what define what a law would be like. Therefore, despite the ultimate well-mindedness of the provisions on rape we must realize that it isn't a crime the society shares a common dais on. It was, and remains an issue that divides us especially in a nation like India where patriarchal, traditional hierarchies still exist.

"This is what God intended to happen," comments a member of the Haryana KhapPanchayat, a sentiment echoed by a senator in Indiana, United States. "The girl brought it on herself," says another self-proclaimed godman who adds that the victim should have called the offender brother. Such sentiments exist, or rather thrive and it is up to these laws to stand the tides of such sentiments and make the world a better place to live in.

Rape Under The Indian Penal Code:

Rape, its definition, elements and punishments have been given under Section 375-376. These sections were substantially amended on the recommendations of the Justice J.S. Verma Committee that was setup in wake of the 16 Dcember 2012 gang rape case. The amendment was made to make the provisions more inclusve and at the same time award a stricter punishment.

Under Section 375, Rape which derives from the Latin word '*rapio*' meaning '*to seize*' is defined as any act of penetration by penis or another body part or object, or any manipulation the woman's body parts under the following circumstances-
Against her will: Here, 'will' refers to the faculty of reasoning or the mental capacity to understand the consequences of doing or not doing a particular act. In *State of Punjab v. Gurmeet Singhit* was held that the prosecutrix who had been abducted and subjected to sexual intercourse forcibly had been raped against her will.

Without her consent: Consent refers to the positive concurrence of a woman's will. This is based on the principle that a man is the best judge of what is good for him/her and can consider and give consent to what he feels is good for him. In *Queen v. Flattery*, it was held that the girl's consent was meant for a surgical operation and not for sexual intercourse and such consent was manufactured and was not a ground for exemption from criminal culpability.

Consent obtained by fear of death or hurt of person or someone close: In '*State of Maharashtra v. Prakash*', it was ruled that where a gypsy woman was raped by police constables who beat her husband and threatened to put him in remand, it accounted for being a threat manufacturing a false consent. The infamous *Mathura Rape Case* held that where a woman was raped in a police station by police

constables with no sign of injury or any threat of the same, the meekness towards such an act constituted consent.

Under the pretence of being her husband: *Queen v. Elbakkay*, held that even on the account of a man representing himself to be a woman's boyfriend to have sexual intercourse, it accounted to false pretence.

Under intoxication or unsoundness of mind by which capacity to consent is undermined: This provision was a consequence of the Criminal Amendment Act of 1983 according to which where a woman has been intoxicated and is unable to judge or give consent to any act of sexual intercourse or where the woman is impaired with intelligence or social functioning skills, she is said to be intoxicated or unsound respectively.

Under eighteen years of age, irrelevant of consent: The consent of a woman is irrelevant and in fact, immaterial if she is below the prescribed age.

Unable to communicate consent:

Section 376 goes ahead to define the punishment for rape as under Section 375 which is a minimum of seven years extending to life plus fine. Sub-section 2 prescribes a stringent punishment (10 years to life) for certain special circumstances like a police officer committing rape in the premises of a police station or on a woman in his protective custody, a public servant who takes advantage of his position to rape a woman in his custody, an official in service within a jail or remand home who commits rape etc.

Justice Arijit Pasayat in his judgement in *State of Karnataka v. Puttaraja* held that a rapist not only robs a woman of her most cherished possession i.e. her chastity and dignity but also leaves an indelible mark on the society around the victim and the offender. Brilliantly put, we must keep this in mind while handing out punishments of sexual offences which leave a deep imprint on the moral compass of any society. In *State of Himachal Pradesh v. Raghubir Singh*, it was held that punishment for sexual assault may be reduced on rare, compassionate grounds.

Need to Streamline Rape Laws:

With a rising number of cases of rape, the public opinion in favour of death for rape convicts is higher than ever. Yet, members of the legal fraternity must see sexual offences like Rape through a legal perspective and not through the prism of public opinion. Finally, the question remains if the punishment is adequate in cases of rape under Section 375 and 376. This has been debated upon widely because there has never been a strict interpretation of the gravity of a crime like Rape or of the accused in such a crime. For example, in the United States of America, people convicted of sexual offences are given psychiatric and therapeutic help as they are viewed as 'sick' and not just as one of the crowd of prisoners in India's jails.

The rising tide of suggestions to streamline Rape laws under the Indian Penal Code include, Incestuous rape or rape by a person within the family must be made a statutory offence given the fact that cases of incest have risen over the years.

In India, most cases of rape either go unreported because of the inevitable social stigma that gets attached to the victim or are dismissed where the accused are acquitted due to lack of evidence or proof. This is largely because here, a case of rape includes the careful dissecting of a woman's character and chastity.

Domestic Violence:

The Protection of Women from Domestic Violence Act, 2005 21 Domestic Violence, particularly against women, is widely prevalent throughout the country, but owing to the patriarchal form of a "male dominated" society has been invisible in the public domain, and wife-beating is professed more as a norm than as an aberration. According to a 1999 survey, 56% women said it was OK if their husbands hit them, while 40% agreed that it was justified if they did not care for their children or take care of the household. Even women, who are educated, independent and belong to well-to-do families, continue to be silent victims." Till 2005, The Indian Penal Code 23 dealt with persons inflicting cruelty to a married woman U/S 498-A or 304-B. The law, therefore, was thought not to be addressing this phenomenon in its entirety as it dealt only with crimes committed against a married woman, and that too, for dowry. Other women - like sisters, mothers, aunts, daughters etc., though are subjected to violence, have no way of redressal of their grievances, even though domestic violence is a human rights issue and a serious deterrent to the development of the individual concerned. Hence the said Act was passed, keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India. The Act covers all women who are or have lived together in a shared household and are related by- consanguinity, marriage or through a relationship in the nature of marriage or adoption, as well as relationships with family members living together as a joint family. This includes sisters, mothers, widows, single women or living with the accused. "Domestic Violence" has been defined to include actual abuse or threat or abuse that may be physical, sexual, verbal, emotional, or economic. It provides for rights of women to "secure housing". It also gives the woman a right to reside in her matrimonial home or shared household, irrespective of the fact that she may have any rights on such a household or not. Such a right can be secured by the woman in form of a "residence order" passed by a Magistrate. The Act empowers a Magistrate to pass protection orders in favour of the aggrieved woman to prevent the accused from aiding or committing any act of domestic violence, entering the work place or any place frequented by the said woman, isolating any assets used by both the parties or causing violence to any of her relatives who are providing assistance to her. It further provides for appointment of "Protection Officers" for providing assistance to the aggrieved woman with respect to her medical examination, obtaining legal aid, safe shelter etc. Registration of non-governmental organizations as service providers for the said purpose has also been provided for, by this Act.

Offences Outraging the Modesty of a Woman:

“Modesty is not only an ornament, but also a guard to virtue...”

We may think that the position of women has changed in our society, especially in metropolitan cities, but that is nothing but a myth. We might have progressed but what's the point in boasting of our growth-story if it hasn't taught us to respect the modesty of women?

The offence of outraging the modesty of a woman has been dealt with in the Indian Penal Code under Section 509 and Section 354, which is an aggravated form of the offence mentioned under Section 509.

Section 509:

This section reads-

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

The object of this section is to protect the modesty and chastity of a woman. The offence under this section is cognizable, bailable, non-compoundable and triable by a Magistrate of first class. The punishment under this section may extend to one year with simple imprisonment or fine or both.

On a close reading of the section we can infer that, the basic constituents of the offence under Section 509 are intention to insult the modesty of a woman.

The insult must be caused by uttering some words, or making some sound, or gesture or exhibiting any object so as to be heard or seen by such woman, or By intruding upon the privacy of such woman.

The question of what constitutes an insult to female modest requires no description. Any song, picture, or figure exhibiting lewd suggestions are considered as immoral and insulting women's modesty.

If the above two ingredients are being fulfilled then a person can be held liable under Section 509.

In *Mrs. Rupandeol Bajaj &Anr v. Kanwar Pal Singh Gill &Anr*, the accused was held liable of outraging the modesty of an Officer of the Indian Administrative Service (I.A.S), belonging to the Punjab Cadre. He was held liable under both sections 509 and 354 of the IPC.

Section 354:

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

The essential ingredients of the offence under this section are:
A woman was assaulted or criminal force was used against her;
The accused intended to outrage her modesty or knew that her modesty was likely to be outraged.

What constitutes an outrage to female modesty is nowhere defined, however, the Supreme Court of India in *Ramkripal* case decided by Justices Ajit Pasayat and S.H. Kapadia brought clarity to section 354. The bench defined modesty as 'The essence of a woman's modesty is her sex, and thus giving skeleton to the flesh.'

Section 354 Under The Criminal Law (Amendment) Act, 2013

After section 354 of the Penal Code, the following sections have been inserted, namely :-

Section 354A-Sexual Harassment:

(1) The following acts or behaviour shall constitute the offence of sexual harassment
(i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
(ii) A demand or request for sexual favours; or
(iii) Making sexually coloured remarks; or
(iv) Forcibly showing pornography; or
(v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

(3) Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-section (1) shall be punishable with imprisonment of either description that may extend to one year, or with fine, or with both. Assault or use of criminal force to woman with intent to disrobe.

Section 354B:

Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and with fine.

Section 354C- Voyeurism:

Whoever watches, or captures the image of, a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.

For the purposes of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim’s genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.

Where the victim consents to the capture of images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Section 354D –Stalking:

(1) Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking: Provided that the course of conduct will not amount to stalking if the person who pursued it shows--

(i) that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or

(ii) That it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) That in the particular circumstances the pursuit of the course of conduct was reasonable.

(2) Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

Unit-4

Women Welfare Laws:

Dowry Prohibition Act

In India, Dowry (Hindi: दहेज, Dahēj] refers to the durable goods, cash, and real or movable property that the bride's family gives to the bridegroom, his parents, or his relatives as a condition of the marriage. It is essentially in the nature of a payment in cash or some kind of gifts given to the bridegroom's family along with the bride and includes cash, jewelry, electrical appliances, furniture, bedding, crockery, utensils and other household items that help the newlyweds set up their home. Dowry is referred to as Jahez in Arabic (derived from Islamic jahez-e-fatimi). In far eastern parts of India, dowry is called Aaunnpot.

Wedding gifts of the son of the Imam of Delhi India with soldiers and 2000 guests
The dowry system is thought to put great financial burden on the bride's family. In some cases, the dowry system leads to crime against women, ranging from emotional abuse, injury to even deaths. The payment of dowry has been prohibited under specific Indian laws including, the Dowry Prohibition Act, 1961 and subsequently by Sections 304B and 498A of the Indian Penal Code

Section 304B-Dowry Death:

The Indian Penal Code under defines it as-

Dowry death. (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation, For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

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

Punishment—Imprisonment of not less than 7 years but which may extend to imprisonment for life—Cognizable—Non-bailable—Triable by Court of Session—Non-compoundable.

Essential ingredients:

Death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances. Death should have occurred within seven years of her marriage. Her husband or any relative of her husband must have subjected the woman to cruelty or harassment. Cruelty or harassment should be for or in connection with the demand for dowry. Cruelty or harassment should have been meted out to the woman before her death.

In *Prema S. Rao v. Yadla Srinivasa Rao*, it was held that to attract the provisions of section 304B, one of the main ingredients which is required to be established is that "soon before her death" she was subjected to cruelty and harassment "in connection with the demand of dowry".

Expression 'soon before her death':

The expression 'soon before her death' used in the substantive section 304B, I.P.C. and Section 113B of the Evidence Act is connected to the idea of proximity text. No definite period has been indicated and the expression 'soon before her death' is not defined. The determination of the period which can come within the term 'soon before' is to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would

normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

Applicability:

In the case of *Vadde Rama Rao v. State of Andhra Pradesh*, it was argued that the husband or any of his relative could be guilty of the offence only if he or she directly participated in the actual commission of the offence. This contention was rejected by the Andhra Pradesh High Court. It observed that in its real import, section 304B would be applicable if cruelty or harassment was inflicted by the husband on any of his relative for, or in connection with demand for dowry, immediately preceding the death by bodily injury or by burning.

Burden of Proof:

The prosecution under section 304B cannot escape from the burden of proof that the harassment to cruelty was related to the demand for dowry and that it was caused "soon before her death". The word "dowry" has to be understood as it is defined in section 2 of the Dowry Prohibition Act, 1961. There are three occasions related to dowry, i.e., before marriage, at the time of marriage and at an unending period. The customary payment in connection with the birth of child or other ceremonies, are not involved within ambit of "dowry".

In *Patil Paresh Kumar Jayanti Lal v. State of Gujarat*, it was held that where the evidence revealed that accused-husband killed deceased-wife for not satisfying his dowry demand but there was nothing on record to show involvement of co-accused in-laws, co-accused in-laws are not guilty of offence under sections 304B.

In cases of *Ratan Lal v. State of Madhya Pradesh* and *N.V. Satyanandam v. Public Prosecutor*, it was ruled that in dowry death cases and in most of such offences direct evidence is hardly available and such cases are usually proved by circumstantial evidence. This section as well as section 113B of the Evidence Act enacts a rule of presumption, i.e., whether death occurs within seven years of marriage in suspicious circumstances. Burns or any other bodily injury may cause this. Thus, it is obligatory on the part of the prosecution to show that death occurred within seven years of marriage. If the prosecution would fail to establish that death did not occur within seven years of marriage, this section will not apply;

2. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex selection) Act, 1994:

The Act was enacted in 1994, amended and effectively implemented in 2003 and strictly amended in 2011. As can be seen from the daily media reports, almost all

over the country, absolute stringent action is being taken against all the erring radiologists/ sonologists/ gynecologists. The effective implementation of The Act has painted a grim picture of The Act. This article is an effort to show that fulfilling certain mandatory requisitions laid under the Act can easily follow The Act though draconic.

The PC-PNDT Act was enacted on 20 September 1994 with the intent to prohibit prenatal diagnostic techniques for determination of the sex of the fetus leading to female feticide. That is to say the preliminary object was to put a check on female feticide. No doubt the bare perusal of the Act indicates that it is a draconic act from the point of its effect on radiologists/sonologists. The Act does not offer any escape to the erring radiologist/sonologist.

But at the same time it is very simple to fulfill and abide by the requisitions of the Act. The few basic requirements of the Act are:Registration under Section (18) of the PC-PNDT Act.Written consent of the pregnant woman and prohibition of communicating the sex of fetus under Section 5 of the Act.Maintenance of records as provided under Section 29 of the Act.Creating awareness among the public at large by placing the board of prohibition on sex determination.A look at the basic requirement of the Act shows the simplicity of the Act, but non-compliance of the Act in any manner, be it the smallest of an error brings wrath upon the errant. The Act penalizes all the errants, either involved in sex determination or non-maintenance of records.

The Act is legislated in a manner that it should be a deterrent for those indulging in sex determination. The unfortunate decline in the male-female sex ratio has brought in stringent measures, there is suspension of registration, filing of criminal cases and sealing of machines. Besides, criminal prosecution will also bring in suspension and cancellation of registration granted by the State Medical Council.

Remedies are also provided–like filing an appeal before the appellate authority and getting the machine released from the court of law, but all these remedial measures are time-consuming and bring the career of an individual to a standstill.

It would not be out of place to therefore state that the most effective precautionary measures are to maintain records scrupulously, fill the Form-F as provided in the Act, accurately and correctly, submit the records to the appropriate authority within the stipulated time; then there will be nothing to worry.

There is no doubt that there are a few shortcomings in the Act but that does not give any reason for non-compliance of or contravention of any of the provisions of the Act.

The major contribution by radiologists/ sonologists/ gynecologists towards prevention of female feticide can be achieved by thus fulfilling the mandatory requisitions of the PC-PNDT Act.

3. Indecent Representation of Women (Prohibition) Act, 1986:

The Indecent Representation of Women (Prohibition) Act, 1986 was enacted on 23 December 1986 by 37th year of republic of India by Parliament. This Act was enacted to prohibit any representation of women indecently via advertisements or writings, paintings, figures or publications or in any other manner and for such related matters. Except State of Jammu and Kashmir it extends to whole of India.

Definitions are explained under Section 2 of the Act for words like Advertisement, Distribution, Label, Indecent Representation of Women, Package, and Prescribed. Under Section 3 of the Act any advertisement wherein any indecent representation of women in any form by any person who publish or arrange or take part in publication or exhibition is punishable.

Any paper, pamphlet, slide, film, writing drawing photos, figures that contain indecent representation of women cannot be produced, sold or let to hire by any person but with some exceptions. Exception like, it shall not apply to any book, paper, pamphlet, painting, writing, photograph, or any figure that is done for public good or in the interest of science, art, and literature. Exceptions also apply if it is used for religious purpose and sculptures, engraved, paintings of which are an ancient monument under Ancient Monument and Archaeological Sites and Remains Act 1958 or any temples or idols used for religious purposes and any film for which Part 2 of the Cinematograph Act 1952 applies.

Section 5 of the Act explains about the Gazetted Officer appointed by State government who can make rules with regard to entry and search any place at any time where he/she believes an offence has been committed. Seizing of any book, paper, slide, film, writing, painting, that contravenes the provisions of said Act. He can examine any record, document and seize it if he believes it can be used as evidence against the commission of offence under this Act. But entry into a private house should be done with warrant. Seizing of any article that cannot be separated by reason of it being embossed can also be done under the Act and CRPC 1973 provisions will apply with regard to search and seizure and such seized items should be given to nearest Magistrate for custody.

Penalty for the crime committed under this Act is up to 2,000 rupees and imprisonment up to 2 years for the crime done for first time and if it is repeated second time then punishment can extend to 5 years and fine too may extend up to 1 lakh rupees.

If an offence has been committed by a company or a person incharge of such company shall be deemed to be guilty of such offence and can be liable for proceedings and punishment. But if anything done without their knowledge then he/she cannot be punished. If any offence is proved that it is done with consent of director, manager, secretary then that officer can be punished under the Act.

Offences under this ACT are cognisable and bailable notwithstanding anything contained under CRPC 1973. No proceedings can be made against Central or State Government or any officer as such for actions done in good faith and under the provisions of this Act.

Section 10 explains that Central Government can make rules to carry out the provisions of the Act after Gazette notification. Rules are made for manner of seizure of articles and manner of seizure list made and delivered to concerned person or any other matter. Each rule made under the Act should be put before Houses of Parliament when it is in session for 30 day period and the Houses can amend the rule as such.

Indecent Representation of Women (Prohibition) Rules, 1987 dated 25th September 1987 has been framed by Central Government that came into force on 2 October 1987. Here manner of seizure of articles, packing and dealing with advertisements seized, sealing such seized articles in some cases are explained.

Some key amendments have been proposed to the said Act to cover the scope of law wherein to cover audiovisual media and electronic materials also under this Act. By adding newer forms of communication like multimedia messaging, internet etc. it will ensure proper protection is provided against indecent representation of women.

4. The Immoral Traffic Prevention Act, 1987:

The fundamental law relating with the sex workers is The Immoral Traffic (Suppression) Act, 1956 which legalizes the practice of prostitution in private but is not permitted to ask for or seduce customers openly and does not allow brothels, prostitution rings etc. The Immoral Traffic Prevention Act, 1987 has amended The Immoral Traffic (Suppression) Act, 1956. The 1987 Act was passed by the Parliament to comply with the United Nations Declaration on the Suppression of Trafficking in 1950 for the purpose of preventing and ultimately prohibiting prostitution to criminalize sex work.

The Act states that the person who carry on or administer or acts or aids in the keeping or administration of a brothel shall be punished with imprisonment and fine according to the provisions of the Act. A person who is a tenant, resident, lessee or any person who is in charge of the premises, utilizes or deliberately permits any one to utilize such premises or any of it part as a brothel or as an owner, property-holder or lessor of the premises or the representative of such person, allows the same or its part with the awareness that it may be utilized for the purposes of a brothel or he is intentionally a party to the utilization of such premises, such person shall be punished with imprisonment and fine as provided under the Act.

It shall also be supposed that any person is intentionally permitting the premises to be employed for the purpose of brothel or has awareness that premises are used for the said purpose where a report has been circulated in the newspaper in the areas where the person resides to the result that the premises are found to be used for prostitution as a consequence of the search. It shall also be presumed if the duplicate of the list of articles that found at the time of search is provided to such person.

Any person above eighteen years of age intentionally earns his livelihood from the payment received from prostitution of any other person shall be punished with imprisonment as specified in the enactment. Where a person above eighteen years of age is established to be living or consistently lives in the company of a prostitute or has applied power, order or authority over the movement of prostitute in the manner to prove that such person is assisting, encouraging or forcing her prostitution or to work as a tout or pimp to help a prostitute it shall be considered that such person intentionally earns his livelihood from the earnings of prostitution of a different person as provided under the Act. Any person, who obtains, encourages or gets person for conducting prostitution or confines a person in the premises or brothel where the sex work is conducted shall be penalized by imprisonment and fine. Where any person conducts the sex work and the person associated with such work that are within the areas specified under the Act or in a place near to religious worship, hospital, educational establishment, restaurants or any other place of public importance which are notified under the authority of the Commissioner of Police or Magistrate shall be punished with imprisonment.

A Special Police Officer and other police officers subordinate to him shall be entrusted for dealing with the offences under the enactment for such areas prescribed by the State government. The Magistrate is empowered under the Act to remove a person from a place, where he receives sufficient information that such person is a prostitute residing in an area within the local limits of the jurisdiction of Magistrate. The State Government is authorized under the Act to constitute protective homes and other corrective institutions for the purposes provided under the Act. The Act empowers the Central and the State Government to establish special courts for speedy justice for the offences under the enactment.

The Act repealed all the State legislations relating to suppression of immoral traffic in persons or prevention of prostitution. The Parliament has initiated The Immoral Traffic (Prevention) Amendment Bill, 2006 which is still under discussion before the two Houses.

5. Family Courts Act, 1984:

The Court established to conclude upon matters relating to family law like matrimonial reliefs, custody of children, maintenance for wife and children etc is termed as Family Court. In United States the 'Domestic Relations Court' was established in 1910 which is the first family court in the world. The Central Government enacted the Family Courts Act in India in 1984 with an intention to encourage and protect prompt settlement of disputes dealing with family affairs and matrimonial issues. The Status of Women Committee in 1975 together with the report of the 59th Law Commission recommended the Central Government to establish a separate judicial forum to settle family disputes immediately before the beginning of the trial proceedings. Hence it was decided to establish a family court in India by the Act of 1984.

The Act under Section 3 provides for the establishment of Family Courts in areas where the total population goes beyond one million and in the areas where the State

deems necessary to establish such a Court. The power to establish family courts and determination of the jurisdiction are vested in the State Government after seeking advice from the concerned High Court. The Act empowers the State Government to appoint such number of judges, Principal Judges and Additional Principal Judges in a Family Court where it considers essential, in accordance with and procedure prescribed under the Act.

For appointing a person as the judge of Family Court, he should have seven years experience in the judicial service in India, or he should have served as a member of the tribunal, or has seven years of practice as a lawyer in the High Court or other additional qualifications prescribed by the Union in consultation with Chief Justice of India. The Act further provides that a Judge of the family court shall be preferably women and shall be a person dedicated to the need to safeguard and care for the marital relations and uphold interests of children and experienced to resolve disputes by way of conciliation and provide counseling where necessary. The State Government shall frame rules on the advice of the High Court to associate, the services of family welfare organizations, social activists, persons or professionals interested to uphold the welfare of family, with the family court to assist in fulfilling the powers in concurrence with the present legislation.

The Family Court shall have the same status as that of a District Court and shall exercise the jurisdiction accordingly and also empowered to initiate suits and proceedings in par with the conditions stipulated by the Act. Where there is any chance for settlement of the dispute between the parties, the Family Court shall postpone the proceedings and take steps for settlement at the earliest. Under the Act a party to the dispute cannot claim the service of a legal practitioner as of right, but the Court shall have the power to appoint a legal professional as amicus curiae. An aggrieved party may, however, prefer an appeal to the High Court from an order of the Family Court. The High Court shall frame rules in the matters connected therewith, after publishing in the Gazette. The Act also confers power on the Central and State Government to formulate rules as prescribed under the Act.

The Central aim of the legislation was to resolve family disputes and settle the disputes through conciliation where ever possible. But the goal could not be achieved due to the prolonged procedures and improper implementation of the provisions of the Act. The counselors shall be appointed on a permanent basis so that the family problems need not be clarified to the new counselor every time. The modifications if made to certain provisions and the proper implementation of the Act would indeed serve the intention of the current legislation.

6. Labour Welfare Legislations: Maternity Benefit Act

The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act, repeals the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or

establishment to which the provisions of Employee's State Insurance Act 1948 applies, 138 except as otherwise provided in Section 5A and 5B of the Act.

7. Factories Act

The Factories Act 1948 was an Act of Parliament passed in the United Kingdom by the Labour government of Clement Attlee. It was passed with the intention of safeguarding the health of workers. It extended the age limits for the medical examination of persons entering factory employment, while also including male workers in the regulations for providing seats and issuing extensive new building regulations.

Under the legislation, young persons under the age of eighteen became subject to medical examination not only on entry to the place of work, but annually thereafter. Certificates of fitness were also made a requirement for young people employed in the loading, unloading and coaling of ships and other kinds of work in ships on harbour or wet dock, engineering construction and building operations as well as for factory employees.

The act prohibited children below the age of 14 from working in factories

Equal Remuneration Act

The Equal Remuneration Act in India was enacted to prevent discrimination between workers on grounds of gender. The preamble to the act describes it as:

An Act 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 therewith or incidental thereto.

The purpose of the act is to make sure that employers do not discriminate on the basis of gender, in matters of wage fixing, transfers, training and promotion. It provides for payment of equal remuneration to men and women workers, for same work or work of similar nature and for the prevention of discrimination against women in the matters of employment.

Discrimination is nothing more than the expression of a preference. In this neutral sense, without assessing either the consequences of such behaviour, or the "social justice" aspect, the right to discriminate is a desirable feature of any free society.

Individual acts of choice may sometimes result in a preference that might exclude or inconvenience a certain group. However, how valid or just is it to make such a choice illegal? Even more significant, how many profit-maximising, and efficiency-enhancing entrepreneurs would make such a choice?

Except in rare circumstance, people's preferences are not absolute, but vary depending on other factors, main among them being the cost, or benefit of making such a choice. Under normal circumstances, the higher the cost (the lower the

benefit), the less likely the choice will be made. Discrimination has a price, and the existence of this price will limit the existence of discrimination prevalent in the market.

Prohibition of discrimination during recruitment

Section 5 of the Equal Remuneration Act specifically forbids employers from discriminating against women during recruitment. It states:

On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women.

In a competitive world such legislation has no bearing at all. All discrimination in the market costs money, and any profit-maximising entrepreneur would realise the costs of discrimination and do his best to remove it. During recruitment, if employers discriminate against women, and refuse to hire them, they are doing this at their own detriment. An employer would only want to hire a woman if she can display herself to be amply able to perform the task at hand. If this is so, by judging applicants on grounds other than efficiency, an employer is hiring those who are potentially less productive, or less suited to the job. Such a policy would definitely cause profits to decrease.

Profit seekers would begin employing women, and as such employment would increase. As demand for women workers increases, their wages also get bid up.

An employer hiring on bases other than an employer's ability to contribute to firm's productivity wouldn't be able to persist since his willingness to operate with discrimination would confer an advantage on his competitors. If all entrepreneurs aren't actively practising discrimination, then one who is doing so is operating under a comparative disadvantage. He must either bear these losses, or change his hiring policy.

Furthermore, during recruitment, in a world of incomplete information, employers must guess at employees' productivity using some proxies, and gender might prove to be a possible proxy. Factors such as maternity leave, inability to work late hours, inability to work night shifts etc. are reflections of the worker's productivity, and would go towards establishing gender as a proxy. Using such proxies economises in information, if employers later find that such proxies are wrong, they will find they are hiring workers with low productivity, and principles of profit maximisation would force them to choose new proxies.

Prohibition of discrimination during wage fixing

The Equal Remuneration Act also seeks to address the issue of payment of unequal wages to men and women. It makes it compulsory for employers to pay women

wages equal to those paid to men for performance of the same work. Section 4(1) states:

No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

This law also has no relevance in a competitive world, where the employer's primary concern is to make a profit. Perhaps, earlier when Indian industry was protected and sheltered, employers could afford to follow such potentially profit reducing policies, and still stay afloat, however, this is no longer the case today.

Productivity is defined in terms of profit statement; employers reward workers proportionate to the amount they add to revenues. When an employer estimates wages, he takes into account the following factors:

Intelligence 5 Leadership ability
Efficiency 6 Communication Skills
Initiative 7 Perseverance
Skill 8 Experience

However, an equal pay legislation such as the Equal Remuneration Act in India, seeks to determine wages on the basis of a politically motivating or social justice related factor, in this case, gender. The mutual incompatibility of the two sets of factors is obvious. While the first set might generate an efficient labour force, the second set has absolutely no relation to productivity, and hence cannot work towards an efficient labour force.

If a firm overpays, it would eventually have to close down since it would run out of money. At the same time, if a firm underpays, it is would still not be a profit yielding practise since it would lose employees to competitors. To add to it, it would suffer from over optimal quit-rates, and have to invest additionally in hiring, firing, and other training expenses.

While clearly, the search for profit would cause some entrepreneurs to set aside their taste for discrimination, it is nevertheless true that others would be willing to incur the cost. These employers would then be paying the price of discrimination in the form of decreased profits.

The extent to which the most discriminatory employers can continue this practice would be largely determined by factors beyond their control, namely, by the competitive pressures exerted by other employers. An employer's willingness to operate under the competitive disadvantage of discrimination would confer an advantage on his competitors. So, even if some employers were willing to pay the price of discrimination, failure to respond to the continuous challenge of the market would mean eventual displacement by a more cost-effective firm.

There are several other reasons that cause unequal pay between sexes that are unconnected to any bias or prejudice on the part of the employer, known as non-discriminatory reality. Women may receive different wages because they bear children, and are hence separated from the labour force for a period, which could range between a few months and a few years. Data in Canada and the USA have found a negative correlation between female-male wage-ratios and birth rates.

To add to the problem, the Equal Remuneration Act does employers further injustice by forcing them to obliterate any difference in wages by increasing the wages of the woman. Section 4, sub-sections 2, and 3 state:

- (1) No employer shall, for the purpose of complying with the provisions of sub-section
- (2), reduce the rate of remuneration of any worker.
- (3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers.

Hence, not only must an employer make sure that he pays the workers equal wages, he may not decrease wages to this purpose.

The injurious nature of the act with respect to entrepreneurs

Consider the situation in light of the numerous labour laws that make it very difficult to fire any worker. An employer who hires a woman must pay her equal wages as the male worker although, she may prove to be less efficient. Furthermore, he may not decrease the male worker's wages to fulfil this condition. Given that following such a policy might later prove to be harmful and bankrupting to the employer, one might expect him to be reluctant to hire a woman in the first place. However, the law prevents him from doing that too!! In the attempt to protect women workers from some perceived injustice, the act is exploiting the entrepreneur who is simply trying to run an honest business.

The applicability of the act does not depend upon the financial viability of the employer to pay equal remuneration as provided by it, nor does it take into account the employers' cost constraints. And such an act has overriding effect with respect to implementation. Section 3 of the act states:

The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act, or in any instrument having effect under any law for the time being in force.

Such an act serves only to create an extremely restrictive and confining atmosphere for entrepreneurs and is in no way encouraging for industry as a whole.

It's redundancy in a liberalised, competitive and free labour market is apparent. Given that India has entered the era of liberalisation and has begun the process of deregulation in other fields, elimination of the act is but a natural, logical, and obvious step.

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