CHAPTER 2

Genesis of the Status of Women in the Socio-legal Order

2.1. Position of women in human society

The best way to understand the spirit of a civilisation and to appreciate and realise its excellence and limitations is to study the history of its womenfolk – development and change in the status of women from time to time. It is, therefore, very important to look at past society because the norms and values affecting the status and rights of women today have their roots in the past.\(^1\) There is no comprehensive history of women through the ages and variety of cultures. Most attempts to write a continuous history of women is limited to a certain time and space. Of late, the study of position of women in society has gained much importance. The status of women in every society is neither a new issue nor is it a fully settled one. In *Muller v. Oregon*, the Supreme Court held that “...history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, while diminishing, has continued to the present.”\(^2\) Women were thus considered inferior to men in every society.

Domestic violence against women has a long history as a deep-seated social phenomenon. There are certain formal and informal sanctions by society that have encouraged it. It has been observed that prior to the late 19\(^{th}\) century it was considered a


\(^2\) 208 US 412:52 L Ed 551 (1908)
necessary aspect of a husband’s marital obligation to control and chastise his wife through the use of physical force.\(^3\)

During the Roman Empire and medieval times, the “Laws of Chastisement” found in many countries as well as in selected passages of the Old and New testaments in the Bible endorsed male authority over the female. For many centuries, during the Dark and Middle Ages as well as the Renaissance, women were routinely subjected to physical punishment that accompanied their accepted inferior status and justified by the so-called “laws of chastisement” which went unquestioned. Such violence was simply taken for granted as part of the order of things which are predetermined by the divine powers.

Attitudes that condoned wife beating entered into mainstream American culture via English law. The infamous rule of the thumb which permitted a husband legally to beat his wife with a rod not thicker than his thumb was a formal section of British Common law. Ironically, it was intended as an example of compassionate reform to limit how harshly men abused their mates. Thus, man’s right to use violence in maintaining discipline in their homes became a socially and legally accepted pattern.

It was not until the women’s liberation movement in the 1970s that identified and responded to wife abuse recognising it as a social problem.\(^4\). Prior to this time its existence was overlooked and even denied, although it continued to exist. It was only in the 20\(^{th}\) century that the law finally considered wife abuse to be a criminal offence.


In India, women once enjoyed considerable freedom and privileges in the spheres of family, religion and public life. Women in the Vedic period enjoyed equal status with men. They enjoyed freedom in all spheres of life. They were allowed to pursue the academic attainments and shared the family life with full vigour. They were free to select their conjugal partner and exercised free will in entering into the matrimonial bondage. They were respected and honoured. Women participated freely in all social activities like men. There was no discrimination between a boy and a girl. It is characterised by the absence of the purdah system.

During the period the high place of woman in the family was recognised and honoured. The entire responsibility of the household was vested in the hands of women. She was considered to be the better half of her husband’s. No man was allowed to perform religious ceremonies without the participation of his wife. Women were highly educated and cultured. The family life was also conducted according to Vedic principles. There was no feeling of assigning women folk a secondary role either in the family or in the society.

The Vedic period can rightly be termed as the period of feminine glory and masculine sagacity and liberalism. While early Vedic society was by and large relatively undifferentiated, there were no indications to suggest that women could occupy the highest position of authority and prestige of those of priest or the king. Thus a certain degree of social stratification along gender lines is clearly discernible.

Yet over the centuries, their situation changed adversely and subordination of women became a key principle. Dominance of males over females grew in post-Vedic society.

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The position and status of women in India declined steadily from the later Vedic period onwards. There are many sacred texts which relegate women’s place to a lower or secondary rank to man, the *Manusmriti* being one. Such texts are frequently quoted as the scriptural basis for the legitimating of women’s low status through the ages; they are the sacred authority which teaches that women’s status has to be low and unequal to that of man.  

Day and night must women be held by their protectors in a state of dependence, says Manu. The injunctions of Manu merged the wife’s individuality with that of her husband and recommended strict seclusion for women and rigorous discipline for the widow. Thus a mild form of *purdah* system was prevalent at that time. The increasing authority of men coupled with the growing subservience of the womenfolk gave a major setback to the status of women. In Hindu scriptures, the description of a good wife is as follows: “a woman, whose mind, speech and body are kept in subjection, acquires high renown in this world, and, in the next, the same abode with her husband.” However, women’s right to property could still be found during this period. The position of women further degraded in the Medieval period. They became more oppressed in the feudal order and patriarchal setup of the family.  

Traditionally, women in India have experienced subordinate position in the family and society. There is enough evidence to their subordination which is expressed in the day to day family life and supported by the personal family laws. In the patriarchal Indian society, the relations between husband and wife were asymmetrical. Women assumed

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7 supra note 14. p.22
the subordinate position and were denied equal status with men. For them, the husbands were *Pati Parmeshwar* (God).

Death of husband however, did not mean an end to the widow’s life too. The custom of sati or self immolation by the widow on the husband’s pyre was not prevalent. However, they were not allowed to remarry. Women suffered a lot of disadvantages like that of no inheritance right or no right to own property. They meekly suffered discrimination in the form of female infanticide, Sati *pratha*, dowry, denial of widow remarriage, denial of education, denial of share in family property, etc because of their dependency and lack of alternative support system. Whatever may be the status of women in general in the post-Vedic period, there are certain rights of women which were recognised, the foremost being the right of a wife, and the corresponding obligation of the husband to provide for her support and maintenance.

The women were entitled to *Stridhan*. *Stridhan* can be defined as “what was given before the nuptial fire, what was presented in the bridal procession, what had been conferred on the wife through affection, and what has been received by her from her brother her mother, or her father, are ordained the six fold *Stridhan* or women’s property”. The gifts to the son-in-law had also been considered as *Stridhan*. What has been presented to the husband of a daughter, goes to the woman, whether her husband live or die, and after her death, goes to her offspring.

Buddhism came as a reaction to the Brahmanical form of society. The position of women was different in Buddhism. The religion was more practical and less rigid as well as highly ethical. In it every human being, man or woman, was a free agent able to work out his own salvation independent of any supernatural agency or the medium of
priests for rituals. Buddhism was a literal reaction against orthodoxy. The inequality between man and woman was wiped out in matters of religion; both sexes were charged with duty of upholding Dharma. Hence, women with certain reservations in Buddhism had a special place.

The Muslim era brought a significant change in the attitude towards women. The Hindu society under the socio-political impact of Islamic rule suffered a setback and the Hindus were forced to adopt certain Muslim customs. The functions and the position of a woman were distinctly subordinate to that of men. The girls were considered a liability right from the time of their birth. A mother giving birth to a number of girls in succession was despised. Women as mothers, however, enjoyed a position of great respect. In all the sections of Hindu society, the mothers and other elderly ladies were given utmost respect and their commands were invariably carried out.

As a wife also woman had to follow the commands of the mother-in-law and win other members of husband’s family through dedicated service. However, generally in course of time the women acquired freedom to manage the household. Even the Muslim wives were expected to get along well with the mother-in-law and failing to do so could lead to divorce.

Hindu women as it has been observed were never economically independent in the past. They were not allowed to own property. They did not have the right to inherit. On the other hand economic condition of Muslim women was much better. They were entitled to a definite share in the inheritance and were free to dispose of the property. The Muslim women retained this right even after their marriage.
After Muslim invasion, *purdah* system what was originally a Muslim custom was introduced in India. *Purdah* or veiling of women was a common practice among the Muslims and was adopted by the Hindu women under the pressure of circumstances. As a general rule the girls were married at an early age in both the communities. Even if formal education was not allowed to them, they were given training in domestic affairs, needlework, cooking etc. Divorce was uncommon among the Hindus but was a regular feature among the Muslims. Widow re-marriage was virtually non-existent.

Thus during this period also the life of a woman in India was not easy. They enjoyed a second class status, devoid of education and economic capacity. Thus, they were forced to lead a miserable life, which was largely dependent on the whims and fancies of their male counterparts.

The impact of British rule on Indian social life was beyond imagination. The British were more cultured and reformed. The first impact of the British on the Indian society was the spread of education in the country. People understood the importance of being educated which, in turn, made them capable of rational thinking and prompted them to shed traditional ideas and blind belief.

During the 19th century, the leading reformers namely, Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Swami Vivekanand and many others launched a vigorous campaign against social evils that affected Indian women such as the practices of child marriage, sati and harsh treatment of widows. They advocated women’s education, widow remarriage and such other social reforms. They firmly believed that the integration of women in the national mainstream and the betterment of their lot can only bring development of the society. In response to the enlightened Indian public opinion,
the British rulers legislated against the glaring social evils. Although these early reforms were not acceptable to Indian multitude and they failed to produce the desired effect, they did succeed in creating resurgence among Indian women. It was a period of Renaissance in India. They engaged in advancing the status of women by requiring that the law to take cognizance of their rights by providing them some basic rights as the right to live.

In the 1820s, Lord William Bentinck outlawed the practice of Sati. Sati had always been an exaggeration of the Hindu ideal, never practised by the majority, and was therefore successfully eradicated. In 1856, the Widow Remarriage Act was passed. It was, however, less successful. The British also passed the Infanticide Act in 1870 to abolish the practice of female infanticide. However, such protections failed to make any visible dent in women’s status. The British were unwilling to interfere with Indian customs for the simple experiences that they feared that tampering with traditions would make them unpopular and destabilise their rule. It was only because of the dogged persistence of their Western-educated Indian subjects that they were compelled to move at all. The position of women in early British period was still deplorable as they were subjected to exploitation and prejudice till certain reform movements to emancipate women were initiated.8 Serious attempts were made to elevate the status of women only after Independence.

Apart from legal reform of social customs, another force for improvement in the status of women is education. Different reformers favoured education for women. Women’s

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education got a lift during the British rule. Earlier girls were not allowed to go to school by the families because their guardians thought if unsafe to let girls study in co-educational schools and colleges. The British established girls’ schools and women’s colleges which gave a boost to female education in India. Education for women was however restricted to the very small upper-class elite, yet it still played an important role in opening up avenues for women in gainful employment outside their homes.

During this period the status of women changed to a great extent and remarkable development could be noticed which affected both economic and social structure of the society. As the society marched on towards progress, the evil customs, traditions and blind belief automatically paved the way to achieve a quality and meaningful life for women. However, there are many types of oppression that women still face across class, race and caste.9

Despite the continuing challenges for women’s growth and empowerment, the recognition of gender equality in the 1970s by the state has given confidence to women to claim new spaces.10 In the twentieth century, women came forward with new demands to ensure her equal sharing with men in both private and public spheres of life. Many women activists across the country joined the movement. As women became more active in a variety of social and political movements undermining the hegemonic claims of the major women’s organisations, new ideologies significantly altered the discussion of what women needed. From the end of the 1930s to the early 1950s, women participated in a wide range of social and political movements.

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10 ibid
Along with the efforts of the noted social activists and their crusade against social evils, some women’s organization came to be established in the beginning of the twentieth century at the national level to fight and work for the causes of women. They took up the issues like women education, Hindu law reforms, abolition of social evils, moral and material progress of women, equality of rights and opportunities and women’s suffrages. But the women leaders by and large belonged to urban high and middle class societies and failed to fathom the pitiable condition in which the rural women were leading their lives. The socio-economic maladies of the rural women folk could not be brought to lime-light.

In the Indian subcontinent, there are infinite variations on the status of women diverging according to cultural milieu, family structure, class, caste, property rights and morals. The changing patterns of life in very recent human society have opened up new arena of freedom and possibilities for women. Although the situation of women in the upper and middle income group families in the urban areas is better in present time, the plight of women in rural areas and those in poverty-stricken groups in the urban areas still continues to be as bad as before. Thus, neglect and exploitation of women continues in its characteristic form. The conditions of women in general do not show much improvement and the social economic measures of women’s upliftment have not significantly affected their economic status practices. The widespread incidence of bride burning and dowry deaths reflect the traditional practice of dowry in a new ghastly form. Thus, in spite of constitutional and legal provisions aimed at uplifting their status

as equals, women continue to suffer.\textsuperscript{12} Equality and freedom remained far from women in the history of mankind as one finds that different and disparate cultures, however distant they may be in time and space, have one thing in common and that is contempt for women. This unequal status of women in society is offensive to human dignity.\textsuperscript{13}

\textbf{2.2. Gender-based discrimination and violence against women}

Gender based discrimination is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men. Violence is central to any discussion of gender, irrespective of location within the system. The overall pattern of violence is subjugation of the weaker section of the society. In every culture and society, women occupy an inferior position and this has, in turn, made them vulnerable to violence and its various manifestations.

A small percentage of women who have gained economic independence are resisting the manipulative social order. They no longer accept the asymmetric relationship and want an egalitarian way of living. Men are unlikely to accept the new position of women and so use violence to retain their traditional position.

The expression “violence against women” is defined in Article 2 of the Convention on Elimination of Discrimination against Women\textsuperscript{14} as to include ‘physical, sexual and

\begin{itemize}
  \item \textit{physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children with household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
\end{itemize}

\textsuperscript{12} supra note 7. p. 34
\textsuperscript{13} supra note 14
\textsuperscript{14} Article 2 of the Convention on Elimination of Discrimination Against Women states that “violence against women” shall be understood to encompass:
psychological’. This definition gives focus on all the aspects of violence. Violence against women is very much gender specific because the forms of control and coercion exercised in the case of women are related to gender and arise out of a hierarchical gender relationship where men are dominant and women are subordinate.

Women constitute about half of the global population but they are placed at various disadvantageous positions due to gender differences and biases. Although women comprise half of the world’s population, it is ironical that their lives are of little value. Their suffering is very well in tune with the social system and life pattern. The patriarchal system in society which is the root of male hierarchy gives power to men and this in turn manifest into violence as it is committed to feel a sense of power.15 Generally men are the perpetrators of violence against women and it is thus believed to be a battle of sexes. But the fact is that it is both an inter-sex and intra-sex problem. The violence against a female may be by a male or another female. In many cases of domestic violence, females also play their roles in victimising women.16

Crime against women is rampant in human society. Women are vulnerable to violence inside and outside of their homes. There is no woman who has not suffered at one time or another, the harassment, humiliation, exploitation and violence that shadows her sex. A woman’s life lies between pleasure at one end and danger at the other. In daily life,

(b) physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs


women are routinely defined by sex, and even if not all men are potential perpetrators of various forms of crime against women, all women are potential victims.17

Violence, whether domestic, or in any other form, is not merely a criminal act of physical force perpetrated against women. It covers the entire gamut of exploitation, discrimination, maintaining unequal economic and social structures and creation of an atmosphere of terror and threat, all of which are supported and mandated by the socio-economic context of power relations. It has the tendency to manifests in different forms – physical, sexual, economic or mental. It has been an intrinsic part of the human society since time immemorial. Violence violates human rights of life, liberty, equality and dignity.

Violence against women is a widespread and systemic violation of human rights which affects women and girls at all stages of the life cycle – from female infanticide and genital mutilation to forced prostitution and trafficking, domestic violence, sexual harassment at work and abuse and neglect of older women.18 From womb to tomb, the sufferings of women are innumerable and take many forms.

Increasingly, violence against women is being understood as a multifaceted phenomenon grounded in interplay of psychological, situational and socio-cultural factors. According to Kersti A. Yllo, violence has become “a means of social control of women that is at once personal and institutional, symbolic and material”.

Where women are concerned, social arrangements are far from neutral, and therefore assuming a posture of neutrality with respect to women has very far reaching

18 supra note 12
consequences in terms of discrimination and an undermining of basic rights. Violence against women is a vicious circle. In societies reporting high incidents of crime against women, there tends to be structural violence against women, as seen from the various socio-political and economic discrimination against women and the kinds of deprivation they face in terms of access to resources within the family and in the larger society, this very discrimination perpetuates direct violence.\textsuperscript{19}

In a hierarchical society, violence grows on lines of power relations. A patriarchal society organised on the principles of domination and subordination utilises violence in its variegated forms to enforce the ideology of class, caste and gender domination. Its aim is the victimisation of the weakest members of the group. While violence within the home is the product of the unequal power relations it is at the same time a specific mechanism in society to legitimise gender control of all women.

A pan cultural feature of all patriarchal societies is the subordination of women as a category. This means that the roles played by women in society are generally devalued and is not allocated a high status. Within these principles of societal organisation, violence against women is always rationalised and is motivated. In many such instances violence against the ‘erring’ woman is seen as justified and highly deserving. For instance in several patriarchal societies, domestic violence is not seen as a crime but the legitimate action on the part of the husband in controlling a wayward wife. It is seen as a symbol of his masculinity and an affirmation of his control over his home.\textsuperscript{20}


\textsuperscript{20} Ibid.
Men and women can never be on the same footing until and unless women are free from all forms of gender-specific violence. Gender equality and elimination of all forms of gender-based discrimination is the cry of the day.

2.3. International Order on Violence against Women

Women have been the victims of violence and exploitation in the male dominated society all over the world. Violence against women has been rampant in every part of the world and at the same time, there has been growing consciousness for the protection and promotion of the human rights of women. The prevalent gender bias is offensive to human dignity and human rights. In fact, it is a fundamental crisis the world over. All forms of discrimination on grounds of gender violate fundamental freedom and human rights. Gender injustice and insensitiveness manifests itself in the form of discrimination, crime and violence against women.

State Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights. There are also resolutions, declarations and recommendations adopted by the United Nations and the specialised agencies promoting equality of rights of men and women. However, despite all these instruments, extensive discrimination continues to exist against women that violate the principles of equality of rights and respect for human dignity. This discrimination is also an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of


22 supra note 14. p.25
their countries. It hampers the growth and the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and humanity. In situations of poverty, women have the least access to food, health, education, training and opportunities for employment and other needs. A change in the traditional role and role of women in society and in the family is needed to achieve full equality between men and women. In pursuance of their obligations under the Conventions, the State Parties condemned discrimination against women in all its forms, agreed to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

The United Nations from the very day of its inception from 1945 till date worked to secure women’s legal equality. The United nations have chalked out a comprehensive programme by means of various conventions to uplift and develop the status of women in the field of education, politics including the position in social life with the formation of the Commission on Human Rights and the Commission on the Status of Women in 1946 and the adoption of the Universal Declaration of Human Rights in 1948. The United Nations had also undertaken a massive research study to assess the position and status of women across the world. It was found that in many parts of the world the women have constantly been denied equality in law and also in practice. They are compelled to live under male dominated world and are subjected to variety of discrimination. As a result the United Nations have incorporated a series of treaties and Conventions to achieve the equal legal and political rights of women worldwide. The Preamble of the United Nations begins by referring to the faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of nations, large and small.
The Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. The two International Covenants of 1966 noted that the States parties to the Covenants have the obligation to ensure the equal rights of men and women to enjoy economic, social, cultural, civil and political rights. All the resolutions, declarations recommendations adopted by the United Nations and the specialised agencies are for the promotion of equality of rights of men and women. In spite of the various instruments for safeguarding the interest of women, discrimination against women continues to exist.

Realising the change in the traditional role of men as well as the role of women in society and in the family, the United Nations recognised the need to achieve full equality between men and women and has taken a number of steps to eradicate the discrimination against women.23

**The United Nations Charter, 1945**

Article 1(3) of the Charter of the United Nations lays down that the United Nations aspires “to achieve international cooperation in solving international problems of an economic, social and cultural, or humanitarian charter, and in promoting and encouraging respects for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

23 *supra note* 16. p.396
Article 8 of the Charter states there should be no restrictions on the eligibility of men and women to participate, in any capacity, and under conditions of equality, in all its principal and subsidiary organs.

Article 13(1)(b) of the Charter of United Nations provides for the promotion of international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

**Universal Declaration on Human Rights, 1948**

The General Assembly of the United Nations Organisation adopted the Universal Declaration of Human Rights on December 10, 1948. The Universal Declaration of Human Rights of 1948 has a powerful influence both internationally and nationally. It is a global proclamation of a common standard of achievement for all peoples and all nations. Article 2 of the Declaration states that all human beings should be treated equally without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status.” With regard to marriage, Article 5 of the Universal Declaration of Human Rights prohibits inhumane treatment to women. Article 16, in particular, says that men and women of full age without any restriction due to race, nationality or religion, have the right to marry and to form a family. They are entitled to equal rights as to marriage, during marriage and its dissolution. As per the United Nations Declaration on Human Rights of 1948, women along with men are entitled to all rights and the terms ‘no one’ and

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24 supra note 14 p.29

‘everyone’ include both men and women.\textsuperscript{26} The Supreme Court in \textit{Keshavanand Bharati v. State of Kerala},\textsuperscript{27} observed that understanding the nature of human rights, the Constitution of India had adopted the Universal Declaration of Human Rights, 1948 though it is not a legally binding instrument.

**Commission on the Status of Women (CSW)**

In pursuance of the principle of the United Nations Charter, the Commission on the Status of Women (CSW) was established in 1949. The Commission aimed to define and elaborate the general guarantees of non-discrimination in the various instruments of the United Nations from a gender perspective. The mandate of the CSW included the preparation of recommendations relating to urgent problems requiring immediate attention in the field of women’s rights with the object of implementing the principle that men and women should have equal rights, and the development of proposals to give effect to such recommendations. The CSW is dedicated to the promotion of women’s rights, documenting the reality of women’s lives the world over, and thus shaping global standards on gender equality and the empowerment of women.\textsuperscript{28} Although there are a number of declarations and conventions that protect and promote the human rights of women, the approach they reflected was fragmentary, as they failed to deal with discrimination against women in a comprehensive way.\textsuperscript{29}

\begin{itemize}
\item \textsuperscript{26} supra note 14
\item \textsuperscript{27} AIR 1973 SC 1461
\item \textsuperscript{28} Retrieved on 2014-09-09 from \url{http://research.un.org/en/CSW60}
\item \textsuperscript{29} United Nations Department of Public Information: \textit{Short History of CEDAW Convention}. Retrieved from \url{www.un.org/womenwatch/daw/cedaw/history.htm} on 2015-03-18
\end{itemize}
Since 1995, the Commission on the Status of Women has played a pivotal role in monitoring, reviewing and appraising progress achieved and problems encountered in implementing the Beijing Declaration and Platform for Action.  

**Convention on the Political Rights of Women, 1953:**

The Convention desires to implement the principle of equality of rights for men and women contained in the Charter of the United Nations. According to Article I of the Convention on the Political Rights of Women, 1953, women shall be entitled to vote in all elections on equal terms with men, without any discrimination. As per Article II, women will also be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination. Article III provides that Women shall be entitled to hold public office and to exercise all public functions, established by national laws, on equal terms with men, without any discriminations.

**Convention on the Nationality of Married Women, 1957**

It was adopted by the General Assembly of the UN on 29 January, 1957, and provides that each contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality, by the husband during marriage, shall automatically, affect the nationality of the wife (Article 1). It further provides that each contracting State agrees that neither the voluntary acquisition of nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national (Article 2).

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30 Retrieved from www.WomenEnabled.org on 04-02-16
International Covenant on Civil and Political Rights, 1966

In Article 2(1) in Part II of the Covenant the State Parties to the International Covenant on Civil and Political Rights, 1966\textsuperscript{31} undertake to ensure to all individuals the civil and political rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national, or social origin, property, birth or other status.\textsuperscript{32} This human rights treaty provides a range of protections for civil and political rights. Together with the Universal Declaration of Human Rights and the International Covenant on Economic and Cultural Rights, the International Covenant on Civil and Political Rights are considered the International Bill of Human Rights. Some of the basic human rights which it obligates countries that have ratified it to protect and preserve are the right to life and human dignity; equality before the law; gender equality, etc. The State Parties to the Covenant should take legislative, administrative and judicial measures to protect the rights enshrined in the treaty.

International Covenant on Economic, Social and Cultural Rights, 1966

The State Parties to the International Covenant on Economic, Social and Cultural Rights, 1966 undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the Covenant by all appropriate means, including particularly the adoption of legislative measures.\textsuperscript{33} They also undertake to guarantee that the rights enunciated in

\textsuperscript{31} Adopted by the United Nations General Assembly in 1966 and came into force in 1976.
\textsuperscript{32} supra note 16 p. 398
\textsuperscript{33} Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, 1966
the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\textsuperscript{34} Article 3 undertakes to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

\textbf{Declaration on Elimination of Discrimination against Women, 1967}

The Preamble of the Declaration on Elimination of Discrimination against Women of 1967 states that despite the existence of various conventions to protect the rights of women, the discrimination against women continues. This Declaration pledged to eradicate discrimination against women in any form which violates the principles of equality and right to live with dignity. Gender-based violence has been declared to be unacceptable, regardless whether it occurs in the private domain or in the public sphere, and whether committed by State or non-State actors. Article 10 of the Declaration gives directions to all Member States to undertake all adequate measures to ensure equality of married of unmarried women with men in the social and economic fields. It ensures all women, married or unmarried, the right, without discrimination on grounds of marital status or any other grounds to receive vocational training to work, to free choice of profession and employment; the right to equal pay with men and to equal treatment in respect of work of similar nature; the right to leave with pay, retirement privileges and provisions for security in respect of unemployment, sickness, old age or other incapacity to work; and the right to receive family allowance on equal terms with men.

\footnote{\textit{ibid} Article 2(2)}
In order to prevent discrimination against women, on account of marriage or maternity and to ensure their effective work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave with guarantee of returning to former employment and to provide the necessary social service, including child care facilities.

The Declaration on the Elimination of Discrimination against Women, 1967 led to the adoption of the Convention on Elimination of All Forms of Discrimination against Women in 1979.\textsuperscript{35}

**Convention on the Elimination of all Forms of Discrimination of Against Women**

The Convention on Elimination of Discrimination against Women adopted in 1979 by the United Nations General Assembly has been described as an International bill of rights for women. In fact, it is the first international, legal document which pays specific focus to the violence that women suffer due to legal, social and cultural traditions. The Convention is the result of a United Nations’ efforts to codify comprehensively international legal standards for women. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women in Article 1 as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 3 says that State Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

In Article 5(a), it is provided that State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

The Convention provides for the establishment of a Committee on the elimination of discrimination against women. The implementation machinery for the Convention is very weak and far from satisfactory by any standard. The Committee has no teeth. It cannot compel State Parties to give effect to the provisions of the Convention. It may simply make suggestions and general recommendations based on the examination of reports and information received from State Parties. The Convention on the Elimination of all forms of Discrimination against women is also conspicuous by absence of provisions relating to inter-state communications system. To make the Committee more effective, Optional Protocol to the Convention on the Elimination of Discrimination against Women, 1999 was adopted.\textsuperscript{36}

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Declaration on the Elimination of Violence against Women, 1993:

Article 1 of the Declaration on the Elimination of Violence against Women defines the term “violence against women” as any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring public or in private life.

The pervasiveness and magnitude of domestic violence in the Nineties is reflected in the Declaration on the Elimination of Violence against Women adopted by the General Assembly of the United Nations at its 85th plenary meeting held on 20th December, 1993. It recognises that violence against women in the family and society was pervasive and cut across lines of income, class and culture. The Declaration shows its concern that violence against women is an obstacle to the achievement of equality, development and peace, as recognised in the Nairobi Forward-looking Strategies for the advancement of women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The Preamble to the Declaration on the Elimination of Violence against Women, 1993 states that the Declaration on the Elimination of Violence against Women is the first international human rights instrument to exclusively deal with the issue of violence against women. It affirms that violence against women violates the rights and fundamental freedoms of women and impairs or nullifies women’s enjoyment of those rights and freedoms. It gives its

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concern about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women.

**Vienna Conference**

The Vienna Conference of 1993 also known as the World Conference on Human Rights was held by the United Nations in Vienna, Austria on 14 to 25 June, 1993. This conference resulted in the Vienna Declaration and Programme of Action. The conference made efforts to highlight women’s rights amongst other in the context of universal political and economic rights and called for the creation of instruments to publicize and protect the rights of women. The Vienna Declaration and Programme of Action drew attention to the importance of women’s rights and the rights of the girl-child. Para 18 of Part I states that, the human rights of women are and inalienable, integral and indivisible part of universal human rights. It further provides that the priority objectives of the international community are the full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex.

The Vienna Declaration also recognised that women are subjected to different forms of gender-based violence and so it urged Governments, institutions, intergovernmental and non-governmental organisations to intensify their efforts for the protection and promotion of women. It explicitly mentioned that gender-based violence, sexual harassment and exploitation resulting from cultural prejudice and international trafficking are incompatible with the dignity and worth of the human person, and must be eliminated.
Beijing Conference

In the Fourth World Conference on Women in Beijing held in 1995, 189 countries adopted the ‘Beijing Declaration’ and ‘Platform for Action’ as a comprehensive guide for gender equality, the empowerment of women and the human rights of women and girls. The ‘Platform for Action’ was a defining framework for the advancement of women in the countries around the world. It recommended commitments under twelve areas of concern as these areas were considered to be an obstacle in the empowerment of women. These areas of concern are enumerated as under:

- Women and poverty
- Education and training of women
- Women and health
- Violence against women
- Women and armed conflict
- Women and economic participation
- Women in power and decision-making
- Institutional mechanisms for the advancement of women
- Human rights of women
- Women and the media
- Women and the environment
- The girl child.38

The Beijing Conference unleashed notable political determination and worldwide visibility. It connected and reinforced the activism of women’s movements on a global scale. Since then, governments, civil societies and the public have translated the Platform for Action’s promises into concrete changes in individual countries. These have ushered in enormous improvements in the lives of women.

The Beijing Platform for Action serves as a strategic guide for states in the implementation of their policies around women. It articulated a vision for women and girls to have equal rights, freedom and opportunities in all spheres of society and to live their lives free from want, fear and violence.

The assessment of the implementation of the Beijing Platform for Action has been done in 2000, 2005, 2010 and 2015 and these events were called Beijing+5, Beijing+10, Beijing+15 and Beijing+20 respectively. The five-year, ten-year, fifteen-year and twenty-year evaluation processes of the Beijing Platform of Action attempted to find out new ways to fulfil the needs of the vulnerable sex. These events brought together governments and women’s groups to evaluate progress in achieving women’s equality and eradicating violence against women, and to identify obstacles to implementation of women’s rights. Beijing+10 pointed out that violence against women, specifically domestic violence, remains prevalent in all countries, and women continue to suffer from so-called traditional violence.

**Beijing +20**

The agenda of gender equality in all dimensions of life as envisioned in the Platform for Action is not yet completed in any country. The 20th anniversary of the Beijing Conference opens new opportunities to reconnect, regenerate commitment, charge up
political will and mobilize the public. It is a process to review how far Member States and other stakeholders have come in implementing the commitments made at the Beijing Conference in 1995. The Beijing Platform for Action, still forward looking at 20 offers important focus on rallying people around gender equality and women’s empowerment.\(^{39}\) The review process called on governments to report on what steps they had taken in the last 20 years on their commitments to the twelve main areas of concern of the Beijing Platform for Action of 1995.

The Beijing +20 aimed to renew political commitment for the full implementation of the Beijing Declaration and Platform for Action and realisation of the gender equality goals and targets in the post-2015 development agenda. The Member States were urged to mobilize new commitments to eliminate gender inequality and discrimination against women, and to prevent and address social norms and stereotypes that condone gender inequality, discrimination and violence.

India admitted to gender inequalities in its Beijing plus 20 review on the implementation of the Beijing Declaration and Platform for Action, and that these deep rooted gender inequalities continue to undermine the country’s potential to translate economic growth into inclusive development.\(^{40}\)


The United Nations General Assembly created a United Entity for Gender Equality and Empowerment of Women named United Nations Women in 2010. The new entity is meant to accelerate progress in meeting the needs of women and girls worldwide.\[^{41}\]

**United Nations Millennium Declaration**

In the 8\(^{\text{th}}\) plenary meeting held on 8\(^{\text{th}}\) September 2000, the Member States of the United Nations adopted the United Nations Millennium Declaration whereby the Member States of the United Nations explicitly pledged to promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable. They further resolved to combat all forms of violence against women, and to implement the *Convention on the Elimination of all Forms of Violence against Women* as part of their global vision for the new millennium.\[^{42}\]

After the issuance of the 2006 Secretary-General’s in-depth study of all forms and manifestations of violence against women, the General Assembly adopted a series of comprehensive and action-oriented resolutions, calling on all stakeholders to intensify their efforts to eliminate violence against women. The United Nations Secretary-General launched his global campaign “UNiTE to end violence against women” in 2008, to run through 2015.\[^{43}\]

“one-stop” site for information on measures undertaken by Member States in this matter.  

According to Bunch, “Human rights instruments and mechanisms provide avenues for challenging the systematic abuse of women and governments can be made to take gender-based violations more seriously by being held accountable for the implementation of laws against them…”

It is, however, submitted that in spite of various Conventions, the world is yet to achieve the desired results in gender equality and empowerment of women. The position of women is still deplorable in the developing countries and India is one of them. Unless we improve the fundamental educational system and bring public awareness in the field of women’s rights, we cannot achieve success in the relevant fields. Thus, India is still the male-dominated society. Although some noticeable changes have taken place, the country still has a long way to go to come at the level of women’s position in the developed countries.

2.4. Position of Women in Indian Legal Perspective

In India, serious attempts were made to elevate the status of women only after Independence. After Independence, the Government of India, initially decided to pave a path to bring about social change based on three major areas, viz. constitutional and

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46 *supra note* 49. p. 361
legal reforms, planned development based on mixed economy and state support to social welfare activities. All these three steps have their impact on women.47

There has been a tremendous change in the legal status of Indian women in the post-Independence era. The Constitution of India is an organic and dynamic socio-political and legal written document. It has kept pace with women’s rights and freedoms. There has been a constant upliftment in the field of the constitutional and legal rights of women; thereby giving them increased legal protection.48

The framers of the Constitution were well aware of the discrimination and unequal treatment meted out to the fairer sex, from time immemorial. They included certain general as well as specific provisions for the upliftment of the status of women. They provided equality of status and of opportunities explicitly at some places and implicitly in all other places on par with men as citizens of India. It provides against discrimination on the ground of sex (Article 15 and 16) but it did not take note of discrimination that is specifically based on gender.

The Constitution of India provides certain safeguards to women. It has given special attention to the needs of women to enable them to exercise their rights on equal footing with men and participate in national development.49 The Preamble to the Constitution of India resolves to secure to all its citizens, men and women alike, justice – social,


economic and political. It enshrines the principles of equality of status, liberty and social justice. Articles 14, 15 and 16 ensure equality and prohibit any form of discrimination on the basis of caste, creed, race or sex. The Indian Constitution guarantees certain rights to women. Articles 14, 15 and 21 of the Constitution of India deal with the rights and privileges of women. Under Article 15(3) of the Constitution, the State can make special provisions for women. One of the Directive Principles of State Policy lay down that the State should provide adequate means of livelihood for men and women, equal pay for equal work, maternity reliefs.

Discrimination against women has been explicitly prohibited in some Articles of the Constitution. Article 15(1) clearly states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. It is provided in Article 15(2) that No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to Access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Article 15(3) specifically says that nothing in Article 15 shall prevent the State from making any special provision for women and children.

Article 16 of the Constitution of India mentions equality of opportunities for all and also explicitly prohibits the discrimination against women. Accordingly, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. No citizen shall, on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of any employment or office under the State.
The following Articles of the Constitution of India provide equal opportunities for women implicitly as they are applicable to all persons of both sexes. Under Article 14 of the Constitution of India, the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. As per Article 21 of the Constitution, no person shall be deprived of life or personal liberty except according to procedure established by law. Article 23 prohibits the traffic in human beings and forced labour.

Though the discrimination of women is explicitly prohibited in Articles 15 and 16 of the Constitution of India, this type of prohibition of discrimination of sex is mingled with the prohibition of other discrimination on the ground of religion, race, caste, place of birth. In all other fundamental rights, the words ‘citizen’, ‘person’ means both male person and female person. Hence women are equally entitled for the protection of all fundamental rights along with men. Thus, there is no discrimination of women relating to the fundamental rights guaranteed in the Constitution.

As per Justice Bhagwati, “...these fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.”

The Directive Principles of State Policy contained in Part IV of the Constitution of India incorporate the principles and objectives to be followed by the State while making laws for the governance of the country. They lay down certain economic and social policies to be pursued by the various governments in India. Though they are not enforceable in

\[50\] Maneka Gandhi v. Union of India (1996) 5 SCC 148
any court, they are fundamental in providing welfare to the people. The idea of a welfare state envisaged by our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty. In fact, they are ideals which both the Union and State Governments must keep in mind while they formulate a policy or pass a law. Some Directives are explicitly intended to improve the status of women and for their protection. As the words ‘people’ and ‘citizens’ in these Directives means both men and women, all the Directive Principles are related to women also.

The Directive Principles of State Policy direct the State to take certain remedial measures for the welfare of the women. Article 39 contains some provisions related to women which require the State to direct its policy towards to secure the right to an adequate means of livelihood to the citizens, men and women equally; equal pay for equal work for both men and women; and to protect the health and strength of workers, men and women, and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength.\(^{51}\)

\(^{51}\) Article 39 of the Constitution of India – “The State shall, in particular, direct its policy towards securing –

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
(d) that there is equal pay for equal work for both men and women;
(e) that the health and strength of the workers, men and women, and the tender age of the children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
Article 39A contains the provision for equal justice and free legal aid. It says that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Women can thus approach state agencies for free legal aid.

In the fundamental duties contained in Part IVA added to the Constitution by the 42nd Amendment, 1976, Article 51A (e) which specifically relates to women states that “it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.”

Reservations of seats for women in Panchayats and Municipalities have been provided in Article 243D(3) and 243T(3) of the Constitution of India respectively. Thus women’s participation in decision-making bodies has also been ensured to some extent.

All disadvantaged sections of the society lacks access to institutions of grievance redressal. Therefore, one of the important strategies to provide empowerment is to facilitate access to rights enforcing institutions. Strengthening of the institutional infrastructure for facilitating access to decision-making and remedial institutions is very important. The substantive rights conferred by the laws are ineffective in the absence of an efficient infrastructure.

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52 The Constitution of India
Although law can catalyse change in social behaviour, the real change can come only through the efforts of those who struggle for change. The fact that women are now given a share in decision-making is not because of the change in the nature of men’s attitude but of the compulsions of legal provisions. The law plays a very important role in supporting and monitoring the women’s struggle for gender equality. The main task of those who are crusading for gender justice will be to educate both men and women about it. The movement to change public opinion and societal attitudes can at the most be catalysed by law. But such change cannot be brought about by legal activities alone. The law can help by protecting the freedom of those who struggle for it and by firmly preventing those who try to weaken it.53

While a number of legislative measures were adopted to guarantee legal equality to women, in practice, there are hardly any opportunities provided for women to learn their new roles; the process of revolutionary transformation in the social position of women submitted to an anti-participatory, elitist bureaucratic structure of exclusion and manipulation. Attempts to legislate, reform and enforce laws have tended to build on the assumption that society is against such phenomenon. The state initiatives were accordingly directed towards making its executive functionaries more sensitive, judiciary more receptive and the law, in words, less sexist.54

It was not until 1955, by passing the Hindu Marriage Act that the law forbade polygamy for Hindus, allowed divorce by either husband or wife on the same grounds and specified the marriage age for girls as 15 and for boys as 18. Secular and mixed


marriages were legalised by the Special Marriage Act of 1954. These Acts were followed by the Hindu Succession Act of 1956, providing that a son, daughter and widow/mother could inherit equally. The Hindu Adoption and Maintenance Bill of 1956 provided separate maintenance for women under certain conditions, where legal separation or divorce was not sought. The Dowry Prohibition Act was passed in 1961 as an effort to end the practice of demanding dowry. This Act was modified by the Dowry Prohibition (Amendment) Act, 1986. Other major legislative efforts to improve the position of women have been the passage of the State Maternity Benefits Acts and the Termination of Pregnancy Act in 1972.

A number of provisions have also been formulated pertaining to women engaged in industrial activities. Some noteworthy enactments in relation to this are the Equal Remuneration Act, 1976, Maternity Benefit Act, 1961, Factories Act, 1948 and Employees Provident Fund Pension Linked Insurance Fund Act, 1952.55

The attempt to transform society into a more equitable and just one through legal injunctions and reforms has had a long tradition in India. The conflict between that attempt and religion or custom has also had a long history. The injunctions are made by the State, usually under pressure from some section of the society which is bent upon bringing about social change. That one of the ways they seek to do this is through legal reform perhaps reflects the fact that significant sections of this multicultural and multinational society are unwilling to accept that change and nothing short of the threat of illegality and criminality will make them transform their behaviour. Nor has legal reform ever been accepted passively. Every articulate section of society adds its mite to the debate, the media gleefully amplifies it all and legal reform hardly ever seems to

55 supra note 49. p. 314
become actual in its originally proposed form. After being subjected to the differing philosophies of different courts and judges, intention and result might not have much to do with each other when the law is ultimately applied to the people. Still, legal reforms have always been an important arena of social development. Not surprisingly, the new women’s groups in the country, in their attempt to transform social values in the direction of greater justice and equality for women, have made the legal sphere an important area of their struggle.56

Though our Constitution guarantees equal rights to men and women alike, in reality, a majority of women in India are still lagging behind men in every sphere of life. The task is enormous and needs the commitments of the growing women’s movement as well as of all those who seek a just society. The more silent and invisible forms of oppression that women face everyday are shocking. An essential step for combating the oppression of women would be absolute public acknowledgement – governmental as well as societal – of the existence of widespread abuse and discrimination at every level of Indian society. There is persistence in India of cultural practices that discriminate against girls and women.57

When international instruments guaranteeing human rights are in place and the understanding of the woman as an individual and a bearer of rights is already firmly entrenched, campaigns against “dowry deaths” and for greater protection for women within their marital homes, has fixed the responsibility on the state to institute these

protections, shifting the customary norm of a specific form of domestic violence – “dowry deaths” – out of the community into a secular democratic space. While international instruments like CEDAW have been brought into Indian legal regimes, the framework of CEDAW is yet to create any impact on the judicial perception of women’s rights in relationship on a day-to-day level.

Though the Indian Constitution provides equality of status and of opportunity to women, discrimination is persisting in one form or the other. Discrimination against women continues to exist even today as it is so deep-rooted in the traditions of Indian society. The root cause for the discrimination of women is that most women are ignorant of their rights and the position of equality assured to them under the Indian Constitution and legal system.

Indian women are becoming more and more conscious of their constitutional and statutory rights. This consciousness has awakened in them a sense of urgency in expressing equality and social Justice. Without equality and social justice there cannot be democracy in the real sense. However, the term equality is to be comprehended in its true sense. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual and also the equal subjection of all individuals and classes to the ordinary law of the land. As Dr. Jennings put it, “Equality before the law means that amongst equals the law should be equal and should be equally administered and that like should be treated alike”.

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58 Amnesty International 2000: 10
2.5. Violence against Women in India

In communities where male dominance is strong, violence against women is likely to be frequent. India, with its rigid patriarchal structure of a family and society and the hold of feudal values is no exception, but a glaring example of such violence. For centuries the laws of Manu as regards the role and behaviour of women have been rigidly adhered to in the Hindu society. Manu propounded a theory of perpetual slavery for women. She is to be under her father’s guardianship in childhood, husband in youth and son in old age.  

A study conducted in New Delhi in 2012 found that 92% of women reported having some experience in sexual violence in public spaces in their lifetime and 88% of women reported having experience some form of verbal sexual harassment (including unwelcome comments of a sexual nature, whistling, leering or making obscene gestures) in their lifetime. It is indeed ironic that in India, which has given apostles of peace and non-violence, women have to bear the brunt of violence – domestic as well as public, physical as well as emotional.

In Madhur Kishwar v. State of Bihar, it was observed by Justice K. Ramaswamy that Indian women “have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination”


In India, we have a unique situation of co-existence of all forms of violence against women. In the Indian society dominated by men, the womenfolk are prone to bias and discrimination. For centuries, they have been subjected to social, physical, economic, psychological and sexual exploitation. The real extent of violence against women in India will never be known, but even the official figures – with all their limitations such as under-reporting are appalling enough.

Violence against women can be attributed to the patriarchal elements of the Indian culture and tradition. According to a newspaper report Indian men are far more traditional, even young, educated men are not changing rapidly as women. Numerous social, political, economic, cultural and family conditions are responsible for women’s oppression. They fell victims of circumstances which have been created due to gender discrimination which persist in India since time immemorial.

The patriarchal set-up of our society keeps women in a disadvantageous position. The patriarchal society in India rigidly defines the stereotype roles of men and women. Our societal structure is such that a woman is expected to be perfect in every aspect. Most often women suffer from mental agony. The wounds on the mind, though not visible, are the most difficult to heal. Violence against women is not a myth, but a reality. Various forms of violence against women are prevalent in our society, though many

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64 Times of India. March 7, 2011 “Gender Equality: India at the bottom of the pile”
cases remain unreported due to cultural norms, apathy or ignorance. They may manifest themselves directly in foeticide, female child killings, bride-burning, dowry-murder, wife-battering, abduction, eve-teasing, verbal abuses or verbal rebukes. Women, on many occasions, are victimized by all sorts of discrimination, deprivations and obstructions in goal-achieving responses. These incidents may occur in the family, offices, agricultural fields, industries or even public places. There has been an alarming increase in the incidence of violence within and outside the family. According to the NCRB records of 2011, there were 2,28,650 reported cases of crime against women, out of which 99,135 accounted for cruelty by husband and relatives and 8618 cases of dowry death. The most common form of violence in all states of India is physical violence. Sexual violence is reported least often in most states.

Women in India experienced violence in various forms throughout their lives, and it cuts across boundaries of caste, class, religion, and region. Among the different types of gender-based violence, domestic violence is the most common type prevalent in India. Marital discord sometimes culminates in violence. Women being physically weaker than men are very often victims of family violence. Cruelty by the husband and relatives of the husband may drive a woman to end her life. Insults and constant criticism can reach intolerable heights whether sexual taunts, or accusations about being a bad wife and mother. Violence in the family is often regarded as a domestic affair in which others should not interfere. Violence against women “needs to be placed in the patriarchal, patrilineal, and patrilocal …cultural context of India marked by unequal

gender relations that are rooted in centuries old religious scriptures”. The non-fulfilment of dowry is a major catalyst in domestic violence against women perpetrated by husbands and by members of his family, including other women in the patrilocal household. Dowry, which had its origin in vardakshina meaning a gift voluntarily given by the bride’s father to the bridegroom, later developed into the practice of dowry. It became a means of exploitation. The lower social status of women in the Indian society is mainly responsible for the evil of dowry. Young married women have been subjected to physical and mental torture in order to extract dowry from their parents. In some cases, the women have either committed suicide or burnt to death by their husband and in-laws.

In our society, the nature of violence against women by members of the marital home is closely related to demands for dowry as well. The term ‘domestic violence’ is therefore appropriate in the Indian context as it has been understood as violence perpetuated against a married woman by members of her marital family regardless of whether it is accompanied by demands of dowry. The dowry menace has increased phenomenally in recent years. Several provisions were added to the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act. Three provisions were added in the Indian Penal Code to deal with the problem of domestic violence though the term ‘domestic violence’ is not explicitly mentioned in the provisions. Section 498A is applied when the woman is subjected to cruelty and harassment. Section 304B is invoked when such cruelty specifically made with regard to demands for dowry results in the death of the woman in suspicious conditions. Section 306 is applicable to cases in which the woman

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69 supra note 64
commits suicide. The very nature of these offences requires a less technical and socially sensitive approach by various components of the criminal justice system. There is need to take note of the ghastliness of the dowry deaths, which usually take place in the privacy of the matrimonial home. Separation from husbands carries a major social stigma for women and their families, and thus, women are more likely to remain in abusive marriages, less likely to seek help and more likely to tolerate abuse.\textsuperscript{70}

The worst part of the problem is that women today are not feeling safe and secured even in the family. The incidence of violence of all forms in the family has also gone up.\textsuperscript{71} According to the National Crime Records Bureau, in 2013, more than 38\% of crimes committed against women were by their husbands or relatives. A UN Report indicates that 6 out of 10 Indian men admitted to indulge in violence against their wives or partners.\textsuperscript{72} The concept of home, sweet home, is no more so for many women who suffer violence against themselves by the members of the family. Immediate control of violence against women needs cooperation from the society, voluntary organizations, and governmental agencies. Such a burning problem of violence against women needs a multi-disciplinary conceptual analysis.

To conclude, in India, marriage institution is considered as a religious obligation. This is truer in case of Indian women, whose destiny in life has been marriage and motherhood. The Indian women, starting from their childhood are trained to be submissive, expected to develop patience and courage to face different odds in life but not to seek separation from their spouses. Although legally, she is allowed to seek divorce because of the


\textsuperscript{71} supra note 17. p.871

\textsuperscript{72} Retrieved from https://www.youtube.com/watch?v=knPvf6eM
atrocities of her husband, yet social definitions, values and norms have not undergone appropriate changes to create congenial situation for her to go for divorce, even if circumstances demand so. Consequently, divorce for women is still stigmatised. Under these circumstances it is not easy for her to terminate the marital relationship even though it is abusive. Additionally, she may be economically, psychologically and socially dependent upon her husband or have so much emotional investment in her marital relationship and children that she prefers to suffer rather than to go for separation or divorce.\textsuperscript{73}

\textbf{2.6. Legislations on violence against women in India}

Law is one amongst many mechanisms that can challenge the patriarchal set-up and lift up the status of women in the society. Whether public opinion is in favour of such laws or not is a different issue. Since law is an instrument to bring about social change, we need to study the various legislations enacted to bring about the necessary change in the society. It is a constitutional inspiration to ameliorate the status of women. Crimes and offences against women need protection in the sense that they are in a disadvantaged position because of their gender. There has been complete normalization of violence against women – sexual, domestic, communal and public.\textsuperscript{74}

An overview of some legal enactments will fill the lacuna in the knowledge of laws for women and the hiatus between the letter and the spirit of the law. The span of the legal review is wide enough to encompass legislation touching every aspect of a woman’s life: the all-pervasive problem of sexual violence in varying degrees of severity, the

\textsuperscript{73} supra note 7 p. 58-59

pernicious custom of dowry resulting in torture and death of young brides, other types of domestic violence, including wife-battering, prostitution, the relatively innocuous-appearing but insidiously harmful issue of indecent representation of women, widow immolation, and sex determination tests leading to female foeticide. It testifies to the shocking amount and life-threatening nature of the violence that dogs a woman at every step, and, at the same time, reveals the insufficiency and inadequacy of the legal measures which claim to offer protection.

An attempt to give an insightful and incisive analysis and copious documentation of the laws pertaining to women that have been enacted is given in this chapter. However, the list of enactments is not exhaustive. If oppression can be tackled by enacting laws, then women in the country would be free from all forms of violence. In 1984, the Dowry Prohibition Act was amended to introduce more stringent punishment for the giving and taking of dowry, and in 1986, the Indian Penal Code was amended to address the offence of dowry death.

**The National Commission for Women Act, 1990**

The National Commission for Women Act, 1990 constituted the National Commission for Women on 31-1-1992. Section 10 of the Act enumerates the various functions of the Commission. The Commission is to investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.\(^75\) It is the function of the Commission to present reports upon the working of the constitutional safeguards provided for women to the Central Government annually and at such other

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\(^75\) Section 10(1)(a) of the National Commission for Women Act, 1990
time as the Commission may deem fit, and make recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State. The Commission has to review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments in them and suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in those legislations. Another function of the Commission is to take up the cases of violation of the provisions of the Constitution and other laws relating to women with the concerned authorities.

It is also the function of the Commission to look into complaints and take *suo motu* notice of matters relating to deprivation of women’s rights, non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development and non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women and take up these issues with the appropriate authorities.

The Commission shall also call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal. It shall also be the function of the Commission to undertake promotional and educational research to suggest ways to ensure due representation of women in all spheres and identify the

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76 *ibid.* Section 10(1)(b)
77 *ibid.* Section 10(1)(c)
78 *ibid.* Section 10(1)(d)
79 Section 10(1)(e) of the National Commission for Women Act, 1990
80 *ibid.* Section 10(1)(f)
81 *ibid.* Section 10(1)(g)
factors for impeding their advancement, such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity.\textsuperscript{82}

The evaluation of the progress of the development of women under the Union and any State is another function of the Commission.\textsuperscript{83} It shall inspect or cause to be inspected a jail, remand home, women’s institution or such other place where women are kept as prisoners or otherwise.\textsuperscript{84} It is also the function of the Commission to fund litigation affecting a large body of women.\textsuperscript{85} It shall also participate and advise on the planning process of socio-economic development of women\textsuperscript{86} and also make periodical reports to the Government on any matter pertaining to women.\textsuperscript{87}

Section 10(4) of the Act provides that the Commission shall have all the powers of a civil court trying a suit in matters which relates to summoning and enforcing the attendance of any person from any part of India and examining him on oath; requiring the discovery or production of any document; receiving evidence on affidavits; requisitioning any public record or copy of it from any Court or office; and issuing commissions for the examination of witnesses and documents.\textsuperscript{88}

\begin{footnotes}
\footnotetext{82}{\textit{ibid.} Section 10(1)(h)}
\footnotetext{83}{\textit{ibid.} Section 10(1)(j)}
\footnotetext{84}{\textit{ibid.} Section 10(1)(k)}
\footnotetext{85}{\textit{ibid.} Section 10(1)(l)}
\footnotetext{86}{Section 10(1)(i) of the National Commission for Women Act, 1990}
\footnotetext{87}{\textit{ibid.} Section 10(1)(m)}
\footnotetext{88}{\textit{ibid.} Section 10(4)}
\end{footnotes}
The Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

This is an Act to provide for the prohibition of sex selection, before or after conception and for regulation of pre-natal diagnostic techniques and for the prevention of their misuse for sex determination leading to female foeticide. Section 3A specifically provides that sex selection on a woman or a man or on both or on any issue, embryo, conceptus, fluid or gametes destined from either or both of them is prohibited.\textsuperscript{89} Section 6 of the Act prohibits any genetic counselling centres or laboratories or genetic clinic or any person to conduct or cause to be conducted pre-natal diagnostic techniques including ultrasound technology for determining the sex of the foetus.

The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act of 1971 provides for the termination of certain pregnancies by registered medical practitioners in certain cases so as to save the pregnant women’s health, strength and life in case of any complications which might put her life at risk. Section 3(2) provides that such termination of pregnancy can be done when the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or when there is a substantial risk that if the children were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Explanation I to Section 3(2) lays down that where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. It is further provided in sub-section

\textsuperscript{89} Section 3 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
(3) that in determining whether the continuance of a pregnancy would involve such risk of injury to the pregnant woman, account may be taken of the pregnant woman’s actual or reasonable foreseeable environment. Moreover, termination of pregnancy of a woman who has not attained 18 years of age, or who, having attained the age of 18 years, is a mentally ill person as defined in Section 2(b)\(^90\) cannot be done without the consent in writing of her guardian.\(^91\)

\(^90\) Section 2(b) of the Medical Termination of Pregnancy Act, 1971 – “mentally ill person” means a person who is in need of treatment by reason of any mental disorder other than mental retardation.”

\(^91\) Sub-section (1) and (2) of Section 3 of the Medical Termination of Pregnancy Act, 1971 reads as under:-

“Where pregnancies may be terminated by registered medical practitioner –

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or any other law for the time being in force if any pregnancy is terminated by him in accordance with the provisions of this Act., pregnancy

(2) Subject to the provisions of sub-section (4), pregnancy may be terminated by a registered medical practitioner:

(a) where the length of the pregnancy does not exceed twelve weeks, if such medical practitioner is, or

(b) where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioner are:

of opinion formed in good faith, that:

(i) the continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

(ii) there is substantial risk that if the children were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Explanation I. – Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.

Explanation II. – Where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.
The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act of 1956 was enacted to suppress immoral traffic. It is an Act to curb and abolish flesh trade and prostitution of human beings as an organised means of livelihood. As provided under Section 2(g) of the Act, ‘prostitution’ means the sexual exploitation or abuse of persons for commercial purposes. Prostitution per se is not an offence but immoral traffic of persons for the purpose of prostitution is punishable under the Act. Prostitution is a social evil therefore it is necessary to curb it. An interesting feature of this Act is that it not only covers women and children but also men.

This Act does more harm women in general and prostitutes in particular. Under this Act, any woman who is out at night can be picked up by the police. The only aim of the amendment of 1986 seems to be to enforce more stringent punishment.

The Indecent Representation of Women (Prohibition) Act, 1986

The Indecent Representation of Women (Prohibition) Act of 1986 was passed with the objective of providing a separate piece of legislation to prohibit references to women in publications particularly in advertisements, which are considered obscene. Under this Act, any indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other form is prohibited. Section 2(c) defines indecent representation as the depiction of the figure of a woman, her form or body or any part in any manner which have the effect of being indecent or derogatory to, or denigrating women or is likely to deprave, corrupt and injure the public morality or

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92 supra note 49
morals.\textsuperscript{93} Section 3 prohibits the publication or exhibition of any advertisement which contains indecent representation of women. The Act also prohibits the publication or sending by post of book, pamphlets, etc., containing indecent representation of women.\textsuperscript{94} This section does not apply to the publication of any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which is kept or used \textit{bona fide} for religious purposes; or which is proved to be justified as being for the public good on the ground that it is in the interest of science, literature, art or learning or other object of general concern. Section 4 is also not applicable to any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958; or any temple, or on any car used for the conveyance of idols, or kept or used for any religious purposes. It further provides that it does not apply to any film in respect of which the provision of Part II of the Cinematograph Act, 1952 is applicable. In \textit{Chandra Kumari vs. Commissioner of Police, Hyderabad}\textsuperscript{95}, it was held that the dignity of women is protected by Article 21 of the Constitution of India.

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

In order to eradicate the social evil of Sati, the Parliament enacted the Commission of Sati (Prevention) Act, 1987. ‘Sati’ as defined under Section 2(1)(c) means the burning or burying alive of any widow along with the body of her deceased husband or any

\textsuperscript{93} Section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986

\textsuperscript{94} Section 4 reads as under: -

\textit{No person shall produce or caused to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form}

\textsuperscript{95} AIR 1998 A.P. 302
other relative or with any article, object or thing associated with the husband or such relative; or any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the woman or otherwise.

The Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 reformed the Hindu law of marriage and brought a radical change in the traditional Hindu Law on marriage. The Hindu marriage Act, 1955 has made elaborate provisions as to the conditions for a Hindu marriage, ceremonies, legitimacy of children restitution of conjugal rights, divorce etc. This Act confers certain rights on the Hindu women as regards the personal matters of marriage, divorce, succession etc. The Act permitted divorce enabling abused wives to separate from their husbands, allowing them alimony and custody of young children.

Section 5(i) introduces monogamy which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. This clause prohibits bigamy. A bigamous marriage is void as provided under Section 11 of the Act. Before the Act, a Hindu could marry any number of wives even if he has a wife or wives living. The Act abolished polygamy as well as polyandry. A marriage in violation of section 5(1) is void. In Smt. Yomuna Bai Anant Rao Adhar vs. Anant Rao Thiraram Adhar, the Supreme Court held that the marriage becomes null and void where it is in violation of the first condition of Section 5.

A person whose wife is alive and his marriage is valid and subsisting at the time cannot marry another wife, similarly a woman whose husband is alive and her marriage is valid

96 supra note 14. p. 193
and subsisting at the time cannot marry another husband. In all the cases of bigamy a strict proof of solemnization of marriage, comprising essential customary rites and ceremonies, is required. The wife of bigamous marriage has no legal status as a wife because the marriage itself is void but she entitled to get maintenance. The children of void marriage are treated as legitimate for limited purpose of inheriting the parents.

In spite of the rule of monogamy, bigamy seems to persist because social norms have not been able to keep pace with legal reforms. An Indian woman devoid of economics security or social awareness accepts her husband’s lapse meekly as her fate and she is afraid of even going to courts of law. It is further suggested that the word “solemnized” should be removed from the Act, because in many cases the real hardship is that woman finds it a gigantic task to prove that her husband has married again accordingly to the Hindu marriage Act.

The essential conditions for a valid marriage under the Act are enumerated below:

i. Neither party has a spouse living at the time of marriage.

ii. Neither party is incapable of giving a valid consent due to unsoundness of mind.

iii. Parties are of prescribed age that is 21 in case of male and 18 in case of female.

iv. Parties are not within prohibited degrees of relationship, unless the custom governing them are otherwise.

v. The parties are not sapindas of each other, unless such marriage is permitted by custom.
Section 5 has the effect of preventing child marriage, abolishing the prohibition on widow remarriage and polygamy. This has enhanced the social status of Hindu women.

A provision for registration of Hindu marriages is laid down under Section 8 of the Hindu Marriage Act, 1955 for facilitating proof of such marriages. However, the validity of such marriage is not affected because of non-registration.

Restitution of conjugal rights is a matrimonial right which husband and wife have to each other’s society.\textsuperscript{97} Section 9 of Hindu Marriage Act, 1955 affords a remedy to the aggrieved wife or husband against a deserting spouse.

**The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

Since sexual harassment of women at the place of employment is against the principle of gender equality, it is violation of the fundamental rights, particularly Articles 14, 15 of the Constitution which enshrined principles i.e., equality before law and prohibition of discrimination on grounds of religion, race, caste, sex and place of birth. Such sexual harassment also violates Article 21 of the Constitution which deals with protection of life and personal liberty.

The Supreme Court of India in the case of *Vishaka vs. State of Rajasthan*\textsuperscript{98}, reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognized that it violates the constitutional right to equality and provided guidelines to address the issue pending the enactment of a suitable legislation. With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an

\textsuperscript{97} supra note 49

\textsuperscript{98} (1997) 7 SCC 323
enabling working environment for women through legislation was felt imperative by the Government. It was, thus, proposed to enact a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status, free from all forms of sexual harassment.

The Parliament of India enacted “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013)” to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Section 3 of the Act provides that:

1. No woman shall be subjected to sexual harassment at any workplace;

2. The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:-

   a. Implied or explicit promise of preferential treatment in her employment;

   or

   b. Implied or explicit threat of detrimental treatment in her employment; or

   c. Implied or explicit threat about her present or futures employment status;

   or

   d. Interferes with her work or creating an intimidating or offensive or hostile work environment for her; or

   e. Humiliating treatment likely to affect her health or safety.
“Aggrieved woman” under Section 2(a) of the Act means –

a. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

b. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

Sexual harassment at the workplace results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution which discourages women’s participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth. Article 19(1)(g) gives the fundamental right to all citizens to practice any profession, or to carry on any occupation, trade or business. This right pre-supposes the availability of an enabling environment for women, which is equitous, safe and secure in every aspect. Article 21, which relates to the right to life and personal liberty, includes the right to live with dignity, and in the case of women, it means that they must be treated with due respect, decency and dignity at the workplace.

**The Indian Penal Code, 1860**

The Indian Penal Code, 1860 contains certain provisions dealing with offences that may be committed against the body, marriage, honour, modesty and property of women along with other offences. Section 10 of the IPC defines ‘woman’ as ‘a female human being of any age’.
Section 100 of the Act lays down that “The right of private defence of body extends under the restrictions mentioned in the last preceding section, in the voluntary causing of death or of any harm to the assailant, if the offence which occasion the exercise of the right of any of the descriptions hereinafter enumerated, namely, –

First - Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly - Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly - An assault with the intention of committing rape;

Fourthly - An assault with the intention of gratifying unnatural lust;

Fifthly - An assault with the intention of kidnapping or abducting;

Sixthly - An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release;

Seventhly - An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”

*Dowry death*

The offence of dowry death was inserted into the IPC as Section 304B by Act 43 of 1986. However, this section gives no scope to be used in situations where the violence

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99 Section 100 of the Indian Penal Code, 1860
is not linked to dowry. This section also presumes that women are harassed for dowry only within the first seven years of marriage. So overall, this section is not likely to benefit women to deal with domestic violence.

**Cruelty**

The Criminal Law (Amendment) Act, 1983 inserted Section 498A of the IPC under Chapter XX-A to control the menace of dowry death. This section is wide enough to apply to situations of domestic violence. Although the aim was to deal with dowry harassment and suicide, explanation (a) does not use the word ‘dowry’ to define cruelty. It also includes mental cruelty. Hence it is wide enough to be used in situations of domestic violence and mental cruelty. However, the use of the word ‘grave’ in this explanation precludes the everyday violence suffered by a majority of women. Even with this limitation, this section can be an effective deterrent to violence husbands if the judiciary and other agencies had interpreted and enforced it in the right spirit. But the conviction of the husband is not the best solution to her problems. The complexities of

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100 Section 304B IPC – Dowry death: Where the death of a woman is caused by any burns or bodily injury or occurs otherwise, under normal circumstances within seven years of her marriage and if it is shown that soon before her death she was subjected to cruelty, or harassment by her husband or any other relative of her husband for or in connection with any demand for dowry, such death shall be called as ‘dowry death’ and such husband or relative shall be deemed to have caused her death.

101 Section 498A IPC is worded thus: Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purpose of this section, ‘cruelty’ means
(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or death whether mental or physical of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such a demand.
women’s lives, particularly within a violent marriage have to be comprehended beyond the context of popular ethics.\textsuperscript{102}

\textbf{Causing miscarriage}

Sections 312 to Section 314 of the Indian Penal Code deal with the offence of causing miscarriage of a woman. Section 312 of IPC provides that whoever voluntarily causes a woman with child to miscarry, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, is punishable. A woman who causes herself to miscarry is within the meaning of this Section.

Section 313 lays down that whoever causes the miscarriage without the consent of the woman, whether the woman is pregnant or not is also punishable. Section 314 provides for punishment when the act done with an intention to cause miscarriage causes the death of the woman.

\textbf{Intention to outrage the modesty of woman}

An assault with criminal intention to outrage the modesty of a woman is punishable under the Section 354 of the Code.

Section 354A contains the provisions for sexual harassment and punishment for sexual harassment. A man shall be guilty of this offence if he commits any of the following acts:-

i. Physical contact and advances involving unwelcome and explicit sexual overtures: or

ii. A demand or request for sexual favours; or

iii. Showing pornography against the will of a woman; or

iv. Making sexually coloured remarks.

Section 354B relates to assault or use of criminal force to a woman or the abetment of such act with the intention of disrobing or compelling her to be naked.

Section 354C lays down the provision dealing with the offence of voyeurism. It provides that any man who 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 or disseminates such image commits a crime.

Under Section 366 of the Indian Penal Code of 1860, kidnapping, abducting a woman with the intention to compel her to marry someone against her will, or to force or seduce her to have illicit intercourse is an offence.

Section 366A provides punishment for the procuring of any minor girl for the purpose of prostitution. It provides that whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intent to force or seduce to illicit intercourse with another person commits an offence. Section 366B also makes importation of a girl below 21 years.

**Rape**

Section 375 of the Indian Penal Code describes the offence of rape. Section 376 relates to punishment for the offence of rape.
The Supreme Court of India in *Bodhisattwa Gautam vs. Ms. Subhra Chakraborty* observed:

“Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is a violation of the victim’s most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21.”

Section 376B lays down the provision for sexual intercourse by husband upon his wife during separation. This section provides that a man who has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent is punishable.

Section 376C lays down punishment for sexual intercourse with a woman by the following groups of persons:

i. a person in a position of authority or in a fiduciary relationship; or

ii. a public servant; or

iii. superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women’s or children’s institution; or

iv. a person on the management of a hospital or being the staff of a hospital.

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103 AIR 1996 SC 922.
Section 376D provides that when a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape.

Sections 493 to 498 lay down provisions dealing with offences relating to marriage. Section 494 of the Indian Penal Code, 1860 prohibits subsequent marriage during the existence of first marriage. It is applicable to all Hindus, Parsis, and Christians but not applicable to Muslims because a Muslim man can have four wives at a time. However, a Muslim woman cannot have more than one husband at a time.\textsuperscript{104}

Section 509 of the Code provides that any person, intending to insult the modesty of any woman, utter any word, makes any sound or gesture, or exhibits any object to be seen or heard by the woman or intrudes upon her privacy is punishable.

Sections 53A, 113A, 113B, 114A and 146 are some provisions of the Indian Evidence Act of 1872 which deals with women-related offences. Section 53A of the Act which has been inserted by the Criminal Law Amendment Act, 2013 declares the irrelevancy of the evidence of the character of the victim of a rape or her previous sexual experiences with any person where the question of consent is an issue in a prosecution for an offence under certain sections of the Indian Penal Code, 1860. Section 113A relates to presumption as to abetment of suicide by married woman.

Section 125 of the Code of Criminal Procedure, 1973 falls within the constitutional guarantee provided under Article 15(3). In the famous \textit{Shah Bano}\textsuperscript{105} case, the Supreme Court held that Section 125 is applicable to all irrespective of their religion.

\textsuperscript{104} \textit{supra} note 49. p.138

\textsuperscript{105} \textit{Mohd.Ahmed Khan v. Shah Bano Begum} 1985 Cr. L.J. 875 (SC)
The Dowry Prohibition Act, 1961

The Dowry Prohibition Act of 1961 specifically prohibits the giving and taking of dowry. Dowry is a deep-rooted social evil which continues to persist in the society even today. Many an innocent woman has become victim of the dowry system. The legal sanctions have not been able to curb this problem totally. Section 2 defines ‘dowry’ as any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage, or by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before, or any time after the marriage in connection with marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law [Shariat] applies.\(^\text{106}\)

The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act of 2005 (43 of 2005) is an important legislation relating to protection of women from any form of violence inside the four walls of the home. It defines ‘domestic violence’ under Section 3. Any act, omission or commission or conduct of the respondent is regarded as an act of domestic violence if it harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. It is also domestic violence if anyone harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security. If the act

\(^{106}\) Section 2 of the Dowry Prohibition Act, 1961
injures or causes harm, whether physical or mental, to the aggrieved person, it is also
taken to be an act of domestic violence.

Explanations to Section 3 of the Protection of Women from Domestic Violence Act,
2005 elaborately describes the various forms of domestic violence. For the purposes of
this Section, physical abuses means any act or conduct which is of such a nature as to
cause bodily pain, harm, or danger to life, limb, or health or impair the health or
development of the aggrieved person and includes assault, criminal intimidation and
criminal force. Sexual abuse includes any conduct of a sexual nature that abuses,
humiliates, degrades or otherwise violates the dignity of the woman. Verbal and
emotional abuse is taken to include – a) insults, ridicule, humiliation, name calling and
insults or ridicule specially with regard to not having a child or a male child; and b)
repeated threats to cause physical pain to any person in whom the aggrieved person is
interested. Economic abuse is said to include – a) deprivation of all or any economic or
financial resources to which the aggrieved person is entitled under any law or custom
whether payable under an order of a court or otherwise or which the aggrieved person
requires out of necessity including, but not limited to household necessities for the
aggrieved person and her children, if any, Stridhan, property, jointly or separately
owned by the aggrieved person, payment of rental related to the shared household and
maintenance; b) disposal of household effects, any alienation of assets whether movable
or immovable, valuables, shares, securities, bonds and the like or the other property in
which the aggrieved person has an interest or is entitled to use by virtue of the domestic
relationship or which may be reasonably required by the aggrieved person or her
children or her Stridhan or any other property jointly or separately held by the aggrieved
person and c) prohibition or restriction to continued access to resources or facilities
which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Generally, complaints under the criminal laws can be registered only after an offence has been committed. But in a domestic situation, a woman would need protection even before the crime, when she apprehends danger to her life, as she is living with and is dependent on her assailter.

The purpose of the Protection of Women from Domestic Violence Act, 2005 is to stop the occurrence of domestic violence against women. It has been designed to help the woman during the most intense phase of abuse, and the availability of protection orders or residence orders will succeed in stopping the violence for that period depending on her needs and the gravity of the situation. Such protection for victims of domestic violence which is easy to obtain and available immediately, is, therefore, of utmost importance. The law, by itself, will not stop the violence, but it would provide the woman with a protection mechanism and would signify the official response of the state that violence behaviour even within the confines of home will not be excused or tolerated. If the law is to have a significant effect, it should be accompanied by the sensitisation of the police, the judiciary and the society as a whole.

An attempt has been made to review the laws and their impact on women against the backdrop of changing perceptions towards penal enactments within the women’s movement, while also examining the legislative reform in the realm of economic rights of women upon marriage. The disturbing trend about legislative reform in recent years has been that while penal legislations are given on a platter, there has been extreme resistance by the State to change the status quo within the family in favour of women.
In India, women are way ahead of their counterparts elsewhere in the matter of social legislation. But the implementation of laws granting rights to women has been so slow and lopsided and haphazard that socially, economically and politically women are kept far behind men. They are discriminated against at work and denied their due in every field. At home, they are often worse off, reduced to slavish drudges and maltreated in a hundred different ways. Constantly derided and mocked at, frequently bullied, sometimes assaulted, and occasionally burnt to death, they remain victims in every role. Indian women, thus, have been described as the underdogs of society where, in theory the law of equality exists, and women are considered to be on a par with their male counterparts, but in actual reality, men remain all powerful and thrive at the expense of women. While in western countries, women’s problem/issue is mostly one of identity, job equality, and sexual roles, in India, the question is simply one of stark survival.

The Constitution of India guarantees equality, freedom, opportunity and protection to women, and various social legislations give them several exclusive rights. Yet, they enjoy an unequal status. Some thinkers relate it with social conditions in our society like illiteracy, poverty, social customs, ignorance and lack of awareness of rights, while others relate it with their personality characteristics like feeling of helplessness, inferiority complex, and poor self-image, lack of self-confidence, self-reliance, and resourcefulness. Added to these is their unrecognised output in domestic chores and help to family members in their economic pursuits.

In recent years, on the one hand, incidents of aggressive violence against women are reported to be escalating alarmingly in our country, and this in itself is a sufficient cause for increased concern, and on the other hand, awareness of rights among women has increased, leading to the rise of feminist movement, resulting in a new sensitivity to all
forms of subjugation of women by men. A large number of cases of violence against women is smothered due to social pressures. The rights of women have been neglected, and in actual terms, there has not been any significant change in the rights of women within the family. Women’s rights should be brought to the centre-stage of the current political context to ensure better status of women of both majority and minority communities.