Part - I
Chapter - I
Introduction

A woman possesses a distinct status of its own. Woman plays a major and influential role in the family. The family is incomplete without woman. Man is too incomplete without a woman. That could be the reasons as to why the God has created in-built attraction with each other. Right from the ancient society, the women played a major role in the construction, constitution and progress of the society. In spite of her universally recognised indispensable importance in the family and society at large, the woman is subjected to so much hardship and given subservient or secondary status as compared to man.

While introducing the Topic of Research Study, it requires to deal with many aspects, pertains to woman which are mentioned in brief as follows:

**Status of woman in pre-independence period:**

In patriarchal family system, the woman has to leave her parent's home and she is introduced in in-law's family on permanent basis. In our country, the patriarchal family system has been in existence since time immemorial. In patriarchal family system man is in privileged and dominant position whereas the woman is given a subservient or secondary status in the family. Many a times, she is made the victim of atrocities in different ways by men and other members of in-laws family including even un-married sisters of her husband. She was also the victim of evil effects of many old systems like "sati" polygamy, child marriage etc. Many social reformers like Mahatma Jyotiba Fule, Mrs. Savitribai Fule, Madhav Karve and Chhatrapati Sahu Maharaj had done lot of contributions for the overall improvement of the status of women.

However, there was no legal protection to her to make her status equal to man in the family before independence.
Constitutional protection to women.

The founding fathers of the Constitution and particularly Dr. Babasaheb Ambedkar had given due weightage in the Constitution to make the status of women equal to men.

The Preamble provides to secure to all its citizens the Justice—Social, Economic and Political, Liberty of thought, expression, believe, faith and worship and Equality of status and of opportunity irrespective of the discriminations on the basis of sex. Hence, the Constitution brought the women at par with the men in the Preamble, which is the main source of the further provisions in the Constitution.

In Randhir Singh v. Union of India,¹ the Supreme Court relying on the Preamble and Articles 14 and 16 held that the Article 39 (d) of the Constitution envisages the constitutional right of “equal pay for equal work” for both men and women.

In Chapter III on Fundamental Rights, through many Articles, the women have been provided the status equal to men and prohibited the discrimination on the ground of sex. Particularly, the following Articles have dealt with the Rights of Women:

Art. 14 provides equality before the law and equal protection of laws to every person.

Art. 14 guarantees equal status to women with men.

The Apex Court in “Air-India” v/s Nargesh, Merza,² while giving the ruling on equality, struck down the AIR India & Indian Airlines regulation on the retirement and pregnancy bar on the services of Air Hostages being unconstitutional on the ground that the conditions laid down there were entirely unreasonable and arbitrary. The main conditions which were violative of the provisions of equality were struck down and relief was given to air hostesses, bringing them at par with men. Regulation 46 provided that an air hostess would be relived from the service of the Corporation after attaining age of 35 years or on marriage if it took place within 4 years of

² AIR 1981 SC 1829.
service or on first pregnancy whichever occurred earlier as per Regulation 46. The Managing Director had the discretion to extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years if an air hostess was found medically fit. The condition that the services of the Air Hostess would be terminated on first pregnancy was held to be most unreasonable and arbitrary and hence it was violative of Art. 14 of the Constitution. The termination of services of Air Hostesses on the first pregnancy is not only a callous and cruel act but an open insult to Indian womanhood, the most sacrosanct and cherished institution, the Apex Court observed. The provision in Regulation 47, giving the discretionary power to Managing Director to extend the services of Air hostesses without any guidelines was held to be uncontrolled and discriminatory power and hence liable to be struck down as Unconstitutional. As it gives option to Managing Director to continue a particular Air Hostess whereas the other Air Hostess can be terminated and hence this provision in Regulation 47 was held to be violative of Art.14 as it suffered from the vice of excessive delegation of powers.

Art. 15 Prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.

The equal protection of law is guaranteed to every person whether citizen or not under Art.14 whereas the rights under Art. 15 is available to every citizen.

Art. 15 (1) prohibits the state to discriminate against a citizen on the grounds only of religion, race, caste, sex or place of birth or any of that. The second clause to Art. 15 prohibits citizens as well as the states from making such discrimination with regard to access to shops, hotels, place of public, resorts etc. It is pertinent to note that clause (1) of Art. 15 of the Constitution prohibits discrimination by the state whereas clause (2) prohibits both the state and private individuals from making any discriminations.
Special provision for women and children:

Art. 15 (3) empowers the state to make special provisions for the protection of women and children. The justification for making special provision for women and children is that the "women's physical structure and the performance of maternal function place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race (Muller v. Oregon, 25 L. Ed. 551).

In Dattatraya v. State, the establishment of Educational Institutions by the state exclusively for women was held to be not violative of Art. 15 of the Constitution. The reservation of seats for women in a college does not violate Art. 15 (1) of the Constitution. The provisions providing reservation of seats for women in local bodies or in educational institutions are held valid. The women workers can be given special maternity relief under Art. 42 of the Constitution and a law to this effect will not be violative of Art. 15 (1) of the Constitution.

In Union of India v. V.P. Prabhakaran, it was held that the reservation of certain posts exclusively for women is valid under Art. 15(3) of the Constitution.

Women and sexual harassment.

In Vishakha v. State of Rajasthan, it was held by the Supreme Court that the sexual harassment of working women amounts to violation of the right under Articles 14, 15 and 23 of the Constitution.

Art. 16 provides for equality of opportunity in matters of public employment to all citizen:

Art. 16 (1) guarantees the right of equality of opportunity and employment in public officers to all citizen whereas clause (2) prohibits the state to discriminate any citizen on the grounds only of religion, race, caste, sex, decent, place of birth, residence or any of them. However, other clauses

1. AIR 1953 Bom. 311.
2. 1997 11 SCC 638.
3. AIR 1997 SC 3011.
(3),(4),(4-A),(4-B) and (5) to Art. 16 provide four exceptions by way of reservation to scheduled caste and scheduled tribes to the above rule of equality of opportunity.

The basic object of Art. 16 (1) is to guarantee the constitutional right to equality of opportunity and employment in public offices to all citizens as distinguished from other persons.

In C.B. Muthamma v. Union of India, the service rules, requiring a female employee to obtain the permission of the Govt. in writing before her marriage is solemnised and denying her right to be promoted on the ground that the candidate was married women was held by the Apex Court to be discriminatory against women and hence unconstitutional. In this case, the petitioner was denied promotion to Grade of the Indian Foreign Service only on the above ground.

Equal pay for Equal work:

Although, the Equal pay for Equal work’ has not been expressly declared as fundamental right but by virtue of Supreme Court’s ruling in Randhir Singh v. Union of India, D.S.Nakara v. Union of India, P.K.Ram Chandra Iyer v. Union of India, the equal pay for equal work has virtually become a fundamental right.

This principle of equal pay for equal work is equally applicable to temporary or casual employees, performing the same duties and functions, as held by Apex Court in Daily Rated Casual Labourer v. Union of India, and some other cases.

Art. 19 provides Right to freedom and personal liberties:

Art. 19 guarantees six types of freedoms to every citizen which are subjected to reasonable restrictions. These freedoms are equally available to women and there is no any discrimination for availing of these freedoms on the grounds of sex.

1. AIR 1979 SC 1868,
2. AIR 1982 SC 879,
3. AIR 1983 SC 130,
4. AIR 1984 SC 541,
5. 1968 1 SC(122)
Art. 23 provides Right against exploitation:

Art. 23 provides prohibition of traffic in human being and begar and other similar forms of forced labour. To ensure the achievement of object of this Article, the Parliament has passed the "Suppression of Immoral Traffic in women & Girls Act, 1956 which provides punishment for immoral traffic in human beings. The Act was subsequently amended as " The Immoral Traffic (Prevention) Act, 1956."

In Gaurav Jain v. Union of India,\(^1\) the Supreme Court has emphasised the need to provide proper opportunities of education and vocational training to the prostitutes to facilitate their rehabilitation.

In Vishal Jeet v. Union of India,\(^2\) the Apex Court held that the traffic in human beings includes devadasis. The Court has given directives for the rehabilitation of the children of prostitutes.

**Right of enforcement of Fundamental Rights by Supreme Court under Art. 32 and by High Court under Art.226.**

The Fundamental Rights are meaningless unless proper mechanism is there for the enforcement of these rights. Hence proper effective machinery for their enforcement has been provided in Part III itself by way of Articles 32 to 35. Art. 32 is itself a fundamental right.

In the word of Dr. Babasaheb Ambedkar -- "Art. 32 is the most important Article without which the Constitution will be a nullity. It is the very soul of the Constitution and the very heart of it".

Art. 32(1) guarantees the right to enforce the Fundamental Rights by moving to Supreme Court through "appropriate proceedings" whereas clause (2) empowers the Supreme Court to issue appropriate directions or orders or writ, including the writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of any of the Fundamental Rights in Part III of the Constitution.

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1. AIR 1997 SC 3021, 3035, 3036;  
2. AIR 1990 SC 1412;
In Delhi domestic working women's forum v. Union of India, the Supreme Court has given guidelines for the rehabilitation and compensation to victim working women in rape cases in a petition of Public Interest Litigation. In Vishaka v. State of Rajasthan, the Supreme Court has laid down detailed guidelines for the prevention of sexual harassment of working women.

**Writ Jurisdiction of the High Court under Art. 226.**

Art. 226 empowers the High Court to issue to any person or authority of the Government within its territorial jurisdiction the directions, orders or writs including the writs of habeas corpus, mandums, prohibition, quo warranto and certiorari or any of them for the enforcement of fundamental rights in Part III and for any other purposes.

**The Directive Principles of State Policy and the protection for women:**

Through Directive Principles, the State are advised to adopt the policies of welfare State. Though the Directive Principles are not enforceable as fundamental Rights, they are in no way less important for achieving the objectives of welfare State.

**Art. 39(a) and (d) requires the State to secure equal status to women with men:**

Clause (a) to Art. 39 of the Constitution requires the State to direct its policy for the securing of equal right of men and women to adequate means of livelihood, whereas clause (d) provides for equal pay for equal work for both men and women.

In Randhir Singh v. Union of India, the Supreme Court has held that the principle of 'equal pay for equal work' though not fundamental right is certainly a constitutional goal and therefore, capable of enforcement.

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2. AIR 1997 SC 3011.
through Constitutional remedies under Art. 32 of the Constitution. Hence in this case, the Apex Court has raised the status of Art. 39 (a) to that of Fundamental Right.

In another case **Grih Kalyan Kendra workers Union v. Union of India**, the Supreme Court has given the status of Fundamental Right to the Directive Principle under Art. 39 (d) of the Constitution.

In **Noor Suba Khatoon v. Mond Quasim**, the Supreme Court held that a divorced Muslim woman is entitled to claim maintenance for her children till they become major. The Court further held that the obligation of the father was absolute when the children were living with divorced wife under both the Muslim Personal Law and also under Section 125 of Cr. P.C. 1973.

The Panjab & haryana High Court has also directed a Muslim husband to pay alimony to his divorced wife and minor children even after the expiry of the *iddat* period.

**Indian Penal Code and the provisions dealing with various kinds of atrocities against women:**

In the inception of Indian Penal Code in 1860, the founding father of Indian Penal Code Lord Macaulay had paid much attention to the specific type of atrocities against women by incorporating various provisions, dealing with atrocities against them.

In we classify these provisions, in original IPC, the provisions are mainly dealing with offences affecting body, modesty of a woman and sexual offences.

**Amendments to Indian Penal Code dealing with offences related with women:**

The amendments to Indian Penal Code for dealing with offences pertains to women prior to 1983 are just few in numbers i.e. by adding two sections, that too only in the year 1923. In the year 1923, section 366 A was added to IPC for dealing with offence of procuring a minor girl for prostitution and section 366 B was added for crime of importation of girl from foreign country for prostitution.

1. AIR 1991 SC 1173,
2. AIR 1997 SC 3280,
Major Amendments to IPC in 1983 and 1986:

In the Indian Penal Code the various provisions for offences related with women were incorporated including amended provisions in the year 1923 as mentioned above.

However, the legal provisions prior to amendments in the year 1983 and 1986 and the provisions in Prohibition of Dowry Act 1961 were not sufficiently enough to prevent the marriage and sex related crimes against women and hence the Legislators thought it proper to amend Indian Penal Code again in the year 1983 and 1986, providing stringent provisions for dealing with cruelty to women, minimum mandatory punishment in rape cases and provision for dealing with dowry death.

Amendments to Indian Penal Code in 1983:

i) Section 498 A: Cruelty to woman by husband or relatives of husband.

ii) The crime of abetment to commit suicide and presumptive provision u/s 113 A in Indian Evidence Act:

The crime of abetment to commit suicide by young married women due to cruelty to them were on increase day by day. Considering this aspect, the corresponding provision in Indian Evidence Act was added by the same amendment in 1983, providing discretionary presumption as to abetment to commit suicide by young married woman due to cruelty u/s 113 A of Indian Evidence Act.

iii) Section 376 (1) and (2) IPC dealing with Rape and Custodial / Gang Rape etc.:

The amended section 376 prescribes a minimum mandatory punishment of seven years imprisonment for the offence of rape. Considering the more seriousness of rape offence in case of custodial rape, rape on pregnant woman, rape of girls under 12 years of age, a minimum mandatory punishment of ten years imprisonment has been provided by new Amendment of 1983.
Banning the disclosure of identity of rape victim and publication of court proceedings under new section 228 A:

By the same Amendment of 1983, a new section 228 A was added to Indian Penal Code which prohibits the disclosure of identity of rape victim and also the publication of court proceedings before a court without previous permission of such court.

**Court Proceedings in camera under new sub-section (2) of section 327 of Criminal Procedure Code, 1973.**

A new sub-section (2) was added by the same Amendment to section 327 of Criminal Procedure Code which provides for the conduction of rape cases in camera.

**The corresponding amendment in Indian Evidence Act by adding new section 114 A to Evidence Act:**

By the same Act of 1983, a new section 114 A was added to Indian Evidence Act which provides for mandatory presumption as to absence of consent in cases of custodial rape, rape on pregnant woman and in cases of gang rape.

iv) **376 A : Intercourse by a man with his wife during separation**  
( added in 1983 )

v) **376 B : Intercourse by Public Servant with woman in his custody**  
( added in 1983 )

vi) **376 C : Intercourse by Superintendent of a jail, remand home etc.**  
( added in 1983 )

vii) **376 D: Intercourse by any member of the management or staff of a hospital with any woman in that hospital ( added in 1983 )**

The new section 376 A to 376 D were added by the same amendment for dealing with special situations which came into force w.e.f. 25th Dec., 1983. These new sections were introduced with the object of dealing with sexual abuses of woman in custody, care and control by various categories of persons due to their official position which though not amounting to rape were nevertheless considered highly reprehensible.
Amendment to Indian Penal Code in 1986:

Section 304: Dowry Death and Presumptive provisions u/s 113 B in Indian Evidence Act:

This new section was inserted by "Dowry Prohibition (Amendment) Act, 1986 with the basic object for combating the increasing menace of dowry death, with the relevant provision for providing mandatory presumption in Evidence Act by adding new section 113 B with a view to give more discretion to Judiciary for punishing the accused. The punishment provided for dowry death shall not be less than seven years of imprisonment but which may extend to life imprisonment. It indicates that the maximum quantum of punishment can be similar to that of murder u/s 302 IPC except death sentence. Hence combined effect of section 304 B IPC and 113 B Evidence Act is much more stringent than earlier section 498 A IPC.

The Rationale and Scope of Research Study:

Considering the increasing trend of atrocities against women, the Indian Penal Code has been drastically amended in the year 1983 for providing stringent provisions for dealing with atrocities / cruelties and sex related offences against women. By the same amendment in 1983, the presumptive provisions by way of sections 113 A and 113 B were added in Indian Evidence Act for giving more discretionary power to the Court in favour of prosecution i.e. to ensure justice to victim women. For dealing with sex offences, section 376 IPC has been amended and was bifurcated into two viz. 376 (1) and 376 (2), providing enhanced and also minimum mandatory punishment for rape and custodial/gang rape with corresponding provisions by way of section 114 A in Indian Evidence Act, providing mandatory presumption as to absence of consent of prosecutrix in certain prosecutions for rape.

Again in the year 1986, the Legislators felt it necessary to come out with stringent provision for the prevention of many lives of young married woman due to non-fulfillment of dowry demands by the victims' parents. Accordingly, new section 304 B was added to IPC for dealing with "dowry
death" of young married women with corresponding mandatory presumption u/s 114 A in Indian Evidence Act for giving more discretion to Court to decide the fate of the case in favour of prosecution, though it amounts to slight deviation from the traditional Rule of Evidence, based on "Accusatorial System" i.e. 'the accused is presumed to be innocent unless he is proved guilty.'

Considering all the progressive and positive legal developments basically for the prevention of atrocities, marriage and sex related crimes against women, the researcher felt it necessary to critically analyse and examine as to whether the 'punitive' and 'deterrent' objects of these legal provisions for the prevention of atrocities against women have been achieved or not through available crime statistics and the public view i.e. secondary data through questionnaires. That is the reasons as to why the "Scope of Study" has been confined to marriage and sex related crimes against women from the period of major and drastic amendments in the year 1983

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