Chapter – III

Scope of Study

1. Legal Provisions in Indian Penal Code, 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. The following provisions after amendments are aimed at dealing with various kinds of crimes against women:

Affecting body:

1. Dowry Death u/s 304 B IPC
2. Abetment of suicide u/s 306 IPC
3. Causing miscarriage u/s 312 IPC
4. Causing miscarriage without woman’s consent u/s 313 IPC
5. Death caused by act done with intent to cause miscarriage, if act done without woman’s consent u/s 314 IPC
6. Act done with intent to prevent child being born alive or to cause it to die after birth u/s 315 IPC
7. Assault or criminal force to woman with intent to outrage her modesty u/s 354 IPC.
8. Kidnapping, abducting or inducing woman to compel her marriage, etc u/s 366 IPC
9. Procuration of minor girl for prostitution u/s 366 A IPC
10. Importation of girl from foreign country for prostitution u/s 366 B IPC
11. Selling minor for purposes of prostitution etc. u/s 372 IPC
12. Buying minor for purposes of prostitution etc. u/s 373 IPC

Sexual offences

13. Rape u/s 375 & 376 IPC
14. Intercourse by a man with his wife during separation u/s 376 A IPC
15. Intercourse by public servant with woman in his custody u/s 376 B IPC
16. Intercourse by Superintend of Jail, remand home etc. U/s 376 C IPC
17. Intercourse by any member of the management or staff of a hospital with any woman in his hospital u/s 376 D IPC

**Offence of cruelty by Husband or Relative of Husband.**

18. Husband or relative of husband of a woman subjecting her to cruelty u/s 498 A IPC

**Affecting modesty of a woman:**

19. Word, gesture or act intended to insult the modesty of a woman u/s 509 IPC

**2) Amendments to Indian Penal Code for dealing with offences, related with woman.**

Since the inception of Indian Penal Code in 1860, if we consider the Amendments in IPC, the following Amendments have been made in respect of offences dealing with atrocities against woman:

1. **366 A**: Procuring a minor girl for prostitution *(added in 1923)*
2. **366 B**: Importation of girl from foreign country for prostitution *(added in 1923)*
3. **498 A**: Cruelty to woman by husband or relatives of husband *(added in 1983)*

**Sexual offences:**

4. **375 & 376**: Rape u/s 375 & 376 IPC *(amended in 1983)*
5. **376 A**: Intercourse by a man with his wife during separation *(added in 1983)*
6. **376 B**: Intercourse by Public Servant with woman in his custody *(added in 1983)*
7. **376 C**: Intercourse by Superintendent of a jail, remand home etc. *(added in 1983)*
8. **376 D**: Intercourse by any member of the management or staff of a hospital with any woman in that hospital *(added in 1983)*
9. **228 A**: Ban on the Disclosure of identity of the victim of certain offences etc. *(added in 1983)*

This new section was added to IPC by the Criminal Law (Amendment) Act., 1983 which prohibits disclosure of identity of victim in rape cases and also prohibits the publication of proceedings before a court without previous permission of such court.
Sub-Section (2) of section 327 to Criminal Procedure Code, 1973 was added by the same Amendment Act of 1983 which permits the court to conduct rape cases in camera.

By way of Explanation, it is clarified that the printing or publication of the judgement of any High Court or of Supreme Court would not amount to an offence.

10. 304 B: Dowry Death (added in 1986.)

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.

3) The Objects and Reasons of above amendments-vis-à-vis the scope of study:

If we consider the above amendments, it is clear that the amendments were made in IPC in the year 1923, 1983 and 1986.

(i) Amendments in 1923 and Objects:

In the year 1923, the amendments were made by adding two sections viz sections 366 A and 366 B with the basic objects of protecting minor girls from getting them involved in prostitution/illicit trafficking. These amendments were enacted by Act xx of 1923 to give effect to certain Articles of the International Convection for the suppression of Traffic in Woman and Children, signed by various Nations at Paris on 4th May, 1910. As the subject of traffic in women and children is not included in the scope of study, hence it is not dealt with in details.
(ii) Amendments in 1983 and basic Objects and Reasons:

(a) Section 498 A:

In the year 1983, the amendment was enacted basically to deal with cruelty, being committed by the husband and relatives of the husband of a woman by adding new section 498 A to IPC. The statement of Objects and Reasons for enacting Criminal Law (Second Amendment) Act No. 46 of 1983 read as under:

"The increasing number of Dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of the helpless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their in-laws."

(b) Sexual offences under Sections 375 & 376 IPC: Sections 375 and 376 have been substantially amended by the Criminal Law (Amendment) Act No. 43 of 1983 which came into force w.e.f. 25.12.1983. By this amendment, the old clause 'Fifthly' has been retained as Clause 'Sixthly' and new Clause 'Fifthly' has been added by the above Amendment Act. These two sections – 375 and 376 have been substantially changed and also introduced new sections, viz. Sections 376 A, 376 B, 376 C and 376 D for making the sexual intercourse being with consent not amounting to rape but different offences of lesser gravity than rape. The corresponding changes in Evidence Act has been made by adding new Section 114 A, providing for mandatory presumptions as to absence of consent of victim in custodial and gang rape, rape on pregnant woman, rape by public servant by taking advantages of his official position etc. The amended Section 376 IPC has now prescribed a minimum punishment of seven years' imprisonment for the offence of rape whereas it provides for mandatory minimum rigorous punishment of 10
years’ imprisonment in case of special circumstances viz. Custodial rape, rape on pregnant woman, rape on girl under 12 years of age, gang rape etc. It is pertinent to make special reference here that provision for mandatory presumption as to absence of consent of the prosecutrix u/s 114 A Evidence Act is not available to offence of rape on a girl under 12 years of age under Clause (l) of sub-section (2) of Section 376 and rape under sub-section (1) of 376 IPC.

In Sakshi v. Union of India,¹ the attention of the Supreme Court was drawn to existing sections 375 and 376 by pointing out that interpretation, being placed before the courts on those sections cannot be said to be in tune with current state of affairs existing in the society, particularly in the matter of sexual abuse of children. After taking this arguments into consideration, the Supreme Court has requested the Law Commission to examine the issue of feasibility of making recommendations for amendments to IPC or to deal with such matters for plugging the loopholes. The sexual offences of rape by amending sections 375 & 376 were made more stringent and heinous crime and also deterrent in nature by providing more punishment to the accused with relevant amendment in Evidence Act. by adding section 114 A which raises a mandatory presumption as to absence of consent in of some special circumstances viz. cases of custodial rape, rape on pregnant woman, gang rape etc.

In the category of sexual offences, the new section 376 A, 376 B, 376 C and 376 D have been added for making sexual intercourse, being with consent not amounting to rape but offences of lesser gravity under above sections to protect the women from sexual harassment by the persons in position by taking advantage of their official position.

(iii) Amendment in 1986 and basic Objects & Reasons:

Section 304 B-Dowry Death:

In the year 1986, section 304 B was added to IPC by the (Dowry Prohibition) Amendments Act., 1986 for combating the menace of dowry death due to cruelty to woman within seven years of her marriage by the husband or the relatives of the husband for dowry purpose. As seen earlier,

¹. (1999) 3 SCC 591 : 1999 SCC (Cri) 1159,
In the year 1983, the cruelty to woman by the husband or relatives of the husband was made serious cognisable offence u/s 498 A, covering the cruelty not only for dowry but also cruelty due to any other reasons. But in section 304 B IPC, the cruelty is due to non-fulfillment of demand of dowry. The basic Object and Reason for enacting the Dowry Prohibition (Amendment) Act., 1986 was to combat the increasing menace of dowry deaths due to non-fulfillment of dowry demand. The Amendment in 1986, also provides presumptions as to dowry death in certain circumstances by adding new section 113 B to Evidence Act.

The necessity for adding these two sections 304 B in IPC for 'Dowry Death' and corresponding sections in Evidence Act., providing for mandatory presumption u/s 113 B in Evidence Act was mentioned by the Law Commission of India in its 91st Report dated 10th August, 1983 on 'Dowry Deaths' and Law Reforms. As most of the dowry deaths are occurred in the premises at in-laws or husband, it is very difficult under pre-existing law in securing the evidence to prove dowry related deaths. It is in the above background, presumptive section – 113 B in Evidence Act has been added besides providing the mandatory presumpting language in substantive section 304 B IPC itself.

Considering the above Objects and Reasons of the legislations, the researcher wants to examine through analytical study as to whether the Objectives have been fulfillment in dealing with above crimes against women firmly and strongly and whether it has its impact on the prevention through "Deterrent Theory of Punishment" of such atrocities against women in the subsequent period of amendments.
4. Scope of study:

(i) Regarding atrocities/crimes: confined to marriage including dowry and sex related crimes:

If we consider the various amendments to IPC, it is obviously noticed that maximum amendments have been made to offences either related with marriage or sexual offences. Secondly, the marriage related and sexual offences have been made more stringent and deterrent so as to have effective prevention of atrocities on women in future, subsequent to such amendments, made in the year 1983 and 1986. Hence the researcher wants to confine his study in respect of marriage related including dowry crimes and sexual offences. With the above Object of Analytical Study of the existing legal system, the legal provisions in IPC for research study are mentioned as under:

Marriage including dowry related crimes:

1. Cruelty to woman by husband or relative of husband u/s 498 A IPC. (added in 1983)

2. Abetment to commit suicide due to cruelty to woman u/s 306 IPC r/w 498 A IPC.

3. Dowry Death u/s 304 B IPC. (added in 1983)


Sex related crimes:

5. Rape including custodial & gang rape and rape under special circumstances u/s 375 & 376 IPC.

6. 376 A : Intercourse by a man with his wife during separation (added in 1983)

7. 376 B : Intercourse by Public Servant with woman in his custody (added in 1983)

8. 376 C : Intercourse by Superintendent of a jail, remand home etc. (added in 1983)

9. 376 D: Intercourse by any member of the management or staff of a hospital with any woman in that hospital (added in 1983)
(ii) Scope of study regarding Period of study: (1983 to 2004)

As most of the above provisions have been amended or added in IPC in the year 1983 and 1986, with the object of combating menace of cruelty to women and resulting such cruelty into dowry deaths and for giving more protection to women against the crimes related with marriage and sexual offences, the researcher intends to critically examine the impact of above provisions on the deterrent aspect on the of prevention of crimes, related with marriage and sexual offences from the year 1983 to 2004.

(iii) Scope of study regarding Geographical area:

Five Districts of North Maharashtra for study (Nashik, Jalgaon, Ahmednagar, Dhule & Nandurbar)

The researcher intends to collect the secondary data related with crimes (registered, convicted & acquitted) under above legal provisions from five districts namely Nashik, Jalgaon, Ahmednagar, Dhule & Nandurbar of North Maharashtra for the period from 1983 to 2004. However primary data through questionnaires will be collected from above five districts as well as other parts of Maharashtra.
Part -- II

Chapter - IV

Constitutional Provisions on Women's Rights.

General scenario of the status of women in Pre-independence period:

In pre-independence period, the woman was subjected to so many restrictions and evil practices basically due to patriarchal family system. The women were mainly confined to home as house-wife and responsible for looking after home-affairs and the children. They were given a subservient or secondary status due to patriarchal system wherein the man was dominant over the woman in every respect.

The women were subjected to evil and inhuman practices like "Sati" polygamy, child marriage etc. They could not have the separate entity and recognition but always had to follow the men whether the men were correct or not. However, the great social reformers like Mahatame Jotiba Fule, Mrs. Suvitribai Fule, Madhav Karve and Chatrapati Sahu Maharaj had done miraculous things for the overall improvement of the status of women. After independence, the greatest contribution for the women’s rights was made by Dr. Babasaheb Ambedkar by compelling the Indian Government to codify the Hindu-Laws and through these laws, provided a definite status to the women in our country and tried to give the status to women at par with men.

Some of the main features of the women's status during pre-independence period are mentioned as follows:-

The practice of Sati, patriarchal family systems i.e. man dominant and subservient or secondary status to women.

Basic role of women was confined to home as housewife.
Provision for the protection of women's right in Government of India Act., 1935.

Hindu system of recognising man's right for having more wives by custom.

**The status of women after independence:**

**Transformation of women's status through Constitutional Provisions:** The founding fathers of the Constitution had considered the prevalent secondary status to women in male-dominant society and tried to remove the inequalities between woman and man by incorporating number of provisions, providing equal status to women with men.

**1. Preamble and Status of Women:**

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*, 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.

**2. Fundamental Rights and the Protection to the woman:**

The Chapter of Fundamental Right has been described as the Meghna Carta of India. Considering the spirit of the Meghna Carta of the British and the Declaration of the Rights of Man and the Citizen of France (1789), the Americans had incorporated the Bill of Rights in their Constitution. First time, the Americans had given the Constitutional status to the Bill of Right. The framers of Indian Constitution had taken inspiration from the already existing provisions on Fundamental Rights and had incorporated the most elaborate and comprehensive chapter on Fundamental Rights.

In the historic judgement of *Maneka Gandhi v. Union of India*, on the Fundamental rights, Justice Bhagwati observed:

2. AIR 1978 SC 397 at P. 619,
“These Fundamental rights represent the basic values cherished by the people of this country (India) 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. They weave a ‘pattern of guarantee’ on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual liberty in its various dimensions”.

A balance between individual liberty and social need:

Individual liberty is necessary for the development of the personality but unrestricted liberty becomes a license and jeopardises the liberty of others. Civil liberties as guaranteed by the Constitutions imply the existence of an organised society maintaining public order without which liberty itself would be lost in the excess of unrestrained abuses as observed in Fax v. New Hampshire,¹ Hence, the framers had incorporated the provisions for the protection of individual rights but these rights were subjected to reasonable restrictions which ensures a striking balance between individual liberty and social need.

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

The phrase “equality before the law” is some what negative concept implying the non-observance of any special privilege to individuals whereas “equal protection of law” is more positive concept implying equality of treatment in equal circumstances. Article 14 provides 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

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² AIR 1981 SC 1829.
attaining age of 35 years or on marriage if it took place within 4 years of 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. 14 and the Rule of National Justice: In a judgment of far reaching importance in Central Inland Water Transport Corpn. Ltd. V. Brojo Nath, the Supreme Court has held that Service Rules empowering the Government Corporation to terminate Services of permanent employees without giving reasons on three months notice of pay in lieu of notice period is violative of Article 14 being unconscionable.

The Rule of Natural Justice is implicit in Art. 14: As regards the natural justice, the Court held that it is a fundamental requirement of law that the Doctrine of Natural Justice be complied with and it is an integral part of administrative jurisprudence of this country. Judicial review has its application to its fullest of extent in even departmental proceedings where it is found that the recorded findings are totally perverse.

The validity of section 198(2) Cr. P.C. and section 497 IPC was challenged on the ground of discrimination on sex in Revathi v. Union of India,¹ as Sec 198 (2) and Sec. 497 IPC disables the wife from prosecuting

¹. AIR 1986 SC 835.
her husband for the offence of adultery. As the validity of Section 497 IPC and Section 198(2) Cr.P.C. has been challenged in above case, the provisions of these Sections are mentioned as follows:

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

**Section 198 Cr. P.C. (only relevant portion is mentioned):**

**Sub-Section (1)** :- No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence.

**Sub-Section (2)** :- For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or Section 498 of the said Code.

By virtue of these sections, the right to prosecute the adulterer is only given to the husband of the adulteress but has not been given to the wife of the adulterer. Though apparently, these provisions seemed to be discriminatory on the ground of sex, the Apex Court has held that there was no discrimination based on sex and these were not violative of Art.14. The court has further explained the implied object of these sections that these sections appear to be for ‘Social good between husband and wife by permitting them “to make up or break up” the matrimonial tie rather than to drag each other to the criminal court. They can either condone the offence in a spirit of “forgive and forget” and live together or separate by appropriate action in a matrimonial court. It is not meant to arm the two spouses to hit each other with the weapon of these provisions to be challenged in criminal court. Therefore the offence of adultery which can be committed only by a man, not by a woman was held valid. Thus there is no discrimination against the woman in so far as she is not permitted to prosecute her husband, the adulterer. The provisions of Sec.497 IPC and
198 (1) Cr.P.C. read with sub-section (2) were held to be valid since the classification was not based on the ground of sex alone. It does not provide the punishment to the wife even as an abettor.

Section 497 IPC and sect. 198(1) Cr.P.C. read with sub section (2) of Cr.P.C. go hand in hand and constitute a legislative package to deal with the offence, committed by an outsider to the matrimonial unit and poisons the relationship between husband and wife. The above provision provides the punishment to the erring "man" alone and not the erring "woman". It does not arm the two spouses to hit each other with the weapon of criminal law. That is the reason why neither the husband can prosecute the wife nor can the wife prosecute the husband, the adulterer.

In *Sowmithri Vishnu v. Union of India*, the Apex Court held that section 497 does not discriminate between man and woman by conferring right only on the husband to launch prosecution and as such does not offend Articles 14 or Art. 15 of the Constitution. It was further ruled that the fact that a provision for hearing the wife is not contained in Section 497 cannot render that Section 497 IPC unconstitutional as violative of Art. 21 of the constitution. It was further declared by the Apex Court that the offence of adultery, as defined in Section 497 IPC is considered by the Legislature as an offence against the sanctity of the matrimonial home, an act which is committed by a man, as it is generally. Therefore, those men who defile that sanctity are brought within the net of the law.

The validity of section 3 & 4 of the Muslim women (Protection of Rights on Divorce) Act, 1986 was challenged in *Danial Latifi and another v. Union of India*, on the ground that it was violative of Art. 14 of the Constitution.

These sections 3 & 4 provide the right to Muslim divorced women for claiming maintenance from her husband even after the period of *iddat*. It was held by the Apex Court that the said Act of 1986 was valid and not violative of Art. 14 of the Constitution. The Apex Court further held that:

(a) a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife extending beyond the *iddat* period in terms of Section 3(1)(a) of the 1986 Act.

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1. AIR 1985 SC 1618; 1985 Cr LJ 1302,
2. AIR 2001 SC 3262
(b) not only this but if a Muslim woman remains unmarried and is not able to maintain herself after iddat period she can proceed under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they may inherit on her death according to Muslim law. If the relatives are found unable to pay her maintenance, the magistrate may direct the State Wakf Board, established under the Wakf Act, to pay such maintenance.

Can the special courts be constituted for speedy trial of offences, committed against women:

The Art. 246 (2) provides that the Parliament by law is empowered to set up special Court and to provide special procedure for the trial of certain "offences" or "class of offences".

In Re-special Court Bill, 1978, it was held that such law will not be violative of Art. 14 if it lays down proper guidelines for classifying "offences", "class of offences" or classes of cases to be tried by special Court. But the special procedure prescribed by such a law should not be substantially different from the procedure, prescribed by such a law under an ordinary law. In this re-the special Courts Bill, 1978, the question which was referred to the Apex Court for advisory opinion was whether the special Courts Bill, 1998 proposing to get up special courts for the speedy trial of offences, committed by the holders of high public offences during the emergency of 1975-1977 is constitutionally valid. It was held by the Apex Court that the Parliament had legislative competence to enact such law. It was also ruled that the classification made by the Bill was valid and not violative of Art. 14 as it classified both "offences" and the 'class of offenders'. The equal protection of law means the right to equal treatment in similar circumstances. The Court have upheld the legislations, containing apparently discriminatory provisions where the description was based on a reasonable basis. The reasonable basis has been interpreted that the classification must not be arbitrary but must be reasonable.

On the basis of above advisory opinion of the Supreme Court and other rulings, the special Courts for offences, of atrocities against the women can be constituted by special law, to be passed by the Parliament, as it fulfill the test of reasonableness.

1. AIR 1979 SC 478.
4. **Art. 15 Prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.**

The equal protection of law is granted to every person whether citizen or not under Art. 14 whereas the grantee 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. Prabahkaran**, it was held that the reservation of certain posts exclusively for women is valid under Art. 15(3) of the Constitution.

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2. AIR 1997 SC 3911)
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.

5. **Art. 16 provides for Equality of opportunity in matters of public employment.**

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.

The clause (2) to Art. 16 of the Constitution prohibits the State to discriminate any citizen on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. The combine effect of clauses (1) and (2) of Art. 16 is to lay down the general principle that no citizen shall be discriminated against or be ineligible for any employment or office under the state on grounds only of religion, race, caste, sex, descent, place of birth or residence whereas clause (3),(4),(4-A),(4-B) and (5) of Art. 16 provide four exception by way of reservations to scheduled caste and scheduled Tribes to this general rule of equality of opportunity.

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.

In another case *Air India v. Nargesh Meerza*, the petitioner - Air-Hostess challenged the validity of the Rules, providing for retirement of Air-Hostesses at the age of 35 years or if they get married within four years of their service or on first pregnancy, on the ground of discrimination and hence these provisions in the Rules were held violative of Articles 14, 15 and 16 of the Constitution. The Supreme Court held the provisions on pregnancy

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1. AIR 1953 Bom. 311.
2. AIR 1979 SC 1868.
bar and the retirement age and the option of the Managing Director to continue the Air-Hostesses in service as unconstitutional as these provisions are unreasonable and arbitrariness and hence violative of Art. 14 of the Constitution whereas the Court has upheld the validity of the provision, prohibiting the Air-Hostesses to marry within four years of their service as in this particular provision there was no unreasonableleness and arbitrariness.

**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,*¹ *D.S.Nakara v. Union of India,*² *P.K.Ram Chandra Iyer v. Union of India,*³ the equal pay for equal work has virtually become a fundamental right.

This principle of equal pay for equal work is equally applicable to a temporary or casual employees, performing the same duties and functions, as held by Apex Court in *Daily Rated Casual Labourer v. Union of India,*⁴ and some other cases.

**6. Art. 19 provides Right to Freedom and Personal liberties:**

The fundamental rights regarding six type of freedoms are equally available to woman as Art. 19 of the Constitution guarantees these freedom to every citizen subject to reasonable restriction.

The fundamental rights of protection in respect of conviction for offences under Art. 20 and the protection of life and personal liberties under Art. 21 are equally available to woman as these fundamental rights are available to every person.

**Beauty contest:**

Regarding 'Beauty Contest' in *Chandra Rajkumari v. Police Commissioner, Hyderabad,*⁵ the A.P., High Court has held that the beauty

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1. AIR 1982 SC 879.
2. AIR 1983 SC 130.
3. AIR 1984 SC 541.
contests, in their true form are not objectionable. The Court has further held that if there is indecent representation of the figure of a woman or if there is any matter derogatory of woman, then it would offend the Indecent Representation of Woman Act, 1986 and Art. 21 of the Constitution.

Sexual harassment at the workplace:

In Vishakha v. State of Rajasthan, the Supreme Court has held that sexual harassment in the workplace is violation of Art. 15 and 21 of the Constitution. The Court has given detailed direction/guidelines for preventing sexual harassment to woman in the workplace which are to be strictly observed by all employees, public or private persons. In deciding the case, the Court relied on International Conventions and norms which are significant in interpretation of guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1) (a) and the safeguards against sexual harassment implicit therein.

In this case, a writ petition was filed by Vishaka, a Non-Governmental Organisation working for ‘gender equality’ by way of PIL, seeking enforcement of fundamental rights of working woman under Articles 14, 19 and 21 of the Constitution. The writ was filed due to alleged brutal gang rape of a social worker of Rajasthan. The Apex Court in absence of enacted law to provide for effective enforcement of basic human rights of gender equality and safeguard against sexual harassment, has laid down the following guidelines:

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

(a) Express prohibition of sexual harassment which include physical contact and advances; a demand or request for sexual favours; sexually coloured remarks; showing pornographic or any other unwelcome physical, verbal or non-verbal conduct of sexual nature should be noticed, published and circulated inappropriate ways.

1. AIR 1997 SC 3011.
(b) The rule or regulation of Government and Public Sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards to private employers, steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no women should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

(2) Where such conduct amounts to specific offences under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

(3) The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

The fundamental right to carry on any occupation, trade or profession depends on the availability of a safe working condition. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislations, and the creation of the mechanism for its enforcement, is the responsibility of the Legislature and the Executive. When, however instances of sexual harassment resulting in violation of fundamental rights of women workers under Arts. 14, 19 and 21 are brought before the Court for redressal under Art. 32 of the Constitution, ineffective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum", Mr. Justice Verma said.

This decision of the Court will go a long way in incalculating a sense of security in the minds of working women that their honour and dignity will be safe in their place of work.
In another case *Apparel Export Promotion, Council v. A.K. Chopra*, the supreme Court has applied the law, laid down in *Vishakha v. State of Rajasthan* and held that the sexual harassment to a subordinate female employee at the place of works violative of fundamental right under Art. 21 of the Constitution. In this case, a Private Secretary to the Chairman of the Apparel Export Promotion Council tried to molest a woman employee of the Council who was working as clerk-cum-typist. On her complaint, the Private Secretary to the Chairman was dealt with through departmental proceedings and the charges leveled against him were proved. As the charges were proved, he was dismissed from the service. The Supreme Court has upheld the dismissal from service who was found guilty of sexual harassment of a subordinate female employees at the place her work on the ground that it violated her fundamental right under Art. 21 of the Constitution.

*Apparel Export Promotion, Council v. A.K. Chopra*, is the first case in which the Supreme Court applied the law laid down in the case of *I Vishaka v. State of Rajasthan* and upheld the dismissal from service of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Art. 21 of the Constitution. The respondent was working as a Private Secretary to the Chairman of the Apparel Export Promotion Council, a private company. He tried to molest a woman employee of the Council who was working as a clerk-cum typist. She was not trained to take dictation. The respondent, however, insisted that she go with him to the business Center at Taj Palace Hotel for taking dictation from the Chairman and type out the matter. Under the pressure of the respondent, she went to Taj Hotel to take the dictation from the Chairman. While she was waiting for the Director in the room, the respondent tried to sit too close to her and despite her objection did not give up his objectionable behaviour. After taking the dictation, the respondent told her to type it at the Business Centre of the Taj Hotel which was located in the Basement of the Hotel. He volunteered to show her the Business Centre and taking advantage of the isolated place

1. AIR 1999 SC 625.
again tried to sit close to her and touch her despite her objections. The Chairman corrected the draft matter and asked her to retype it. The respondent again went with her to the Director and submitted a written complaint also. The respondent was suspended and a charge sheet was served on him. The respondent denied the allegations and said that they were imaginary and motivated. He contended that he merely attempted to molest her but had not actually molested her. The Inquiry officer found the charges levelled against the respondent to be proved. The Disciplinary Authority agreed with the report of Inquiry officer and imposed the punishment of removing him from service.

The Court further held that each attempt of sexual harassment of female at the place of work results in violation of fundamental rights to Gender Equity in Art. 14 and the right to life and liberty under Article 21 of the Constitution and Courts are under constitutional obligation to protect these fundamental rights of working women. The Court also cautioned that the effect should be given to the principles, contained in the *International Convention and Instruments* such as the *Conviction on the Elimination of all forms of Discrimination Against women*, (1979) and the *Beijing Declaration* which directs all State Parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of the women.

In *Radal Shah v. State of Bihar,*\(^1\) the Supreme Court has awarded monetary compensation for the violation of fundamental right of the citizen under Art. 21 of the Constitution.

**Compensation to the victim of Rape:**

The Supreme Court has awarded compensation to the victim of rape in *Delhi Domestic Working Women's Forum v. Union of India,*\(^2\). In this case, the petitioner, women forum through a Public Interest Litigation brought out the pathetic condition of four domestic women servants who were raped by seven army Jawans in a running train while travelling by Muri Express from Ranchi to Delhi. The victims were helpless tribal women.

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In spite of such barbaric assault on the poor women, neither the State Govt. nor the Central Govt. has given any attention to the need and their rehabilitation and hence the Court expressed serious concern about the increase of crimes against women in recent times and suggested that the defects in criminal laws be removed soon. The Court observed as follows:

"The defects in the present system are Firstly, complainants are handled roughly and are not giving such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a experience. The experience of giving evidence in Court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly the Court proceedings added to and to and prolonged the psychological stress they had to suffer as a result of the rape itself."

In view of this, the Court laid down the following guidelines for trial of rape cases---

(1) The complainants of sexual assaults cases should be provided with legal representation. Such a person must be well acquainted with criminal justice. The victims advocate's role should not be only to explain to her the nature of proceeding, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind consulting or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.

(2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state at the police station, the guidance and support of a lawyer at this stage would be of great help to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and the police report should state that the victims was so informed.
(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have any particular lawyer in mind, or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the Court on application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the Court was sought or obtained.

(6) In all rape trials, anonymity, (name not to be disclosed), of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the directive principles contained under Art. 38 (1) of the Constitution, to set Criminal Injuries Compensation Board. Rape victims frequently incur substantial loss. Some, for example, are too terrorised to continue in employment.

(8) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as the loss of earnings due to pregnancy and child birth if this accrued as result of rape.

The National Commission for Women be asked to frame schemes for compensation and rehabilitation to ensure justice to victims of such crimes. The Union of India shall then examine and take necessary steps to implement them at the earliest.

**Interim compensation to the victim of Rape:**

In *Bodhisathwa Gautam v. Subhra Chakraborty,* the Supreme Court has awarded an interim compensation of Rs. 1000/- per month to the victim of rape until her charges be decided by the trial Court. In this case, the complainant Subhra Chakraborty was a student of the Baptist College, Kohina and the accused Sri Bodhisathwas Gautum was a lecturer in the same College who not only induced the complainant but cohabited with her, giving her a false assurance of marriage and also fraudulently gave through a certain marriage ceremony with knowledge and thereby dishonestly made

1. 1996 1 SCC 490,
her to believe that she was a lawfully married wife of the accused Bodhisathwa. The accused married with her before the God, he worshipped by putting her vermilion on her forehead and accepted her as his wife but later on refused to recognise her as wife. Due to said ceremony, she was convinced to believe that she was a lawfully married wife of the accused.

Considering the pitiable condition of women, his lordship Jusitic Saghir Ahmad observed that “unfortunately, a woman in our country, belongs to a class for group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution “enjoy equal status”.

“Women also have the right to life and liberty; they also have the right to be respected and reacted as equal citizens. Their honour and dignity can not be touched or violated. They also have the right to lead an honorable and peaceful life”.

Rape is a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, normally, the right to life contained in Article 21 of the Constitution.

7. **Art. 23 Provides Right against exploitation:**

Art. 23 of the Constitution provides prohibition of traffic in Human Being’ and bagar and other similar forms of forced Labor.

To achieve the goal of the Article, the State has to pass an enactment. Accordingly in pursuance of this Article, Parliament has passed the “Suppression of Immoral Traffic in Women and Girls Act, 1956 for punishing immoral traffic in human beings. The Act was subsequently amended as. “The Immoral Traffic (Prevention) Act 1956”. This Article protects the individual not only against the State but also against private citizens and the protection is available to every person.

**Prostitution:**

The Supreme Court has dealt with the plight of prostitution in **Gaurav Jain v. Union of India**,¹. The Court placed the emphasis on the need to

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¹ AIR 1997 SC 3021, 3035, 3036.
provide proper opportunities of education and vocational training to the prostitutes to facilitate their rehabilitation. The Court has issued the following direction:

(1) The Court held that it is the duty of Government and all voluntary non-governmental organisation to take necessary measure for protecting them from prostitution and rehabilitate them so that they may lead a life with dignity of person.

(2) The Court directed that they should be provided opportunity for education, financial support, developed marketing facilities for good produced by them. If possible their marriages may be arranged so that the problem of child prostitution can be eradicated. Marriage would give them real status in society. They should be given housing facilities, legal aid, free counselling assistance and all similar aids and services so that they do not fall into the trap of red light area again.

(3) The Court held that economic empowerment is one of the major factors, that prevent the practice of dedication of the young girls to the prostitution as Devadasis Jogins or Venkatasins. Referring the various measures taken up by different States, the Court directed that the social welfare Department should undertake similar rehabilitation programmes for the fallen victims so that the foul practice is totally eradicated and they are not again trapped into the prostitution. The Court gave example of State of Andhra Pradesh where the State Government is providing housing facilities, free treatment in hospitals and pension to Devadasis women of 60 years or above and adult literacy programme. Such measures are being taken by Non-Governmental Organisations (N.G.O.S.) in the States of Maharashtra, Karnataka and Andhra pradesh.

(4) The Court directed that the rescues and rehabilitation of the child prostitutes and children should be kept under nodal department, under the Ministry of Welfare and Human Resources, Government of India, which will, devise suitable
schemes for proper and effective implementation. The Court directed the Ministry of Welfare, Government of India for the establishment of Juvenile homes.

(5) The Court directed to constitute a Committee within a month from the judgment which would make an indepth study into these problem and evolve suitable schemes as are appropriate and consistent with the direction given above. It shall submit its report within three months. On the basis of its report, direction would be given to the State Governments for effective implementation of the schemes. The Nodal Department would enforce and regularly be supervised by the Minister of Welfare. A permanent Committee of Secretaries should be constituted to review the progress of the implementation on annual basis and to take such other steps as may be expedient in the effective implementation of the Schemes. Periodical progress as to funding and enforcement of the scheme should be submitted with Registry of the Supreme Court. “It is hoped”, the Court said, the above law and direction would relieve the human problem by rehabilitation of the unfortunate fallen women caught in the trap of prostitution, their children would be brought into the mainstream of the social order. These directions would enable them to avail the equality of opportunity and of status with dignity of person which are the arch of the Constitution.

In Vishal Jeet v. Union of India, it was held by the Court that traffic in human beings includes devdasis. The Court has also given the directives as to the rehabilitation of the children of the prostitutes.

Indian Penal Code also provides for few offences dealing with traffic in human beings and particularly in women under Sections 372 and 373 IPC.

As per Section 372 IPC the selling, letting to hire or otherwise disposing of any person under the age of eighteen years for the purpose & prostitution or illicit intercourse is punishable with imprisonment which may extend to ten years and also be liable for fine.

1 AIR 1990 SC 1412.
According to Section 373 IPC the buying, hiring or otherwise obtaining possession of any person under the age of eighteen years is punishable with imprisonment which may extend to ten years and also be liable for fine.

Right to Constitutional Remedies:

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. Hence an application under Art. 32 can always be filed directly in Supreme Court since Art. 32 is itself a fundamental right. It is not necessary to resort to Art. 226 by filing application in High Court before approaching the Supreme Court under Art. 32 as was held in Ramesh Thapper v. State of Madras,¹

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. By virtue of provisions in Art. 32, the dynamic approach of Public Interest Litigation (PIL) has been devised by the Supreme Court through Judicial Activism and hence any person irrespective the traditional rule of locus standi can move the Supreme Court for the enforcement of Fundamental Rights in the larger interest of public.

In Delhi domestic working women’s forum v. Union of India,² 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,³ the Supreme Court has laid

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¹ AIR 1956 SC 124
² 1995: 1 SCC 14
³ AIR 1997 SC 3011
down detailed guidelines for the prevention of sexual harassment of working women.

Again in another PIL, filed by Public spirited advocate Shri Gaurav Jain v. Union of India, the Supreme Court has given directives for the protection of women from prostitution and the rehabilitation of their children.

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, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of fundamental rights in Part III and for any other purposes. Hence the jurisdiction of High Court is not limited to enforcement of fundamental rights only but also for any other legal rights. But Supreme Court's powers are confined to enforce fundamental rights under Art. 32. However the High Court's powers cannot be in derogation of the Supreme Court under Art. 32. It means an order by Supreme Court under Art. 32 will supersede the orders of the High Courts, previously passed.

In brief, the Constitution of India has provided number of protection by various Fundamental Rights and the status of women has been brought at par with men. Art.14 guarantees the equal status to women with men whereas Art. 15 prohibits discrimination on the ground of religion, race, caste, sex or place of birth. The protection given to women under Art. 14 and 15 have been upheld by the Apex Court in various judgement. Particularly in “Air India v. Nargesh Merza,” the Apex Court has struck down the Air India & Indian Airlines Regulations on the retirement and pregnancy bar on the services of Air Hostages being unconstitutional on the ground of unreasonable and arbitrary to women.

Art. 16 provides for equality of opportunity in matters of public employment to all citizen including women whereas Art. 19 has provided rights to freedom and personal liberties to all citizen including women. Art.

1. AIR 1997 SC 3021.
2. AIR 1988 SC 1829.
23 has provided right against exploitation. It provides prohibition of traffic in human being and particularly of women. The Apex Court in *Vishaka v. State of Rajasthan*,¹ has held that the sexual harassment of working women amounts to violation of Fundamental Rights Under Art. 14, 15 and 23 of the Constitution.

The mechanism for enforcement of fundamental Rights have also been provided by incorporating Art. 32 in Part III itself and providing writ jurisdiction to High Court Under Art. 226 of the Constitution for issuing directions, orders or writs including the writs of *habeas corpus, mandamus, prohibition, quo warranto and certiorari* or any of them for enforcement of fundamental rights and for any other purposes.

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¹ AIR 1997 SC 3011.