The Constitution of India has made elaborate provision to secure rights for women under part-III of the Constitution and also certain directions under part IV namely, Directive Principles of State Policy not only to propagate and protect human rights but also to protect the dignity of women. The protection of Human Rights Act of 1993 has been promulgated with a view to implement the mandate of the Constitution.

3.1 Human Rights in the Indian Constitution

The transition from the medieval to modern period has resulted in a prodigious change in the Indian history. With the advent of British rule in India, a new era started which created ripples in the political and legal spheres leading to imposition of British political and legal culture on India. The British government in India had not only deprived the Indian people of their freedom but had based itself on the exploitation of the masses, and ruined India economically, politically, culturally and spiritually. Resistance to this four-fold disaster was manifested in the form of demand for fundamental freedoms and civil and political rights for the people.1

The British Indian rulers discriminated against Indians in matters of their political and civil liberties and rights. They resorted to arbitrary acts such as brutal assaults on unarmed satyagrahis, internments, deportation etc., against Indians fighting for national independence, equal justice and economic equality. After witnessing the colonial rule, every Indian was of the firm opinion that the recognition, protection and implementation of human rights are not only basic but also inalienable for them for leading a civilized life. It is, however, after the national struggle for freedom that a concrete movement for claiming the human rights for the people of India took shape in which people from different walks of life joined together to achieve Swaraj (independence) for themselves.

Raja Ram Mohan Roy (1772-1823), one of the greatest rationalists and creative thinkers of his age led India in the earliest period for her transformation from feudalism to modernity. His rational mind made him a poignant critique of those religious rituals of Hinduism like sati and child marriage, which patronized and promoted societal violence against women in the name of religion. His opposition of polygamy, and his advocacy for equal rights of women including the right of widows to marry and right of women to property also came from his firm belief in the supremacy of reason. In this context, it would not be out of place to mention that, for his catalytic thoughts and actions, Ram Mohan can

2 Supra note 24, p.101.
reasonably be regarded as the founding father of human rights movement in modern India.

To revive the philosophy of human rights in modern sense, concerted efforts were made by the Indian National Congress, which demanded basic human rights in the Constitution of India Bill, 1895. Constant resistance to the foreign rule manifested in the form of demand for fundamental freedoms, civil and political rights for the people. The rights like freedom of expression, right to property, equality before law and inviolability of one's own home figured in this Bill. Congress as early as in 1918 in Bombay session demanded declaration of rights of people of India and again the same was reiterated in Nehru Committee Report in 1928. The Congress in the resolutions of 1917 and 1919 asserted demand of civil rights and equal status with the English men. In 1922, Congress aimed at achieving swaraj to uphold dignity of the country. The Sapru Report (1945) incorporating the proposals of fundamental rights did not find favour.

Simultaneously, the freedom struggle had reached its climax and demand for independence gained momentum. In a landmark development, the British Cabinet Mission in 1946 recognized the need for a written guarantee of fundamental rights in the Constitution of India and envisaged a Constituent Assembly for framing the Constitution of India. The Constituent Assembly pledged to draw the Constitution for the country wherein shall be guaranteed for the people of India, justice, social, economic and political, equality of status and
of opportunity before the law; freedom of thought, expression, belief, faith and worship, vocation, association and action, subject to law and public morality⁴.

The aspirations of people of India found expression in the Indian Constitution, which enacted a nearly complete catalogue of human rights around the time when the international scene was witnessing the framing the Universal Declaration of Human Rights. The human rights content of the Indian Constitution is a complex amalgam of civil and political rights along with economic, social, religious and minority rights.

The preamble to the Constitution envisages certain objectives which can be seen in the following resolution:

We, the people of India, have solemnly resolved to constitute India into a (Sovereign Socialist Secular Democratic Republic)⁵ and to secure to all its citizens:

Justice, social, economic and political;
Liberty, of thought, expression, belief, faith and worship;
Equality, of status and of opportunity;
and to promote among them all

Fraternity assuring the dignity of the individual and the (unity and integrity of the Nation).⁶

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⁵ Substituted by the Constitution (Forty-Second Amendment) Act, 1976, S.2, for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3.1.1977).
⁶ Substituted by the Constitution (Forty-Second Amendment) Act, 1976, S.2 ibid, for "Unity of the Nation" (w.e.f. 3.1.1977).
The Preamble contains "the ideals and aspirations of the people of India". One of the golden ideals is "the equality of status and of opportunity". This objective has been achieved by and large, by providing equality clause in the Constitution of India. The equality clause expressly prohibits discrimination on the basis of race, religion, caste, sex and place of birth and guarantees equality before the law and equal protection of laws irrespective of race, religion, caste, sex etc. Thus the Indian Constitution has ensured equal status to all i.e. not only between men and men, women and women, but also between men and women.7

The Preamble, Fundamental Rights8, Directive Principles of State Policy9, newly added Fundamental Duties10, reservation for scheduled castes and tribes, special provisions for Anglo-Indians and other backward classes11 are important constitutional provisions from the human rights point of view. Now, the concept of human rights is no longer a philosophical conception but it has become a functional reality. The study of human rights with reference to Indian Constitution reveals that the Constitution enshrines almost all the human rights provided in the various international conventions, covenants and treaties such as

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7 Articles 14 to 16 of the Constitution of India.
8 Fundamental Rights are - (1) Right to Equality (Article 14-18); (2) Right to Freedom (Article 19-22); (3) Right against Exploitation (Article 23-24); (4) Right to Freedom of Religion (Article 25-28); (5) Cultural and Educational Rights (Article 29,30); (6) Right to Constructional Remedies (Article 32)
9 Article 36 to 51
10 Article 51 – A
11 Article 330 – 324.
Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966, etc. It is pertinent to mention here that our constitutional makers, having incorporated a long list of fundamental rights, have also provided effective remedies for the enforcement of these rights. Articles 32 and 226 have adequate provisions for the enforcement of fundamental as well as other legal rights of the individuals through judicial means. These articles are the novel provisions in the Constitution of India and have no provisions in the Constitution of any other country.

Apart from the aforesaid constitutional provisions, various statutes have also been enacted by the Indian legislature with a view to protect and promote human rights. These legislations seek to protect different aspect of human rights. Some of the important legislations enacted by the Union are: Protection of Human Rights Act, 1993; National Commission for Minorities Act, 1992; National Commission for Women Act, 1990; Protection of Civil Rights Act, 1955; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989; Immoral Traffic (Prevention) Act, 1987; Bonded Labour System (Abolition) Act, 1976; Juvenile Justice (Care and Protection of Children) Act, 2000; Child Labour (Prohibition and Regulation) Act, 1986 etc. India has also adopted a number of legislative measures for the social security of the labour, which have been greatly influenced by ILO's standards.

When there is any discussion on human rights in the country, the role of judiciary in giving a concrete shape to these rights through its activism cannot be
ignored. The enforcement of human rights by the judiciary has now become an integral part of our jurisprudence. By virtue of Article 32 and 226, the Courts have greatly extended the ambit of judicial review and devised new methods and strategies by opening the doors of justice to the poor and downtrodden through Public Interest Litigation (PIL). Under the emerging and expanding concept of PIL, the traditional rule of locus standi that a petition under Article 32 can only be filed by a person whose fundamental right is infringed, has now been considerably relaxed. In a number of cases the Supreme Court has used Public Interest Litigation as a prime tool to build up its own jurisprudence, a jurisprudence with social relevance compelling the governments and other instrumentalities to discharge their constitutional duties of protecting the poor, downtrodden, exploited and victimized categories of people including prisoners, under trials, workers, bonded labourers, women and children against social and economic injustices and ensuring realization of basic human rights. It can fairly be concluded that judiciary in India, through the innovation of Public Interest Litigation or Social Action Litigation has broadened the concept of social justice and has gone much ahead in structuring, expanding, protecting and promoting the human rights. By putting strenuous efforts the courts are trying to translate the constitutional philosophy of human rights jurisprudence into reality. The judiciary has been rendering judgments which are in tune and temper with

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legislative intent while keeping pace with time and zealously protecting and
developing the dimensions of fundamental human rights of the citizen so as to
make them meaningful and realistic.\textsuperscript{13}

By giving a liberal and comprehensive meaning to ‘life and personal
liberty’ the courts have formulated and established a plethora of rights, such as
right to privacy; right to travel abroad; right to livelihood; right to shelter; right to
lie in; pollution-free environment; right to medical care; right to education; right to
live with human dignity; right to speedy trial; right to free legal aid; right against
inhuman, cruel and degrading treatment; right against solitary confinement; right
against handcuffing, bar-fetter; right to compensation etc.

The idea of a value-loaded law acting as loadstar for Social Change and
Social-Justice was beyond the ken of law Courts and Lawyers during the British
rule in India.\textsuperscript{14} Law and Justice smacked despotism, absolutism and tyranny to
enslave people, never intended to serve them.\textsuperscript{15} Nehruji\textsuperscript{16} and Gandhi too,
condemned the un-Indianness of British law which failed to move with changing
needs of times and place due to its stricter adherence to the doctrine of judicial
precedent. They too believed in making the law as an instrument of socio-

\textsuperscript{15} Ibid. \textsuperscript{16} Ibid.
economic change and progress\textsuperscript{17}. So in the backdrop of Gandhian Humanism and Nehru's scientific temper, the new Constitution was enacted and adopted in 1950 which helped in ushering a new legal and constitutional philosophy embodying ideals of liberty, equality and human dignity. Influenced by the scientific approach, the Indian judges have started interpreting the law in its contextual and social setting and no more draw their inspiration from unknown alien soil and system which has different life style and social milieu\textsuperscript{18}.

The latest judicial trend reveals that Indian courts are quite enthusiastic in using the law as a tool of social revolution. What is being realized is that the process of social change through law involves not only the legislature but law-courts also interact and react through interpretative device. That is why judiciary is expected to act as a catalytic agent of social control and quite successfully hammer out human rights jurisprudence in the mind that Courts in India have been endeavouring to shield the cause of the poor and wage war against the plight conditions of prisoners\textsuperscript{19}, destitute-women\textsuperscript{20}, bonded-labour\textsuperscript{21}, agricultural and industrial labour\textsuperscript{22} etc. Public Interest Litigation\textsuperscript{23} strategy is showing signs of

\textsuperscript{17} Ibid.

\textsuperscript{18} See Dr. S.N. Dhyani, fundamental of Jurisprudence (1992), pp. 240-52.


\textsuperscript{22} Ibid.

warming up and shaping legal ideology in consonance with the philosophy of Human Rights.

Chief Justice Bhagwati highlighted the new-swing and significance of judicial process in these words: "Today a vast revolution is taking place in the judicial process, the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of the people who are denied their basic human rights and to whom, freedom and liberty has no meaning".

Keeping in view the significance of constitutional philosophy of human rights in mind, the present chapter has been devoted to throw light on the efforts being made by the Indian courts in actualizing the philosophy of women's rights in India. The main concern here would be to highlight the judicial endeavour to show how far it has succeeded in shaping out the contours and parameters of Women's Rights jurisprudence as envisioned by the wise founding fathers of our Constitution and ultimately achieved success in translating the philosophy of Human Rights jurisprudence into reality. What is true is that human rights would remain safe so long as its judges are strong and independent and do not come into pressure of influence of centre of power and are committed to the cause

24 Ibid.
25 See Mool Chand Sharma, Justice P.N. Bhagwati, Court, Constitution and Human Rights (1995), pp 92-93
of human rights. The main focus here would be to give wide coverage to the functional aspect of the judiciary and highlight the responsibility of safeguarding women’s rights in the light of our constitutional commitment.

3.2 Constitutional Safeguards for Women

The Constitution of India provides the following safeguards for women:

(i) Right to Equality (Article 14, 15 and 16).

(ii) Right to Life and Right against Exploitation (Article 21 and 23).

(iii) Directive Principles of State Policy (Article 38, 39(a) & (d), 42 and 44).

(iv) Elections (Articles 325).

(v) Fundamental Duties (Articles 51 A Q (e)).

In addition to the above, the Preamble, which incorporates the chief goal enshrined in the Constitution, reflects the spirit of equality.

The framers of the Indian Constitution bestowed sufficient thought on the position of women in the Indian Social order. This is evident from the provisions of the Constitution, which have not only ensured equality between men and women but also provided specifically certain safeguards in favour of women. The Preamble of the Indian Constitution lays emphasis on, among others: social justice which would be a myth in a society wherein one half of the population
consisting of women continues to bear the burden of erstwhile servile or inferior status. Equality of status and of opportunity is a concomitant to principle of social justice, for the realization of the latter is well high impossible without the free play of the former. Finally, the dignity of the individual is the result of an uninhibited interaction between the concept of social justice and the principle of equality of status and of opportunity. In as much as the "dignity" of women depends on the happy consummation of these two concepts, the Constitution makers have incorporated sufficient provisions in the body of the Constitution to achieve it.

Article 14 of the Indian Constitution states that "the State shall not deny to any person equality before the law or the equal protection of the laws". This provisions guarantees to all persons, including women, the right to equality in law. Then Article 15(1) prohibits the State from discriminating against any citizen on the ground of sex. At the same time, Clause (2) of the same Article says that no citizen shall on the ground of sex be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) 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. The second Clause obviously ensures social equality to women. The next clause, namely Clause (3) of Article 15, states that "nothing in this article shall prevent the State

26 For full text of these provisions See Clauses (1) and (2) of Article 15 of the Indian Constitution.
from making any special provision for women and children". This provision enables the State to make special provisions in their favour. In other words, it enables the State to make special provisions in their favour. So, this provision has been described by constitutional experts as "protective discrimination" for women. Article 16 of the Constitution ensures equality of opportunity for all citizens, including women, in matters relating to employment or appointment to any office under the State, and it reinforces this idea when it states further that no citizen shall on the ground of sex be ineligible for, or discriminated against in respect of, any employment or office under the State.

Finally, Article 23, which prohibits, among others, traffic in human beings and makes any contravention of the provisions of this Article an offence punishable in accordance with law, guarantees to women a right against exploitation.

Thus, these Articles of the Constitution have assured women the right to equality in law, right to equality in matters relating to Government employment, right to protective discrimination and right against exploitation. In a nutshell, the Constitution has provided three norms regarding the rights, status and welfare of women and they are equality, privilege in the form of protective discrimination and safeguard against exploitation. In other words, these provisions of the Indian Constitution truly constitute the palladium of liberty of women in India.

27 Article 16(1) of the Indian Constitution
28 Article 16(2) of the Indian Constitution
3.2.1 Right to Equality

Women's rights have to be considered in three different respects

- Women's rights to be treated equally with men
- Women's rights to be treated unequally from men i.e. favoured or protected by the law (as a response against the historical and social subjugation of women)
- Rights which women have because of their specific biological difference from men.

3.2.1.1 Right to be treated Equally with Men

Article 14 of the Constitution provides:

"The State shall not deny to any person equality or the equal protection of the laws within the territory of India."

Article 15(1) of the Constitution provides:

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

Article 16(2) of the Constitution provides:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State."

A combined reading of these three fundamental rights provides the foundation for legal equality of women. The Articles make it abundantly clear
that everyone will be treated equally in the eyes of the law and all will have equal protection of laws and women cannot be discriminated against on account of their sex. But it does not mean that a reasonable classification for application of laws is not permissible. What the equality provision prohibits is unequal treatment of equals, but allows unequal treatment of unequal.

So one way of applying some laws to men alone or to women alone is by showing that men and women form different and distinct classes for the purpose of the law. Many of the constitutional disputes around women's rights in India, have centered around certain laws which discriminate against women and are sought to be justified by arguing that for the purposes of the given law, treating women as a separate class amounts to a valid classification.

Besides, what Article 15(1) prohibits is discrimination only on grounds of sex. If it is shown that the discrimination is not only on the ground of sex but also on other grounds, the same has been upheld by the courts of law.

Article 14 of the Constitution of India prohibits class legislation but permits reasonable classification. The classification must be based on some "intelligible differentia" and should have a "rational nexus" with the object sought to be achieved by the act or legislation in question. In view of classification and object of legislation, women can be treated as a class and special laws can be made in their favour. Various provisions have been declared valid and within the frame work of the Constitution of India, where women have been given a special treatment. Such provisions of law have been declared to be valid by the Courts as
“permissive classification” not violating the principle of equality under Article 14 of the Constitution provided the classification is not arbitrary.

Article 14 of the Constitution of India enunciates the general principle of right to equality and prohibits the State from denying to any person, “equality before the law or the equal protection of the laws.”

“Equality before law” finds a place in almost all the written Constitutions that guarantee fundamental rights.29 Both the expressions have also been used by the Declaration of Human Rights.30 This term has been adopted from the English Constitution and implied absence of special privilege in favour of any person. The term “equal protection of the law” is of American origin and is a more positive concept. It implies “equality of treatment in equal circumstances”,31 i.e., application of the same law alike and without discrimination to all persons similarly situated.32 Both the expressions, taken together, aim at establishing “the equality of status” as has been envisaged by the Preamble of the Constitution. “Status” refers to her position and rights in different fields of Hindu Law, namely property, succession, matrimonial relief, guardianship right, will making power,

29 U.S.A. Constitution, Sec. 1 of 14th amendment “No state shall………..deny to any person within its jurisdiction the equal protection of laws. ‘Eire constitution, Section 40(1). All Citizens shall as Human persons be held equal before law’ Burma Constitution - Section 13 ‘All Citizens irrespective of birth, religion, sex or race are equal before law, that is to say, there shall not be any arbitrary discrimination between one citizen or class of citizens and other’. Constitution Article 10 “All the inhabitants of Republic are assured equality before the law”.

30 U.N. Declaration of Human Rights, 1945-Article 7 ‘All are equal before the law and are entitled without any discrimination to equal protection of the law’.

31 Dicey Law of the Constitution, 49, 10th ed.

power of adoption. Her status is being elevated because now she can exercise her rights independently and for her own sake as opposed to *Shastric* Law. Status whether proprietary or otherwise has been now the natural outcome of Article 14 and other allied provisions of Indian Constitution. In the past she was denuded of status but now she has been granted the same in domestic as well as in matters of property. The underlying principle of Article 14 of the Constitution of India is that "like should be treated alike and not that unlike should be treated alike." Amongst the equals law should be equal and should be equally administered.

The Supreme Court of India, the protector and guardian of the fundamental rights has always been the champion in maintaining and elaborating the concept of "equality of status" - particularly when the discriminatory laws were made by the State against women. In the very first year of its working, a woman - Champakam Dorairajan for claiming equality of status came before the Supreme Court and got the G.O. of the Madras Government declared unconstitutional and violative of Article 14 (Right to equality) and Article 15 (Discriminatory legislation). Article 14 of the Constitution firstly, confers on women the equality of Status and secondly, protects against any violation of this principle.

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34 *Jaising's Law of the Constitution*, p.94.
Article 14 of the Constitution recognizes "women" as a class. The Court has declared that women as a class were different from men as a class; and for this, the legislature had merely removed the disability attaching to women by passing the Hindu Succession Act, 1956. This Act has declared in unequivocal term that the limited rights in property of a female will now be held by her as an absolute owner, which clearly shows departure from the Shastric Law. Furthermore Section 8 of the Hindu Succession Act has put female heirs on par with male heirs. In case of division of property after the death of father, sons, wife and daughters are entitled to inherit his estate including alienated property even though the wife and daughter were under the customary laws incompetent to challenge the alienation. Again in Bhabani Prasad v. Smt. Sarat Sundari, the Court has made it clear that the Section 14 of Hindu Succession Act does not discriminate between citizens on the ground of place of birth, it equally applies to the "Mitakshra" and "Dayabhaga" Schools of Hindu law. The Hindu Adoption and Maintenance Act, 1956, under Section 22, provided that illegitimate daughters along with sons can claim maintenance from those who take the estate if she has not obtained any share in the estate. This preferential treatment is not

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38 (1937) AC 527. Sonubai Jadhav v. Bala Govind Yadav, A.I.R. 1983 Bom. 156- Sec. 15(2). Principally, law of succession, is a law of entitlement and also of status. Succession to Property of female is not violative of Articles 14 and 15 on the ground of sex determination.
violative of Article 14 as it puts daughters equal to sons. On the basis of Article 14, the U.P. Land Laws (Amendment) Ordinance, 1997 has been promulgated to provide equal share in the agricultural land to an unmarried daughter and unmarried sister.

It is worth mentioning that Section 23 of the Hindu Succession Act, 1956 appears to be discriminatory against women. It provides that where a Hindu intestate has left surviving male and female heirs of class I of the schedule and property includes dwelling house then the right of any of such female heir to claim partition shall not arise until male heirs choose to divide their respective shares. Thus, the provision treats the female heirs unequal which is against the provision of Article 14 of the Constitution of India. Sex is by accident of birth. Thus, female should not be discriminated, and section 23 of the Hindu Succession Act, 1956 must be modified in the interest of the Hindu females, because the number of divorce cases is increasing day by day. Many women are also choosing to remain unmarried.

Rule 18(4) of the Indian Foreign Service (Recruitment, Seniority and Promotion) Rules, 1961, which required permission before marriage and denial of right to employment to married women for panel employees in the government was declared discriminatory by the Supreme Court on the ground of sex and thus

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40 See the Article of Ajai Kumar on ‘Gender Injustice under Section 23 of the Hindu Succession Act, 1956,’ published in A.I.R. 1998 Journal 129.
violative of Article 14. The Court upholding the principle of equality of status put the female employees on par with male employees. On the same lines the Allahabad High Court has declared that the condition in service that a nurse (male or female) who married while in service was required to resign is violative of Article 14 of the Constitution. The Patna High Court also, for ignoring the claim of woman officer, declared Bihar Service Code (1952) R. 12 against Articles 14 and 16 of the Constitution. In Sorbic v. Trust Houses Forte Hostels Ltd., waitresses earning less than waiters doing the same work were not permitted by Equal Pay Act, 1970 (as amended by Sex Discrimination Act, 1975) to be elevated to higher positions though waiters were entitled for promotion. This provision was also held violative of Article 14 of the Constitution of India. Similarly, the Orissa High Court has held the Orissa Service Rules violative of Article 14 of the Constitution which disqualified married women from being selected to the post of District Judges. This rule was declared discriminatory on the basis of sex.

Hostile Discrimination against women has always been struck down by the Supreme Court of India from time to time. Because ".......... since sex, like race and national origin, is an immutable characteristic determined solely by

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42 (1973) 1 Servo L.R. 909 (All.).
43 1975 Lab. I.C. 637 (pat.)
44 1976(3)WLR918.
accident of birth, the imposition of special disabilities upon the members of their sex (female) would seem to violate the basic concept of our system that legal burdens should bear some relationship to individual responsibility.\textsuperscript{46}

Therefore, for being of fair sex if some disability is attached it amounts to hostile discrimination against women violative of Article 14 of the Constitution of India. What is said above about the fair sex equally applies to a pregnant woman also because pregnancy is not a disability but one of the natural consequences of marriage and is an immutable characteristic of married life. Thus, any unreasonable restriction on the basis of pregnancy is violative of Article 14 of the Indian Constitution. The landmark case in the history of women's right on this point is \textit{Air India v. Nargish Meerza and others}.\textsuperscript{47} In this case some of the provisions of Air India Employees Service Regulations and of Indian Airlines (Flying Crew) Service Regulations were declared against the letter and spirit of Article 14 of the Constitution of India. Regulation 46(1) (c) of the Air India Employees Service Regulations, provided that "An Air Hostess was to resign from her service: (a) upon attaining the age of 35 years, or (b) on marriage, if it takes place within four years of service, or (c) on first pregnancy, whichever occurs earliest. Justice Fazal Ali, while declaring clause "c" of the above provision, i.e. termination of services on first pregnancy as violative of Article 14, observed that, "it seems to us that the termination of services of an Air Hostess

\textsuperscript{46} In Sharron A. Frontiero \textit{v. Elliot L. Richardson}. (1973) 36 LED. 2583.

\textsuperscript{47} A.I.R. 1981 S.C 1829.
under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood - the most sacrosanct and cherished institution.” We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notion of a civilized society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Therefore, such a provision is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution. Similarly, in *Bombay Labour Union v. International Franchises Pvt. Ltd.*, the Supreme Court has declared unconstitutional the clause in the regulation of the Corporation which required that unmarried women were to give up service on marriage. Regulation 47 of the Corporation further provided that “the Managing Director can extend the retirement age from 35 years to 45 years to his discretion”. About this the Court observed that this provision did not provide any guidelines, rules or principles which may govern the exercise of discretion by the Managing Director. Secondly, the provision did not even give the right to appeal to higher authorities in case of refusal to such extension. Therefore, the extension of the retirement of an Air Hostess depended on the “mercy and sweet will” of the Managing Director.

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Director. Such wide and uncontrolled powers are clearly violative of Article 14, as the provision suffered from the vice of excessive delegation of powers.

The writ by Miss Muthamma, a senior member of Indian Foreign Service, speaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality. It was a unique example of sex discrimination ultra vires Articles 14 and 16 of the Constitution of India. Rule 8 (2) of the Indian Foreign Services Rules, 1961 provided that “a woman member of the service shall obtain the permission of the Government in writing before her marriage is solemnized. At any time after marriage, a woman member of the service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in way of the due and efficient discharging of duties...........” Justice Krishna Iyer while delivering the judgment has observed that “Discrimination against woman, in traumic transparency, is found in this rule..........In these days of nuclear families inter-continental marriages and unconventional behaviour one fails to understand the naked bias against the gender of species.”

Both the rules were declared violative of principle of equality and held discriminatory.

A regulation which discriminates on the basis of sex but protects the interests of women cannot be held unreasonable and ultra vires the Constitution


of India. In University of Madras v. Shanta Bai\(^2\) the regulation of the University requiring that the College should provide certain facilities for women before they could be admitted, the Hon'ble Court held, are not discriminatory on the ground of sex but they are only reasonable restrictions permitted within the framework of the Indian Constitution. On the same analogy it was held that the denial of admission in a college to a woman student under above regulation is not unconstitutional.\(^3\)

Section 354 of the Indian Penal Code which makes assault or use of criminal force with intent to outrage the modesty of any woman (and does not include "man" within the proviso of the section), is not invalid as being a violation of the equal protection clause.\(^4\) The classification made in favour of wives and that too those deserted by their husbands is also not arbitrary. Because the classification made under Section 488 of Criminal Procedure Code 1898 (now section 125 of Criminal Procedure Code 1973) aims at preventing starvation of wives deserted by their husbands and provides for right to maintenance. This cannot be questioned on the ground that the Section provides for maintenance of wife and contains no similar provision in favour of men as against wives.\(^5\) It is not inconsistent with the principle of equality though, contrary view has been expressed by Hon'ble Madras High Court. The High Court observed that a

\(^{2}\) A.I.R. 1954 Mad. 67.

\(^{3}\) A.I.R. 1954 Mad. 67.


jobless husband is entitled for maintenance from her well to do wife. The wife filed special leave petition before the Hon’ble Supreme Court. During pendency of the case in the Apex Court, one of the litigating parties died, thus the matter has become infructuous. 56

The Allahabad High Court made it clear that special provision for women as a class can be made, but not to benefit an individual woman. 57 Exclusive reservation of posts in reservation offices of Railways for women alone is violative of Articles 14 and 16 of the Constitution of India. 58

While the right to equality of women can be discerned from Articles 14, 15 and 16 of the Constitution, a positive duty imposed on the State to secure equal treatment for women in certain matters can be found in Article 39. It states that the State shall direct its policy towards securing for both men and women equally the right to an adequate means of livelihood 59, and the right to equal pay for equal work 60. These are the Directive Principles to which the States are expected to give effect in course of time. Thus, on the one hand, the Constitution prohibits the State from taking any sex-based discriminatory action and, on the other; it imposes a positive duty on the State to strive to secure equality.

57 Saviri v. K. K. Bose, A.I.R. 1972 All. 305
58 Ambujam v. Union of India, A.I.R. 1980 Mad. 214
59 Article 39(d)
60 Article 39(d)
The positive duties mentioned above have not been carried out effectively by the State. However, recently some definite moves have been made to secure equal pay for men and women. In September 1975 the President of India promulgated an ordinance, which provided for payment of equal remuneration to men and women workers for the same work or work of similar nature in various sectors of employment in the country. In 1976, this was replaced by the Equal Remuneration Act enacted by Parliament. The Act imposed duty on all employers to pay equal remuneration to men and women workers for same work or work of a similar nature. Besides, it has provided for the setting up of Advisory committees to promote employment opportunities for women. In the course of debate some Members of Parliament expressed their fear that after this enactment employers might retrench women workers, or restrict their intake into jobs in future on one excuse or the other. The Government, however, did not seem to share this fear fully, probably because they felt that the advisory committees, creation of which was contemplated in the Bill could effectively take care of this aspect of the problem. Thus, finally the law has not only ensured that there would be no discrimination against women in matters relating to wages in any economic sector wherein the Minimum Wages Acts are in force, but also

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62 Id., S.4.
63 Id., S.6.
made provisions for the creation of advisory committees to promote their employment opportunities.

Equality in matter relating to voting right has been assured by the Constitution to both men and women. Constitution provides for one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either. House of the Legislature of State\textsuperscript{65}, and then it states that "no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them\textsuperscript{66}. In other countries women had to fight a long battle to get their right to vote, and in Switzerland women were able to get the right only at the beginning of the seventies of this century. But, in India, the Constitution readily and unhesitatingly accepted the concept of equality in this field and ensured the voting right to women by prohibiting sex-based discrimination in preparing the electoral rolls in the country.

In the field of education, the governing provision is Article 29(2) of the Constitution which states: "no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them". This provision obviously omits the word "sex". This has given rise to a presumption that if an educational institution discriminates on the basis of sex while admitting students

\textsuperscript{65} Article 325.

\textsuperscript{66} Ibid.
it is not hit by the provisions of Article 29(2). The University of Madras v. Shanta Bai\(^67\), the High Court of Madras said that the omission of "sex" in Article 29(2) was a deliberate departure from the language of Article 15(1) and its object was to leave it to the educational authorities to make their own rules suited to the conditions and not to force on them an obligation to admit women students. In another case, Anjali Ray v. State of West Bengal\(^68\), the High Court of Calcutta stated that, although final opinion on the point was not yet expressed, it was inclined to hold the view that discrimination in regard to the admission of students into educational institutions on the ground of sex might not be unconstitutional. In this connection, it said that "the framers of the Constitution may have thought because of the physical and mental differences between men and women and considerations incidental thereto, exclusion of men from certain institutions serving women only and vice versa would not be hostile or unreasonable discrimination\(^69\).

Thus, it is clear that sex can be a valid basis for discrimination in regard to admission of students into educational institutions. What is more, Article 29(2) says that even educational institutions maintained by the State may practise such discrimination. This power conceded to the State by Article 29(2) virtually takes away the effect of Article (15(1) which prohibits the State from making any discrimination on the grounds of sex. Education is the most important instrument

\(^{67}\) A.I.R. 1954 Mad. 67.

\(^{68}\) A.I.R. 1952 Cal. 825.

\(^{69}\) Id., at 831.
to bring about equality among human beings, and if the sex-based discrimination is permitted in the field of education it would blunt the instrument itself.

It is said that the provisions in Article 29(2) help to establish educational institutions exclusively for women and also for men. This is not in any way beneficial to women. If there is any need for establishing separate educational institutions for women, sufficient scope is provided in Article 15(3) for the State to satisfy any such need. The State may carry out its task in this respect either by reserving a few State maintained educational institutions to women only or by permitting private management to establish educational institutions exclusively for women. Besides, there are certain renowned educational institutions, which were established long ago, and admission into them was confined from the beginning to male students. Article 29(2), which allows them to continue the status quo with regard to admission of students, virtually prevents the admission of women into such prestigious and well-equipped educational institutions. Therefore, Article 29(2) is not only disadvantageous to women but detrimental to their interest as well. The High Court of Calcutta tried to justify this provision by a strange and archaic argument based on "the physical and mental differences between men and women and considerations incidental thereto", which has lost its meaning in the modern world. The right to equality can be made more meaningful for women if its impact is made to be felt in the educational field, and this can be accomplished by amending Article 29(2) and adding the word "sex" in it between the words "caste" and "language".
3.2.1.2 Protective Discrimination

Differential treatment for women due to historical and social subjugation and biological difference is discussed under this head.

Article 15 of the Constitution is more specific instance to right of equality which prohibits the State from making discrimination "against any citizen on grounds only of religion, race, sex, place of birth or any of them." This right is available against an individual being subjected to discrimination in matters of rights, privileges and immunities. To effectuate equality between men and women the Constitution of India prohibits the State to make any kind of discrimination on the basis of sex specifically. Not only this but the Constitution has gone further and empowered the State to a positive act where it is needed, by giving "preferential treatment" in favour of women.\textsuperscript{70} There can be no discrimination in general on the ground of sex, but special laws can be made in favour of women and children. The reason is that woman's physical structure and the performance of maternal functions places her to 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.\textsuperscript{71}

\textsuperscript{70} Article 15(3) says that nothing in this article shall prevent the State from making any special provision for women and children.

\textsuperscript{71} \textit{Muller v. Oregon}, 52 LEd 551.
In University of Madras v. Shanta Bai;72 the respondent was refused admission to the college on the ground of "sex" only. The Syndicate of University had directed to the college under its jurisdiction not to admit women students without obtaining permission of the Syndicate. Had the respondent not been a woman, she would have been admitted in the college on the basis of her marks. The Madras High Court held that the Madras University was not a "State" and therefore, the respondent could not complain of discrimination under Article 15(1) as Article 15(1) of the Constitution prohibits discrimination made by the "State" only. The Court further held that University was right in refusing admission to the respondent in the colleges open for men only, because in these colleges there were no facilities for women like separate common room, toilet, and the like. The decision appears to be wrong on the following grounds: firstly, that the rule made by the Syndicate does not satisfy the legal criteria for discrimination. If discrimination in fact results, it is unconstitutional, however, sound the motive or object may be; secondly, for want of adequate facilities, the fundamental right conferred on women cannot be denied because state itself is responsible for this creating facilities for male students and in failing to create equal facilities for women. Thirdly, omission of the word "sex" in Article 29(2) does not empower the state to segregate women from men in educational institution, when Article 15(1) of the Constitution gives them equal right in educational institutions.

72 A.I.R. 1952 Mad. 67.
In Anjali Ray v. State of West Bengal, the appellant was denied admission in the third year class with honours in Economics for which she applied. Her case was that the refusal of her application was solely on the ground of her sex and this was in contravention of Article 15(1) of the Constitution of India. The college authorities offered her the facilities for attending the honours classes in that institution, provided she got herself admitted in the women's college which was recently established in the locality and which, at present impart instructions only in the pass courses.

Justice Bose held that the provision contemplated in Article 15(1) of the Constitution does not require that absolutely identical facilities as those enjoyed by men in similar matter must be afforded to women also. The judgment seems to be based on wrong interpretation. Firstly, Article 15(3) enables the State to make special provisions favouring women, it cannot be interpreted in a manner so that it denies the right already granted to them under Article 15(1). Secondly, under Article 15(1) discrimination only against women will be unconstitutional. Thirdly, Article 15(1) be read as supplementary to Article 14 of the Constitution of India. Hence, it cannot deviate from the principal guarantee.

The Calcutta High Court in another case observed that, "Discrimination is comparative in its connection. Discrimination on the ground of sex alone must mean that one sex is discriminated as against the other. Discrimination is double-
edged. To discriminate against one is to discriminate in favour of the other but inherent in the very notion of every discrimination is a measure of comparison." There are certain functions which can be performed by women only such as bearing a child. Similarly, an act may be an offence, if committed against women for example outraging the modesty of women or rape.

In Dattatraya Motiram v. State of Bombay, Chief Justice Chagla held that as a result of joint operation of Article 15(1) and Article 15(3) the State could discriminate in favour of women against men, but it, could not discriminate in favour of men against women. Accordingly, reservation of seats for women in election to a Municipality was upheld as protected by Article 15(3) of the Constitution of India.

The Allahabad High Court in Crucknell v. State of U.P., declared Section 8 (i)(b) of the Court of Wards Act, 1912, unconstitutional as it was violative of Article 15(1) of the Constitution of India. Section 8 (i)(b) of the Act provided that "proprietors shall be deemed to be disqualified to manage their own property when they are females declared by the Provincial Government to be incapable of managing their own property." The Court held that the provision classified female proprietors in an arbitrary manner and placed them in a more disadvantageous position than the male members without giving them any opportunity to show cause. It is submitted that the Court had rightly declared

75 A.I.R. 1953 Bom. 842.
76 A.I.R. 1953 All. 746.
Section 8(i)(b) of the Court of Wards Act, 1912, unconstitutional as violative of Article 15 (3), because the discrimination was solely based on "sex". The true intentment of Article 15 is that other qualifications being equal "sex" only shall not be a ground of preference or disability.

In Shri Niwasan v. Padmanini Ammal, a civil revision petition was dismissed by the Madras High Court ordering parties to bear their own costs. The respondent (a woman) prayed that she being a woman, should get her costs. The Court while rejecting this prayer of the respondent stated, that "in modern time discrimination on the ground of sex is not allowed." It is submitted that the Court should have taken into consideration the income of the respondent i.e. whether the respondent was independent financially or dependent on some one, and secondly, the fact that the respondent was forced to defend herself before the High Court.

The Assam High Court, in Beney Bhushan Chakravarty v. Govind Chandra Sharma, upheld Rule 3 of the Election Rules under the Assam Municipal Act, 1923, providing discrimination in voting facilities in favour of female as constitutional and not violative of Article 15(3) of the Constitution. It is submitted the Court rightly decided the case, as exemption accorded to women, men stand benefited as otherwise social burden on him will increase in the matter of looking after children, household duties etc. for which he is generally unfit.

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77 A.I.R. 1957 Mad. 622.
78 A.I.R. 1955 Assam 1780
In *Savitri v. K.K. Bose*,\textsuperscript{79} while disposing of application for grant of licence, the Excise Authorities preferred women applicants to men applicants without any provision. The Allahabad High Court held that “since no special provision had been made for women in respect of the grant of Liquor licence,” the grant of the licences to the appellant only on the ground that she was a woman not only made on an irrelevant ground but was also discriminatory and violative of article 15 (1). It is submitted that the Court rejected the licence only because preference was given to female applicants over male applicants without any provision i.e. without any protective legislation of Article 15(3) of the Constitution.

In *Baghu Ban Saudagar Singh v. State of Punjab*,\textsuperscript{80} the division bench of the Punjab and Haryana High Court upheld the order of the Governor of the Punjab rendering women ineligible for all posts in men’s jail except those of clerks, on the basis that convicts in jails were habitual and hardened criminals, guilty of heinous crimes of violence and sex. So the women performing jail duties would be in a more hazardous position than a male warden. The Court struck a balance between nondiscriminatory treatment irrespective of sex and social interest of maintaining administrative efficiency and peace in jails. The Court held that discrimination involved in the case was not based solely on the ground of “sex”, but administrative efficiency and social facts coupled with sex.

\textsuperscript{79} A.I.R. 1972 All. 305.

\textsuperscript{80} A.I.R. 1972 P&H 117
In *Aparna Basu Mallic v. Bar Council of India and others*\(^1\) the Calcutta High Court has held that Bar Council cannot deny the petitioner to be enrolled as Advocate. The petitioner did her LL.B. as a non-collegiate student from Calcutta University. The Bar Council had failed to perform its functions of laying down the conditions of enrollment. Its function is to recognize the Indian Universities for purposes of the Advocates Act. The Calcutta University is recognized by the Bar Council. But the Bar Council had refused to enroll the petitioner on the ground that she had done her LL.B. as a non-collegiate student.

In *Smt. Choki. v. State of Rajasthan*,\(^2\) the Hon'ble Court upheld Section 497 of Criminal Procedure Code 1898 which prohibits release of a person accused of a capital offence on bail except women and children under 16 years of age and sick men. The Court held that the State can make special provision for the benefit of women and children.

Article 15 (3) of the Constitution of India must be treated as applying to both existing and future laws for making special provisions in favour of women. In *Yusuf Abdul Aziz v. State of Bombay*,\(^3\) Yusuf was charged with an offence of adultery under Section 497 of Indian Penal Code as violative of Articles 14

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\(^1\) A.I.R. 1983 Cal. 461.

\(^2\) A.I.R. 1957 Raj. 10.

\(^3\) A.I.R. 1954 SC 321. "We cannot but feel that there are some peculiarities in the State of Society in this country which may well lead a human man to pause before he determines to punish the infidelity of wives. The condition of women in this country is—they are married while still children; they are often neglected for other wives while still young."
and 15. The challenge under Article 15(1) was based on the last Para of Section 497, which provides that the wife not to be punished as an abettor. The Chief Justice of Bombay High Court, Mr. M. C. Chhagla repelled the challenge under Article 15(1) by observing that the differential treatment was not based only on the ground of sex, but on the ground of social position of women in India. On appeal, Bose J. held that the challenge under Article 15(1) was effectively met by referring to Article 15(3). In dismissing the appeal he observed:

"It was argued that clause (3) of Article 15 should be confined to provisions which are beneficial to women and cannot be used to give them a licence to commit and abet crime. We are unable to read any such restriction into the clause; no are we able to agree that a provision which prohibits punishment is tantamount to a licence to commit the offence of which punishment has been prohibited."

The two Articles 14 and 15 read together validate the impugned clause in Section 497 of the IPC.

In Girdhar Gopal v. State, it was held that section 354 of Indian Penal Code, which makes an assault or use of criminal force, whether by a man or woman, with intent to outrage the modesty of a woman punishable, is based on a valid classification under Article 14, and does not violate Article 15(1) as it did not discriminate on grounds "only" of sex but also on consideration of property, public morals, decency decorum and rectitude. It is submitted that the decision is

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84 A.I.R. 1953 MB 147.
correct but it should be rest on the ground that the section is covered by Article 15 (3). Under clause (3) of Article 15 of the Constitution discrimination can be made favouring the women and not against them. Further, this clause protects both the pre-Constitution and post-Constitution laws.\(^5\)

Numerous laws\(^6\) have been enacted relating to prohibition of female infanticide, dowry, exposure of women in advertisements and films, female child marriage, atrocities and molestation, abduction and rape, maternity benefits, medical termination of pregnancy, prohibition of prostitution and trafficking in women, protection in employment etc. The decisions of the courts have served as a stimulus for the Indian legislatures to enact new laws or to bring about the changes in the existing ones with a view to afford better protection to women.

### 3.2.1.3 Equality of Opportunity

Article 15(3) of the Constitution states that “nothing in this Article shall prevent the State from making special provision for women”. This is intended to give an initial advantage to women so that they could compete with men in various fields effectively. Since women were suppressed for a very long period, they lost their initiative, confidence in their capacity to face problems and

\(^5\) This Principle was reiterated by J. Krishna Iyer in Bai Tahira v. Ali Hussain Fiddali Chottua (1979) 2 S.C.C. 318.

opportunity to equip themselves for various types of professions and avocations. It is because of these facts that the Constitution makers considered them weaker sections of the people who required some definite help and initial advantage to compete with men in all spheres of life. Therefore, this provision has been described by various writers as "protective discrimination" and "adventitious aid" for women.

In the Constituent Assembly there was a controversy on this point. A few members held the view that the word "sex" should be deleted from the main provisions of Article 15 so that State could discriminate on the ground of sex and make special provision for women. But, a few other members opposed it and said that the word "sex" must be retained in the general clauses of Article 15 to ensure equality between men and women and a proviso must be appended to it to enable the State to make special provision for women. The later view finally prevailed and Clause (3) of Article 15 was the result. The framers of the Constitution took a pragmatic view in incorporating this Clause because they expected that this provision might compensate the loss of opportunities suffered by women during the last several centuries. So, Clause (3) of Article 15 of the Constitution may be described as a compensatory provision for women.

The provision in Article 15(3) has enabled the State to make special provisions for women, for example, separate educational institutions exclusively for women, reservations of seats or places for women in public conveyances and

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places of public resort. Besides, many pieces of legislation conferred benefits on women, to which men are not eligible. The Factories Act of 1948 provides for separate facilities and favourable treatment for women. The Act (1) prohibits employment of women during night and in hazardous occupation;\(^{88}\) (2) makes safety provision by disallowing them to clean, oil or repair moving machinery or to lift heavy weights;\(^{89}\) (3) provides for opening of creches for small children of women workers; (4) compels the factory authorities to allow women workers,\(^{90}\) who have left their young children in the factory crèche, to go and feed their babies at stated frequencies,\(^{91}\) and provides for maternity benefits for women employees\(^{92}\). The Mines Act prohibits the employment of women underground\(^{93}\), for such employment is considered to be very hazardous to women. Free medical treatment and maternity bonus are provided for women under the Maternity Benefit Act of 1961\(^{94}\). What is more, employment of women during the period of six weeks after delivery is prohibited and dismissal of women workers on ground of pregnancy is also prohibited\(^{95}\). Some of these provisions are in the nature of safety measures to prevent the employment of women in dangerous and hazardous jobs, and others are intended to confer certain benefits on them which

\(^{88}\) S.66, Factories Act, 1948.

\(^{89}\) S.22(2) and S.34(2) of the Factories Act, 1948.

\(^{90}\) S.48, Factories Act, 1948.

\(^{91}\) S.48 (3) (d), Factories Act, 1943.

\(^{92}\) S.5 of Maternity Benefit Act, 1961.

\(^{93}\) S.46 of the Mines Act, 1952.

\(^{94}\) S.B.

\(^{95}\) S.12.
are necessary for them in view of the additional responsibilities they have to shoulder in life.

Another specific example of equality of status is the right to equality of opportunity for citizens of India provided under Article 16 of the Constitution of India. Clause (1) of Article 16 provides equality of opportunity in matters relating to employment or appointment to any office under the State. This right to equality is only in employment or appointment under "the State" that is, in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, gratuity, pension, age of superannuation, etc. But this equality envisaged under Article 16 of the Constitution is the equality amongst equally placed persons-equality amongst the same class of persons and not amongst different classes of persons.

Clause (2) of Article 16 of the Constitution lays down specific grounds on which citizens are not to be discriminated against one another in matters of opportunity and offices under the State. These are religion, race, caste, sex, descent, place of birth, residence or any of them. Discrimination on the basis of sex has been specifically prohibited under the Constitution so as to bring women on par with men. Sex shall not be the sole ground of ineligibility for any post. In Punjab the Governor promulgated an ordinance making women ineligible for the post of warden in men's Jail. It was held by the Court that such order cannot be
said to be discriminatory on the ground of sex alone and remains immune to
challenge even after the commencement of the Constitution.97 Denial of
promotion to a woman from the post of typist to the post of Stenographer in
Police Department on the ground of the nature of the Stenographer duty (touring
with officers and working at off hours) is discrimination on the ground of sex.98
Article 15 (3) can also be invoked to justify the discrimination in favour of female
under Article 16 (2).99 The sole reservation of Reservation-cum-booking clerks in
metropolitan cities by Railways has been held to be violative of Article 16 (1) and
(2) of the Constitution of India.100

But, in reality such equality of opportunity has not been conceded fully to
women in matters relating to employment. This fact is brought to the fore in two
important cases, namely, Muthamma v. Union of India101 and Air India v.
Nargesh Meerza.102 Rule 8(2) of the Indian Foreign Service (Conduct and
Discipline) Rules 1961 provided that (1) a woman member of the service shall
obtain the permission of the Government in writing before her marriage is
solemnized, and (2) at any time after the marriage she may be required to resign
from service, if the Government is satisfied that her family and domestic
commitments are likely to come in the way of the due and efficient discharge of

97 Mrs. Raghubans v. State, A.I.R. 1972 Punj. 117 (DB)
98 A.I.R. 1977 Ker LT 677 (682).
100 (1979) Lab. I.C 1226 (Cal.)
her duties as a member of the service. In Muthamma case, characterizing this Rule 8(2) as one that practiced discrimination against woman in traumatic transparency, Justice Krishna Iyer said that if the family and domestic commitments of a woman member of the Service is likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. Further, "in these days of nuclear families, inter-continental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species."103

Apart from that, there was Rule 18(4) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, which stated that "no married woman shall be entitled as of right to be appointed to the service". This rule according to Justice Krishna Iyer, is in defiance of Article 16. He says that if a married man has a right, a married woman, other things being equal, stands on no worse footing104. Describing the rule as a "misogynous posture" and the one which was framed forgetting the fact that "our struggle for national freedom was also a battle against woman's thralldom",105 Justice Krishna Iyer emphatically states that "freedom is indivisible, so is justice" and that our "founding faith" enshrined in Article 14 and 16 should have been tragically ignored vis-a-vis half

103 A.I.R. 1979 S.C 1868. at p. 1870.
104 Ibid.
105 Ibid.
of India's humanity, viz., our women, "is a sad reflection on the distance between Constitution in the book and law in action".\textsuperscript{106}

More or less similar problem arose in \textit{Air India v. Nargesh Meerza}.\textsuperscript{107} Air India Employees Service Regulations provided inter alia, that an Air Hostess shall retire from the services of the Corporation "upon attaining the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier". But, the retirement age for male employees, namely, Assistant Flight Purser and Flight Stewards, was fixed as 58 years. This was challenged as violative of Articles 14, 15(1) and 16(2) of the Constitution.

Regarding the retirement age, the Court pointed out that various circumstances such as incidents, service conditions and promotional avenues of Assistant Flight Purser and Air Hostesses are different. Therefore, though the Air Hostesses and Assistant Flight Purser are members of the cabin crew, the Air Hostesses are an entirely separate class governed by different set of rules, regulations and conditions of service. Hence the fixation of their retirement age at 35 years is not violative of Article 14, for the retirement age has been fixed on the basis of reasonable classification and there is no hostile discrimination\textsuperscript{108}. Besides, the contention that the conditions of service with regard to retirement

\textsuperscript{106} Ibid.

\textsuperscript{107} A.I.R. 1981 S.C 1829.

\textsuperscript{108} Id., pp.1842-1846.
amounted to discrimination on the ground of sex only and hence violative of Articles 15(1) and 16(2) was overruled by the Supreme Court on the reasoning that it was a discrimination on the ground of sex coupled with other considerations, which is not prohibited by Articles 15(1) and 16(2) of the Constitution.\textsuperscript{109}

The second limb of the Regulation regarding the retirement of Air Hostesses in the event of marriage taking place within four years of the service has also been upheld by the Supreme Court on the ground that it is not unreasonable or arbitrary in nature. In support of this ruling, the Court adduced three reasons. First, according to the regulations an Air Hostess starts her career between the age of 19 and 26, and the regulation permits her to marry at the age 23 if she has joined the service at the age of 19, which is by all standards a very sound and salutary provision. Apart from improving the health of the employee, it helps a good deal in the promotion of family planning programme. Secondly, if a woman marries around the age of 23 years, she becomes fully mature and there is every chance of such a marriage proving a success. Thirdly, if the bar of marriage within four years is removed then the Corporation will have to incur huge expenditure additional Air Hostesses either on a temporary or on ad hoc basis to replace the working Air Hostesses if they conceive and any period short

\textsuperscript{109} Id., pp.1847-1848.
of four years would be too little a time for the Corporation to phase out such an ambitious plan.110

The aforesaid reasons given by the Supreme Court are not only unconvincing but they are callous in nature as well. The first two reasons of the promotion of family planning programme and becoming fully mature person with every chance of a successful marriage resulting from such late or postponed marriage could be applied to male employees of the Corporation as well. The first two limbs of the impugned regulation, which have been upheld by the Supreme Court in Nargesh Meerza case, would show that the relic or remnant of male chauvinism of yesteryears still lingers in Indian society and in the laws of the country. This is another sad example of what Justice Krishna Iyer, calls "the distance between Constitution in the book and law in action".

However, the Supreme Court has redeemed its position to certain extent by striking down the third part of the regulation, which stipulated that the Air Hostesses should retire on their first pregnancy. The Supreme Court has pointed out that termination of service of an Air Hostess if she becomes pregnant amounts to compelling her not to have any children and thus interfere with and divert the ordinary course of human nature. The termination of the services of an Air Hostess under such circumstances, according to the Court, "is not only a callous and cruel act but an open insult to Indian womanhood, the most sacrosanct and cherished institution such a course of action is extreme detestable and abhorrent to

110 Id. pp.1849-1850.
the notions of a civilized society." Further, the Supreme Court has said that by making pregnancy a bar to continuance in service of an Air Hostess, the Corporation seems to have made an individualized approach to a woman's physical capacity to continue her employment even after pregnancy which undoubtedly is the most unreasonable approach.\textsuperscript{112}

As a matter of fact, it is this unreasonable and much detested "individualized approach to woman's physical capacity" that has been instrumental in denying women their right to equality of opportunity in numerous fields and also their right to equal pay for equal work. The Constitution prohibits sex-based discrimination. The salutary constitutional stipulation must be given full effect. "individualized approach to a woman's physical capacity" to circumvent the constitutional mandate must be given up and women must be treated as normal human beings like men in all spheres of life, more particularly in the fields of education and employment.

It must be borne in mind that women, like the Backward Class of citizens, have been considered weaker sections by the Constitution because of their long suppression in the society. Owing to deprivation of their right to equality in society for a long period, their position has become so weak that they are not in a position to compete effectively with men, the stronger section. Consequently, though they constitute approximately one half of the population, they are not

\textsuperscript{111} Id. p.1850.
\textsuperscript{112} Id. p.1853.
adequately represented in the services under the State. A special provision in Article 16 for reservation of appointments or posts in favour of women would have helped to mitigate this situation. Therefore, it may be suggested here that in order to render the right to equality of opportunity in Government employment more meaningful to women a suitable amendment must be carried out to Article 16 to incorporate in it a special provision for reservation of appointments or posts in Government service in favour of women.

Recently, the Supreme Court has been called upon to discuss reservation of posts or appointments in rather indirect manner in Government of A.P. v. P.B. Vijayakumar. With a view to reserve certain percentage of posts for women in public service the Government of Andhra Pradesh introduced new Rule 22-A in the Andhra Pradesh State and Subordinate Service Rules vide Clause (2) of Rule 22. It stated that in the matter of direct recruitment to posts for which women and men are equally suited, "other things being equal, preference shall be given to women and they shall be selected to an extent of at least 30% of the posts in each category of OC, BC, SC and ST quotas." It has been challenged on the ground that it violated Article 14 or 16(4). The Supreme Court upheld the validity of the impugned Rules 22-A (2) and said that arguments advanced before the Court ignored Article 15(3). The Court pointed out that Article 15 deals with every kind of State action in relation to the citizens. Every sphere of State activity is controlled by Article 15(1). Therefore, there is no reason to exclude from the

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ambit of Article 15(1) employment under the State. At the same time Article 15(3) permits special provisions for women\textsuperscript{114}. Proceeding further, the Court stated that Article 16 does not touch upon any special provision for women being made by the State, and, therefore, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3); and the power under Article 15(3) is wide enough to cover the entire range of State activity including employment under the State.\textsuperscript{115}

The Supreme Court explained that the purport of Article 15(3) is to improve the status of women who are socially and economically backward, and to empower them in a manner that would bring about effective equality between men and women. Therefore, according to the Court, "to say that under Article 15(3) job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3) is not whittled down in any manner by Article 16.\textsuperscript{116} The phrase "any special provision for women" in Article 15(3), according to the Court, would mean State activities in the form of affirmative action or reservations that might be taken or made by the State to improve the position of women. Similar phraseology is found in Article 15(4). Whereas Article 16(4) is limited to reservation of appointments or posts".

\textsuperscript{114} Ibid. P. 1651.

\textsuperscript{115} Ibid.

\textsuperscript{116} Ibid.
Therefore, Article 15(3) and Article 15(4) are wide in scope than Article 16(4)\textsuperscript{117}. Finally, the Court referred to the language of the impugned Rule 22-A(2) and said that it provided for preference being given to women to the extent of 30\% of the posts, other things being equal, and the preference contemplated therein is clearly not a reservation for women in the normal sense of the term. Further, reservation connotes a separate quota which is reserved for a special category of persons. Within that category appointments to the reserved posts may be made in the order of merit, and to those reserved posts the said special category of persons is not required to compete on equal terms with the open category\textsuperscript{118}. On the other hand, the impugned Rule 22-A(2) is one for a limited affirmative action, because the word "preference" and the phrase "other things being equal" in the impugned Rule clearly indicate that for women to claim the 30\% of the posts they must as meritorious as men\textsuperscript{119}. Hence the Court concluded that the Rule 22-A(2) is within the ambit of Article 15(3) and is not in any manner violative of Article 16(2) or 16(4) which have to be read harmoniously with Article 15(1) and 15(3) of the Constitution\textsuperscript{120}.

The Supreme Court gave wider interpretation to the phrase "special provision" in Article 15(3) to include within its ambit not only positive State acts like concessions, preferences, benefits, etc., but also reservation of posts or

\textsuperscript{117} Ibid. PP. 1651 - 1652.
\textsuperscript{118} Ibid. PP. 1562.
\textsuperscript{119} Ibid. PP. 1562 - 1563.
\textsuperscript{120} Ibid. P. 1563.
appointments in Public Service in favour of women. The decision in Vijayakumar Case therefore, undoubtedly is a step forward in empowering women in the field of Public Service. However, it is necessary to bear in mind that women should not be made to wait for their empowerment right to develop from case to case at the apex Court. As stated earlier, incorporation of a new provision in Article 16 of the Constitution to enable the State to make reservation of appointments or posts in favour of women who, in the opinion of the State, are not adequately represented in the services under the State will go a long way in improving position of women.

3.2.2 Right to Life and Right against Exploitation

The birth of a girl is not considered as a matter of pleasure even today in many parts of India. 105 female infants had been killed every month throughout 1997 in Dharampuri District of Tamil Nadu. What is worse, thousands of female infants are murdered in their mother's wombs, after determining the sex in spite of the enactment of the 1994 Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act. Today, India tops the list in illegal abortions and female infanticide in the world. According to the United Nations International Children's Emergency Fund (UNICEF), 40 to 50 million girls have gone
“missing” in India since 1901 because they were not allowed to be born, or if born, murdered within days or even hours of their birth.\textsuperscript{121}

In the month of December, 1993 a father of a minor girl of 16 years age filed a writ petition before the Madras High Court under Medical Termination of pregnancy Act, 1971 for a direction from the Court to terminate the pregnancy of his minor daughter. The Hon’ble High Court of Madras dismissed the writ petition and held that abortion cannot be forced on a minor girl when she is willing to bear the child.\textsuperscript{122} According to G.V. Ramaiah, Article 21 of the Constitution may be interpreted to mean that the word ‘person’ applies to all human beings including the unborn off springs at every state of gestation. The State can not discriminate against persons who are foetuses by offering them less or no protection than other persons. Therefore, the State is under an obligation under Article 21 not only to protect the life of unborn child from arbitrary and unjust destruction but also not to deny it equal protection under Article 14 of the Constitution of India.\textsuperscript{123} Article 21 gives right to life and personal liberty. “Right to life” does not merely mean animal existence but means something more, namely, the right to live with human dignity. Rape, is therefore, a crime against basic human rights and is also violative of the victims, right to life contained in


Article 21. In a recent case "Chairman, Railway Board and others v. Chandrima Das and others," the Supreme Court observe that Article 21 of the Constitution guarantees fundamental rights to an individual, and not only a citizen. Therefore, contending that the victim was a foreigner and thus not entitled to compensation was unacceptable. The Central Government could be held liable for the offence of rape committed by its employees. Article 23 of the Constitution of India provides for prohibition of traffic in human beings and forced labour. Similarly, Article 24 prohibits employment of any child (which includes a female child) below the age of fourteen years to work in any factory or mine, or engage in any other hazardous employment. A brief analysis of these provisions would reveal how much our founding fathers were concerned in not only protecting the interests of women but also to ameliorate the conditions of this lot in totality. Forced labour in any form including beggar and traffic in human beings is completely prohibited and any contravention of this provision has been declared an offence punishable in accordance with law. The State, in pursuance of the above provision, has enacted, the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) which has recently been amended, and now it is known as the Prevention of Immoral Traffic Act (PITA) in the society's attitude towards immoral traffic in women and girls. The emphasis has now been shifted

from “suppression” to “prevention”. This would go a long way in remedying speedily this deep rooted social malice.

Another milestone in the matter of improving the lot of Indian women is passing of the Indecent Representation of Women (Prohibition) Act, 1986. If this Act is implemented in its true spirit, we would be able to boast of restoring to the Indian women their lost dignity, status and the high position they enjoyed during the early stages of Indian Civilization and culture. The Statute prohibiting indecent representation represents an enlightened Indian mind and attitude towards women. The term “indecent representation of women” has been provided a very comprehensive definition so as to “include the depiction in any manner of the figure of women, her form of as to have the effect of being indecent, or derogatory to or denigratory to women, or is likely to deprive, corrupt or injure the public morality or morals.”12b The sincerity of the Parliament in enacting this statute is clearly exhibited by the penalty clause contained in the Act. Any person who violates the provision of this statute, on first conviction, shall be punishable with imprisonment of either description for a term up to two years and with fine up to Rs.2000. The punishment provided to a subsequent violator is harsh and may extend to minimum imprisonment of not less than six months which may extend to five years and also with fine not less than Rs.10,000/- which may extend to one lakh rupees. What an exemplary punishment has been provided to an offender under the Act. Does it not ensure the dignity of women in its true sense?

12b Section 2 (c) of the Indecent Representation of Women (Prohibition) Act, 1986.
It deserves three cheers from all Indian Women. Women in other countries should be inspired from this enlightened piece of legislation and should persuade and compel their law maker to recognize their dignity by enacting a similar statute.

Begar and other forms of involuntary forced labour is absolutely forbidden not only from men but from women also. The Bihar Harijan (Removal of Civil Disabilities) Act, 1949 makes it an offence to compel man or woman against his or her will or without payment of wages to do any work. The Payment of Wages Act, 1936 also provides that every employer is responsible for payment of wages to his employees and with holding of payments has been declared an offence. In *Sanjit Ray v. State of Rajasthan*,\(^{127}\) the Supreme Court delivered a monumental judgment holding that payment of wages less than that prescribed under the Minimum Wages Act amounts to forced labour or begar and no exemption by any other statute can be allowed as Constitutional in view of the nature of the Minimum Wages Act. This case also represents a sort of socio-legal awakening amongst women workers engaged in drought or famine relief works or organized by the State. It would not be out of place to mention the famous declaration of Supreme Court on this point in *Neerja Chowdhary v. State of M.P.*\(^{128}\) Justice Bhagwati in that case declared that women and children can not be compelled to work in unhygienic conditions and for nominal wages. Such system of bonded labour is in violation of Articles 21 and 23 of the Constitution of India and the

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\(^{127}\) A.I.R. 1963 SC 328.

\(^{128}\) A.I.R. 1964 SC 1079.
Bonded Labour System (Abolition) Act, 1976 (Sections 4 and 14). Justice Bhagwati in Bhandhwa Mukti Morcha v. Union of India.\textsuperscript{129} observed that "the Central Government is bound to ensure observance of various social welfare and labour laws enacted by the parliament for the purpose of seeking to the workmen a life of basic human dignity in compliance with the Directive principles of State Policy."\textsuperscript{130} Keeping this in view, the Court directed the Central and state Governments "to ensure that minimum wages is paid to the women and or children who look after the vessels in which pure drinking water is kept."

Coir industry, the most ancient and also the largest employer in terms of the number of workers involved, is the second largest source of non-agricultural employment for the poor in the State of Kerala. Traditionally, it has been the occupation of women from low caste Hindu families and it continues to be their major occupation till date. Thus, the majority of workers (82\%) are women, who are victims of low wages and health hazards.\textsuperscript{131} Despite the above pronouncements made by Hon'ble Courts, the cooperatives and government welfare schemes, they continue to suffer starvation and death.

The Kerala High Court in Balan Nair v. Bhavani Amma\textsuperscript{132} observed that the main thrust of Article 15 (3) and Article 39 of the Constitution is to assist women and children in distress and if these two Articles are read together

\textsuperscript{129} A.I.R. 1984 SC 802

\textsuperscript{130} A.I.R. 1984 SC 812.


\textsuperscript{132} A.I.R. 1987 Ker. 110.
"empowers as well as directs the State to make special laws in favour of women and children and to develop the condition of freedom, equality and dignity." In Nihal Singh v. Ram Bai, a typical situation came up before the Court. In this case, the question was whether the customs which were derogatory to the Constitutional provisions should be allowed to prevail and any contract in pursuance of such customs should be upheld? In that case plaintiff contracted the respondent to arrange for his son a Dangi Woman who could be kept by him as his mistress. Plaintiff paid Rs.4000 to the defendant who sent a girl to her house. The girl lived with the son of the plaintiff for twenty days and went back to her village. After this, she never came back. Later on it was discovered that the girl was not Dangi by caste. Therefore, the plaintiff claimed her money back. First two trial courts declared the suit on the ground that the defendant had obtained Rs.4000 from the plaintiff fraudulently invoking Section 65 of the Indian Contract Act. The High Court of Madhya Pradesh reversed the Judgments of the lower courts. It was declared by Hon’ble Justice Singh, T.N. that such contract is violative of the Constitutional injunctions. He observed that "such a contract would not only be void ab-initio in virtue of Article 13 (2) of the Constitution but the constitutional prohibition of Article 23.... Indeed, because, such a contract would not only be unenforceable a suit based on such a contract could not have been entertained by any Court of law acting under the Constitution which prohibits such a transaction from taking place. Because a Court set up under the

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Constitution cannot be party to violation of a Constitutional injunction. If sale of a woman is considered "traffic in human beings", which is prohibited by Article 23 of the Constitution. I do not see how any action based on a contract, evidencing such a transaction can at all be entertained...........It ought to have been dismissed in limine.\textsuperscript{114} The procuration of a minor girl for purposes of prostitution, selling or letting, to hire a minor girl and buying or obtaining possession of a minor girl for the same purposes are criminal actions conveying a penalty of upto 10 years and fine under Sections 372 and 373 of Indian Penal Code.

Employment of children below the age of 14 years is strictly prohibited under the Constitution of India. Therefore, females below the age of 14 years cannot be employed to work in any factory or mine or engaged in any hazardous activity. Obviously, the provision is in the interest of health and in the interest of young male or female and is in the light of Article 39, a Directive Principle of State Policy, which enjoins that it is the duty of the state to ensure that the health and strength of workers, men or women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength. The existing labour legislations are to take care of the safety and health of children, male or female. Section 3 of the Employment of Children Act, 1938 prohibits employment of children below 15 years of age to work in any occupation concerned with transportation of passengers, goods by

\textsuperscript{114} A.I.R.1987 M.P. 131-132.
mail, by railway or any work involving the handling of goods within the limits of any port. Similarly, the Factories Act, 1948 prohibits the employment of children below the age of 14 years to work in any factory. The Mines Act, 1952, The Merchant Shipping Act, 1958 and the Motor Transport Workers Act, 1951 prohibit employment of a child below the age of 15 years. The Bidi-Cigar Workers (Conditions of Employment) Act, 1966 and the Apprentices Act of 1961 prohibit employment below 14 years of age. The Plantation-Labour Act, 1951 prohibits employment below the age of 12 years. Besides, different States have enacted their own laws regulating the condition of workers in shops and establishments. Generally speaking a child below 12 years of age is not to be employed in such establishments though in a few States like Tamil Nadu, Pondicherry and Uttar Pradesh, the age is 14 years. It appears that the Indian legislature is fully conscious about the need to protect the interest of women and to give them a status equal to their male counterparts in the society. However, the enforcement aspect generally remains neglected and needs improvement.

3.2.3 Rights of Women vis-à-vis Directive Principles of State Policy

It is known fact that at the time of framing of the Covenant on Human, Rights, there was great cleavage between the Western Countries and the erstwhile block of Soviet Union. While the former laid more emphasis on Civil and Political Rights, the latter on economic and social rights. Ultimately, two Covenants were framed. The interesting, aspect of the two Covenants is that in
regard to Covenant on Civil and Political Right, the State-parties to the Covenant are under an obligation to respect them and ensure them to all persons, there is no such obligation under the Covenant on Economic, Social and Cultural Rights. Article 2 of the former may be contrasted with Article 2 of the latter.

Article 2 of the Covenant on Civil and Political Rights is categorical. It runs:

1. Each State-party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present 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.

2. Where not already provided for by existing legislative or other measures, each State-party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State-party to the present Covenant undertakes:

   a. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective
remedy, notwithstanding that the violation has been
committed by persons acting in an official capacity;
b. To ensure that any person claiming such a remedy shall have
his fight thereto determined by competent judicial,
administrative or legislative authorities, or by any other
competent authority provided for by the legal system of the
State, and to develop the possibilities of judicial remedy; and
c. To ensure that the competent authorities shall enforce such
remedies when granted.

Article 2 of the Covenant on Economic, Social and Cultural Rights runs:

1. Each State-party to the present Covenant undertakes 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 recognized in the present
Covenant by all appropriate means, including particularly the
adoption of legislative measures.

2. The State-parties to the present Covenant undertake to guarantee
that the rights enunciated in 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.
3. Developing countries, with the regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

3.2.3.1 Special Protection under Directive Principles of State Policy

Till the end of nineteenth century the old concept of the State was that the State is mainly concerned with maintenance of law and order and protection of life and property of its subjects. But we are living in the era of "welfare State," where a State seeks to promote the socioeconomic well being of the people. The policy of the State should be for social good.

Pursuing this object, the Constitution of India has provided in Part IV the Directive Principles of State Policy. These principles lay down certain economic and social goals to be achieved by the various Governments in India - i.e., the Central Government and the State Governments. These directives impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people. Though these principles are "non-justiciable," they are constitutional directions which the "State" is supposed to abide by Mathew J. has aptly observed:

"The moral rights embodied in Part IV of the Constitution are equally an essential feature of it, the only difference being, that the moral rights embodied in Part IV are not specially enforceable as against the State by Citizen in a Court of
Law in case State fails to implement its duty but, nevertheless, they are fundamental in the government of the country and all the organs of the State, including the Judiciary, are bound to enforce those directives.\textsuperscript{135}

In a broader perspective the Directive Principles epitomize the ideals, the aspirations, the sentiments, the precepts and the goals of our entire freedom movement. In another sense they represent a compromise between the ideals and reality. In the initial stages of the Constitution making there was a strong current of opinion to make the Directive Principles as much justiciable as the Fundamental Rights. But it dawned on the Constituent Assembly that it would not be practicable to make the positive rights justiciable. Thus, ultimately the non-justiciable Directive Principles were enshrined in Part IV of the Constitution. T.T. Krishnamachari called the non-justiciable Directive Principles as "a veritable dustbin of sentiment sufficiently resilient to permit any individual of this House to ride his hobby-horse into it."\textsuperscript{136} The fact is that once the Constituent Assembly accepted the non-justiciable character of the Directive Principles it felt relieved, and the Directive Principles became not a "veritable dustbin" but a vast beautiful vase in which every one was permitted to put a bunch of flowers of his own liking and choice, and Directive Principles became more than precepts. In two sessions of the Constituent Assembly the flowers of all the ideals, sentiments aspirations, precepts and goals were placed in this vase. The Gandhian ideology, Hindu


\textsuperscript{136} CAD. VII. 12.583.
orthodoxy, ideals of socialism, aspirations of weaker-sections of society, sentiments of minorities, all found a place. Ambedkar observed that the Directive Principles contain our ideal of economic democracy and prescribed "that every government in power shall strive to bring about economic democracy"\(^\text{117}\)

Therefore, the 'Directive Principles' aim at securing social and economic freedom by appropriate action. Article 37 of the Constitution lays down that "the Directive principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Emphasizing it, the Supreme Court observed that, "the command of the Constitution must ever be present in the minds of the Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles."\(^\text{118}\)

By their very nature the Directive Principles imply a lot of social control and social engineering. Some of the legislations enacted with a view to giving effect to the Directive Principles are bound to impinge on the Fundamental Rights. Thus the question has arisen before our courts as to whether a legislation violative of a fundamental right could be upheld on the basis of one or more Directive Principles? Before the insertion of Article 31-C by the 25th Amendment in 1972, our Courts have, by and large, answered the question in the negative, though in some cases the courts have relied on the Directive Principles

\(^{117}\) Cad. VII. 495.

to uphold the legislation. In 1970, Hedge, J. (it seems, obiter) observed, "while rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other. The mandate of the Constitution is to build a welfare society in which justice, social, economic and political, shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met."\(^{139}\) In this case the Supreme Court was concerned with the validity of certain provisions of the Minimum Wages Act, 1948 which were alleged to be violative of Article 14.\(^{140}\) The challenge failed. But the case was not argued on the basis of fundamental rights versus directive principles.

The Directive Principles for State Policy visualizes a society in which everyone will have the place of dignity and recognition of his identity. But this is not enforceable in the Court for that very reason that the substantial change has become nugatory. The plea for Uniform Civil Code has received no positive response and the State has yet to give the provisions of Chapter IV as a realistic approach. To achieve the objective of social and economic justice in order to

\(^{139}\) Chandra Bhawan Boarding v. State of Mysore A I.R. 1970 SC 2042 at 2050

\(^{140}\) Earlier in Bijory Cotton Mills Ltd. v. State of Ajmer (1955) 1 S.C.R. 752 the Supreme Court had held that the statute did not violate Article 19(1)(g) as it imposed reasonable restrictions in the public interest.
bring equality of status certain directive principles have been provided in Chapter IV of the Constitution of India. Article 38 (2) clearly provides that - the State shall 

endeavour to eliminate inequalities in Status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.\(^1\)

Another manifest declaration of the Constitution to achieve equality of status is a directive under Article 39. It provides: (a) that the citizens, men and women, equally have the right to an adequate means of livelihood. The State shall, in particular direct its policy towards securing, (b) That there is equal pay for equal work for both men and women, (c) That the health and strength of workers, men and women .........are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age and strength. The principle underlying this provision is "equal wages for equal work" irrespective of "sex".

In furtherance of these principles suitable provisions have been included in various labour laws passed from time to time e.g. the Equal Remuneration Act, 1976, the Bonded Labour System (Abolition) Act, 1976, the Factories Act, 1948, the Mines Act, 1952, the Workman’s Compensation Act, 1923, the Plantation Labour (Amendment) Act, 1981 and several other statutes. In this regard various International Labour Conventions and recommendations of the International Labour Organization have been kept in view. For example, Equal Remuneration

\(^1\) Ias. By the Constitution (Forty-Fourth Amendment) Act, 1978, Section 9 (w.e.f. 20.6.1979).
Convention 1951, which provided for equal remuneration for work of equal value-regardless of “sex” was ratified by India in the year 1958 and consequently the Remuneration Act was passed in 1976.

In Randhir Singh v. Union of India, applying this principle, it was explained that it is true that the principle of “equal pay for equal work” is not expressly declared by our Constitution to be fundamental right, but it certainly is a constitutional goal. Article 39 (d) of the Constitution of India proclaims “equal pay for equal work for both men and women” as Directive principle of State policy........means equal pay for equal work for every one and as between the sexes. The above principle of “equal pay for equal work” has also been reiterated by the Supreme Court in Bhagwan Das v. State of Haryana and R. D. Gupta v. Lt. Governor, Delhi Administration. It has also been made clear by the Supreme Court that this principle has to be read in the light of Article 14 and Article 16 of the Constitution.

The Constitution of India also provides some other principles of State policy to elevate the status and position of women, viz. “Article 42 provides that the State shall make provision for securing just and humane conditions of work and maternity relief.” Article 43 of the Constitution provides that “The State shall endeavour to secure by suitable legislation, economic organization or in any way,

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143 A.I.R. 1987 SC 2049.
144 A.I.R. 1987 SC 2986.
to all workers, agricultural Industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life............." The cumulative effect of these two Articles is that "the State is under an obligation to provide by suitable legislation just and humane conditions in various industrial's and maternity benefits to women." The Factories Act provides that the women are not required to work normally between 7 p.m. and 6 a.m. and not in any case between 10 p.m. and 5 a.m. Similar provisions also exist under the Mines Act, 1952 [Section 46(3)] and the Plantation Act, 1950 (Section 25). Further, it has been provided that women labour would not be asked to perform any work of heavy load and to work in under ground mines. This is an attempt to further ameliorate the conditions of women. In India, the Maternity Benefit Act, 1961 was passed which provides 12 weeks maternity leave with wages to women workers and other sundry benefits.

The existing labour laws are quite inadequate in giving the working women their due benefits. The saddest part is that the existing laws have not been implemented effectively and in their right spirit. We should provide proper safeguards for better working conditions. The report of the national committee on "Status of women" (1974) has highlighted this aspect and suggested measures to improve upon the conditions of women. But no concrete steps have so far been taken by the government to remove the impediments in the employment of women. It is further suggested that the female workers in unorganized sectors specially in construction work and domestic employment etc. are harassed and
exploited. Therefore, some legislative protection must be provided to the female workers in these sectors. It is further suggested that the piece-meal protection provided under different labour legislations has been failed to fully protect the interest of female workers. Therefore, a comprehensive legislation is the crying need of the hour. Rather a comprehensive “Protection to workers code” would be most welcome.

Another Directive Principle protecting the interest of women and which puts women on par with men, is Article 44 which provides, “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” The Article envisages that in making laws uniformity must be adopted. The same laws must be applicable to all and that should be equal before the law. It is observed that there has been an half hearted effort in this direction because Article 44 has yet to receive the biting teeth as Art. 44 is not justifiable like fundamental rights. Art. 44 only specs something real to be done by the State but ironically stating it has failed to take a practical shape till date. It is questionable that what has been the endeavour of the State in fulfilling the desired result as ordained in Article 44. Nothing has been done in this regard in spite of the best intention and efforts of the law makers. Wherever this issue comes for deliberations in a conference, seminar or symposium it receives more opposition than acceptance.
3.2.3.2 Uniform Civil Code

There are many situations in which women belonging to a particular community are discriminated. It is a very sorry state of affairs that Hindu, Muslim, Christian, Parsi and Jew women cannot be treated alike in the matters of marriage, divorce, inheritance, maintenance and adoption etc, just because they belong to a particular community and thus the objectives enshrined in the Preamble to our Constitution cannot be achieved.

This Article has been framed for the achievement of the objectives enshrined in the Preamble to the Constitution, by which we have solemnly resolved to constitute India "into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all the citizens: Justice, social, economic, and political; Liberty, of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all, Fraternity, assuring the dignity of the individual and the unity and integrity of the Nation". Chaudhari Hyder Hussain, Bar-at Law has urged the "necessity of having one single code to be named as the Indian Civil Code applicable to everybody........irrespective of caste, creed or religious persuasions." He has emphasised the need of framing of the Uniform Civil Code, for the unity and integrity of the Nation in the following words: "it appears to be absolutely essential in the interest of unification of the country for the building of one single nation with one single set of laws in the country."145

145 A.I.R. 1949 Journal 68 (at 73).
During the British regime, 1772 Regulations made by Lord Warren Hastings for the administration of Civil Justice were applicable to the entire population under their regime irrespective of the religion or creed. By regulations of 1781, the personal laws came to be applied in matters of inheritance, marriage, religious usages and institutions. The British permitted the application of personal laws only under the authority of legislation and not under the authority of religion. This is evident by subsequent legislations framed during the British regime, and which are applicable to all sections of the society irrespective of their caste, creed, religion, even against their personal laws, in the above matters. Some of them are Caste Disabilities Removal Act, 1850; Evidence Act, 1872 (specially Sections 107-108 and 112); Married Women’s Property Act, 1874 (Sec.6.); Majority Act, 1875; Kazis Act, 1880.; Transfer of Property Act, 1882; Guardians and Wards Act, 1890; Indian Succession Act, 1925; Child Marriage Restraint Act, 1929; Muslim Personal Law (Shariat) Application Act, 1937; and Dissolution of Muslim Marriage Act, 1939.

After attaining Independence, the following laws have been framed. Some of the provisions of which are against the personal laws, but they are applicable to all citizens. They are Dowry Prohibition Act, 1961; Criminal Procedure Code, 1973; Code of Civil Procedure, 1908 as amended by 1976, Act. These laws operate and are continuing to operate and can be amended. The Hon’ble Supreme Court has observed that “The legislation - not religion - being the authority under which personal laws were permitted to operate and is continuing to operate the
same can be superseded /supplemented by introducing the Uniform Civil Code. In this view of the matter no community can oppose the introduction of Uniform Civil Code for all the citizens in the territory of India."\(^{14b}\)

Renowned Jurist Dr. Tahir Mahmood in his celebrated book "The Muslim Law of India" in Chapter IV of the Application of Uniform Laws, has remarked:

"The State of India has not left each and every aspect of laws of personal status, family relations, and succession to be governed by the various denominational laws. Certain laws meant to be applicable to all Indians, alike have been enacted in the said areas now and then. The Muslim law, like all other personal laws, operates in India, so long as its application is not ousted by any of such uniform laws enacted in this country."

It was held by the Hon'ble Supreme Court that "this broad policy continued throughout the British regime until independence and the territory of India was partitioned by the British rulers into two States on the basis of religion. Those who preferred to remain in India after the partition fully knew that the Indian leaders did not believe in two nation or three nation theory and that in the Indian Republic there was to be only one Nation - Indian Nation - and no community could claim to remain a separate entity on the basis of religion."\(^{147}\)

Noted Jurist Dr. Tahir Mahmood in his book "The Muslim Law of India" has further noted under the heading "State and the Muslim Law" as follows:

\(^{146}\) A.I.R. 1995 SC 1531 (Para 35)

\(^{147}\) A.I.R. 1995 SC 1531 (at 1539)
“All those subjects which were within the personal laws at the time of the commencement of the Constitution are placed in list III (Concurrent List) of the subjects for legislation. Accordingly Parliament and the State legislatures both have jurisdiction to legislate on these subjects.........Constitutionally, the State is competent to modify, amend, reform or repeal any part or even the whole of the Muslim Personal Law (as also other personal law).”

Criticizing this State of affairs, Hon’ble Supreme Court observed that “the Government - which have come and gone - have so far failed to make any effort towards “unified personal law for all Indians” the reasons are too obvious to be stated. The utmost that has been done is to codify the Hindu Law in the form of the Hindu Marriage Act, 1955, The Hindu Succession Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956, which have replaced the traditional Hindu Law, based on different schools of thought and scriptural laws into one unified code. When more than 80% of the citizens have already been brought under the codified personal law, there is no justification whatsoever to keep in abeyance any more, the introduction of “Uniform Civil Code” for all citizens in the territory of India”. Further, it was held that ‘the successive Governments till date have been wholly remiss in their duty of implementing the Constitutional mandate under Article 44 of the Constitution of India.’ The Supreme Court has regretted on this sorry state of affairs, as – “It is also a matter of regret that Article 44 of our Constitution has remained a dead letter... There is no evidence of official activity

148 A.I.R. 1995 SC 1531 (1532)
for framing a Common Civil Code for the country." The Supreme Court has directed "the Government of India, through Secretary, Ministry of Law and Justice to file an affidavit of a responsible officer in this Court in August, 1996, indicating therein the steps taken and efforts made by the Government of India towards securing a "Uniform Civil Code" for the citizens of India." 

Justice D. R. Khanna in his article has pointed out that 'a view point has come to say that any steps in that directions would affect the rights of the minorities, and unless they approve of the same nothing should be imposed. That in fact, amounts to surrendering before non-secular forces." Replying to the debate on Article 44 in the Constituent Assembly, Dr. K. M. Munshi has said, 'that this is not an attempt to exercise tyranny over a minority, it is much more tyrannous to the majority.' Dr. Tahir Mahmood has also written in his book supra that -

"The practice however, the Government has so far generally refrained from legislating on the area of Muslim law due to consideration of political exigency and democratic viability."

T. K. Tope in his "Constitutional Law of India" has observed:

"India has accepted the ideal of a secular State. Hence it is necessary to replace the various systems of personal laws by a Uniform Civil Code. As a first
step towards this goal Parliament Codified Laws relating to Hindus... However, no further steps were taken for enacting a Civil Code for all Indians. Even a Secular bill for adoption of children was withdrawn from the Parliament by the Government in 1978. The reluctance on the part of the Government to pass a Civil Code is based on the apprehension that the party might lose the support of the Muslims at the time of next General Elections. Hence so long as the ruling political party continues to entertain this apprehension, there is very little likelihood of implementing the directive principles.\textsuperscript{152}

Hon'ble Supreme Court awarding maintenance under the provisions of Section 125 of the Criminal Procedure Code 1973 to a divorced Muslim woman defined as wife under sub-section (2) of Section 125 has held that 'Section 125 is a part of Code of Criminal Procedure and not of the Civil Laws which define and govern the rights and obligations of the parties belonging to particular religions...

... Neglect by a person of sufficient means to maintain these and the inability of these persons to maintain themselves are the objective criteria which determine the applicability of Section 125. Such provisions which are essentially of a prophylactic nature cut across the barriers of religion... The liability imposed by Section 125 to maintain close relatives who are indigent is formed upon the individual’s obligation to the society to prevent vagrancy and destitution. That is

\textsuperscript{152} Ed. 1992, p. 347.
the moral edict of the law and morality cannot be clubbed with religion. Section 125 is truly secular in character.\textsuperscript{153}

Fundamentalists protested against this verdict of Hon’ble Supreme Court, which is more lucidiously described by Justice Tulzapurkar in his article "Uniform Civil Code" as under:

Great furore was raised against the decision by a cross section of the Muslim community and it was criticised in vituperative language both inside and outside Parliament, on emotive but erroneous grounds that the Supreme Court had no power to interpret, quranic texts and that the ruling interfered with their personal law which was claimed to be immutable. This salutary decision which preserved the benefit of a secular law for Muslim women divorcee was set at naught by preferring an old archaic rule of Muslim personal law. By the enactment of the above legislative measure on the basis of a whip issued to its party members and after ignoring all pressure of public opinion built against it by the opposition, media and the progressive elements in the Muslim community, the Government purported to confer protection - an illusory protection on Muslim women divorcees. A more glaring instance of an abject surrender to pressures exerted by fundamentalists, obscurantists, and religious fanatics of the largest minority community in the country with electoral considerations in mind would be difficult to find........ When the political will to strike at fundamentalism is

\textsuperscript{153} A.I.R. 1985 SC 945.
lacking, secularism will always remain an unattainable ideal.\textsuperscript{154} According to Bhagwati Prasad Singhal Muslims are not minority communities.\textsuperscript{155} The Government framed the Muslim Women (Protection of Rights on Divorce) Act, 1986 which deprives Muslim divorced woman of the benefits arising out of the above decision \textit{Mohd. Ahmed Khan v. Shah Bano Begum}.\textsuperscript{156} This law does not give any benefit to the divorced Muslim woman, but on the contrary is unconstitutional, due to following amongst other many reasons -

(i) It discriminates divorced women on the ground of religion.

(ii) Article 15 (4) of the Constitution enjoins that the special law made for women must be beneficial to them, but at the same time does not permit such law to be framed for the women of a particular religion.

(iii) Dignity of woman and equality of status and equal opportunity for all and fraternity of the preamble of the Indian Constitution are not saved.

(iv) It violates Article 14 of the Constitution, as the classification is arbitrary, irrational and unreasonable.

(v) It is inconsistent with the provisions of Article 39-A of the Indian Constitution.\textsuperscript{157}

\textsuperscript{154} A.I.R. 1987 Journal 17.

\textsuperscript{155} See the Article of Bhagwati Prasad Singhal on "Uniform Civil Code Framing is imperative" published in A.I.R. 1998 Journal 164 (168)

\textsuperscript{156} A.I.R. 1985 SC 945

The framing of Uniform Civil Code cannot be done voluntarily. State has to do it, as it has done in the matter of Hindu Code, which was opposed vigorously by Hindus. Justice Tuzapurkar writes that “A Voluntary Uniform Civil Code is a contradiction in terms. The moment it is made optional, it ceases to be uniform ... The Constituent Assembly debates clearly show that by Uniform Civil Code, the founding fathers meant a family code uniformly applicable to the members of all the communities living in the country. Any attempt to make the code voluntary or optional must be opposed.138

The Hon’ble Supreme Court has observed that “Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom, whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of Hindus such as relating to marriage, succession and the like have all the sacramental origin in the same manner as in the case of Muslims or the Christians. The Hindus along with Sikhs, Buddhists, and Jains have foreseen their sentiments in the cause of national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a ‘Common Civil Code’ for

the whole of India”. ¹⁵⁹ It is submitted that amongst Muslims marriage is not sacramental.

According to Bhagwati Prasad Singhal “As we have seen, the major opposition to the framing of the Uniform Civil Code is coming from 2nd largest community in India viz. the Muslims. They are objecting even the slightest reform or change in their personal law in the name of religion or in the name of culture or in the name of immutability of the law as ordained by Allah and prophet. The Government had to frame the Muslim Women (Protection of Rights on Divorce) Act, 1986, to undo the interpretation put by Hon’ble Supreme Court (in a case reported in A.I.R. 1985 S.C. 945), of the Muslim law, thereby giving relief to indignant woman to save her from vagaries of life which was not acceptable to the fundamentalist Muslims”.¹⁶⁰

The personal law of Muslims is being amended and codified in Muslim countries including Pakistan and Bangladesh. The right of a Muslim male marrying a second wife in the presence of first wife, and giving of divorce by triple utterance of the word “Talaq” is bridled in Pakistan and Bangladesh. Polygamy has been completely prohibited in Turkey and Tunisia. It is curbed in Syria, Morocco, Egypt, Jordan, Iran.¹⁶¹ Malaysia will not allow Muslim men to

¹⁵⁹ A.I.R. 1995 SC 1531 (1538)
¹⁶⁰ See the article of Bhagwati Prasad Singhal on “Uniform Civil Code Framing is imperative,” published in A.I.R. 1998 Journal 164 (168).
¹⁶¹ Ibid.
divorce their wives by posting messages via mobile phones. Dissolution of Muslim Marriage Act, 1939 is an example against the immutableness of the personal law of Muslims. The Bombay High Court has observed that—“What the State protects is religious faith and belief. If religious practices, run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole.”

In *Mohd. Ahmed Khan v. Shah Bano Begam*, the Hon’ble Supreme Court observed that “It is a matter of regret that though Article 44 of the Constitution provides that ‘the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India’ but there is no evidence of any official activity for framing a common civil code. A Common Civil Code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. Though there are difficulties in bringing persons of different faiths and persuasions on a common platform, a beginning has to be made if the Constitution of India is to have any meaning.” But the position of Muslim women has been again degraded by the enactment of Muslim Women (Protection of Rights on Divorce) Act, 1986.

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163 A.I.R. 1952 Bom 84.
Previously, there was provision in the Civil Procedure Code that the summons were to be served on the male members and not on female members of the family. It had been declared constitutional on the ground: firstly: Article 15 (3) of the Constitution provides that state can make special laws in favour of women; and Secondly: this provision in view of mass illiteracy among women who hardly know as to what has been served on them.\(^{165}\) Now, this provision has been amended by C.P.C. (Amendment) Act, 1976, and now, the summons can be served on any adult member of the family, whether male or female who is residing with him.\(^{166}\)

### 3.2.4 Women's Quota in Panchayats and Municipalities

According to Article 40 of the Constitution of India, The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. Reservation of seats for women in Panchayats and Municipalities have been provided in Articles 242-D and 243-T of the Constitution of India. Part IX and IX A have been added to the Constitution by the Constitution (73\(^{rd}\) Amendment) Act, 1992 and the Constitution (74\(^{th}\) Amendment) Act, 1992 popularly known as the Panchayat Raj and Nagarpalika Constitution Amendment Acts with Articles 242, 243-A to 243-D, and Arts. 243-P to 243 ZG.

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166 Order 5, Rule e 15 of Civil Procedure Code.
3.2.4.1 Reservation of seats for Women in Panchayats

Article 243 D of the Constitution of India provides that,

1) In every Panchayat, seats shall be reserved for the Scheduled Castes and Scheduled Tribes. The number of seats so reserved shall be, as nearly as may be, in the same proportion to the total number of seats to be filled by direct election in the Panchayat as the population of the SC’s and ST’s in the Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

2) Out of total number of seats reserved under clause (1) not less than one-third seats shall be reserved for women belonging to the SCs and STs.

3) Out of total number of seats to be filled by direct election in every Panchayat not less than one-third (including the number of seats reserved for SCs and STs women) seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat.

4) The offices of the Chairpersons in the Panchayat at the village or any other level shall be reserved for SCs, STs and women in such manner as the Legislature of a State may, by law, provide. But the number of offices of Chairpersons reserved for the SCs and STs in the Panchayats at each level in any State shall be, as nearly as
possible, in the same proportion to the total number of such offices in the Panchayats at each level in proportion of the total population of the SCs and STs in the State. However, not less than one third of the total number of the offices of Chairpersons in the Panchayat at each level shall be reserved for women. The number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334 (i.e. 50 years).

6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat offices of Chairpersons in the Panchayats at any level in favour of backward class of citizen.

3.2.4.2 Reservation of seats for Women in Municipalities

According to Article 243-T of the Constitution of India.

1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality. The number of seats reserved for them shall be as nearly as may be, in same proportion to the total number of seats to be filled by direct election in that Municipality as the
population of the SCs and STs in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

2) No less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes, or, as the case may be, to the Scheduled Tribes.

3) No less than one-third (including the number of seats reserved for women belonging to the SCs and STs of the total number of seats to be filled by direct election in every Municipality) shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

4) The Offices of Chairpersons in the Municipalities shall be reserved for the SCs, the STs and women in such manners as the Legislature of a State may, by law, provide.

5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under (4) shall cease to have effect on the expiration of the period specified in Article 334 (i.e. 50 years).

6) Nothing in this part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward caste of citizens.
However the Women's reservation bill proposed for their greater participation in political and planning matters could not be initiated in Parliament for want of consensus among the political parties.

3.2.5 Fundamental Duties towards Women

Part-IV-A which consists of only one Article 51-A was newly added to the Constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of ten fundamental duties for citizens. Article 51-A(c) is related to women. It 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 Indian transcendng religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women".

In addition to the above, in honor of women in particular, a special provision may be incorporated in this Part, casting an obligation on all to respect women and renounce practices derogatory to their dignity.

It could be seen from the discussion on the provisions of the Constitution that there is recognition of equality for women and equal opportunity has been provided. The Constitution aims at promoting and protecting the dignity of women and provides for enjoyment of all the rights by women as well. In the next chapter the provisions of law meant for translating the constitutional goals in to action will be discussed.