"Half of the Indian population is women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination."

Madhu Kishwar v. State of Bihar

Women enjoy a unique position in every society and country of the world. In spite of their contribution in all spheres of life, they suffer in silence and belong to a class, which is in a disadvantaged position on account of several barriers and implements. India, being a country of paradoxes, is no exception. Here too, women, an epitome of Shakti, once given an exalted status, are in need of empowerment. Empowerment - legal, social, political and economic. However, empowerment and equality are based on the gender sensitivity of society towards their problems. The intensification of women's issues and rights movement all over the world is reflected in the form of various Conventions
passed by the United Nations. These international protections have helped in the articulation of feminist ideology.

With the birth of republic came a grand document vibrant with new ideas, new philosophies and new rights namely the Constitution. It brought about a sweep change and a social revolution beyond imagination. Justice Krishna Iyer expressed the following words,

"The Constitution was to foster the achievement of many goals, transcendent among them was that social revolution. Through this revolution would be fulfilled the basic need of the common man, and it was hoped, this revolution would bring about fundamental change in the structure of Indian Society - a society with long and glorious cultural traditions, but greatly in need, Assembly members believed of a powerful infusion of energy and nationalism. The scheme of social revolution runs throughout the proceedings and documents of the Assembly."\(^{11}\)

Indian Constitution is prominently a social document. It is goal oriented.

This document puts women completely at par with men and fulfils the cherished

\(^{11}\) in his book "Social Justice- Sunset of Dawn
goal of equality in matters of civil, political and economic rights. The political rights of franchise have also been given to Indian women under the provisions of the Constitution. It guarantees several rights for women some of them are mentioned below:

- Equality before law for women (Article 14).
- The state not to discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them [Article 15 (i)].
- The state to make any special provision in favour of women and children [Article 15 (3)].
- Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state (Article 16).
- The state to direct its policy towards securing for men and women equally the right to an adequate means of livelihood [Article 39 (a)]; and equal pay for equal work for both men and women [Article 39 (d)].
- To promote justice, on the basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A).
- The state to make provision for securing just and humane conditions of work and for maternity relief (Article 42).
- The states to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46).
The state to raise the level of nutrition and the standard of living of its people and the improvement of public health (Article 47).

To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounces practices derogatory to the dignity of women [Article 51 (A) (e)].

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat [Article 243 D (3)].

Not less than one-third of the total number of offices of chairpersons in the Panchayats at each level to be reserved for women [Article 243 D (4)].

Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a municipality [Article 243 T (3)].

Reservation of offices of chairpersons in municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide [Article 243 T (4)].

But still women have not been restored to the pedestal to which they belong. In India the deities of learning, wealth and velour, Saraswati, Lakshmi and Durga have been categorised as women. Shakti has been prominent from
the days of yore, but unfortunately women do not get even minimum guarantees and safeguards in life. Bride burning, torture, rape and untold miseries seem to be the lot of women today. The criminal law also is loaded against women. In case of rape open obscene interrogation in courts has become the order of the day. So many prefer to die with their secrets without going to the gates of justice.

(A) A question of dependence

When we talk of empowerment, there is also a question whether women refuse to get empowered. For example, sometime back Lucknow study had confirmed that Mahila Pradhans are still ruled by male relatives. A number of experts on Panchayati Raj, who attended a one-day seminar at Bakshi-ka-Talab recently said the dependence of Mahila Gram Pradhans on their men folk eventually forced the government to issue an order forbidding husbands and brothers of Women Gram Pradhans from attending meetings.

In four out of the five Assembly segments of Amethi, the condition of Gram Sabhas represented by women is precarious, as per the survey, conducted by the Sahbhagi Sikshan Kendra. On the basis of the 1995 polls, women represented at least 143 Gram Sabhas. But most of these women attend Sabha meetings merely as escorts of their husbands, brothers or other male relatives, who actually function in authority.
A vital study by the Majlis, a Mumbai-based non-governmental organisation, which provides legal help and evolves litigation strategies on behalf of Muslim women, have shown that 10 per cent of Muslim men who divorce their wives don't agree to pay any maintenance. Seventeen per cent of divorced women do not get any maintenance even if they demand it while the outcome is not known in 11 per cent of cases. It is, however, in 62 per cent that justice is done, albeit after inordinate delays. "Divorce and marriage are interlinked. A husband marries again but forgets about the first wife and children from her," said Ms. Flavia Agnes, who heads the Majlis. "If a divorced woman files case for maintenance, the husband has ready excuses for not paying. And getting him to pay leads to years of litigation." The government has to do something to quicken justice for them.

The Union Planning Commission is deeply interested in the development of women and children who represent 67.7 per cent of the country's total population and who constitute the most vital target group in the present-day context of developmental planning. Therefore, their concerns are placed on the priority list of the country's development agenda.

Real empowerment of women had been a serious commitment of the Ninth Five Year Plan (mentioned in subsequent chapters) through creating an enabling environment where women can freely exercise their rights both within and outside their homes, as equal partners along with men.

(B) Strategies
One of the members in charge of Education, Health, Women and Children in the Union Planning Commission, said that the prime objective in the Tenth Plan at Yojana Bhavan should be a just, socio-economic change of women towards development. The strategies to be adopted were as below:

- To create an enabling environment for women to exercise their rights, both within and outside home, as equal partners along with men, through early adoption of `National Policy for Empowerment of Women';
- To legislate reservation of not less than 1/3 seats for women in the Lok Sabha and the State Assemblies and thus ensure their adequate representation in decision making;
- To adopt an integrated approach towards empowering women through effective convergence of existing services, resources, infrastructure and manpower in both women-specific and women-related sectors;
- To adopt a special strategy of `Women's Component Plan' to ensure that not less than 30 per cent of funds/benefits flow to women from other developmental sectors;
- To organise women into self-help groups and thus mark the beginning of a major process of empowering women;
- To accord high priority to reproductive, child health services and thus ensure easy access to maternal and child health services;
- To universalise the on-going supplementary feeding programme - Special Nutrition Programme (SNP) and Mid-Day Meals (MDM);
➢ To ensure easy and equal access to education for women and girls through the commitments of the Special Action Plan of 1998;
➢ To initiate steps to eliminate gender bias in all educational programmes;
➢ To institute plans for free education for girls up to college level, including professional courses;
➢ To equip women with necessary skills in the modern upcoming trades which could keep them gainfully engaged besides making them economically independent and self-reliant; and
➢ To increase access to credit through setting up of a `Development Bank of Women Entrepreneurs' in small and tiny sectors.

The States should march in step with the Centre in empowering women as it is agreed today that without empowering women lasting development is not possible.

It is evident from the various cases decided by the Supreme Court and the High Courts that they have interpreted the Constitutional provisions in the same spirit in which they were framed. The judiciary has upheld legal measures favourable to women and those discriminating against them have been, by and large, discarded. Gender equality, as an ideal, has always eluded the constitutional provisions of equality before the law or the equal protection of law. This is because equality is always supposed to be between equals and since the judges did not concede that men and women were equal, gender equality did not
In Bradwell v. State of Illinois\textsuperscript{13}, Justice Bradley, of the United States Supreme Court said:

"The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.... The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

It is also worthwhile to quote the words of an eminent American Judge who, after tracking the historical background, explained the need for special provisions being made for women. Thus in Muller v. Oregon\textsuperscript{14}, it was stated:

"That woman's physical structure and the performance of maternal functions places her at a disadvantage for subsistence is obvious. History discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength and this control in various forms, with diminishing intensity, 

\textsuperscript{13} 83 US 130 (1973).
\textsuperscript{14} 208 US 412.
has continued to the present. Education was long denied to her, and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother. She will still be where some legislation to protect her seems necessary to secure a real equality or right."

As late as in 1961 in Hoyt v. Florida\textsuperscript{15}, the United States Supreme Court upheld a law placing a woman on the jury list only if she made a special request because, as put by Justice Harlan:

"A woman is still regarded as the centre of home and family life."

Basically, as pointed out by Dicey,\textsuperscript{16} the Constitutional theories of Rule of Law and the fundamental rights stemmed from the struggle for individual liberty and were intended to curb the power of the State. For a long time gender issues were not in the limelight. But as pointed out by Felix Frankfurter\textsuperscript{17}:

\begin{footnotes}
\item[17] Frankfurter, Felix: \textit{Mr Justice Holmes and the Supreme Court}, Harvard University Press Cambridge, Massachusetts, 1938.
\end{footnotes}
"Our Constitutional guarantees of individual freedoms are not static but are expressions of basic human values. They transcend day to day shift in majority wishes and hence require redefinition from time to time to meet narrowly recognized if not narrowly created human needs."

(C) Provisions of Indian Constitution

In our country, the Constitution makers while drafting the Constitution were sensitive to the problems faced by women and made specific provisions relating to them. The suprema lex, in its various articles, not only mandates equality of the sexes but also authorizes benign discrimination in favour of women and children to make up for the backwardness, which has been their age-old destiny. But categorical imperatives constitutionalised by the Founding Fathers are not self-acting and can acquire socio-legal locomotion only by appropriate State action.18

A Constitution is the basic document of a country having a special legal sanctity, which sets the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of these organs. The Constitution aims at creating legal norms, socio philosophy

and economic values which are to be effected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals.\textsuperscript{19}

(1) **Preamble**

The Preamble is the key to the Constitution. It contains the quintessence of the Constitution and reflects the ideals and aspirations of the people. The Preamble starts by saying that "we, the people of India, give to ourselves the Constitution". The source of the Constitution is thus traced to the people, i.e. men and women of India, irrespective of caste, community, religion or race. The framers of Constitution were not satisfied with mere territorial unity and integrity. If the unity is to be lasting, it should be based on social, economic and political justice. Such justice should be equal for all. The Preamble contains the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity. The aspect of social justice is further emphasized and dealt with in the Directive Principles of State Policy.\textsuperscript{20}

It does not discriminate men and women but it treats them alike. The framers of the Constitution were well aware of inequal treatment meted out to the fair sex from the time immemorial. In India the history of suppression of women is


very old and long which is responsible for including special provisions for upliftment, reservation and development of the status of women.

Undoubtedly, the Preamble appended to the Constitution of India, 1950 contains various objectives including "the equality of status and opportunity" to all the citizens. This objective has been inserted with the view to give equal status to men and women in terms of the opportunity at every level.

(i) Political Rights

Despite the fact that women participated equally in the freedom struggle and, under the Constitution and Law, have equal political rights, enabling them to take part effectively in the administration of the country has had little effect as they are negligible represented in politics. There were only seven women members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the Lok Sabha and Vidhan Sabhas. Political empowerment of women has been brought by the 73rd and 74th Amendments which reserve seats for women in Gram Panchayats and Municipal bodies, illiteracy, lack of political awareness, physical violence and

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economic dependence are a few reasons which restrain women from taking part in the political processes of the country.

Article 243D of the Constitution of India provides reservation of seats for women in every Panchayat. It states as under:

"(1) Seats shall be reserved for—
(a) the Scheduled Castes; and
(b) the Scheduled Tribes,
in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the, total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that 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) Not 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, the Scheduled Tribes."
(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women:
Provided also that 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.

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

Similarly Article 243T of the Constitution of India provides reservation of seats for women in every Municipality. It states as under:

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the
Municipal area or of the Scheduled Tribes 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) Not 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, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) 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 Scheduled Castes, the Scheduled Tribes and women in such manner 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 clause (4) shall
cease to have effect on the expiration of the period specified in article 334.

(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 class of citizens.

The Parliament, through 81st Constitutional Amendment Act, sought reservation of one-third of seats in Lok Sabha and State Assemblies for women.

(ii) Economic Rights

There has been a catena of legislation conferring equal rights for women and men. These legislations have been guided by the provision of the fundamental rights and Directive Principles of State Policy. Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity benefits, equal remuneration and property/ succession have been enacted to provide the necessary protection in these areas.

(iii) Social justice
For providing social justice to women, the most important step has been codification of some of the personal laws in our country, which pose the biggest challenge in this context. Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, unthought of. These examples of gender insensitivity were tackled by the judiciary and incorporated into binding decisional laws to provide social justice. Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactments of certain legislations like the Pre-natal Diagnostic Techniques (Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevents the violation of justice and humanity right from the womb. In spite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the objective of securing to each individual dignity, irrespective of sex, community or place of birth. In Valsamma Paul v. Cochin University\textsuperscript{22}, it was held by the Supreme Court that human rights are derived from the dignity and worth inherent in human beings. The Universal Declaration of Human Rights has reiterated Human Rights and fundamental freedom and they are interdependent and have mutual reinforcement. The human rights of women including girl child are therefore an inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedom of women and their equal participation in political, social, economic and cultural life are concomitants for national development, social and family stability and growth—culturally,

\textsuperscript{22} (1996) 3 SCC 545.
socially and economically. All forms of discrimination on grounds of gender are violative of fundamental freedom and human rights.

2. Fundamental Rights

The role of right to equality in attaining gender justice in a patriarchal society is of great practical significance. Rejection of sex as a ground of discrimination under Article 15(1) and 16(2), availability of multiple dimensions of Article 14 and state's power to make special provision for women and children under Article 15(3) together build up a coordinate framework for gender justice. They not only tend to nullify anti-women discrimination in State policies and laws but also give a clear thrust for pro-women interpretation. The reason is that, women as incomplete agents in democratic participation are likely to be marginalized by male majoritarianism and risks of democracy and that women's subordination in socio-legal regime should be countered by anti-subordination interpretation instead of aggravating the differences by a difference analysis. When patriarchal power dictates freedom, empowerment of women to withstand or overcome the influence of patriarchy is the true method of freeing women.

Human rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time

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23 Tracy E. Higgins, Democracy and Feminism 110 Harv L Rev 1657 at 1676 - 85
immemorial and therefore included certain general as well as specific provisions for the upliftment of the status of women.

Justice Bhagwati in Maneka Gandhi v. Union of India\textsuperscript{24}, said:

"These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent."

Thus, Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution.

(i) Equality

Article 14 of the Constitution provides equality before law. It provides that:

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

\textsuperscript{24} (1978) 1 SCC 248: AIR 1978 SC 597.
Article 14 embodies the general principle of equality before law and prohibits unreasonable discrimination between persons. Article 14 is an epitome of the noble ideals expressed in the Preamble of the Constitution.

(a) Relation of Article 15 with Article 14 of the Constitution

Article 15 of the Constitution specifically prohibits discrimination on the ground of sex. It states that:

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them 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 general public."
(3) Nothing in this Article shall prevent the state from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the scheduled Castes and scheduled Tribes."

Thus Article 15(3) allows State to make special provisions for women and children. This calls for operation of the substantive equality mechanism for their well-being. The explicit objective of this model of equality is elimination of substantive inequality of the disadvantaged group in the society by positive measures. In interpreting Article 15(3), the court held that the special provisions can be facilitating, protective and corrective for women but not discriminatory against them. But even with this approach, it was possible to methods of balancing between the two.

Article 15(3) is not the sole source of substantive equality for women and children. The potentiality of Equal Protection of the Laws under Article 14, with its doctrine of reasonable classification and abhorrence of arbitrariness, to serve as a springboard of substantive equality is clear in some cases where Article 15(3)

25 Mahadeb V/s B B Sen AIR 1951 Cal 563; Anjali Ray V/s State AIR 1952 Cal 825
is not attracted. In Bombay Labour Union V/s International Franchise\textsuperscript{26}, the Supreme Court quashed an employment rule, which required the unmarried woman to give up her position when she married, as violative of Article. In C B Muthamma\textsuperscript{27} the Court invalidated a rule that prohibited married women from entering into Indian Foreign Service, as it was discriminatory. In Nergez Mirza,\textsuperscript{28} although the Supreme Court upheld a restraint upon Air Hostesses to marry within four years of entering into service as a non-discriminatory measure of promoting family planning, the rule, which required them to retire on first pregnancy, was declared unreasonable and arbitrary, and hence violated Article 14. The Court observed,

"It seems to us that the termination of the services of an air Hostess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood – the most sacrosanct and cherished institution .... Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values".\textsuperscript{29}

While the case is illustrative of contribution of right to equality towards right to privacy, its contribution towards effective equality, which in turn promotes

\textsuperscript{26} AIR 1966 SC 942; (1966) 2 SCR 493
\textsuperscript{27} C B Muthamma V/s Union of India AIR 1979 SC 1868; (1979) 4 SCC 260
\textsuperscript{28} Air India V/s Nergiz Mirza AIR 1981 SC 1829; (1981) 4 SCC 335
\textsuperscript{29} Ibid, at 1850
the spirit underlying Article 15(3), is considerable. The difficulty with this approach is that it starts with a formal approach towards equality and is not sure whether it ultimately converges in substantive equality analysis. For example in T. Sareetha V/s T. Venktasubbaiah\textsuperscript{30} the High Court of Andhra Pradesh analysed the impact of the decree of restitution of conjugal rights on the basis of substantive inequality between wife and husband in the matter of pregnancy and accordingly quashed Section 9 of the Hindu Marriage Act. Although subsequently in two different cases, first the delhi High Court in Harvinder Kaur\textsuperscript{31} and then the Supreme Court\textsuperscript{32}, disagreeing with Sareetha case upheld the validity of Section 9 of the Hindu Marriage Act, no doubt was expressed, at least by the Supreme Court, on the application of the requirement of reasonableness or of Articles 14 and 21 to matrimonial laws or non-penal laws. The Delhi High Court "applying the standard that the law has to be just, fair and reasonable as enunciated in Maneka Gandhi" found section 9 constitutionally valid. So also the Supreme Court found that section 9 "serves a social purpose as an aid to the prevention of break-up of marriage" and therefore satisfied Articles 14 and 21. In various cases involving gender discrimination in the matter of civil and political rights, the courts have applied Article 14, keeping the dichotomy between formal and substantive equality alive. It has been held by the Bombay High Court that an Act to prevent

\textsuperscript{30} AIR 1983 AP 356  
\textsuperscript{31} AIR 1984 Del 66  
\textsuperscript{32} Saroj Rani Vs. Sudershan Kumar, (1984) 4 SCC 90.
bigamous marriages was not violative of religious freedom since it fell under clause 2(b) of Article 26.

Judiciary has met the challenges on constitutionality of personal law, which was not regarded as law under Article 13(1) in Narasu Appa Mali in order to keep a law that prohibited bigamy amidst Hindus away from equality scrutiny. But the Court's willingness to make equality scrutiny of personal laws to examine gender bias in them became Sareeta clear in later cases like Saraswati Ammal and Saroj Rani. But judicial self-restraint occurred once again in Madhu Kishwar V/s State of Bihar on a different count. The case involved constitutionality of Chota Nagpur Act 1908, which conferred right of intestate succession in tribal family exclusively upon sons of the deceased person. While RAMASWAMY, J., in dissent, was willing to extend the right to succession to female heirs on the basis of Articles 14 and 15(3), the majority of the three judges bench of the Supreme Court (Punchhi and Kuldip Singh, JJ.) ruled that non-application of Hindu Succession Act, 1956 and the consequent diversity of law did not violate Article 14. Since State Government's Committee came with a report about unacceptability of amendment to Chota Nagpur statute amidst the tribals, the Court was inclined to adopt a cautious approach. However, the

33 Pritam Kaur V/s State of PEPSU AIR 1963 Punj 9 (FB); Mahdeb V/s B B Sen AIR 1951 Cal 563; Sucha Singh V/s State of Punjab AIR 1974 Pat 162; also see Anjali Ray V/s State of West Bengal AIR 1952 Cal 825
35 AIR 1983 AP 356; Harvinder Kaur AIR 1984 Del 66
36 Srinivasa Aiyar V/s Saraswati Ammal AIR 1952 Mad 193
37 Saroj Rani V/s Sudarshan Kumar AIR 1984 SC 1562; (1984) 4 SCC 90
38 Madhu Kishwar V/s state of Bihar AIR 1996 SC 1864; (1996) 5 SCC 125
difficulty was overcome by an appreciably creative interpretation that female members' right to maintenance formed an aspect of right to dignified life, which could not be deprived by male heirs' right to inherit the property. The case demonstrated the advantage of relying on Article 21 rather than on Article 14 and 15 in hard cases.

However, in quashing the discriminatory provision in Section 10 of Divorce Act, which had put women into a disadvantageous position in getting divorce, the Kerala and Bombay High Courts applied Articles 14 and 15. In Gita Hariharan the Supreme Court construed the Guardianship legislations in the light of Articles 14 and 15 to the effect that mother was entitled to be natural guardian even during the life time of father, while in fact the statutes had relegated the status of woman to a secondary position. In Daniel Latifi Articles 14, 15 and 21 were applied to hold that Muslim husband's statutory duty to make

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9. When husband may petition for dissolution: Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution: Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a mensa et toro,

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition: Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

40 Ammini E.J. V/s Union of India AIR 1995 Ker 252; Pragati Varghese V/s Cyril G. Varghese AIR 1997 Bom 349
41 Gita Hariharan V/s Reserve Bank of India 1999 (2) Supreme 123
42 Daniel Latifi V/s Union of India JT 2001 (8) SC 218; AIR 2001 SC 3958; (2001) 7 SCC 740
provision for maintenance within the Iddat period comprehended maintenance for future life also. According to the Court, in a male dominated society, where woman sacrificed many of her personal interests at and after marriage, compensating her at divorce assumed the character of basic human right like right to livelihood.

Article 15(1) prohibits gender discrimination and Article 15(3) lifts that rigour and permits the State to positively act in favour of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. The state in the field of Criminal Law, Service Law, Labour Law, etc. has resorted to Article 15(3) and the courts, too, have upheld the validity of these protective provisions on the basis of constitutional mandate.

(b) Co-relation of Article 15(1) & 15(3)

The insertion of clause (3) in Article 15 in relation to women is the recognition of the fact that for centuries, women of this country have been socially and economically handicapped. In order to eliminate the socio-economic backwardness of the women and to empower them in a manner that would bring about effective equality between men and women that clause (3) is placed in Article 15. An important limb of this concept of gender equality is creating job opportunities for women and to say that job opportunities cannot be created would be to cut at the very root of the underlying inspiration behind this Article.
The Supreme Court in P B Vijaykumar in dealing with the employment under the State, observed that, it has to bear in mind both Articles 15 and 16, the former being a general provision. Since Article does not touch upon the special provision for women being made by the State, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article 15(3) is wide enough to cover the entire range of State activities including the employment under the State. The Court concluded that making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3) and Article 16 does not whittle this power conferred under Article 15(3) down in any manner.

The 'special provisions', which the State may make to improve women's participation in all activities under the supervision and control of the State, can be in the form of either affirmative action or reservation.

There are two approaches about the relationship between Articles 15(1) and 15(3). The first is 'textual' or 'exception' approach initiated in Anjali Roy V/s State of West Bengal, which states that Article 15(3) is an exception to Article 15(1) and enables the state to discriminate against males by making a special provision in favour of females. The second approach is facet approach or holistic.

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43 AIR 1995 SC 1648
44 AIR 1952 Cal 825
approach initiated in Dattatreya\textsuperscript{45} case, which regards that Article 15 should be looked as a whole in which Article 15(1) and Article 15(3) are two parts. While the former prohibited discrimination to favour men only on the ground of sex, the latter allowed the state to act in favour of women. In Dattatreya the Bombay High Court looked to the social, historic and economic inequality of women and upheld the reservation of seats for women in municipalities as a special provision to raise the position of women to that of men\textsuperscript{"}. The corrective approach to gender inequality for overcoming the subordinations and past denials is explicit here. Similarly, in Km. Sharda Mishra V/s State of U P\textsuperscript{46}, out of the 15 seats reserved for the dependents of ex-army personnel in the MBBS, 10 seats were reserved for the male candidates and 5 seats for female candidates. The Court held that the reservation being exclusively in favour of male candidates was in violation of Article 14 of the Constitution and it amounted to discrimination in favour of male candidates. The Court reasoned that under Article 15(3) there could be special benefit given to the females, but there is no provision for giving benefits to the males and the court directed that 10 seats should be treated as open seats. In another case\textsuperscript{47}, the petitioners were working as apprentices in the respondent company and the respondent denied them the right to appear at the internal examination, which would be leading to absorption. The court held that such denial of the female apprentice trainees on the ground of sex is clearly violative of Articles 14 & 15 of the Constitution and directed the respondent company to permit the petitioners to appear at the internal examination.

\textsuperscript{45} Dattatreya Motiram More V/s State of Bombay AIR 1953 Bom 311
\textsuperscript{46} AIR 1993 All 112
\textsuperscript{47} Omana OOmen V/s The FACT Ltd., AIR 1991 Ker 129
The paradox that even the holistic approach can be formalistic rather than substantive is illustrated in Yusuf Abdul Aziz\textsuperscript{48} and Sowmithri Vishnu\textsuperscript{49} cases. In these cases the issue was the constitutionality of section 497 of IPC that made adultery committed by man an offence and exempted the 'adultress' woman from punishments even for abetment of the offence. In Yusuf Abdul Aziz, the Supreme Court regarded the impugned provision as providing for preferential treatment for women in the background of aggressive male sexuality to which women fell prey as passive victims. In Sowmithri also, women was considered as the victim rather than author of the crime against sanctity of matrimonial home. It is submitted, there was failure to question these assumptions and look to the equal sanctity of matrimonial relation of wife also\textsuperscript{50}. A substantive approach would have demanded that protecting the marital bed unsullied was equality important for both husband and wife, and that validity of the law should be decided on that basis. Hence, proper enquiry for the purpose of Article 15(3) is to probe whether the impugned state action tends to overcome by empowerment, subordination of women. Section 3(1)(a) of the A P Co-operative Societies Act provides for nomination of two women to the managing committee of the Co-operative Society and the said provision was challenged in Toguru Sudhakar Reddy V/s Government of A P\textsuperscript{51}. The court held that when the Constitution permits the State to make special provision for women, the wisdom of the Legislature by conferring

\textsuperscript{48} Yusuf Abdul Aziz V/s State of Bombay AIR 1954 SC 321; 1954 SCR 930
\textsuperscript{49} Sowmithri Vishnu V/s Union of India AIR 1985 SC 1618; 1985 (Supp) SCC 137
\textsuperscript{50} See Ratna Kapur and Brenda Cosman, On Women, Equality and the Constitution: Through the Looking Glass of Feminism (1993) 1 NLSJ 1 at pp. 40-41
\textsuperscript{51} AIR 1992 AP 19
power on the Registrar to nominate two women members to the general body of
the managing committee would ensure participation of women in Co-operative
movement more effectively and this policy of the Legislature cannot be faulted.

(c) Co-relation of Article 16(1) and 16(2)

Article 16 of the Constitution provides equality of opportunities for all and
prohibits discrimination against women. It states that:

"1. There shall be equality of opportunity for all
   citizens in matters relating to employment or appointment
to any office under the state.

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

3.

4.

5...."

Non-discrimination in the matter of public employment is the core principle
of Article 16(1) and 16(2) and holds good even against gender discrimination.
While it helped the Article 14 analysis of discriminations in cases like Nergez
Mirza and Muthamma, in accommodating the policy of preferential treatment under Article 16(2), Article 15(3) has been successfully invoked in Samsher Singh and Vijaya Kumar cases. In Samsher Singh\textsuperscript{52} the Punjab High Court upheld the pay increase in a branch of educational system exclusively run by women as a result of concerted reading of Article 15(3) and Article 16(2).

In Vijaya Kumar,\textsuperscript{53} Rule 22A(2) of Andhra Pradesh State Service Rules which prescribed a minimum preference of 30\% of the posts in each reservation category was upheld by the Apex Court on the ground that making special provisions for women in respect of employment or posts under the state is an integral part of Article 15(3), which could not be whittled down in any manner by Article 16. The Court regarded that creating job opportunity for women was an important limb of gender equality. Mrs. Sujata Manohar, J. observed for the Court, "it is in order to eliminate the socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15"\textsuperscript{54}. The Court looked to the interrelations between Articles 15 and 16 and viewed that Article 15 is more general provision and the latter, a more specific one. Since Article 16 does not touch upon any special provision for women, it cannot in any manner derogate from the power conferred upon the State in this connection under

\textsuperscript{52} Samsher Singh V/s state AIR 1970 P & H 372
\textsuperscript{53} Government of AP V/s P B Vijaya Kumar AIR 1995 SC 1648; (1995) 4 SCC 520
\textsuperscript{54} Ibid, at 1651. In Vijay Lakshmi V/s Punjab University AIR 2003 SC 3331 reservation in favour of women to the post of Principal of Women's College was upheld; also see Union of India V/s K P Prabhakararan (1997) 11 SCC 638

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Article 15(3). Even in Indra Sawhney\textsuperscript{55} case the Supreme Court had favoured the approach of keeping certain quota of jobs for women in each respective category of reservation. Thus, the impact of Article 15(3) upon the interpretation of Article 16(4) is significant in widening the policy of substantive equality.

The Constitution, thus, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the Courts realize that these articles reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent the Constitution intended. Reflecting this in Dimple Singla v. Union of India\textsuperscript{56}, the Delhi High Court expressed its apprehension that unless attitudes change, elimination of discrimination against women cannot be achieved. There is still a considerable gap between constitutional rights and their application in the day-to-day lives of most women. At the same time it is true that women are working in jobs, which were hitherto exclusively masculine domains. But there are still instances, which exhibit lack of confidence in their capability and efficiency. There remains a long and lingering suspicion regarding their capacities to meet the challenges of the job assigned. Such doubts affect the dignity of working women.

Gender Discrimination

\textsuperscript{55} Indra Sawhney V/s Union of India 1992 SCC (L & S) (Supp) 1 at 254-55
\textsuperscript{56} (2002) 2 ALSLJ 161.
In C.B. Muthumma v. Union of India\textsuperscript{57}, a writ petition was filed by Ms Muthamma, a senior member of the Indian Foreign Service, complaining that she has been denied promotion to Grade I illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women. At the very threshold she was advised by the Chairman of the UPSC against joining the Foreign Service. At the time of joining she was required to give an undertaking that if she married she would resign from service. Under Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, it was provided that no married woman shall be entitled as of right to be appointed to the service. Under Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, a woman member of the service was required to obtain permission of the Government in writing before her marriage was solemnized. At any time after the marriage she could be required to resign if the Government was confirmed that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service. On numerous occasions the petitioner had to face the consequences of being a woman and thus suffered discrimination, though the Constitution specifically under Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth and Article 14 provides the principle of equality before law.

The Court through V.R.Krishna Iyer and P.N.Singhal, JJ. held that:

\textsuperscript{57} (1979) 4 SCC 260.
"This writ petition by Ms Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality. The credibility of the Constitutional mandates shall not be shaken by that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is left to guess."\(^{58}\)

Commenting further on the discriminatory rules the Court said:

"Discrimination against woman, in traumatic transparency, if found in this rule. If a woman member shall obtain the permission of government before she marries, the same risk is run by government if male member contracts a marriage. If the family and domestic

\(^{58}\) (1979) 4 SCC 260.
commitments of a woman member of the service is likely to come of a male member. In these days of nuclear families, intercontinental marriages and unconventional behavior, one fails to understand the naked bias against the gentler of the species.\textsuperscript{59}

Expressing its opinion on Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, the court observed:

\textit{“At the first blush this rule is defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman’s thralldom. Freedom is indivisible, so is justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-à-vis half of India’s humanity, viz. our women, is a sad reflection on the distance between Constitution in the book and Law in action. And if the executive as the surrogate of Parliament makes rules in teeth of part III, especially when high political office, even diplomatic assignment\textsuperscript{59}.”}

\textsuperscript{59} Ibid.
has been filled by women, the inference of diehard allergy to gender parity is inevitable."

Striking down the rules as violating the principle of equality, it was said:

"We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable the rule of equality must govern."

While Justice Krishna Iyer had no difficulty in striking down the discriminatory provision in the Indian Foreign Service Rules the same could not be said in Air India V/s Nargesh Meerza60. In this case, the air hostesses of the Air – India International Corporation had approached the Supreme Court against, again, discriminatory service conditions in the Regulations of Air – India. The Regulations provided that an air hostess could not get married before completing four years of service. Usually an air hostess was recruited at the age of 19 years and the four year bar against marriage meant that an air hostess could not get married until she reached the age of 23 years. If she married earlier, she had to resign and if after 23 years she got married, she could continue as a married

60 (1981) 4 SCC 335.
woman but had to resign on becoming pregnant. If an air hostess survived both these filters, she continued to serve until those provisions were discriminatory on the ground of sex as similar provisions did not apply to male employees doing similar work.

The Supreme Court upheld the first requirement that an airhostess should not marry before the completion of four years of service. The court held that:

"It was a sound and salutary provision. Apart from improving the health of the employee it helps a great deal in the promotion and boosting up of our family planning programme."

However, this argument given by the Court came in for criticism that as the requirements of age and family planning were warranted by the population policy of the state and once the State had fixed the age of marriage, i.e., 18 years, the reasoning advanced for upholding the role was a camouflage for the real concern.

The Supreme Court struck down the Air- India Regulations relating to retirement and the pregnancy bar on the services of Airhostesses as unconstitutional on the ground that the conditions laid down herein are entirely unreasonable and arbitrary. The impugned Regulations 46 provided that an air
hostess would retire from the service of the corporation upon attaining the age of 35 years or on marriage, if it took place within 4 years of services, or on first pregnancy, whichever occurred earlier. Under Regulation 7, the Managing Director was vested with absolute discretion to extend the age of retirement prescribed at 45 years. Both these regulations were struck down as violative of Article 14, which prohibits unreasonableness and arbitrariness.

In Yousuf Abdul Aziz V. State of Bombay61, the validity of section 497 of the Indian Penal Code, which punishes only a male participant in the offence of adultery and exempts the woman from punishment, was challenged as violative of Articles 14 and 15(1) of the Constitution. The petitioner contended that even though the woman may be equally liable on the ground of sex. The Supreme Court upheld the validity of the provision on the ground that the classification was not based on sex alone. The Court obviously relied upon the mandate of Article 15(3) to uphold this provision.

In Madhu Kishwar v. State of Bihar62, the Supreme Court dealt with the validity of the Chotanagar Tenancy Act, 1908 of Bihar, which denied the right of succession to Scheduled Tribe women as violative of the right to livelihood. The majority judgment however upheld the validity of legislation on the ground of custom of inheritance/succession of Scheduled Tribes. Dissenting with the majority, Justice K. Ramaswamy felt that the law made a gender based

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61 AIR 1954 SC 321
62 (1996) 5 SCC 145
discrimination and that it violated Articles 15, 16 and 21 of the Constitution. In his dissenting judgment he said:

"Legislative and executive actions must be conformable to and for effectuation of the fundamental rights guaranteed in Part III, Directive Principles enshrined in Part IV and the Preamble of the Constitution which constitute the conscience of the Constitution. Covenants of the United Nations add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order."

Another historic judgment with reference to gender equality is Githa Hariharan v. Reserve Bank of India63, where the court held that the mother could act as a natural guardian even when the father is alive. Word 'After' in section 6(a) of the Hindu Minority and Guardianship Act, 1956 was read to mean 'in the absence of father', so that the section is consistent with the constitutional safeguard of gender equality. The Court observed:

63 (1999) 2 SCC 228: AIR 1999 SC 1149
"Gender equality is one of the basic principles of our Constitution and in the event the word 'after' is to be read to mean a disqualification of a mother to act as a guardian during the lifetime of the father. The same would definitely run counter to the basic requirement of the constitutional mandate and would lead to a differentiation between male and female. Normal rules of interpretation shall have to bow down to the requirement of the Constitution since Constitution is supreme and the statute shall have to be in accordance therewith and not de hors the same. The father by reason of a dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category and in that view of the mater the word 'after' shall have to be interpreted in terms of constitutional safeguards and guarantee so as to give a proper and effective meaning to the word used".

The constitutionality of section 497 of IPC, 1860\(^{64}\), was again challenged before the Supreme Court in Sowmithri Vishnu v. Union of India\(^ {65}\). Here the petitioner challenged the validity of the section on the ground that it violated gender equality. It was contended on her behalf that the section of adultery punished the man who had illicit relations with another person's wife but did not punish the woman who was a party to the adultery. The section enabled the husband to prosecute the paramour of his wife but did not allow a wife to

\(^{64}\) 497. Adultery:Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall be punishable as an abettor.

\(^{65}\) 1985 Supp SCC 137.
prosecute the woman who had an adulterous relationship with her husband and therefore violated Article 15(2) of the Constitution, which forbade discrimination on the ground of sex. The discrimination was between an adulterer and an adultress because, while the former could be prosecuted, the latter could not be prosecuted. Further, there was discrimination between a married woman and an unmarried woman or a widow or a divorsee because while a man's illicit relations with a married woman constituted the offence, his illicit relations with any other woman did not constitute an offence.

Negating the contentions, the Court observed that it is commonly accepted that it is the man who is the seducer and not the woman. Women were not punishable for adultery because they were less likely to indulge in it. The Supreme Court refused to intervene and upheld the validity of the section holding that:

"the wife is a victim and not the author of crime".

In V Revathi v. Union of India66, the Supreme Court held that section 198 (2) of the Criminal Procedure Code, which gives the husband of an adulteress the right to prosecute the adulterer but does not give the wife of the adulterer a similar right, is not discriminatory following the aforementioned judgment.

In Rajeshwari Devi v. State of U. P., a discriminatory provision in a statute was adjudicated under the U P Court of Wards Act, 1912. According to this Act, a male proprietor could be declared incapable of managing property on only one out of the five grounds, after giving him a notice. A female proprietor on the contrary could be declared incapable to manage property on any of the five grounds without notice. The Allahabad High Court declared the provision discriminatory on the basis of sex and in violation of Article 15 of the Constitution.

In Nithya v. University of Madras, the educational authorities were asked to condone a shortfall in the attendance of a woman caused due to pregnancy.

In Sarita Samvedi v. Union of India, the Supreme Court held invalid a provision of the Railway Board Circular dated 27th December, 1982 which restricted the eligibility of a married daughter of a retiring official for out of turn allotment of a house, to situations where such a retiring official had no son or where the daughter was the only person prepared to maintain the parents and the sons were not in a position to do so. This was held to be discriminatory on the ground of sex.

(e) Right to Maintenance

68 AIR 1995 Mad 164.
The guarantee contained in article 15(1) and article 16 is an extension of the specific application of the general principle of equality contained in Article 14 of the Constitution. Articles 14, 15 and 16 forming part of the same constitutional goal of guarantees are supplement to each other. Article 15 of the constitution prohibits discrimination on the basis of sex alone and does not forbid from making discrimination on the ground of sex coupled with other consideration. Section 125 of the Code of Criminal Procedure, 1973 is a substantive provision providing for maintainence of the wife by husband and child by the father who neglected to maintain them having sufficient means. It was held in Balan Nair V/s Bhavani Amma\textsuperscript{70} that this provision is fully in consonance with Article 15(3) of the Constitution, which states that the prohibition contained in the Article shall not prevent the State from making any special provision for women and children. The provision is a measure of social justice and specially enacted to protect the women and children and the brooding presence of constitutional empathy for the weaker section like the women and children must inform interpretation if it has to have social relevance.\textsuperscript{71}

\textbf{(f) Harmonious Construction of Articles 14, 15 & 16}

The Supreme Court in Yusuf Abdul Aziz V/s State of Bombay\textsuperscript{72}, held that Article 14 is general and is required to be read with other provisions, which set out the ambit of fundamental rights. Sex was held to be sound classification and

\textsuperscript{70} AIR 1987 Ker 115
\textsuperscript{71} Ramesh Chander V/s Veena Kaushal AIR 1978 SC 1807
\textsuperscript{72} AIR 1954 Cal 321.
although there could be discrimination in general on the ground, the Constitution itself provided special provisions in case of women and children. A combine reading of Article 15(1) and 16(2) would clearly demonstrate that what is forbidden is discrimination on the ground of sex alone. If the sex added to a variety of other factors and considerations forms a reasonable nexus for the object of classification then the bar of Article 15 and Article 16(2) cannot possibly be attracted.\textsuperscript{73}

A Full Bench of the Punjab and Haryana High Court in Shamsher Singh V/s State of Punjab\textsuperscript{74}, held that Articles 14, 15 and 16 are constituents of a single code of constitutional guarantee supplementing each other and if a particular provision fell within the ambit of Article 15(3) it could be struck down merely because it also amounted to discrimination solely on the ground of sex. Only such provisions could be made in favour of women, which were reasonable and did not altogether obliterate or render illusory the constitutional guarantee enshrined in Article 16(2) of the Constitution.

Regulation 5, Chapter VII(ii) of the Punjab University Calendar Volume III provided that the Principal of Womens College shall be a lady. The rule was struck down as unconstitutional and ultra vires of the provisions of the Constitution contained in Articles 14, 15 and 16. Justice G S Singhvi and Justice T H B Chalapathi in their contrary view held that primary object of the impugned

\textsuperscript{73} Raghubans V/s State of Punjab AIR 1972 P & H 117 following Duttatraya V/s State of Bombay AIR 1953 Bom 311
\textsuperscript{74} AIR 1970 P & H 372
rule is to provide for smooth and efficient functioning of Women's Colleges. The sex of the person to be appointed as Principal happened to be one of the factors, such a provision would fall within the ambit of Article 15(3) and would not offend Article 16(2).\textsuperscript{75}

\textbf{(g) Reservations of seats for women}

In 1992 by the 73rd and 74th Constitutional amendments the reservation of seats for women in panchayat and in the municipalities has been incorporated by inserting Articles 243 (D). According to the mandate of Article 243 (B) of the Constitution in Panchayat, not less than one-third of the total number of seats is to be filled by direct election in every Panchayat by women. These seats may be allotted by rotation to different constituencies in a Panchayat, which shall be not less than one-third of total member of seats. The Chairperson in the Panchayat at each level shall be reserved for women. Article 243-(T) of the Constitution makes similar provisions regarding reservation of seats for women in the municipalities. Thus, the Government on the strength of the Constitutional powers made a successful reservation of 33% seats for women in the local bodies, which is considered as a pioneer legislative endeavour.

Reservations of seat for women in local bodies or in educational institutions have been upheld. The Supreme Court in Government of A P v. P B

\textsuperscript{75}Dr. D M Sharma V/s Punjab University AIR 1997 P & H 87 (FB)
Vijayakumar76 that reservation to the extent of 30% made in the State Services by the Andhra Pradesh Government for women candidates was valid. The Division Bench of the Supreme Court emphatically declared that the power conferred upon the State by article 15(3) is wide enough to cover the entire range of State activity including employment under the State. The power conferred by Article 15 (3) is not whittled down in any manner by Article 16. In Dattatrey v. State of Bombay77, the Bombay High Court held that the State could establish educational institutions only for women.

(h) Sexual Harassment at Workplace

The policy of empowering the vulnerable classes like women and children has symbiotic relation with their right to dignified life under Article 21. In Lakshmikant Pandey78 the Apex Court pronounced a series of directions by employing Article 15(3) and 21 to protect children from becoming victims of unscrupulous methods of inter-country adoptions. In cases involving violation of human rights, the Court must forever remain alive to the international instruments and conventions and apply the same to a given case where there is no inconsistency between the international norms and the domestic law occupying

77 AIR 1953 Bom 311
78 Lakshmikant Pandey V/s Union of India AIR 1984 SC469; (1984) 2 SCC 244
the field. Each incident of sexual harassment, at place of work, results in violation of fundamental right to Gender Equality and right to life and liberty – the most precious fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the Courts are under Constitutional obligation to protect and preserve those fundamental rights. In Vishaka79 while evolving guidelines for protection of women from sexual harassment in places of work, although Article 21 was mainly relied upon, the help taken from Article 15(3) for judicial reasoning is significant. It was stated that the meaning and context of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. The international conventions and norms are to be read into them in absence of the enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule judicial construction that the regard must be had to the international conventions and norms for constructing domestic law when there is no inconsistency between them and there is a void in the domestic law. The Supreme Court in a case of sexual harassment of female subordinate in Apparel Export Promotion Council80 held that when the entire episode revealed that the delinquent, a superior officer, had harassed, pastered and subjected his lady subordinate by a conduct which is against moral sanction and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances it amounts to sexual

79 Vishaka v/s State of Rajasthan (1997) 6 SCC 241; AIR 1997 SC 3011
80 AIR 1999 SC 625
harassment and the Court upheld the punishment of dismissal from service. In Gaurav Jain\(^81\) while laying down guidelines for protection of child prostitutes and children of prostitutes, assistance was taken from Article 15(3) along with Articles 21 and 23. On the whole, the competence and effect of the interrelationship doctrine in rendering justice to women and children have shown its social utility.

(i) **Right to Personal Liberty vis-a-vis Privacy**

Gender equality becomes elusive in the absence of right to live with dignity. In Neera Mathur V/s LIC\(^82\), the court recognized that privacy was an important aspect of personal liberty. In this case, the Supreme Court was shocked to learn that an LIC questionnaire sought information about the dates of menstrual periods and past pregnancies, and the petitioner was terminated for not providing correct information to the LIC. The Supreme Court held that the questionnaire amounted to invasion of privacy and that, therefore, such probes could not be made. The right to personal liberty guaranteed under Article 21 included the privacy. Information about health could be sought where such information was relevant — it was relevant for selling insurance cover but not for the person seeking employment.

\(^{81}\) Gaurav Jain V/s Union of India (1997) 2 SCJ 334; AIR 1997 SC 3021  
\(^{82}\) (1992) 1 SCC 286
In Gautam Kundu V/s State of West Bengal\textsuperscript{83}, the Apex Court ensured that an application for a blood test to disprove paternity of a child in a maintenance suit was rejected. It was held that a child born of a married woman is deemed to be legitimate unless the contrary is proved. A strong preponderance of evidence and not a mere balance of probabilities could rebut such a presumption. The court laid down the following principles:

(a) that courts in India cannot order a blood test as a matter of course;
(b) an application for subjecting a child to a blood test, made in order to have a roving inquiry, cannot be entertained;
(c) there must be a prima facie case for suspecting the fatherhood of a child which can be established by proving non-access;
(d) the court must carefully examine as to what would be the consequences of ordering a blood test: whether it would have the effect of branding a child as a bastard and its mother as an unchaste woman.

The Court observed that such a demand for subjecting the child to a blood test was contrary to the right to personal liberty guaranteed by Article 21 of the Constitution and said:

"Permitting blood tests to prove or disprove paternity unless there is a strong case and access

\textsuperscript{83} (1993) 3 SCC 418
was ruled out would be slanderous, embarrassing and humiliating for the woman."

In Surjit Singh V/s Kanwaljit Kaur84, the High Court held:

"Allowing the medical examination of a woman for her virginity would certainly violate her right of privacy and personal liberty enshrined under Article 21 of the Constitution. Such an order would amount to a roving enquiry against a female who are vulnerable even otherwise. In this instant matrimonial case the question of virginity of the wife is not in issue and the virginity test cannot constitute the sole basis to prove the consummation of marriage. Allowing such a medical examination of the wife would be holding a roving enquiry, which is not permissible. Thus, order of Lower Court dismissing application by husband for getting wife medically examined in order to prove her virginity is proper."85

84 AIR 2003 P & H 353.
85 Ibid.
In Bodhisattwa Gautam V/s Subhra Chakraborty, the complainant, a student, was induced by the accused, a teacher, on false assurance of marriage but also fraudulently went through marriage ceremonies. When she became pregnant the accused made her undergo an abortion. When she asked him to maintain her, he disowned her on the ground that there was no marriage. He was prosecuted under various sections of the IPC. The Supreme Court refusing to quash the prosecution rules that rape was not only an offence under the Penal Code but was also a violation of a woman's right to live with dignity and personal freedom.

"...... It is a crime against basic human right and it is also violation of victim's most cherished of Fundamental Rights, namely, the right to life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women."

In State of Maharashtra V/s Madhukar N Mardilkar, the Supreme Court said with reference to rape, that unchastity of a woman does not make her "open to any and every person to violate her person as and when he wishes." Even a

86 (1996) 1 SCC 490
87 (1991) 1 SCC 57
prostitute has a right to privacy under Article 21 and no person can rape her just because she is a woman of easy virtue.

Another dynamic judgment with reference to Article 21 is Chairman, Railway Board, V/s Chandrima Das. The Court in this case observed that the word 'life' as used in the Universal Declaration must get the same meaning as in Article 21. It's meaning cannot be narrowed down. Here relief was provided to a Bangladesi woman who was raped. The term life in the International Conventions relating to Human Rights and Article 21 were interpreted to mean life worth living, meaningful and dignified.

In order to find suitable methods for realization of the true concept of 'gender equality' and to prevent sexual harassment of working women in all work places through judicial process, the Supreme Court issued guidelines to fill in the vacuum of existing legislation.

The immediate cause for filing of the writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. The incident reveals the hazard to which working women are exposed and depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in absence of legislative measures.

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Each such incident results in violation of the fundamental rights of 'gender equality' and the right to 'life and liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) to practice any profession or to carry out any occupation, trade or business. Such violation therefore, attracts the remedy under Article 32 of the Constitution for the enforcement of these fundamental rights for women.

The meaning and content of fundamental rights guaranteed in the Constitution are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now the accepted rule of judicial construction that regard must be had to international conventions and norms for constructing domestic law when there is no inconsistency between them and when there is a void in the domestic law.

It is necessary and expedient for employees in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

The Supreme Court laid down the guidelines and norms for due observance at all work places or other institutions for enforcement of the basic
human right of gender equality and guarantee against sexual harassment and abuse which are to be followed strictly until a legislation is enacted for the purpose.

In Vishaka V/s State of Rajasthan89, the Supreme Court, in the field of sexual harassment of women at their place of work, formulated guidelines for their protection. The Court said:

"Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working woman at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose."90

89 (1997) 6 SCC 241
90 Ibid
In the matter of personal law there are certain spheres where there is violation of Article 21, especially in cases of restitution of conjugal rights. In Sareetha V/s Venkata Subbaiah\textsuperscript{91}, the Court held section 9 of Hindu Marriage Act violative of Article 21 of the Constitution. But in later cases,\textsuperscript{92} the Supreme Court overruled the decision was overruled by the Supreme Court.

\textbf{(j) Right against Exploitation}

Article 23 of the Constitution specifically prohibits traffic in human beings. Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing of human beings. This includes the devdasi system prevalent in Andhra Pradesh. To give meaning to Article 23 various laws have been passed to prevalent exploitation of human beings in varied forms. The Immoral Traffic (Prevention) Act, 1956 and the A P Devadasi (Prohibition of Dedication) Act 1988 are legislations, which prohibit the practice of prostitution and dedication of devadasis respectively.

In Vishal Jeet V/s Union of India\textsuperscript{93}, the Court has held that:

\textsuperscript{91} AIR 1983 AP 356  
\textsuperscript{93} (1990) 3 SCC 318
"prostitution always remains as a running sore in the body of civilization and destroys all moral values. The causes and evil effects of prostitution maligning the society are so notorious and frightful that none can gainsay it. This malignity is daily and hourly threatening the community at large slowly but steadily making the way onwards leaving a track marked with broken hopes. Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent."

The Court suggested certain measures for eradicating the evil.

In Gaurav Jain V/s Union of India94, the condition of prostitutes in general and the plight of their children in particular were highlighted. The Court issued directions for a multipronged approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It said that women should be viewed more as victims of adverse socio-economic circumstances than offenders on our society.

3. Directive Principles of the State Policy

94 (1997) 8 SCC 114
Fundamental Rights cater to individual rights while the Directive Principles of State Policy cater to social needs. These provisions are contained in Part IV of the Constitution. Though these principles are not enforceable in any court of law they are fundamental in the governance of the country and provide for the welfare of the people, including women.

Article 39(a) directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood.

Article 39 (d) of the Constitution provides that State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. The convention concerning equal remuneration for men and women workers for work of equal value was adopted by the General Conference of the International Labour Organisation on 29th June 1951 and India is a party to such convention.

The State in furtherance of Article 39(d) of the Constitution and also the Equal Remuneration Convention 1951, the State passed the Equal Remuneration Act, 1976 with a view to implement the same in the International Women's Year. In M/s Mackinnon Mackenzie V/s Audrey D'Costa95, the Supreme Court deprecated the discrimination between the male stenographers and the confidential lady stenographers only on the ground of sex when there was no

95 AIR 1987 SC 1281
difference between the works, which the confidential lady stenographers were doing and the work of their male counterparts. The Court held that the employer is bound to pay same remuneration to both male and female stenographers irrespective of the place where they were working unless it is shown that the women stenographers are not fit to do the work of the male stenographers.

Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief.

The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has recognized the necessity of uniformity in the application of civil laws relating to marriage,
succession, adoption, divorce, maintenance, etc. but as it is only a directive it
cannot be enforced in a court of law.

The issue of Uniform Civil Code has been controversial right from the very
beginning. The Constituent Assembly Debates clearly bring out the fact that there
was a lot of opposition to incorporating Article 44\textsuperscript{96}, particularly from the
members of the Muslim Community in the Assembly.\textsuperscript{97} The scathing attacks on
the idea of having a Uniform Civil Code in India were made on the grounds that
religious freedom permits them to be governed by the laws of their community in
personal matters. There can't be a Uniform Civil Code for such a diverse
population with different religious faiths, customs, festivals, food and culture.
Before independence, the foreign rulers did not meddle with the personal laws of
the people and allow them to be governed by their own laws and customs in
matters of marriage, divorce, succession and property. However, one of the most
dynamic members of the Assembly, Shri K M Munshi, expressed his opinion
that:\textsuperscript{98} If the personal law of inheritance, succession, etc. is considered as a part
of religion, the equality of women can never be achieved.

The Chairman of the Drafting Committee, Dr. B R Ambedkar, stated that in
our country there practically is a Civil Code, uniform in its content and applicable
to the whole of the country. He cited many instances like the Uniform Criminal
Law, The Transfer of Property and the Negotiable Instruments Acts, which are

\textsuperscript{96} Art. 35 in the Draft Constitution
\textsuperscript{97} CAD Book No. 2, Vol. III, pp. 538 - 542
\textsuperscript{98} CAD Book No. 2 Vol. III, 548
applicable to one and all. However, he conceded that the only provinces the civil law has not been able to invade, so far, are marriage and succession. He also dispelled the arguments of certain Muslim members that the Muslim Law is immutable and uniform throughout India. He cited the example of the North-West Frontier Province, which was not subject to the Shariat Law prior to 1935 and until then followed Hindu Law in matters of succession, etc.\textsuperscript{99} The objection to a Uniform Civil Code were thus met by pointing out:

(a) that India had already achieved a uniformity of law over a vast area;
(b) though there was diversity in personal laws, there was nothing sacrosanct about them;
(c) the secular activities such as inheritance covered by personal laws should be separated from religion;
(d) that a uniform law applicable to all would promote national unity; and
(e) that no legislature would forcibly amend any personal law in future if people were opposed to it.

Not much progress has so far been made towards achieving the idea of a Uniform Civil Code, which remains a distant dream. The only tangible step taken in this direction has been the codification and secularization of Hindu Law. The codification of Muslim Law still remains a sensitive matter. It is necessary that

\textsuperscript{99} CAD Book No. 2, Vol. III, 550
law be divorced from religion. With the enactment of a Uniform Civil Code the rights, especially for women, can be secured. The courts have definitely taken a progressive step in that direction.

In Gurdyal Kaur V/s Mangal Singh\textsuperscript{100}, the high Court of Punjab held that Article 44 cannot be enforced under the guise of fundamental rights. In State of Bombay V/s Narasuppa Mali\textsuperscript{101}, also, Justice Gajendragadkar held that Article 44 by necessary implication recognizes the existence of different codes applicable to Hindus and Muslims in matters of Personal Law and permits their continuance unless the State succeeds in its endeavour to secure for all citizens a Uniform Civil Code.

After initial hesitation, the judiciary has taken note of the injustice done to women in personal matters. The Courts have been voicing its concern through a few judgments indicating the urgency to have the uniformity in personal laws. One such important case in which the Court voiced its concern is Mohd. Ahmed Khan V/s Shah Bano Begum\textsuperscript{102}, pertaining to the liability of a Muslim husband to maintain his divorced wife, beyond the period of Iddat, if the wife is not able to maintain herself. The Supreme Court in this case held that section 125 of the Criminal Procedure Code, which imposes such obligation on all the husbands, is secular in character and is applicable to all religions. It applies to all Indians.

\textsuperscript{100} AIR 1968 Punj 396
\textsuperscript{101} AIR 1952 Bom 85
\textsuperscript{102} (1985) 2 SCC 556; 1985 SCC (Cri) 245
generally and overrides the personal law if there is a conflict between the two. The Court, through Chief Justice Y V Chandrachud, held:

"It is also a matter of regret that Article 44 of our Constitution has remained a dead letter ........ There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws, which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State, which is charged with the duty of securing a Uniform Civil Code for the citizens of the country, and, unquestionably it has the legislative competence to do so.

A counsel in the case whispered, somewhat audibly, that legislative competence is one thing the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different religions on a common platform. But, a beginning has to be made if the
Constitution is to have any meaning. Inevitably, the role of a reformer has to be assumed by the Courts because it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of Courts to bridge that gap between personal laws cannot take the place of a Common Civil Code, Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

The obiter in this historic judgment rocked the Muslim community, leading to the enactment of the Muslim Women's (Protection of Rights on Divorce) Act, 1986.

The constitutionality of this Act was challenged in Danial Latifi V/s Union of India. The petitioners, inter alia, submitted that provisions under section 125 of the Criminal Procedure Code reflected the moral stance of the law and ought not to have been entangled with religion and religion-based personal laws; that the Act is violative of Articles 14 and 21. The Supreme Court, while upholding the validity of the Act observed, that if on a rule of construction a given statute will become ultra vires or "unconstitutional" and therefore, void, whereas on another construction which is permissible, the statute remains effective and operative, the Court will prefer the latter on the ground that the legislature does not intend to enact unconstitutional laws.

103 (2001) 7 SCC 740
Before the passing of the impugned Act, a Muslim woman who was divorced by her husband was granted a right to maintenance from her husband under the provisions of section 125, CrPC until she may remarry and such a right if deprived would not be reasonable, just and fair. Thus the provision of the Act depriving the divorced woman of such a right to maintenance from her husband and providing for her maintenance to be paid by the former husband only for the period of iddat and thereafter to make her run from pillar to post in search of her relatives one after the other and ultimately to knock at the doors of the Wakf Board does not appear to be reasonable and fair substitute of the provisions of section 125 of CrPC. Such deprivation of the divorced Muslim woman of their right to maintenance from their former husbands under the beneficial provisions of the Code of Criminal Procedure which are otherwise available to all other women in India cannot be stated to have been effected by a reasonable, right, just and fair law and, if these provisions are less beneficial than the provisions of Chapter IX of CrPC, a divorced Muslim woman has obviously been unreasonably discriminated against and deprived of the provisions of the general law as indicated under the Code which are available to Hindu, Buddhist, Jain Parsi or Christian women or women belonging to any other community. The provisions prima facie, therefore, appear to be violative of article 14 of the Constitution mandating equality and equal protection of law to all persons otherwise similarly circumstanced and also violative of Article 15 of the Constitution which prohibits any discrimination on the ground of religion or the Act would obviously apply to
Muslim divorced women only and solely on the ground of their belonging to Muslim religion."

The Court clarified that to construe the provisions of the Act as less beneficial than provisions of Chapter IX, Cr P C and hold husbands liable to pay maintenance only for the iddat period would result in unreasonable discrimination against divorced Muslim women and would render the Act violative of articles 14, 15 and 21. Therefore, the Court concluded:

"(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extends beyond the Iddat period in terms of section 3(1)(a) of the Act.

(2) Liability of a Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to the iddat period.

(3) A divorced 4 of the Muslim woman who has remarried and who is not able to maintain herself after the iddat period can proceed as provided under Section 4 of the Act against her relatives who are
liable to maintain her in proportion to the properties which they inherit on her death, according to Muslim Law, from such divorced woman including her children and parents. If any of the relatives are unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

(4) The provisions of the Act do not offend Articles 14, 15 and 21."

The Supreme Court further observed:

"In interpreting the provisions where matrimonial relationship is involved, the social conditions prevalent in society have to be considered. In Indian society, whether they being to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and a woman. Indian society is male dominated, both economically and socially and women are assigned, invariably, a dependent rôle, irrespecting of the class of society to
which they belong. A woman on her marriage, very often, though highly educated gives up all her shares with her husband her emotions, sentiments, mind and body, and her investment in the marriage is her entire life a sacramental sacrifice of her individual self, and is far too enormous to be measured in terms of money. When a relationship of this nature breaks up, there can be no answer to the question as to how a woman can be compensated so far as emotional fracture or loss of investment is concerned. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive the Muslim Law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life such as the heirs who are likely to inherit the property from her or the Wakf Boards. Such an approach appears to be a kind of distortion for the social facts. Solutions to such social problems of universal magnitude pertaining to horizons of basic
human rights, culture, dignity and decency of life and
dictates of necessity in the pursuit of social justice
should be invariably left to be decided on
consideration other than religion or religious faith or
beliefs or national, sectarian, racial or communal
constraints."

Shortly after Shah Bano, there was the case of Jordan Diengdeh v. S.S. Chopra\textsuperscript{104}. Here a woman belonging to the Khasi Tribe, a Christian, married S.S. Chopra under the Christian Marriage Act, 1872 and later sought a decree of nullity under the Christian Marriage Act, 1872 and later sought a decree of nullity under the Divorce Act, 1869, which is more than a century old. The Supreme Court said that:

"The case before us is an illustration of a case where the parties
are bound together by a marital tie which is better untied.

Justice Chinappa Reddy also pointed out the archaic nature of the
provisions of the Divorce Act applicable to Christians as compared to the Hindu
Marriage Act, 1955 and the diverse nature of matrimonial remedies applicable to
different religious denominations.

\textsuperscript{104} (1985) 3 SCC 62: AIR 1985 SC 935
Again, the matter of a Uniform Civil Code cropped up in Sarla Mudgal v. Union of India. An organization called 'Kalyani' through its President brought before the Supreme Court four cases, which involved fake conversion to Islam, by Hindu husbands to contract bigamous marriages. The decision of the Supreme Court was sought on the following questions:

(1) Whether a Hindu husband married under Hindu Law, by embracing Islam can solemnize a second marriage?

(2) Whether such a marriage without having the first marriage dissolved under law would be a valid marriage qua the first wife who continues to be a Hindu?

(3) Whether the apostate husband would be guilty of an offence under Section 494 of the Indian Penal Code?

The Court referred to various decisions on the subject and came to the conclusion that a marriage celebrated under one personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and other refuses to do so. Where a marriage takes place under the Hindu Law the parties acquire a status and certain rights by marriage itself under the law governing the Hindu marriage. If one of the parties is allowed to dissolve

105 (1995) 3 SCC 635: 1995 SCC (Cri) 569
the marriage by adopting and enforcing a new personal law, it would tantamount to destroying the existing rights of the other spouse who continues to be a Hindu. According to the Court, a Hindu marriage can be dissolved on any of the grounds specified in the Act. Until the marriage is so dissolved, none can marry again. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu Marriage. In a much-publicised judgment, the Court commented:

"Since Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the 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..... Those who preferred to remain in India after 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, the Indian Nation and no community could claim to remain a separate entity on the basis of religion. In this view of the matter no community can oppose the introduction of Common Civil Code for all citizens in the territory of India."106

106 (1995) 3 SCC 633: 1995 SCC (Cri) 569, para 34 and 35
Kuldip Singh, J., in his judgment referred to the observations of Chandrachud, C.J. in Shah Bano and of Chinappa Reddy, J. in Jorden Diengdeh\textsuperscript{107} case urging the Union Government to evolve the Uniform Civil Code. He then proceeded to say that:

"One wonders how long will it take for the government for the day to implement the mandate of the framers of the Constitution under Article 44 of the Constitution of India.

There is no justification whatsoever in delaying indefinitely the introduction of a uniform personal law in the country.

The Supreme Court urged the Government of India through the Prime Minister to have a fresh look at Article 44.

Again in Pragati Verhese v. Cyril George Verghese\textsuperscript{108}, the Full Bench of the Bombay High Court struck down Section 10 of the Indian Divorce Act. The Court said that Section 10 of the Act compels the wife to continue to live with such a person who has deserted her or treated her with cruelty. The Court further said that this a violation of the protection of life and personal liberty guaranteed under Article 21 of the Constitution.

\textsuperscript{107} (1985) 3 SCC 62: AIR 1985 SC 935
\textsuperscript{108} AIR 1997 Bom 349
In spite of these directions, the Supreme Court in Maharishi Avadhesh v. Union of India\textsuperscript{109} dismissed a petition seeking a writ of mandamus against the Government of India to introduce a Common Civil Code. The Court took the view that this was a matter which fell within the domain of the Legislature and that "the court cannot legislate in these matters".

**Compulsory Registration of Marriages**

The UN General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979. It is described as an international bill of rights for women. It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. India became a signatory to the convention on 30 July 1980 and ratified on 9 July 1993 with two Declaratory Statements and one Reservation.

Article 16 (2) of the convention says:

> "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory" India, while

\textsuperscript{109} 1994 Supp (1) SCC 713
agreeing with the principle of compulsory registration of marriages, says that "it is not practical in a vast country like India with its variety of customs, religious and level of literacy"

and has expressed reservation to this very clause to make registration of marriage compulsory.

The Constitution guaranteed women equality to women at par with men. Article 44 of the Constitution in the Directive Principles of State Policy states "Uniform Civil Code for the Citizens. The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Our country has a plural system of laws where four major communities have their religion based Personal laws, Hindu, Muslim, Christian and Parsi. In 1955 series of laws were enacted which guaranteed certain rights to Hindu women like, Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956, Legislative measures like the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, continued the process of reforms. It is no compulsory to register marriages in India. However, there are number of legislations on the issue in the country, cutting across community lines.
Under the Special Marriage Act, 1954, which is valid for any Indian citizen, irrespective of religion, each marriage is registered by marriage officers specially appointed for the purpose.

Registration of marriage is compulsory under the Indian Christian Marriages Act, 1872. Under the Act, entries are made in the marriage register of the church, soon after the ceremony, along with the signatures of the bridegroom, the bride, the officiating priest and witnesses. Parsi Marriage and Divorce Act, 1936 makes necessary Registration of Marriages. In Muslim law, a marriage is regarded as a civil contract and the qazi, or officiating priest, also records the terms of the marriage in a nikahnama, which are handed over to the married couple. Under Section 8 of the Hindu Marriage Act 1954, there exists a provision for registration of marriages. However, it's left to the contracting parties to either solemnize the marriage before the sub-registrar or register it after performing the ceremony in conformity with Hindu beliefs.

However, the Act makes the provision that the validity of the marriage will in no way be affected by omission to make the entry in the register. Therefore only under the Hindu Personal Law it is not compulsory to register the marriage. Irrespective of caste, creed or religion, Goa's family laws provide for compulsory registration of marriage to avoid multi-marriages. It has the provision of penalizing the civil registrar if any marriage is registered in contravention of the provisions of the civil code. "It makes the concerned officers more responsible".
The following enactments by the State Governments have provided for uniform compulsory registration of marriages:

- The Bombay Registration of Marriages Act, 1953. This Act applies to the States of Maharashtra and Gujarat
- The Karnataka Marriages Act, 1976 in force since 1983
- The Himachal Pradesh Registration of Marriage Act, 1997
- Andhra Pradesh passed the Compulsory Registration of Marriage Act, 2002

The Compulsory Registration of Marriage Act, 2002, which has been passed recently, aims at giving legal status to wedlock and to strengthen the institution of marriage. Under the provisions, the district registrar of marriages or the marriage officer of the local area will issue marriage certificate duly registering the name of the bridegroom, bride and two witnesses. In a bid to curb its rising population, the Uttar Pradesh state government announced its new population policy in 2002. The policy provides for compulsory registration of marriages by the panchayats and maintenance of records related to births and deaths.

In Delhi Ms. Kiran Chowdhary MLA, moved a private member's bill to make registration of marriage compulsory in Delhi. In September 2000, the Union government rejected the National Human Rights Commission's proposal for
compulsory registration of Hindu marriages-- as had the Narasimha Rao government in 1994 and the Deve Gowda government in 1996. The provisions of the Hindu Marriage Act on bigamy are admittedly faulty. So is Section 494 of the Indian Penal Code, which deals with the offence of "marrying again during the lifetime of husband or wife". Both of them require certain ceremonies to be performed for a marriage that is valid and binding. The ceremonies depend upon one's caste and religion. If they are not performed there is no marriage even between a couple who are entitled to marry. The same logic was applied to bigamous marriage.

In a public interest petition filed by Majlis an NGO in Mumbai against 'quick' marriages conducted by the marriage 'bureaus', the Bombay High Court directed the state government to draft regulations necessitating registration of marriages in the presence of the registrar. The court suggested the government should direct that presence of both the spouses would be necessary at the time of registration.

Second, presence of witnesses from both sides will be necessary. Third, registrar will verify whether the marriage had in fact taken place in accordance with the personal law applicable to the spouses. He will specifically mention, in a special column, the presence of the spouses before issuance of marriage certificate.

Non-registration of marriage affects women the most. Women most prominently victims of bigamous relationships and property disputes face
enormous hardship in establishing their marriage as they have no proof of marriage. It has been seen in number of cases of bigamy the wives are losing their cases by reason of their failure to prove the first or second marriage of their husbands.

Another serious national problem is Child marriage and it is estimated roughly a half of all marriages taking place in India in a year the girls are underaged. According to the Rapid Household Survey conducted across the country, 58.9 per cent of women in Bihar were married off before age 18; 55.5 per cent in Rajasthan; 54.9 per cent in West Bengal; 53.8 per cent in UP; 53.2 per cent in Madhya Pradesh; and, Karnataka 39.3 per cent. Jammu and Kashmir has the lowest percentage of underage marriage - 3.4 followed by Himachal Pradesh (3.5) and Goa (4.1). Despite high female literacy, close to one-tenth of Kerala women are married off before attaining the legal age of 18.

The Child Marriage Restraint Act, 1929, prescribes the minimum age of 18 years for girls and 21 years for boys for contracting marriage, and "extends to the whole of India except the State of J&K and it applies also to all citizens of India without and beyond India." Rajasthan, Madhya Pradesh, Uttar Pradesh, Haryana, Orissa, Chattisgargh, Jharkhand and Bihar, where child marriages are rampant, haven't moved towards compulsory registration. The Central Government has made it mandatory for all States to make compulsory birth registration and also asked to legislate for compulsory registration of marriages. The reasoning is that
the States are in a better position to know the social structure and local conditions prevailing in the respective states. Then applying the logic for mandatory birth registration why isn't the Central Government making marriage registration compulsory for the whole of India?

The National Commission for Women through The Marriage Bill, 1994 have recommended for the enactment of a uniform law relating to marriages and providing for the compulsory registration of marriages, with the aim of preventing child marriages and also polygamy in the society.

International treaties and conventions ratified by India do not automatically form part of the Indian law. It needs to be incorporated into Indian law through enabling legislation before the implementation of their provisions can be enforced through courts. Under the Constitution, Parliament has the exclusive competence to enact legislation on any subject for the purpose of giving effect to any international treaty or convention.

The only solution to this complicated and bizarre situation is to insist on regularisation of marriage and the ceremonies will then be optional. The registrar will demand a signed declaration that neither party has a spouse living, something that will deter everyone. Political will is the need of the hour for such a law, which is extremely necessary to curb child marriages and bigamy. This law has to be made widely disseminated through all medium of communication.
It is amply clear that it is necessary to have a Uniform Civil Code and the state should act upon Article 44. A Uniform Civil Code will not take away religious ceremonies and rituals. It will empower women and children by giving protection and ensuring gender just laws. It is high time we had a nationwide debate over it and pass a law on Compulsory Registration of Marriage. In a recent landmark judgment passed by the Supreme Court, the registration of marriage has been made compulsory and States have been asked to enact necessary legislation.

Thus, the issue of a Uniform Civil Code has given rise to heated debates and controversies. It touches the sensitivities of certain groups. But this should not be taken to concede that existing laws should remain untouched. An endeavour should be made to incorporate good points of one system into another and strike down the provisions, which are harsh, antiquated and discriminatory.\footnote{Kusum: Uniform Civil Code - Reform in the Personal Law - Marriage & Divorce Law Manual, Universal Law Publishing Co. Pvt. Ltd., New Delhi}

4. Fundamental Duties

Part IV - A which consist of only one Article 51 - A was 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(e) 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 India transcending religious, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women."

5. Women's Representation in Local Bodies

Under Article 40 the Directive Principles of State Policy state that:

"The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to functions as units of self government".

It was held in N.M. Kheni V. Manik Rao Patil\textsuperscript{111} that:

"Power of the people which is the soul of a republic stands subverted if decentralisation and devolution desiderated in Article 40 is ignored by the Executive in action even after holding Elections to the floor level of administrative bodes."

\textsuperscript{111} (1977) 4 SCC 16

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The 73rd and 74th Amendments to the Indian Constitution effected in 1992 provide for reservation of seats for women in Elections to Panchayats and Municipalities.

Reservation of seats for women in Panchayats and Municipalities have been provided in Articles 243-D and 243-T of the Constitution of India. Parts IX and IX-A have been added to the Constitution by the Constitution 73rd Amendment Act, 1992 and the Constitution (74th Amendment) Act, 1992 popularly known as the Panchayati Raj and Nagarpalika Constitution Amendment Act, with Articles 243, 243-A to 243-D and Articles 243-P to 243-ZG.

In Panchayats

Article 243 – D of the Constitution provides that,

(1) In every Panchayat seats shall be reserved for the Scheduled Castes and 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 that Panchayat as the population of the SCs and STs in that Panchayat area bears to the total population of that area, and such seats may be allotted by rotation to different constituencies in a Panchayats.
(2) Out of the 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 SC and ST women) seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat.

(3) 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 Chairperson reserved for the SCs and STs in the Panchayats at each level shall be as nearly as possible in the same proportion to 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 the 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.

In Municipalities

Reservation of seats for women in Municipalities is provided under Article 243 – T of the Constitution of India. The relevant portions of Article 243-T are:
(1) Seats shall be reserved for the SCs and STs in every Municipality. The number of seats reserved for them shall be, as nearly as may be, in the 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 the 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 SCs or, as the case may be, to the STs.

(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 Chairperson in the Municipalities shall be reserved for the SCs, the STs and women in such manner as the legislature of a State may, by law, provide.