Suggestions and Conclusion

According to a report of the United Nations published in 1980—"Women constitute half of the world population, perform nearly two-thirds of works hours, receive one tenth of the world income and own less than one hundred percent of world's property.'

In view of the Supreme Court as observed in Madhu Krishan v. State of Bihar, women form half of the Indian population. Women have always been discriminated against men and have suffered denial and are suffering discrimination in silence. Self sacrifice and self denied are their nobility and fortitude and yet they have been subjected to all kinds of inequities indignities, incongruities and discrimination."

The Constitution of India, 1950 has certain provision relating to women. It makes special provisions for the treatment and development of women in every sphere of life.

The Preamble.— The preamble is the key to the Constitution. It does not discriminate men and women but it treats them alike. The framers of the Constitution were well aware of unequal 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 general and special provisions for upliftment and development of the status of women. Certain provisions are specifically designed for the benefit 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 a view to give equal status to men and women in terms of the opportunity.

(A) FUNDAMENTAL RIGHTS

Part III of the Constitution of India deals with the fundamental rights. The provisions regarding fundamental rights have been enshrined in Articles 12 to 35, which are applicable to all the citizens irrespective of sex. However certain provisions are related to the rights of women.

According to Article 15 (3) of the Constitution, discrimination on grounds of religion, race, caste, sex and place of birth of shall not prevent the state from making any special provisions for women and children. Under the Constitution the State has been given power to make laws relating to women and children but such laws shall not be violative of Article 15 of the Constitution. Article 15 (1) prohibits gender discrimination. Article 15 (3) lifts that ignominy and permits the state to positively discriminate in favour of women to make special
provisions to ameliorate their social, economic and political condition and accord them parity.\textsuperscript{147}

Article 15 (3) of the Constitution makes special provisions for women and children. It empowers the state to make special legislation in this regard. The Courts have always approved the validity of such special legislation rather than special measures. These women oriented beneficial legislations can be seen in the ambit of the Criminal Law.

The recent Amendment Act i.e. The Constitution (93\textsuperscript{rd} Amendment) Act, 2005 which came into force with effect from 20.01.2006, Article 15 of the Constitution was amended and after clause (4), the following clause has been inserted-

\begin{quote}
"(5) Nothing in this article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than minority educational institution referred to in clause (1) of Article 30."
\end{quote}

\textsuperscript{147} Dr. G. P. Reddy on Women are the Law IV ed., 2000 p. 2.
In view of the above Amendment Act, 2005, the State has been empowered to make any special provision, by law, for the advancement of any socially and educationally backward classes of citizens in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than minority educational institution. Hence, State may make special provision by law, for the advancement of women who are socially and educationally backward.

The Constitution of India guarantees all the rights to women, which are given to men. The special features of fundamental rights are as under:

1. **Right to Equality** (Articles 14 and 15 of Constitution)—It means the equality of opportunity, equality before law, equal protection in the laws, not discriminating against any person on ground of sex, religion, caste and place of birth and no discrimination in the matters of public employment on the grounds of sex only as provided under Article 16 of the Constitution.

2. **Right to Freedom**—Articles 19 to 22 of the Constitution deal with the right to freedom. It includes right to freedom of speech, protection in respect of conviction for offences, protection of life and personal liberty and protection against arrest and detention etc.

3. **Right against Exploitation**—According to Article 23 of the Constitution traffic in human beings and forced labour is prohibited. Employment of children is prohibited under Article 24 of the Constitution.
4. **Right to Freedom of Religion**—Articles 25 to 28 of the Constitution deal with the right to freedom of religion. It means professing practicing and propagating religion freely.

5. **Cultural and Educational Rights**—The interest of minorities is protected under Article 29 of the Constitution, Further Article 30 of the Constitution provides the right of minorities to establish and administer educational institutions.

6. **Right to Constitutional Remedies**—Every Citizen has been provided the right to Constitutional remedies. Articles 32 to 35 deal with the right to Constitutional remedies. Every citizen of India has the right to Constitutional remedies that is approaching Courts for enforcing fundamental rights.

(i) **A Woman shall not denied a job merely because she is a woman** - In its landmark judgment the Apex Court in *Air India v. Nergesli Meerza*,\(^{148}\) has held that a woman shall not be denied employment merely on the ground that she is a woman as it amounts to violation of Article 14 of the Constitution. In the present case where in air-hostesses of Indian Air Lines and Air India have challenged the service rules which state that:

\(^{148}\) AIR 1981 SC 1829.
"Air-hostesses shall not marry for the first four years of their joining; they will lose their jobs if they become pregnant. They shall retire at the age of 35 years, unless managing director extends the term by ten years at his discretion."

The Supreme Court suggested that the first provision is legal, as it would help in promotion of the family planning programmes, and will increase the expenditure of airlines recruiting air-hostesses on temporary or adhoc basis, but the second and third provisions to be declared as unethical, callous, cruel, detestable, abhorrent, unreasonable, arbitrary, unconstitutional and an open insult to Indian Womanhood.

Thus, the above decision of the Apex Court has greatly elevated the status of workingwoman.

(ii) Denial of Seniority promotion on Ground of Sex - Rules regarding seniority and promotion in the Indian Foreign service was challenged before the Apex Court in C. B. Muthamma v. Union of India,149 where it has been held that the Rules relating to seniority and promotion in Indian Foreign Service which make discrimination only on ground of sex is not only unconstitutional but also a hangover of the masculine culture of having cufing the weaker sex. In the instant case a writ petition was filed before the Apex Court, it was contended that she

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149 AIR 1979 SC 1868.
had been denied promotion to Grade I on the ground of sex, which violated Article 15 of the Constitution of India, 1950. The Apex Court allowed the petition and held that Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 which requires that an unmarried woman member should take permission of the Government before she marries and that after marriage, she may be asked any time to resign if it is felt that her family life affects her efficiency as of right to be appointed to the service (I.F.S.) contravenes Article 15 of the Constitution. In view of the above decision, now these provisions have been deleted.

(iii) Beauty Contests - Whether violation of Constitutional provisions - This question was raised before the Andhra Pradesh High Court in C. Rajakumari v. Commissioner of Police, Hyderabad. It has been held that if a beauty contest indecently represents any woman by depicting in any manner the figure of woman, form, body or any part thereof in such a way so as to have the effect of being indecent, or derogatory to or degrading women, or likely to deprive, corrupt an injure the public morality would be violative of the provisions of the Indecent Representation of women (prohibition) Act, 1986 and also unconstitutional as it violates Articles 14, 21 and 51-A of the Constitution of India.

(iv) Constitutional Validity of Section 497 (i.e. Adultery) of the Indian Penal Code, 1860 - In the offence of adultery, Section 497 of the Indian Penal Code,
1860 punishes only the male counterpart and exempt the women from punishment. The Constitutional Validity of Section 497, I. P. C. was challenged on the ground that it is violative of Articles 14 and 15 (1) of the Constitution. In Abdul Aziz v. State of Bombay,\textsuperscript{151} the Apex Court upheld the validity of the provision on the ground that the classification was not based on the ground of sex alone. The court relied upon the mandate of Article 15 (3) of the Constitution to uphold the validity of the said proviso of the code. However, in the present case the petitioner contended that even though the woman may be equally guilty as an abettor, only the man was punished, which violates the right to equality on the aground of sex.

"Section 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, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

A bare reading of Section 497 of The Indian Penal Code, 1860 shows that it punishes the offence of adultery committed with a married woman without the

\textsuperscript{151} AIR 1994 SC 321.
consent or connivance of her husband. The main feature of this offence is that
the male offender alone has been made liable\textsuperscript{152}. This offence is committed by a
third person against a husband in respect of his wife. If an act of sexual
intercourse takes place between a married man and an unmarried woman or with
a widow or with a married woman whose husband consents to it, this offence
shall not be deemed to have been committed. It is not required for an offence
under this section that the offender should know whose wife the woman is, but he
must know that she was a married woman.\textsuperscript{153}

In another case\textsuperscript{154} it was contended that Section 497, 1. P. C. is violative
of Articles 14 and 15 of the Constitution on the ground that it makes an irrational
classification between men and women in that:

(i) it confers upon the husband the right to prosecute the adulterer but it
does not confer any right upon the wife to prosecute the woman with
whom her husband has committed adultery;

(ii) it does not confer any right on the wife to prosecute the husband who
has committed adultery with another woman; and

\textsuperscript{152} ibid.

\textsuperscript{153} Madhub Chander Giri, (1873) 21 WR Con. 13.

\textsuperscript{154} Smt. Sowmi thrivishnu Vs. Union of India and another, 1985 Cr. L. J. 1302 (SC)
(iii) it does not take in cases where the husband has sexual relation with an unmarried woman with the result that it amount to having a free licence under the law to have extra marital relationship with unmarried woman.

However, the Apex Court rejected these aforesaid contentions and held that it cannot be said that in defining the offence of adultery so as to restrict the class of offender to men, any constitutional provision is infringed. It is commonly accepted that it is the man who is seducer and not the woman. In this case the Apex Court observed that this position may have undergone some change over the years, that women may have started seducing men but it is for the legislature to take note of this transformation and amend Section 497 appropriately.

In the aforesaid case it was also contended that since Section 497 of the Indian Penal Code, 1860 does not contain provision for hearing wife, therefore it is violative of Article 21 of the Constitution i.e., freedom of personal liberty. In connection with this question the Court observed that this section is not violative of Article 21, because although this section does not contain provision for hearing of married women with whom the accused is alleged to have committed adultery but if she makes an application in the trial court that she should be given an opportunity of being heard, she would be given that opportunity. Neither substantive nor adjective criminal law prohibits the court from providing a hearing to a party, which is likely to be adversely affected by the decision of the court directly or indirectly.
Indian Constitution and Special Provisions for women - As aforesaid under Article 15 of the Indian Constitution the State is empowered to make special provisions for women and children. For instance making of special seating arrangement in trains or buses is in no way unconstitutional.

(1) Reservation of Seats for women in colleges - The Bombay High Court in Dettatreya v. State of Bombay, 155 has held that reservation of some seats in women’s colleges is not unconstitutional. The court observed that establishment of educational institution exclusively for women is not hit by Article 15 of the Constitution.

(2) U. P. Court of Wards Act, 1912; Proprietorship relating to property - In Ram Raj Rajeswani Devi v. The State of Uttar Pradesh, 156 wherein the issue related to 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 in managing his property only on one of the five grounds mentioned therein and that to after giving him an opportunity of showing cause as to why such a declaration should not be made, a female proprietor could be declared incapable to manage her property on any ground and without giving her any show cause notice. The Allahabad High Court held that this provision was bad because it

155 AIR 1953 Bomb. 311.
156 AIR 1954 All. 608.
amounts to discrimination on the basis of sex, which is violative of Article 15 (1) of the Constitution of India, 1950.

(3) Constitutional validity of Section 437 of the Code of Criminal Procedure, 1973 - The mandate of Section 437 of the Code of Criminal Procedure permits distinction in favour of women even if there appears to be a reasonable ground for believing that they have been guilty of an offence punishable with death or imprisonment for life.

In other words, this section prohibits release of a person accused of a capital offence on bail except women and children less than 16 years of age. In Choki v. State of Rajasthan,157 the Rajasthan High Court has held that it is valid on the ground that it makes special provision for women and therefore it is protected under Article 15 (3) of the Constitution.

(4) Granting licences for opening liquor shop - The Allahabad High Court in Smt. Savitri v. Bose,158 has held that Article 15 (1) of the Constitution protect women from being discriminated on the ground of sex. Accordingly, the decision of the excise authorities to prefer men over women in granting licences for opening of liquor shops was struck-down as coming within the prohibition of Article 15 (1). It was further held that such discrimination was not permitted under Article 15 (3) of the Constitution, which authorises the State to make special provisions for

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157 AIR 1971 Raj. 10.
158 AIR 1972 All 305
women as the special provision can give some advantage to women and can not be to their detriment.

(5) The Immoral Traffic (Prevention) Act, 1956 and the Indian Constitution - Article 23 of the Constitution provides the right against exploitation. This constitutional provision prohibits traffic in human beings. In this context traffic in human beings includes "devadasi system." The Apex Court in Vishal Jeet v. Union of India,159 observed that trafficking in human beings has been prevalent in India for a long time in the form of selling and purchasing of human beings for prostitution for a price just like that of vegetables. On the strength of Article 23 (1) of the Constitution, the legislature has passed the Immoral Traffic (Prevention) Act, 1956 which aims at abolishing the practice of prostitution and other forms of trafficking it, including devadesi system. The court further observed that this Act has been made in pursuance of the International Convention, which signed the declaration at New York (USA) on 9th May 1950 for the prevention of immortal traffic. In the view of the above statutory position and circumstances, the Apex Court upheld the validity of the said Act.

Thus on the strength of the Constitutional powers the state is permitted to enact special laws exclusively for women and children, even the State may make preferential statute to promote development of the women in every walk of life.

159 AIR 1990 SC 1412.
Reservation of seats for women in local bodies and in educational institutions cannot be taken to mean as to discrimination on ground of sex. The Supreme Court in T. Sudhakar Reddy v. Govt. of Andhra Pradesh,\textsuperscript{160} has upheld the constitutional validity of proviso to Section 316 (1) (a) of the Andhra Pradesh Co-operative Societies Act, 1964 and of the Rules 22 (c) and 22 A (3) (a) framed thereunder relying upon the mandate of Article 15 (3) of the Constitution read with the said rules providing for nomination of two women members by the Registrar of the managing committee of the cooperative societies with a right to vote and to participate in the Committees meeting. The Supreme Court upheld the validity of these provisos on the ground that Article 15 (3) of the Constitution permitted the making of special provisions 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

\textsuperscript{160} 1993 Supp. (4) SCC 439.
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.

Recently, the Parliament introduced the 81st Constitutional Amendment Bill seeking to reserve one-third of seats in Lok Sabha and State Assemblies for women, though; the Bill has been referred to a joint Committee of Parliament and is yet to be passed.

In view of aforesaid Constitutional provisions, it can be said that India has moved a big step forward in empowering the women to participate in the political process at the policy decision making level.

In employment the reservation of seats for women has been provided by incorporating amendments, changes in existing statutes and also by passing special rules. In fact it is the Constitutional obligation of the State to take statutory measures to bring women into the main stream by providing them service under the Government. On many occasions the validity of the statutes regarding reservation of seats for women in service under the State has been challenged before the courts, but in most of the cases, judgment has been pronounced in favour of the women. For
example In Union of India v. K. P. Prabhakaran, the Apex Court has upheld the decision of the Railway Administration to reserve the posts of enquiry-cum-reservation clerks in Reservation offices in metropolitan cities of Madras, Calcutta, Bombay and Delhi exclusively for women and also the policy regarding separate seniority panels for promotion of such clerks. The Apex Court before arriving at this conclusion relied upon the decision in Government of A. P. v. P. B. Vijay Kumar, where it was held that the power conferred upon the State by Article 15 (3) of the Constitution is wide enough to include the entire area of state activity covering employment under the State. In the above case, the Apex Court has held that the said decision of the Railway Administration is not unconstitutional and as such it is upheld.

But, in Mrs. Raghubans v. The State of Punjab, the Punjab and Haryana High Court has held that a Government order which declared women as ineligible, for the post of a warden in a men's jail is not violative of Article 15 (1) of the Constitution which does not permit discrimination on the ground of sex for the reason that if a woman was employed as a warden, her position would become worst and hazardous while ensuring and maintaining discipline over habitual offenders kept in the jail. This decision seems to be reasonable because it involved with the physical safety of women.

162 AIR 1995 SC 1648
163 AIR 1972 P & H 117
Scope of Article 15 (4) of the Constitution - The Apex Court in Dr. Preeti Srivastava v. The State of Madhya Pradesh explained the scope and ambit of Article 15 (4), which was added by the Constitution first Amendment of 1951. It enables, the State to make-special provisions for the advancement of women interalia, Scheduled castes and Scheduled tribes, notwithstanding Article 15 (1) and 23 (2). The working of Article 15 (4) is similar to that of Article 15 (3). Article 15 (3) was there from the very inception. It enables special provisions being made for women and children notwithstanding Article 15 (1), which imposes the mandate of non-discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective provision was extended by Article 15(4) to (among others) Scheduled cases and Scheduled Tribes. As a result of the combined operation of these Articles, the various states and Union Government have pursued an array of proammers of Compensatory or protective discrimination. Since every such policy makes a departure from the equality norm, though in a permissible manner for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society.

164 1999(7) Supreme 81.
Mother can act as a natural guardian during the lifetime of father - The Apex Court in Ms. Githa Hariharan v. Reserve Bank of India, held that the father couldn't claim that he alone was the natural guardian and his wife could take no decision without his permission. It was held that the mother of a minor was relegated to an inferior position on the ground of sex alone since her right, as a natural guardian is made cognizable after the father, which was violation of Articles 14 and 15 of the Constitution on that ground. Hence, the mother can act as a natural guardian of the minor during the lifetime of the father who would be deemed to be absent.

In the above case, the court observed that the expression "natural guardian" is defined in Section 4 (c) of the Hindu Minority and Guardianship Act, 1956 as any of the guardian mentioned in Section 6. The term 'guardian' is defined in Section 4 (b) of the Hindu Minority and Guardianship Act, 1956 as a person having the caste of the person of a minor or of his property or of both, his person and property and includes a natural guardian among others. Thus, it is seen that the definitions of 'guardian' and 'natural guardian' do not make any discrimination against the mother and she being one of the guardians mentioned in Section 6 of the Hindu Minority and Guardianship Act, 1956 would undoubtedly be a natural guardian as defined in Section 4 (c) of the said Act. The only provision to which exception is taken is found in Section 6 (a) of the Act which reads "the father, and after him the mother'. The phrase, on a cursory reading,

165 AIR 1999 SC 1149 : 1999 (2) SCC 228.
does give an impression that the mother can be considered to be the natural
guardian of the minor only after the lifetime of the father. In fact, that appears to
be the basis of the stand taken by the Reserve Bank of India also. It is not in
dispute and is otherwise well settled also that the welfare of the minor in the
widest sense is the paramount consideration and even during the lifetime of the
father, if necessary, he can be replaced by the mother or any other suitable
person by an order of the court, where to do so would be in the interest of the
welfare of the minor. Therefore, the Reserve Bank of India was not right in
denying the mother in agreement with the father opening from deposit account in
favour of her minor son. The father can not Claim that he alone was the natural
guardian and, thus, the wife can not take a decision without his prior permission.

(C) Directive Principles of State Policy and women

Under the Constitution of India, 1950 the Directive Principles of State
policy is the reflection of governance that India is a welfare democratic state. This
policy envisaged equal rights to work, equal pay for equal work, adequate means
of decent and dignified livelihood to both men and women, these are guaranteed
under the directive principles of state policy. Part IV of the Constitution containing
Articles 38, 39 (a) (d) and (e), 42, 44 and 45 deals with the welfare and
development of women.

According to Article 39 (a), the State should direct its policy towards
securing that the citizens, men and women equally have the right to an adequate means of livelihood. This Article provides equal right for all citizens, irrespective of sex, to adequate means of livelihood.

As per Article 39 (d) of the Constitution in the states that there should be equal pay for equal work for both men and women. Thus, the state is under Constitutional obligation to direct its policy towards securing that there is equal pay for equal work for both men and women.

(1) Principles of “equal work” is a Constitutional goal - The Apex Court in Randhir Singh v. Union of India,166 has expressed the opinion that the principle of “equal work is not declared in the Constitution to be a fundamental right but it is certainly a constitutional goal. Article 39 (d) of the Constitution declares that, State shall direct its policy towards securing that there is equal pay for equal work for both men and women. The Court further said that continuing Articles 14 and 16 in the light of preamble and Article 39 (d), the principal of equal pay for equal work is deducible from those Articles and may he properly applied to cases of unequal scales of pay based on no classification or irrational classification though, those drawing the different scales of pay do identical work under the same employer. In the present case the Supreme Court has held that the principle of ‘equal pay and equal work”, though not a fundamental right, is certainly a constitutional goal and therefore, capable of enforcement through constitutional remedies under Article 32 of the Constitution.

166 AIR 1982 SC 879.
The doctrine of 'equal pay for equal work' is equally applicable to both men and women; even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work.\textsuperscript{167} Similarly, in State of Haryana v. Rajpal Sharma,\textsuperscript{168} the Supreme Court has held that the teachers employed in privately managed aided schools in the State of Haryana are entitled to the same salary and dearness allowance as is paid to teachers employed in Government schools.

If the kind of work is not identical then it does not matter if men are paid more. But in case work is of the same type both men and women should be paid equally without any discrimination.

\textbf{(2) Men and Women Workers to be protected Equally} - According to Article 39 (e) of the Constitution deals with the health and strength of workers i.e., men and women and that of the children of under age to be protected equally. They should not be forced to work under inhuman and hazardous condition. In view of this Article the State shall direct its policy towards enduring the health and strength of workers (men and women) and that the underage children are not forced by economic necessity to enter a vocation unsuited to their age and strength.

\textbf{(3) Equal justice and free legal aid} - Article 39-A of the Constitution provides

\textsuperscript{167} Daily Rated Casual Labour v. Union of India (1988) 1 SCC 122.

\textsuperscript{168} AIR 1997 SC 449
equal justice and free legal aid. The state shall ensure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid by appropriate legislation or schemes or in any other way to ensure the existence of opportunities for securing justice.

On several occasions it has been held by the Apex Court that legal aid and speedy trial have now been treated as fundamental rights under Article 21 of the Constitution available to all prisoners and enforceable by the courts. The State is under a duty to provide a lawyer to a poor person and it must pay to the lawyer his fee as fixed by the court.169

(4) Uniform Civil Code and Gender Justice, Equality - Article 44 of the Constitution requires that state shall endeavour to secure for the citizen a Uniform Civil Code throughout the territory of India. But women still experience inequalities and injustice. The founding fathers of the Constitution were aware of the gender injustice and sexual inequality of women and therefore, they incorporated Article 44 of the Constitution with the aim that it may be exercised in future at appropriate time. It is really unfortunate that even after 50 years of independence the State did not find it necessary to make any serious endeavours to fulfill this constitutional obligation.

In a landmark judgment in Sarla Mudgal V. Union of India,\textsuperscript{170} the Apex Court has passed direction to the Central Government to take a fresh look at Article 44 of the Constitution which enjoins the State to secure a uniform Civil Code which, according to the Court is imperative for both protection of the oppressed and promotion of national unity and integrity. The above direction was given by the Court while dealing with the case where the question for consideration was whether a Hindu Husband (later converted to Islam) can solemnize a second marriage, without dissolving the first marriage under Hindu law. It has been held by the Apex Court that such a marriage will be illegal and the husband can be prosecuted for bigamy under Section 494 of the Indian Penal Code, 1860. In the present case the Court further held that a Hindu marriage continues to exist even after one of the spouse converts to Islam. There is no automatic dissolution of Hindu marriage. It can only be dissolved by a decree of divorce on any of the ground mentioned in Section 13 of the Hindu Marriage Act, 1955. Accordingly, the second marriage of a Hindu after his conversion to Islam was void in terms of Section 494, IPC and the husband was liable to be prosecuted for bigamy.

As to the question regarding Uniform Civil Code, the division bench (Justice Kuldip Singh and Justice R. M. Sahani), in their concurrent but separate judgments in the aforesaid case observed that since 1950 a number of governments have come and gone but they have failed to make any serious effort towards implementing the Constitutional Commitment made under Article

\textsuperscript{170} (1995) 3 SCC 635
44 of the Constitution. Resultantly, the problem today is that many Hindus have changed their religion and have converted to Islam only for the purpose of escaping the consequence of bigamy. This is so because Muslim Law permits more than one wife to the extent of four. Justice Kuldip Singh said that Article 44 of the Constitution is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Marriage, succession and like matters are of a secular nature and therefore they can be regulated by law. No religion permits deliberate distortions. Much apprehension prevails about bigamy in Islam itself. Islamic Countries such as Tunisia, Morocco, Iran, Pakistan, Syria and several other Islamic Countries have codified their personal law to prevent its abuse. Even in America it has been judicially acclaimed that the practice of polygamy is injurious to public morals even though some religion may make it obligatory or desirable for its followers. The said Honourable Judge further said that this abuse of polygamy can be regulated by the State just by prohibiting human sacrifice or the practice of 'Sati in the interest of public order.

The full Bench of the Bombay High Court in Pragati Varghese v. Cyril George Varghese\textsuperscript{171} has ordered deletion of Section 10 of the Indian Divorce Act under which a Christian wife had to prove adultery along with cruelty or desertion while seeking a divorce on the ground that it infringes the fundamental right of a Christian Woman to live with human dignity as provided under Article 21 of the Constitution. In the present case the court observed that Section 10 of the Indian

\textsuperscript{171} AIR 1997 Bom 349
Divorce Act compels the wife to continue to live with a man who has deserted her or treated her with cruelty. Such a life of a woman is inhuman.

Whether the children of Muslim divorced woman are entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973 inspite of the legal position that they are governed by the Muslim personal Law i.e., Muslim Women (Protection of Right on Divorce) Act, 1986. In Noorsabakhatoon v. Mohd. Quasim\textsuperscript{172} the Apex Court has held that a divorced Muslim woman is entitled to claim maintenance for her children till they become major. The court further held that both under the Muslim Personal Law and under Section 125 of the Code of Criminal Procedure, 1973 the obligation of the father was absolute when the children were living with the divorced wife. The Court makes it clear that the children of Muslim parents are entitled to claim maintenance under Section 125 of the Code of Criminal Procedure 1973 for the priced till they obtain majority or are able to maintain themselves, whichever is earlier and in case of female, till they get married.

In the aforesaid case the Supreme Court said

“\textit{We have opted for a secular, republic and secularism under the law means that the State does not owe loyalty to any particular religion and there is no state religion. The Constitution gives equal freedom to all religion and every one has the freedom

\textsuperscript{172} AIR 1997 SC 3280

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to follow and propagate his own religion. But, the religion of individual has nothing to do with the socioeconomic laws of the State."

The freedom of religion under the Indian Constitution does not permit religion to violate adversely on the secular rights of the citizens and the power of the State to regulate the socioeconomic violation.

In view of the above said judgment the Apex Court, now it is the constitutional duty of the Government to make the uniform civil code to remove inequality and oppression of women folk especially in matrimonial matters. The concept of religion can not he allowed to be used as a tool to abuse and exploit women. Thus, the need of uniform civil code is most warranted to achieve constitutional mandate as enshrined under Article 44 of the Constitution.

It is unfortunate to mention that the State has not yet made any efforts to introduce uniform civil code in India, the Judiciary has recognized the necessity of the uniform application of civil laws like adoption, marriage, succession and maintenance etc. \(^{173}\)

No gender justice can be achieved in its true and full sense, unless a uniform civil code containing the best provisions taken from all the religions is enacted. The

\(^{173}\) See, Sarda M Merdge v. UOI, AIR 1999 SC 1531 ; (1995)3 SCC 635.
concept of Uniform Civil Code does not mean adjusting the law to unreasonable and impracticable extent. In fact, the concept of Uniform Civil Code connotes basic uniformity on the question of marriage, maintenance and divorce. A systematic and orderly combination of all religions should be the substratum of the Uniform Civil Code.

In India the Supreme Court has taken note of injustice faced by the women particularly in matters of personal laws. In Mohd. Ahmed Khan v. Shah Bano Begum the Supreme Court observed in the matter relating to the Muslim husbands liability to maintain his wife beyond “Iddat”, who is not able to maintain herself. The court held that Section 125 of the Code of Criminal Procedure, 1973, which imposes such legal obligation on all the husbands, is secular in character and is applicable to all religions. In this case the Supreme Court emphasised the need for codifying a common civil code and said:

"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"

174 AIR 1985 SC 1945
It is unfortunate to note that there is no Uniform Civil Code in India, however, there is a Uniform Criminal Code, which is very much in existence. Consequently, the criminal law is applicable to all citizens irrespective of the fact as to what religion they belong. There is no uniformity in Civil Laws pertaining to divorce, maintenance, marriage, adoption and succession governing the Hindus, Muslims, Christians and Parsis etc. There are different laws like the Hindu Marriage Act, 1955, the Hindu Minority and Guardianship Act, 1956, the Hindu Succession Act, 1956, the Hindu Adoption and Maintenance Act, 1956 governing the personal matters of Hindus. Whereas Muslims are governed by their personal laws like the Shariat Act, the Dissolution of Muslim Marriage Act and the Muslim Women (Protection of Rights on Divorce) Act etc. Similarly, the Christians in India are governed by the Indian Christian Marriage Act, the Indian Divorce Act and Cochin Christian Succession Act etc. Parsis are governed by a different set of their personal laws. Thus, it can be said that there is no uniformity in these personal laws based on different religions.

Article 44 of the Constitution of India, in its Part IV directs the State to make a Uniform Civil Code throughout the territory of India. Since, this Constitutional provision falls under the chapter namely, “Directive Principles of State Policy,” it cannot be enforced by the court of law.
No gender justice or gender equality can be achieved in its true sense, without making a Uniform Civil Code containing the provisions derived from all the religions, is enacted immediately.

(5) Conversion-Right as to Plurality of Marriage is not conferred on husband. - It is settled legal position that no right is conferred on the husband regarding plurality of marriages without any condition. In Lili Thomas etc v. Union of India,\textsuperscript{175} wherein a Hindu converted to Muslim and got second marriage solemnized, held that it will not dissolve the first marriage and his second marriage will be bigamous. In this case the Supreme Court observed that mere conversion does not bring to amend the marital ties unless a decree for divorce is obtained from the court. Marriage subsists till a decree is passed. Any other marriage during the subsistence of first marriage would constitute an offence under Section 494 of the Indian Penal Code, 1860 read with Section 17 of the Hindu Marriage Act, 1955 and the person, in spite of his conversion to some other religion, would be liable to be prosecuted for the offence of bigamy. It also follows that if the first marriage was solemnised under the Hindu Marriage Act, 1955 the “husband” or the “wife” by mere conversion to another religion, cannot bring to amend the marital ties already established on account of a valid marriage having been performed between them. So long as that marriage subsists, another marriage can not be performed, not even under any other personal law; and on such marriage being performed the person would be liable.

\textsuperscript{175} AIR 2000 SC 1650: 2000 (6) SCC 224
to be prosecuted for the offence under Section 494 of the Indian Penal Code, 1860.

(6) Protection of women from prostitution and rehabilitation of their children - In a significant judgment in Gaurav Jain v. Union of India the petitioner, a public spirited advocate, filed a public interest petition seeking appropriate directions to the Government for the improvement of the plight of prostitutes, fallen women and their children. The Supreme Court has issued a number of directions to the government and all social organisations to take appropriate measures for prevention of women in various forms of prostitution and to rescue them from falling them again into the trap of red light areas and to rehabilitate their children through various welfare measures so as to provide them with dignity of person, means of livelihood and socio-economic improvement. The Court has issued the following directions:

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

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

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

(iv) The Court directed that the rescue and rehabilitation of the child prostitutes and children should be kept under nodal department, namely, Department of Women and Child Development under the Ministry of Welfare and Human Resources, Government of India, which will, devise suitable schemes for proper and effective implementation. The Court directed the Ministry of Welfare, Government of India for the establishment of juvenile homes.

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

The Court held that under Article 32 of the Constitution the Court has power to adopt such procedure as is expedient in a given fact and situation and deal with the matter appropriately therefore, the rigours of the pleading or the reliefs sought for on adversial litigation has been soften, new methods, tools and procedures have been evolved to meet out justice and to enforce fundamental right.
(7) PIL regarding eradication of prostitution - Wherein the Public Interest Litigation filed on the existing affairs of prostitution. The judges have been differing on the opinion of issuing direction for eradication of prostitution. Since they differed in their opinion, Judges were not justified in issuing directions in exercise of powers under Article 142 of the Constitution. It was held that the proper course was to refer the matter before the Chief Justice of India for placing the question before larger bench of the Court. 177

With a view to convert the equality of women from de jure to de facto, educating the female would play an important role. So long as there is disparity between the male and female in education level, the difference between the position of men and women would continue to exist. It is unfortunately true that a woman has, even in her own home given a rather subordinate role to play.

For the emancipation for women in every field, economic independence is of paramount importance. Along with economic independence, equal emphasis must also to be laid on the total development of women—creating awareness among them about their rights and responsibilities—the recognition of their vital role and the work they do at home. If necessary, a social system must evolve and the society must respond and change its attitude.

177 Gaurav Jain and Supreme Court Bar Association V/s Union of India, 1998 (3) Supreme 350: 1998 (2) JT 700
It is imperative that our girls leaving high or higher secondary school should have access to legal education awareness programmes. Our laws will continue to support their male biases until enough women opt for law based on their experience of being female and treated as subordinates, since injustice internalised cannot be experienced vicariously. It will have to be women who enter the mainstream concerns of the law, as both the products of and the changers of the inequalities of our laws. We need many more women lawyers and judges now and for the future. The catchment area for this is to be found in educational institutions all over the country.

**Widow’s Rights - How To Implement Them**

A widow was not allowed to marry again unless it was sanctioned by local or custom, but in any case even if permitted it entailed the forfeiture or divesting of the widow’s estate in most cases. As there was settled rule of Hindu law that chastity was a condition precedent for a widow to inherit her husband’s estate unless this had bee condoned earlier by the husband.

Remarriage of widows was legalised in all cases by the Hindu Widows Remarriage Act, 1856. But the Act provided that all rights and interest with a widow had in her deceased husband’s estate would "cases and determine" on her remarriage, as if she had died. This Act of 1856 was later repealed. She could however succeed to the estate of her son or daughter by her first marriage that died after her second marriage.
However, the Hindu women's right to property Act, 1937 gave better right to Hindu women in respect of property, but gave a limited estate which is held by her only during her life time and then reverts to her husband's heirs. But in view of the limited right becoming an absolute right by virtue of the Hindu succession Act, 1956, the question of divesting the property on remarriage does not arise. Under section 14 (1) if the Act the widow's limited interest gets automatically converted into an absolute right.

It is now judicially settled that once a widow has succeeded to the property and acquired an absolute right under the Hindu Succession Act, 1956 she cannot be divested of the right of remarriage. In order to understand the law relating to widows' property rights, we need appreciate that inheritance and property right are governed by the personal law of the religious communities and differ from area to area even among communities and castes.

**Property Rights of Hindu Woman**

Among Hindus there are two kinds of property (1) self acquired and (ii) ancestral property. In India there are two major school of Hindu law governing ancestral property, the Dayabhaya and Mitakshara. The Dayabhaya law prevails in eastern India such as Bengal and other adjoining areas whereas in most of northern India and parts of Western India it is the Mitakshara law that prevails. In certain parts of western India the Mayukha school is prevalent whereas in some
parts of southern India the Marumakkatayam, Aliyasantama and the Nambudri laws prevail.

In Dayabhaya system person held the property as tenants in common. When the father died the property was divided between the heirs and they could hold it together if they wanted but their shares were defined. Whereas under the Mitakshara systems a male member of the joint family had an interest by birth in the ancestral property. A man could ask for partition of his ancestral property but if he did not, when he died, his interest in the ancestral property was diverted to all male members of the coparcenary.

Women were not coparceneres and did not have any interest by birth in the ancestral property. The law commission of India in its 174th report has recommended that daughter also be made coparceners. They were only entitled to maintenance i.e. expenses or food, shelter, clothing, education and marriage.

However, if partition took place between the male members then mother and wives were entitled to limited interest basically for the purposes of maintenance and on their death the share reverted to the husband or son's heirs. She was not entitled to sell, mortgage or will away that property.

The Hindu succession Act, 1956 brought about some changes. The most important changes were (a) to give equal rights to sons and daughters in their father and mother's property and (b) abolish the concept of a widow's estate,
which gave her only a limited life estate. But it did not do away with the concept of coparcenary nor did it give the daughter a right by birth in ancestral property.

However, a Hindu male is entitled to will away his interest in the ancestral property. If he died without making a will his share would be divided among his heirs. His four primary heirs being his sons, daughters, widow and mother; the others are derivative heirs, i.e. children of pre-deceased son or pre-deceased daughter, widowed daughter-in-law and children of pre-deceased grandson and his widow. With respect to his self acquired property a Hindu male was entitled to will it away before the Hindu succession Act, 1956. By virtue of section 14 (1) of the Hindu succession Act, 1956 women become absolute owners of the property they inherited. They could sell it, gift it, mortgage it, waste it. After a women's death her property would be divided amongst her heirs. A female's heirs were different to a male's heirs.

In the first class they were sons, daughters and husbands. The Supreme Court in Raghbir Singh & Others V. Gulab Singh & Others178, held that a right to maintenance of Hindu female flows from the social and temporal relationship between the husband and wife and that right in the case of widow is pre-existing right which existed under the shastric Hindu law even before the passing of Hindu Married women's Right to separate Residence and Maintenance Act, 1946. These Acts only recognized the position as existed under the shastric Hindu Law and gave it a "statutory backing".

178 AIR (1998) SC 2401
Thus if a Hindu widow was in possession of the property of her husband, she has a right to be maintained out of it and is entitled to retain the possession of that property in lieu of her right to maintenance.

The Supreme court followed the earlier case of V. Tulasamma V. Sesha Reddy\textsuperscript{179} also Ram Kali V. Choudhri Ajit Shankar\textsuperscript{180}, and held that by force of section 14(1) of Hindu succession Act, 1956 the widow held the property absolutely notwithstanding any restriction placed under the document or instrument. Whereas section 14(2) has effects of its own and applies to instruments, decrees, awards, gifts etc. which create an independent or new title in favour of the female heirs for the first time. It has no application to cases where the instrument/document either declares or recognizes or confirms her share in property or her "pre-existing right to maintenance" out of that property.

**Property Rights of Muslim Women**

In practice, both among Muslims and Hindus the widow's place of residence is crucial to the exercise of her right. A widow will get her share of the property as long she lives in her marital home but not if she remarries. This is despite the fact that Islam permits widow re-marriage, but somehow it was not considered "respectful" to take up this option.

A Muslim widow clearly had inheritance right in her parental home as a daughter but in practice as among Hindu daughters, was not given anything. If a

\textsuperscript{179} (1977) 3 SCC 99
\textsuperscript{180} (1997) 9 SCC 613
Muslim women insisted on taking her share she would no longer be welcomed in her parental home.

It is important to see how widows regard themselves with respect to property and what at their social perceptions and how aware are they of the law. People take recourse to statutory law only when there is dispute, but normally widows do not like raising disputes and want to live in harmony especially as they feel socially dependent. They like to practice what is in keeping with the societal community norms. They feel that a widow's rightful home is with her husband's family and all her rights as in her marital home and she does not want to assert the rights as a daughter in her father's home for fear of spoiling the relationship.

Often widows are willing to forfeit their property rights in favour of their adult sons they perceive will look after them. But a widow with minor son claims the rights in her husband's property and widow with daughters, with some difficulty, manages to claim her rights in her husband's lands, but a childless widow finds it very difficult to do so because the community does not perceive it as her social rights.

Thus, though in principle, the widow has the right and she is aware of the rights, in practice her rights have become limited and restricted either because her father-in-law refuses to give her a share of the property or her brother-in-law refuses to give her a share of the property or her brother-in-law decide to act tough or because her adult sons will not allow her a share.
This is basically based on the old conception that widows were given property rights to enable them to maintain their sons and that is why she was originally given only limited usufructuary rights, to use the property while her son was a minor. But even women who know the present law and know that they have rights are not willing to go and meet the officials or to go to the court to assert their rights. If their share is not given to them in their father's home voluntarily, they do not want to go to court for this purpose and relinquish their rights easily.

Position of Young Widow in Society

With regard to remarriage the perception of widows is that unmarried men do not like to marry a widow and widower can easily get an unmarried girl as second or third wife. However, a childless widow is preferred for remarriage to one with children. The family pension, which is being given to the widow of army personnel, is discontinued on her remarriage. This appears to be rather unfair. A similar unfairness is there in the case of an army person who remarries after retirement. It is said that on his death the widow does not get the family pension. The explanation given being that she was not his wife when he was in service. If such rules have been indicated exist in the army then it is necessary to lobby and ensure that they are changed because a widow's right to her pension should not be snatched away if she exercises her right to marry.
It is necessary to build social awareness and to change the mind of people toward widows. It is necessary to educate girl so that they can be independent and fend for themselves and fight for their own rights.

One of the biggest traumas a widow faces after the death of her husband is the whole question of support or shelter - how and where can she live. If she is living with her in laws, she is normally thrown out or life is made so difficult for her that it becomes impossible for her to remain there. If she is living in accommodation provided by the employer of her husband then that has to be vacated and she has to find a roof over her head.

She may or may not be welcome in her parental home and is at mercy of relatives and others. It is thus essential that some thought is given to this aspect and some sort of shelter is organised during the lifetime of her husband. If joint family land has been partitioned then it should be registered in the name of the husband and wife so that after his death she can continue to look after the fields and support herself and her children.

**Special Weightage To Daughters' Rights**

Though the Indian civilisation has a history of much stronger safeguards for women's rights, in the last few centuries, especially after our colonial rulers imposed their own norms of property ownership, women's rights suffered serious
erosion among all communities, including those that followed matrilineal forms of property ownership.

Today the culture of son-preference in our society has assumed such vicious forms that in order to make inheritance laws more gender-just, we will have to give special weightage to daughters' rights. Any will or legal testament through which a parent disinherits his daughters should be deemed invalid. The “freedom” to disinherit daughters must be curbed, as it has proved very lethal for women. But more powerful groups cannot view women's property rights in isolation, if they belong to communities who are facing aggressive onslaughts.

The legal reforms so far have not been adequate to give all Indian women a right to property on the same terms as men. It varies with religion. Even where law has given a right, conventions and practices do not recognize them. Women themselves relinquish their rights. Women, as daughters, wives, daughters-in-law, mothers or sisters tend to lose out and often suffer deprivation.

This gets accentuated when they lose the security of the family, as single women, divorced/separated or widowed. Social awareness of the rights under law, attitudes to adhere to it and a mindset to change law and practice to ensure social justice is therefore urgent.

**Compulsory Registration of Marriage**

A social reform movement is necessary for such awareness and change of mindset. Since ‘marriage’ is the most traditional institution of initiating a family
and preserving it, let registration of marriages be made compulsory (Which Government of India agrees in principle) and recognize the decentralized units of Governance down to the Village Panchayats to take up this task.

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 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"\(^{181}\)

\(^{181}\) The Convention on the Elimination of All forms of discrimination Against Women.
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 of Andhra Pradesh, 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.

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. 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 life time 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. Therefore, registration must be made compulsory to deal with the offence of bigamy effectively. Since the culprits go scot-free due to lack of evidence of marriage.

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\(^\text{182}\).

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

\(^{182}\text{Census 2001}\)
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 Hindu Marriage Act, 1955 enables the State Government to make rules with regard to the registration of marriages. Under Sub-section (2) of Section 8 if the State Government is of the opinion that such registration should be compulsory it can so provide. In that event, the person contravening any rule made in this regard shall be punishable with fine. Except four statutes applicable
to States of Maharashtra, Gujarat, Karnataka, Himachal Pradesh and Andhra Pradesh registration of marriages is not compulsory in any of the other States.

In a recent landmark judgment pronounced by the Hon'ble Supreme Court in Smt Seema V/s Ashwani Kumar [2006 SCCL. Com 90], it was stated that:

"In the affidavit filed on behalf of the National Commission for Women (in short the 'National Commission') it has been indicated as follows:

That the Commission is of the opinion that non-registration of marriages affects the most and hence has since its inception supported the proposal for legislation on compulsory registration of marriages. Such a law would be of critical importance to various women related issues such as:

(a) prevention of child marriages and to ensure minimum age of marriage.

(b) prevention of marriages without the consent of the parties.

(c) Check illegal bigamy/polygamy.
(d) Enabling married women to claim their right to live in the matrimonial house, maintenance, etc.

(e) Enabling widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husband.

(f) Deterring men from deserting women after marriage.

(g) Deterring parents/guardians from selling daughters/young girls to any person including a foreigner, under the garb of marriage."

"As is evident from narration of facts though most of the States have framed rules regarding registration of marriages, registration of marriage is not compulsory in several States. If the record of marriage is kept, to a large extent, the dispute concerning solemnization of marriages between two persons is avoided. As rightly contended by the National Commission, in most cases non registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable
presumption of the marriage having taken place. Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. That being so, it would be in the interest of the society if marriages are made compulsorily registrable. The legislative intent in enacting Section 8 of the Hindu Act is apparent from the use of the expression for the purpose of facilitating the proof of Hindu Marriages.

As a natural consequence, the effect of non-registration would be that the presumption which is available from registration of marriages would be denied to a person whose marriage is not registered. Accordingly, we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized.
Accordingly, we direct the States and the Central Government to take the following steps:

(i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing Rules, if any, or by framing new Rules. However, objections from members of the public shall be invited before bringing the said Rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the States shall issue appropriate notification bringing the Rules into force.

(ii) The officer appointed under the said Rules of the States shall be duly authorized to register the marriages. The age, marital status (unmarried, divorsee) shall be clearly stated. The consequence of non-registration of marriages or for filing false declaration shall also be provided for in the said Rules. Needless to add that the object of the said Rules shall be to carry out the directions of this Court.
(iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny.

(iv) Learned counsel for various States and Union Territories shall ensure that the directions given herein are carried out immediately.

Women Reservation Bill

The issue of women's reservation in legislative body is being debated in the country for many years. However, in the absence of any decision in the matter, women's representation in legislative bodies has remained very low - from zero to around 10 per cent. The positive experience and outcome of women's reservation in Panchayati Raj Institutions and municipal bodies is already before the Nation. Therefore, the basic purpose of the Women's Reservation Bill, which seeks to significantly increase the level of women's representation in Parliament and State Legislatures, should be realized without any further delay.

Women's Reservation Bill - A Social Necessity, National Obligation
The bill, which espouses the cause of women empowerment and egalitarianism by guaranteeing them with 33% reservation in the parliament, again drew battle lines between the parties and women's organizations. It's time this mockery stopped, considering the fact that how vociferously the political Left parties have proclaimed to make the bill a 'law'. If this proposal is accepted, women would get a massive ticket representation in the coming elections in several States and it would be the party bigwigs who would go looking for good and effective women candidates instead of the other way round.

Women represent 50% of the population, contribute to 2/3rd of the working hours and earn 1/10th of the world's income.\(^\text{183}\) This bill is not a bounty but an honest recognition of their contribution to nation building. In a situation where tickets are distributed on merit, there is little doubt that women would pose a serious challenge to the entrenched patriarchal political order. Indeed, this is why women aspirants do not make it to the first stage in the electoral process, getting party tickets. And even if women candidates have been thrown up, this only went on to further perpetuate the patriarchal system via tokenism of rubber-stamping a few women legislators, thus creating the deplorable "bibi brigade". As in case of other reservations, seats have been reserved for women on the bulwark of class and caste status, thereby leading to gaping social schisms and defying of the very hustings of democracy.

For every woman who has been seen as a proxy for a powerful male politician, there has been another who has quietly asserted herself and ushered in phenomenal social changes—from education to health care to women's rights.

\(^{183}\) Census 2001
For these perfectly capable women, a seat in legislature is a right and not a sop. But there is no way they can enter this rarefied space. As powerful catalysts of social change they can end this deliberate exclusion by coalescing to form their own political party on the agenda of women empowerment. There will be no need for reservation then.

All citizens should come forward to put an end to the dastardly social phenomenon of female foeticide. And to pay special attention to the education of the girl child and take special care to ensure protection of women against domestic and social violence.

The time has come for us to give due place in our society including our political institutions, our economic processes and in every walk of life, to our mothers, sisters and daughters. To those who make our homes; nurture our children, shape and mould the citizens of India of tomorrow.

No nation can stand proud if it discriminates against any of its citizens. Certainly no society can claim to be a part of the modern civilized world unless it treats its women on par with men. The time for genuine and full empowerment of our women is here and now. This is an idea whose time has truly come, but whose realisation we must all now work to ensure and to make this happen.

We in our country must never forget our own proud legacy in this regard. No democratic revolution had ever before given women equality of status as our leaders did during our own freedom movement. Even the French Revolution did
not give equality or fraternity or true liberty to the French women. Against this backdrop of history, India's freedom struggle made a historic and heroic departure by upholding women's rights. Large-scale participation of women became the defining feature of our struggle for our independence. Out of that came the recognition that our men must play their due role in all processes of governance.

Our Constitution was based on the idea of gender equality and the necessity to empower women. When it was found that in actual practice this was not getting reflected, the political leaders and others took specific steps to promote gender equality and women's empowerment.

Every five years, a million women are being elected to the Panchayats of our country. This large-scale mobilization of women in the public life of our country is an unprecedented event. It is the most important political intervention aimed at the empowerment of women anywhere in the world.

The time has now come for us to move ahead on this path. We should work towards the political, legal, educational, and economic empowerment of women as one of our top most priorities. It is considered the empowerment of women as one of the key principles of good governance.

A bill on protection of women from domestic violence has been passed and changes have been made in the Criminal Procedure Code and the Hindu Succession Act to empower women.
Therefore, the empowerment of women must begin at the very beginning itself, even before birth. The unacceptable crime of female foeticide, being encouraged by the widespread misuse of modern technology and its mindless commercial exploitation must be stopped. This dastardly social phenomenon must be socially boycotted and legally punished. The citizens must come forward to put an end to this misuse of medical technology. The hazardous effect of this practice is already there for us to see in some of our most developed states like Punjab, Haryana, Gujarat, Maharashtra and Delhi. This is creating a gender imbalance in our population that is harmful to our Nation and society. We must therefore try to restore balance by protecting the life of the girl child from conception, by investing in the nourishment and education of the girl child and in the empowerment of women by taking care of their education and health.

The equitable representation of women in the highest decision making bodies of our country is also urgently required. Therefore serious efforts should be made to build broad-based consensus on the issue of reserving 33% seats in Parliament and State Legislatures for women. The experience with such reservation at the panchayat level has been very encouraging, even if not uniformly successful across the country. A new army of a million empowered women has come forward to participate in governance at the community level. The time has come for us to scale this experiment up to the national level and the very centre of our legislative process that is represented by our Parliament. Therefore, it is suggested to
The education of the girl child should be made free not from 6 to 14 years of age but for higher education also.

She should be made economically capable by giving equal rights in property.

Reservation; there should be reservation for girl child in all educational institutions including non-government aided educational also and there should be reservation for women in employment.

Increase awareness of laws through educational institutions, general awareness and legal awareness programmes.

Sensitize Judiciary, administrators and legislators about implementation of laws in letter and spirit.

Consider long pending recommendations for amendments of legal provisions on inheritance.

Introduce compulsory registration of marriages and strengthen the administrative machinery for the purpose.

India's quest for freedom and dignity or a life of dignity and self respect for all our citizens can never become a living reality unless women are equal partners in all processes of development and governance. We should be committed to making that happen.

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