Chapter 2

PROTECTIVE LAWS FOR THE BENEFIT OF WOMEN
- NATIONAL AND INTERNATIONAL PERSPECTIVE
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WOMEN – NATIONAL AND INTERNATIONAL PERSPECTIVE

2.1. National Perspective

The Preamble, Fundamental Rights, Fundamental Duties and Directive Principles in the Constitution of India provides for the concept of equality among different sexes. This is the Constitution, which gives the power to the State, so that it may discriminate positively in favour of women.\(^\text{12}\) As our country is a democratic country, so the statutes, policies, projects of the government are to be made for the empowerment of women in different aspects.\(^\text{13}\) India is following several conventions, held at international level, and many human rights instruments, which encourage equal rights for women. Law of the land has many provisions in favour of women.\(^\text{14}\) Some are as follows:-

(i) Constitution of India:
   Article 14, 15 (j), 15 (3), 16 (2), 23 (1), 39 (a), 39 (d), 39 (e), 42, 46, 47, 51-A (e),
   243-D (3), 243-D (4), 243-T (3), 243-T (4); and 73\(^{\text{rd}}\) and 84\(^{\text{th}}\) Amendment.
(ii) Indian Penal Code, 1860:
   Section 292 to 294, 304-B, 312 to 318, 354, 354A to 354-D, 366, 366-A, 376, 376A to
   376E, 494, 497, 498-A and 509.
(iii) Criminal Procedure Code, 1973:
   Section 125
(iv) Indian Evidence Act, 1872:
   Section 113-A, 113-B and 114-A
(v) Hindu Adoption and Maintenance Act, 1956:
   Section 18 and 19
(vi) Hindu Succession Act, 1956

\(^\text{12}\) The Gender of Constitutional Jurisprudence, Baines Baverley and Rubio Marin Rath
\(^\text{13}\) Women and Law in India, Nomita Aggarwal
\(^\text{14}\) Law Relating to Offences Against Women, V. K. Dewan
(vii) Hindu Marriage Act, 1955:
   Section 13, 13-B and 24-26
(viii) Special Marriage Act, 1954
(ix) Foreign Marriage Act, 1969
(x) Child Marriage Restraint Act, 1929
(xi) Family Courts Act, 1984
(xii) Guardians and Wards Act, 1860
(xiii) Dowry Prohibition Act, 1961
(xiv) Protection of Women from Domestic Violence Act, 2005
(xv) Indian Divorce Act, 1869
(xvi) Parsi Marriage and Divorce Act, 1936
(xvii) Indian Christian Marriage Act, 1872
(xviii) Muslim Personal Law (Shariat) Application Act, 1937
(xix) Dissolution of Muslim Marriages Act, 1939
(xx) Muslim Women (Protection of Rights on Divorce) Act, 1986
(xxi) Commission of Sati (Prevention) Act, 1987
(xii) Factories Act, 1948
(xiii) Minimum Wages Act, 1948
(xxiv) Equal Remuneration Act, 1976
(xxv) Mines Act, 1952
(xxvi) Employees State Insurance Act, 1948
(xxvii) Plantation Labour Act, 1951
(xxviii) Bonded Labour System (Abolition) Act, 1976
(xxix) Legal Practitioners (Women) Act, 1923
(xxx) Maternity Benefit Act, 1961
(XXXI) Medical Termination of Pregnancy Act, 1971
(XXXII) Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection)
   Act, 1994
(XXXIII) Immoral Traffic (Prevention) Act, 1956
(XXXIV) Indecent Representation of Women (Prohibition) Act, 1986
(XXXV) National Commission for Women Act, 1990
Many other laws are also there, which are for the women empowerment and there is a need to analyse them in respect to men.

2.1.1. Special rights for women, violating the fundamental rights of men

The principle of gender equality is mentioned in the Constitution of India. The preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy has the mark of this principle. The Constitution provides equality to women, along with the powers to the State to use the modes of positive discrimination in favour of women. As we have rule of democracy in our country, our laws, development policies, plans and programmes have the object to promote the advancement of women in different spheres. India has also ratified different conventions at international level and documents relating to human rights, which are targeted to secure equal rights of women. The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) is the most important convention, which was ratified by India in 1993.

2.1.1.1. Articles in the Constitution of India:

The Constitution of India provides equality to women. It also provides the powers to the State to use the modes of positive discrimination in favour of women. The states have such power so that they can neutralize the economic, social, educational and political disadvantages faced by women in various fields. Fundamental rights ensure that all persons are equal before the law and all have equal protection of law; no citizen will be discriminated on grounds of religion,

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15 The Constitution: What it means to the People, Kuppuswami Alladi

16 Introduction to the Study of the Law of the Constitution, A. V. Dicey
race, caste, sex or place of birth, and all citizens will have equal opportunity in matters relating to employment. Articles 14, 15 (j), 15 (3), 16 (2), 23 (1), 39 (a) to 39 (d), 39 (e), 42, 46, 47, 51-A (e), 243-D (3), 243-D (4), 243-T (3), 243-T (4); and 73rd and 84th Amendment of the Constitution are of specific importance in this regard.

 Constitutional Privileges:

(i) **Article 14:**
Women are equal before law.

(ii) **Article 15 (i):**
The State will not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(iii) **Article 15 (3):**
The State will have to make any special provision in favour of women and children.

(iv) **Article 16:**
All citizens will have equality of opportunity in matters relating to employment or appointment to any office under the State.

(v) **Article 39 (a) and (d):**
The State to direct its policy towards securing the right to an adequate means of livelihood equally for men and women; and both men and women will have equal pay for equal work.

(vi) **Article 39 A:**
The State to promote justice, on a basis of equal opportunity and to provide free legal aid by proper legislation or any scheme or in any other

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17 The Constitution of India, J. N. Pandey
way to ensure that no citizen by reason of economic or other disabilities will be denied of the opportunities for securing justice.

(vii) **Article 42:**
The State to make law for securing just and humane conditions of work and for maternity relief.

(viii) **Article 46:**
The State to promote the educational and economic interests of the weaker sections of the people with special care and also to protect them from exploitation and all forms of social injustice.

(ix) **Article 47:**
The State to raise the standard of living and the level of nutrition of its people.

(x) **Article 51 (A) (e):**
To promote the spirit of common brotherhood and harmony amongst all the people of India and to left the practices not beneficial to the dignity of women.

(xi) **Article 243 D (3):**
According to this Article, “One-third (including the number of seats reserved for the Scheduled Castes and the Scheduled Tribes women) of the total number of seats, to be filled by direct election in every Panchayat, shall be reserved for women and such seats shall be allotted by rotation to different constituencies in a Panchayat.”

(xii) **Article 243 D (4):**
One-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women.

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18 Gender & the Constitution, Helen Irving
(xiii) Article 243 T (3):

As per the Article, “One-third (including the number of seats reserved for the Scheduled Castes and the Scheduled Tribes women) of the total number of seats, to be filled by direct election in every Municipality, shall be reserved for women and such seats shall be allotted by rotation to different constituencies in a Municipality.”

(xiv) Article 243 T (4):

Reservation for offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women will be in the manner, prescribed by the legislature of a State.

2.1.1.2. Provisions in other laws:

The State has made various laws for the purpose of ensuring equal rights, for prohibiting the social discrimination and various forms of violence and atrocities and to provide support to working women. The State has done all this to uphold the Constitutional mandate. Women are becoming victims of many of the crimes, such as 'Murder', 'Robbery', 'Cheating' etc. The crimes, which are directed specifically against women, are characterized as “Crime against Women”. These are classified under two categories:

❖ Crimes under The Indian Penal Code, 1860:

The Indian Penal Code (IPC) provides for punishment of following offences, which are committed against women. Some of those offences are as follows:

19 Constitutional Law of India, V. D. Mahajan
20 Law relating to women and their rights, Bhatnagars
21 Women & Law, (Dr.) S. R. Myneni
22 The Indian Penal Code, H. Jhabwalla; The Indian Penal Code, Rattan Lal & Dhiraj Lal
(i) **Murder:**

S. 300 states that, “Except in the cases hereinafter excepted, culpable homicide is murder,
1stly. - if the act by which the death is caused is done with the intention of causing death, or -
2ndly. - It is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or -
3rdly. - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or -
4thly. - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”

S. 302 states that, “Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.”

(ii) **Dowry Deaths or their attempts:**

S. 304-B (1) provides that, “Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called *dowry death*, and such husband or relative shall be deemed to have caused her death.”

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23 *General Principles of Criminal Law, Dr. K. N. C. Pillai*
S. 304-B (2) provides that, “Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

(iii) Assault or Use of criminal force against a woman with intention to outrage her modesty:

S. 354 states that, “Whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty shall be punished with imprisonment of either description for a term, which shall not be less than one year but which may extend to five years and shall also be liable to fine”.

(iv) Sexual Assault:

S. 354A states that, “a man committing any of the following acts –

- Physical contact and advances involving unwelcome and explicit sexual overtures; or
- A demand or request for sexual favours; or
- Showing pornography against the will of a woman; or
- Making sexually coloured remarks,
  
  shall be guilty of the offence of sexual harassment.”

The man will be punished with the maximum imprisonment of three years or fine or both. Further, if some man makes the sexual comments regarding the colour of the woman, then he will be punished upto the imprisonment of one year or fine or both.24

(v) Assault or Use of criminal force to woman with intent to disrobe:

S. 354B provides that, “If a man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling

her to be naked in any public place, he commits an offence under section 354B, which is punishable with imprisonment of at least three years, and it may be raised upto seven years”.

(vi) **Voyeurism:**

S. 354C provides, “Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished under s. 354C. In case of first conviction, imprisonment is not to be less than one year, but may extend to three years, and shall also be liable to fine, and on a second or subsequent conviction, punishment with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.”

(vii) **Stalking:**

S. 354D states that, “If a man, who –

- Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- Monitors the use by a woman of the internet, email or any other form of electronic communication,

shall be deemed to have committed the offence of stalking.”

“Provided that such conduct shall not amount to stalking if the man who pursued it proves that –

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25 Indian Penal Code, Prof. S. N. Mishra
• It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
• It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
• In particular circumstances such conduct was reasonable and justified.”

First time, the accused of the offence of stalking may be punished with imprisonment of up to three years, and if the same accused again found guilty of the same offence of stalking, then he may be punished with the imprisonment of up to five years. However, the offence is subject to certain exceptions like where a person can show that the acts done were in pursuance of some law, amounted to reasonable conduct or in order to prevention of some crime.

(viii) Kidnapping:

S. 360 provides that, “Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.”

S. 361 provides that, “Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

S. 363 provides that, “Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either
description for a term which may extend to seven years, and shall also be liable to fine.”

(ix) **Abduction:**

S. 362 states that, “Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”

(x) **Rape:**

S. 375 provides that “A man is said to commit “rape” if he –

(a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,”

“under the circumstances falling under any of the following seven descriptions:–

*First* – Against her will.

*Second* – Without her consent.

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26 [www.ai.eecs.umich.edu](http://www.ai.eecs.umich.edu), Last visited on April 01, 2014.
Thirdly – With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly – With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly – With or without her consent, when she is under eighteen years of age.

Seventhly – When she is unable to communicate consent.”

S. 376 provides that the accused of the commission of rape in any of the above stated situations, shall be punished with R.I. of at least seven years and which may be raised up to life imprisonment, and the fine also. S. 376A to 376D were also reviewed by our parliament and amended as per the need of the society. In addition to this, one more s. 376E was also added into the group of s. 376, I. P. C.

The punishment become harsher, if the accused of the commission of the rape is some police officer, army personnel, medical officer, public officer, jail officer or public servant. In above stated case, the punishment will be raised to ten years. Death penalty may also be awarded if the prosecutrix dies or goes into the vegetative position, after being raped. A severe punishment of 20 years in case of gang rape is also

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27 Rape and Domestic Violence Legislation: Following or Leading Public Opinion, Marjory D. Fields

28 Sexual offences against Women & Children, B. Senguttuvan.
provided by the amendment.\textsuperscript{29} Further, if the wife is above the age of 18 years, then the marital rape is now considered as the exception to s. 375.

\textbf{(xi) Husband or relative of husband or a woman subjecting her to cruelty:}

S. 498-A states that, “Whoever, being the husband the husband or the relative of the husband of a woman, subjects such own to cruelty shall be punished with imprisonment f or a term which may extend to three years and shall also be liable to fine.”

\textbf{(xii) Word, gesture or act intended to insult the modesty of a woman:}

S. 509 states that, “Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment f or a term which may extend to one year, or with fine, or with both.” \textsuperscript{30}

\begin{itemize}
  \item **Crimes and reliefs available under some Special Laws:**

All laws are not gender specific. The provisions of law, affecting women substantially, are reviewed from time to time and amendments, if needed, are also made to deal with the emerging requirements.\textsuperscript{31} Some Acts, which have special provisions to safeguard women and their interests, are:

\begin{itemize}
  \item (i) The Code of Criminal Procedure, 1973
\end{itemize}

\end{itemize}

\textsuperscript{29} Rape and Victims of Rape, Vimal Veeraraghvan

\textsuperscript{30} Women Crime along with crime against women, Justice Indira Shah.

\textsuperscript{31} Women and the Law, Dr. Dalbir Bharati
(ii) The Indian Evidence Act, 1872

(iii) The Employees State Insurance Act, 1948

(iv) The Plantation Labour Act, 1951

(v) The Family Courts Act, 1954

(vi) The Special Marriage Act, 1954

(vii) The Hindu Marriage Act, 1955

(viii) The Parsi Marriage and Divorce Act, 1936

(ix) The Indian Christian Marriage Act, 1872

(x) The Muslim Personal Law (Shariat) Application Act, 1937

(xi) The Dissolution of Muslim Marriages Act, 1939

(xii) The Muslim Women (Protection of Rights on Divorce) Act, 1986

(xiii) The Foreign Marriage Act, 1969

(xiv) The Indian Divorce Act, 1869

(xv) The Hindu Succession Act, 1956 with amendment in 2005

(xvi) The Guardians and Wards Act, 1860

(xvii) The Hindu Adoption and Maintenance Act, 1956

(xviii) The Immoral Traffic (Prevention) Act, 1986


(xx) The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
Our country is a welfare nation. It means the country is bound to work for the welfare of its residents. “Residents” here means man, woman, children, old age persons etc. There is a huge bulk of laws in our country for the protection of the rights and interests of women.\(^{32}\) These laws cover grievances and offences of

\(^{32}\) Family, State and Law – Part VII. Disputing Violence, Michael D. Freeman
almost fields, related to them. Some of these above stated laws are explained below:

# The Code of Criminal Procedure, 1973 –

S. 125 of the Code provides for the provisions for the maintenance wife, children and parents. A wife is entitled to receive maintenance from her husband, if she is not in the capacity to maintain herself and her husband has the source of income. She has also the right to receive interim maintenance during the trial proceedings in the court. The Supreme Court of India gave an unprecedented observation in the case of Chanmuniya v. Chanmuniya Virendra Kumar Singh Kushwaha that, “Where partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock”. For receiving the maintenance under this section, she has to fulfill the following conditions:

- Her husband has divorced her, or
- She has obtained divorce from her husband, and
- She has not married again with any other man, after such divorce.

Generally in almost cases, husband is ordered by the court to provide the maintenance to his wife, as the Supreme Court of India has also observed recently in a case that the wife is the responsibility of the husband and he is bound to maintain her till her last breath.

# The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 –

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33 Women and the Law, Anjani Kant.

34 (2011) 1 SCC 141
The Parliament of India enacted on Dec. 09, 2013 “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” to provide protection to the rights of women against sexual harassment at the place of their job. While passing the Act, our Parliament has taken into consideration, following points:

- Article 14 of the Constitution of India
- Article 15 of the Constitution of India
- Article 21 of the Constitution of India
- Article 19 (1) (g) of the Constitution of India
- The UN Convention on the Elimination of All Forms of Discrimination against Woman
- The guidelines of the Supreme Court of India in the case of Vishaka and others v. State of Rajasthan and others.  

The main highlights of the Act are as follows:

- The term “aggrieved woman” include in itself the wide range of women of any age, status or employment.
- All the women, working in public, private, organized, unorganized sectors, and domestic workers etc., will be treated equally under the Act.
- A committee shall be constituted to look into the matters of working women, whose enquiry should be completed in maximum 90 days.
- The committee has to submit its report to the District Officer or the employer, who are bound to take the required steps within 60 days.
- Where there are 10 or more employees working in any branch or office, the employer is also bound to make an Internal Complaints Committee.
- Such committee has the powers of the civil court, while dealing with matters under the Act.
- Before starting enquiry, the committee has to provide the conciliation to the party.

35 AIR 1997 SC 3011
In every district and also at Block level, if needed, the District Officer is also bound to constitute Local Complaints Committee.

# The Hindu Marriage Act, 1955 –

The object of the Act is to standardize and improve the procedure and law, dealing with the Hindu marriages. If husband or wife deserts the cohabitation of the other spouse without any sufficient reason, then under this Act, both the husband and the wife has the right to file the suit for restitution of conjugal rights.\(^{36}\) If such restitution becomes impossible, then the aggrieved party may file a suit for the judicial separation under some specified situations under the Act.\(^{37}\) Husband or wife may get declared the marriage to be void in any of the following situations\(^ {38}\):

- The other party is impotent and the marriage is not consumable.
- The other party is of unsound mind.
- The other party is insane or mentally unstable.
- The other party is suffering from epilepsy.
- Consent of the aggrieved party has obtained by fraud or force.
- The other party was pregnant at the time of marriage by some person, except the petitioner.

Both husband and wife has also the right of filing the petition for receiving a decree of divorce, on the basis of prescribed grounds.\(^ {39}\) Some of them are as under:

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\(^{36}\) S. 9, The Hindu Marriage Act, 1955

\(^{37}\) S. 10, The Hindu Marriage Act, 1955

\(^{38}\) S. 12, The Hindu Marriage Act, 1955

\(^{39}\) S. 13 (1), The Hindu Marriage Act, 1955
- After the marriage, the other spouse made sexual intercourse with some other person, except the petitioner.
- The other spouse has committed the cruelty with the petitioner.
- The other spouse has continuously deserted the petitioner for 2 years, without any sufficient reason.
- The other spouse has converted to some other religion.
- The other spouse has renounced the world and joined any religious group
- The other spouse is suffering from such mental disorder or unsoundness of mind, that it can’t be cured.

In addition to the above stated grounds, the wife has some exclusive grounds also, on the basis of which she can obtain divorce from her husband. Apart all of these provisions, both the husband and the wife can obtain the decree from the court, if both have their mutual consent in doing so, subject to the condition that a period of six months has been passed since the solemnization of the marriage. In 2012, the Supreme Court of India has given an observation that the couples, between whom there is no probability to rejoin each other or restitution, need not to file their divorce petition after the passing of 6 months after the marriage. They are exempted from strictly following such rule.

# The Family Courts Act, 1984 –

To protect and encourage the peaceful settlement of matrimonial disputes and family issues, the Central Government has passed “The Family Courts Act” in 1984. The first Family Court in the world was established at United Nations in 1910. In 1975, the Union Government got the recommendation from The Status of Women Committee and Report of the 59th Law Commission that in India, there should some separate judicial authority from traditional courts, so that the matters

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40 Laws of Marriage and Divorce, H. K. Saharaj
41 S. 13-B, The Hindu Marriage Act, 1955
related to the family or marriage can be resolved before starting of the trial in the court. It was those recommendations, which provided us the present Family Court system.

If the total population of an area is more than one million or any other area, which the State government deems fit, the State government is empowered under s. 3 of the Act to establish the Family Court. The judge of such family Court must preferably be a woman, who has been connected with the matters of protecting the rights of woman and children; and the family, so that the proper justice can be done. The court may appoint the professional related to legal field, as Amicus Curiae. If there seems to be any probability of settlement of the dispute, then the court will not continue the proceedings and order for stay on it, till the settlement.

# The Special Marriage Act, 1954 –

The Parliament of India passed this Act for the citizens of India, and Non-Residents of India, so that they can perform such a marriage, in which religion or any faith of the party will not be a bar. Earlier, there was “The Old Act III, 1872” for matters related, which was passed by Henry Sumner Maine. Later on, that Act was replaced by “The Special Hindu Marriage, 1954”. The main features of the Act are as follows:

- To allow a special kind of marriage in special cases.
- To provide for the procedure for the registration of those marriages.
- To provide for the divorce, if needed.

The special feature of the Act is that if any of the party to the marriage, has not completed the required age, then such marriage, if solemnized, will be deemed to be void, which is not the case under The Hindu Marriage Act, 1955. The Indian Succession Act applies in case of the succession to the property of the

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person, whose marriage has solemnized under The Special Marriage Act, 1954, and also applies to the children of such person.\footnote{www.indiankanoon.org, Last visited on Nov 03, 2014.} In case of the succession to the property of the person, whose marriage is solemnized under this Act, but who is Hindu, Sikh, Buddhist or Jain, then The Hindu Succession Act, 1956 governs such succession.\footnote{www.webcitation.org, Last visited on Nov 04, 2014.}

\# The Protection of Women from Domestic Violence Act, 2005  
(D. V. Act) –

In the relationship of marriage, women have to face some critical situations of cruelty, dowry death etc. at their matrimonial house. To deal with such situations, our parliament has enacted an Act, named as The Protection of Women from Domestic Violence Act, 2005, commonly known as D. V. Act, so that the rights and dignity of women can be protected even at their matrimonial houses.\footnote{Handbook on Law of Domestic Violence, Lawyer’s Collective, Indira Jaising} It covers all the acts of domestic violence, which can cause or is causing injury or harm to women, which puts her into a situation of physical or mental harassment. These acts are to be forcing her to do any illegal act, such as giving dowry by threatening her or her any relative.\footnote{Protection of Women from Domestic Violence Act 2005 – An Appraisal, Rachana Kaushal}

According to the Act, it is the duty of general public to intimate the Protection Officer relating to any act of domestic violence, which has performed or of whose there is probability.\footnote{Rethinking Law and Violence: the Domestic Violence (Prevention) Bill in India, 2002, Rajeshwari Sunder Rajan.} The person, intimating such information, will not be liable for such intimation thereafter before any authority. The authority under the Act is bound to convey the information to women regarding their rights
and facilities under the Act, and their right to register a complaint under s. 498A of I. P. C. The authority is also bound to make the arrangement of shelter for the woman, if need arise.

It is the obligation of the concerned State Government to appoint Protection Officers, who are experienced and fulfill the eligibility of the post, so that the functions of Protection Officers under the Act can be easily performed. Some of these functions can be enumerated as follows:

- To assist the magistrate in performing his functions.
- To present the report of domestic violence with any woman before the magistrate and service providers.
- On behalf of the aggrieved woman, to submit an application for requesting the remedies available under the Act.
- To ensure that the aggrieved woman is receiving free legal aid.
- To make the arrangement for shelter to the aggrieved woman.
- To medically examined the aggrieved woman.

After receiving the complaint of domestic violence with any woman, the magistrate will hear the versions of both the parties, and will award a protection order and such other orders, if necessary, to prevent the respondent from performing the acts of domestic violence against the complainant. The magistrate may also award for some compensation amount in favour of the complainant. If the complainant does not satisfy with the orders passed by the magistrate, then she has to file an appeal within the 30 days of the passing of the order by the magistrate.

Central Government has provided a good law on the subject matter of domestic violence, but unfortunate to say that this law is being misused by the so called “aggrieved women” against their counterparts.\textsuperscript{48} Former are filing false

complaints against the latter one and their relatives, which has no ground of showing domestic violence, just for earning personal profits. Central Government is required to hold the programs, so that the awareness regarding the actual benefits from this law can be propagated in the society. Only then it is possible that women will make the right and proper use of this law.\footnote{The Domestic Violence Act; Can We Make a Success of It?, Sidharth Luthra.}

# The Hindu Succession Act, 1956 –

The amendment made in this Act in the year 2005 by the Parliament of India was unprecedented move. That amendment put the daughters on the same footing as the sons are. Former got the equal rights in their ancestral property, as it was only to the latter ones before amendment of 2005. That was the amendment, which had the retrospective effect, meant to say that it had the effect even before its enactment. Before 2005, daughters had no rights in the property of their ancestors. Prior to the enactment of The Hindu Succession Act, 1956, the matters relating to the succession to the ancestral property was dealt under \textit{Shastric} and Customary Laws. The problem with those laws was that they differ from place to place. The female could only avail the benefits of maintenance, except the inheritance into the property of ancestors. They had to depend upon the mercy, in case of death of the coparcener, only then she might get some share into the ancestral property.

There are different state laws relating to the subject matter in different states. There are minor differences, on the part of the woman, on whom the Act is applicable. In addition to this, central government has also its law over the subject matter. So, there is conflict on some aspects between the central and the state laws, and between the state laws in themselves. To cop up the situation, one can follow the principle stated in the case of \textit{Ameera Nissa v. Mahboob},\footnote{AIR 1953 SC 91} that “in
the matters of concurrent jurisdiction as in succession law, central law will prevail over the State law”. In the case of State of Bombay v. F. N. Balsara, the Supreme Court of India stated, “Where a fair reconciliation is possible, such a view will be adopted”.

# The Hindu Adoption and Maintenance Act, 1956 –

The Act was passed in 1956 under Hind Code Bills. The object of the Act is to provide the provisions regarding the adoption of a child by a Hindu and regarding the maintenance to wife or wives, parents and in-laws. All the Hindus are under the purview of the Act. The Act provides that the husband is bound to provide the maintenance to his wife and this facility for the wife is available to her with lifetime validity. This rule is applicable to both the marriages, solemnized before the enactment of this Act or after the enactment of this Act. But, the condition for the wife to receive such maintenance is that she remains to be Hindu for the whole period. If she renounces the Hindu religion or commits adultery with some other man, then she will become ineligible for getting maintenance from her husband.

The Act allows a situation, in which the wife is living separate from her husband and still receiving the maintenance, but it can be possible only if the reasons for living separate are not created by her own fault. The justified reasons may be as follows:

- The husband has married to some other lady also, and that lady is alive.
- He has renounced the Hindu religion, and converted to some other religion, except Hindu.
- He has committed cruelty with her, as defined under the law.

51 AIR 1951 SC 380
52 www.indiancode.nic.in, Last visited on May 16, 2015.
- He is suffering from leprosy.

Even the widow of a Hindu man has also the right of maintenance, and this time, the father-in-law of such widow is bound to pay, subject to the condition that she is unable to maintain herself on her own. Such father-in-law of the widow is not bound to provide for maintenance to such widow in following cases:

- If the widow has the sources of income to maintain herself.
- If she has land in her own name.
- If she remarries.

It is the discretion of the court as to award how much maintenance amount according to the circumstances of the particular case. Some of the facts, which are generally considered by the court, while awarding the maintenance, are as follows:

- The source of income of the husband or father-in-law, as per the case.
- How much persons are entitled for maintenance from the husband or father-in-law.
- Basic requirements of the wife or widow.

These facts are not exclusive and the court may look into some other facts also for providing better justice to both the parties.

# The Indian Christian Marriage Act, 1872 –

This is the Act, passed by the Parliament of India, for providing the provisions relating to the marriage, divorce and related matters among the Christian community.

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The Dissolution of Muslim Marriages Act, 1939 –

Before the enactment of The Dissolution of Muslim Marriages Act, 1939, there was “The Shariat Application Act, 1937” for the regulation of the personal affairs of the Muslims. Some Muslims groups opposed that Act, as it was insufficient for dealing with the matters, for which it was enacted. Those groups demanded the codified law, which could be applicable to the whole Muslim community. For dealing with the matters of divorce by Muslim women, the Parliament of India enacted “The Dissolution of Muslim Marriages Act, 1939”. It provides for the consolidation and explanation of the provisions, which regulates the dissolution of the Muslim marriage by a Muslim woman. The Act clarifies about the doubts, relating to renunciation of husband by a woman in a Muslim marriage.

The Shariat Application Act, 1937 was repealed after coming into force of The Dissolution of Muslim Marriages Act, 1939. The latter Act has just five sections. S. 2 of the Act states about 10 grounds for obtaining divorce. Some are as follows:

- The Muslim husband has not been seen or heard for last 4 years.
- The Muslim husband has left his Muslim wife.
- The Muslim wife has not been getting the maintenance amount for last 2 years.
- Violating the provisions of Muslim Family Laws Ordinance, 1961, the Muslim husband has made marriage with some other woman.
- The Muslim husband has received the punishment of imprisonment of 7 years or more in any case.
- The Muslim husband has failed to perform the obligations relating to marriage.
- The Muslim husband has been suffering from impotency, leprosy, insanity, some virulent venereal disease etc.
- The Muslim husband has committed cruelty over his Muslim wife.

A woman, who has converted her religion from Muslim to some other, has the right to avail the benefits, regarding the divorce, of this Act. But, if she came to Muslim religion from other religion, and again returned to her original religion from Muslim religion, then this Act will not applicable on her. At the time of divorce, she has the right to take the dower, which was given at the time of her marriage or which was not given at that time, but it was agreed at that time that it will be given at some later stage.

# The Muslim Women (Protection of Rights on Divorce) Act, 1986 –

The Act was passed to protect the interests of divorced Muslim women, either separated from their husband themselves or their husbands have left them. The Central Government has passed such Act with an object to make futile the decision of Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum. The SC held in that case that if a Muslim woman cannot maintain herself and also not married yet, she has the right to claim maintenance from her former husband, till remarriage. The present Act is not serving the objects of the Constitution of India.

Some of the main provisions of the Act are as under:

- During the *iddat* period, former husband is bound to provide the justified and reasonable maintenance to her former divorced wife.

- If the children are in custody of their mother, then the former husband is also bound to provide the maintenance for his children also, but for the maximum period of 2 years only from the birth of those children.

- In addition to the maintenance amount, the divorced woman has also the right to obtain whole properties or gifts as were given to her by her parents.

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54 1985 SCR (3) 844
or relatives at the time of marriage, and also the *mehar*, which was agreed at the time of marriage or at any time thereafter.

- The divorced woman has the right to submit an application to the magistrate, if her husband do not pay the maintenance to her or he is not returning the above stated properties to her.

- If the husband do not comply the orders of the magistrate, then a warrant to recover the fine shall be issued against him. He may also be punished with an imprisonment of one year or until he pay the maintenance amount.

- If the divorced woman is not in the capacity to maintain herself after the passing of *iddat* period, then by the orders of the magistrate, all those her relatives, who would have share in her property in succession, are bound to provide the maintenance equal to their shares in the property.

- If the children of such woman are capacitate to provide her maintenance, then magistrate may order them to do so.

- The parents of such woman are liable to provide her maintenance, if her children are not able to maintain her.

- If even the relatives and parents are not in the position to maintain her, then those relatives are bound to maintain her, who are in such capacity.

- If there is no children, parents or relative available and in position to maintain her, then the State Waqf Board, is bound to provide her the maintenance, subject to the condition that she is residing within its jurisdiction.

- If both Muslim husband and wife are interested to run their case under the Criminal Procedure Code, 1973, then they have to submit an affidavit for that purpose in the court.

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# The National Commission for Women Act, 1990 –

Patnaik was the chairperson of the commission. Under the Act, some main provisions for the welfare of women in India are as follows:

- To take decisions for the welfare of women, Chairperson and members of the Commission may hold the meeting at specified time and specified place.\textsuperscript{55}

- The Commission has the following powers under the Act:
  - To make the investigation into the matter of women.
  - To make the report after completing such investigation.
  - To review the matters, relating to women.
  - To submit reports to the Central and the State Governments, recommending for better policies for the welfare of women.
  - It has all the powers of a Civil Court, while dealing with the matters of women.\textsuperscript{56}
  - To provide advice to the Union Government regarding the policies, which affects the interests of women.\textsuperscript{57}

\textbf{# The Medical Termination of Pregnancy Act, 1971 –}

The Parliament of India passed the Act, with an object to save the lives of women by terminating pregnancies in special cases by the registered medical practitioners. Earlier the said matter was dealt by s. 312 of The Indian Penal Code, 1860, which was based upon the law in Britain. Britain itself changed the law in 1967, but unfortunately in India, the law remained the same, which was very narrow in scope, resultantly a lot of death of women every year. Later on, the Union Government constituted “The Abortion Study Committee” to make a report whether any changes were needed in the contemporary law, and if yes, then what

\textsuperscript{55} S. 9, The National Commission for Women Act, 1990

\textsuperscript{56} S. 10 (4), The National Commission for Women Act, 1990

\textsuperscript{57} S. 16, The National Commission for Women Act, 1990
type of changes were it, after studying and surveying. The committee submitted its report after 2 years, in which it recommended to have some liberal and effective law according to the situation in India. Hence, The Medical Termination of Pregnancy Act, 1971 was enacted. Two amendments have been made till date, which are in the year 1975 and 2002. The provisions relating to abortion are much effective and useful, after the passing of the Act and its amendment. It also lowers down the speed of population growth.

Some main provisions of the Act are as under:

- If one registered medical practitioner has given his opinion, then a pregnancy can be terminated within 12 weeks.
- If two registered medical practitioners have given their opinion, then a pregnancy can be terminated even after 12 weeks, but before 20 weeks.
- There must be any one of the following reasons for the termination of the pregnancy:
  - The pregnant lady has the risk of her own life due to the pregnancy.
  - Any serious mental or physical injury may be caused to him.
  - There is high probability of birthing of mentally or physically handicapped child.
  - The pregnancy is due to the rape committed on her.
  - The pregnancy is not planned.
- The consent of legal guardian of the minor or lunatic person is necessary for termination of pregnancy of the latter ones.
- Termination of pregnancy can only be made at Government Hospitals or any authorized place.\[^58\]
- In emergency cases, on the opinion of the registered medical practitioner, termination of pregnancy can be done anywhere.
- If any person, who is not registered for termination of pregnancy, terminates pregnancy of any woman, he is punishable under the Act.\[^59\]

\[^58\] S. 4, The Medical Termination of Pregnancy Act, 1971
- Registered medical practitioner is exempted from any punishment for any wrong happened with the pregnant woman during the termination of pregnancy, if has done the act in good faith.

# Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 –

In the year 1994, our Parliament enacted a law so that the boy child preferred system, which was deep rooted in the Indian society, could be broken. The name of that law was “Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994” and commonly known as “PNDT Act”. An amendment was made in the year 2003, and the law becomes “Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994”. The latest provisions till date under the Act are as follows:

- This Act applies over all the pre-conception sex selection techniques.
- All kinds of sex selection, either it may be before or after the conception of the child, are strictly prohibited.
- PND (Pre-Natal Diagnostic) tests are allowed only in the following situations:
  - Certain congenital malformations
  - Chromosomal abnormalities
  - Genetic abnormalities
  - Haemoglobinopathies
  - Metabolic disorders
  - Sex linked disorders
- Ultrasound is also under the purview of this Act.

59 S. 5, The Medical Termination of Pregnancy Act, 1971
- Appropriate authorities have the power of the civil courts, under which they can make the search, seizure and sealing the machines and tolls of the accused persons.

- The person, after conducting the procedure allowed by the law, is not to inform, either by words or signs or any other method, about the sex of the foetus to the lady pregnant or any of her relatives.

- A punishment of imprisonment of 3 years and fine of Rs. 10,000 will be imposed against the person, who made the advertisement in any form, regarding the pre natal and pre conception sex determination facilities.

- If some person bounds his wife, daughter, sister, daughter-in-law or any other woman to have a PND Test, then such woman will not be punished.

# The Immoral Traffic (Prevention) Act, 1986 –

Earlier the law relating to the sex workers was “The Immoral Traffic (Suppression) Act, 1956”. The Act made the practice of prostitution at private places legal, but it prohibits for asking or seducing the persons in open place, and also prohibits prostitution rings, brothels etc. Later on in 1986, the Act was amended and the new name of the Act became “The Immoral Traffic (Prevention) Act, 1986”. The Act was enacted for following the United Nations Declaration on the Suppression of Trafficking of 1950, so that the prostitution will be prohibited from being an offence. The Act has the provisions, regarding the offences relating to the sex workers. Some main provisions are as under:

- Carrying on, administering, acting or aiding in keeping or administration of brothel is punishable under the Act.

- Earning livelihood from the money received by some other prostitute, and if the person is of the major age and intentionally receiving the money, then the later is punishable under the Act.

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- If the magistrate gets the sufficient information of the residence of the prostitute, and if the residence is within the jurisdiction of such magistrate, then he may get removed such prostitute from such place.
- The State Governments have the power to make arrangements for protective homes and such other corrective institutions.
- Special courts, for fast trial of the offences under the Act, are to be established by the appropriate government under the Act.

# The Indecent Representation of Women (Prohibition) Act, 1986 –

All types of indecent representations of women are prohibited under the Act through any of the following modes:

- Advertisements
- Writings
- Paintings
- Figures
- Publications
- Any other such matter

If the person has committed first time any of the offences, provided under the Act, then he will be punished from the imprisonment of up to 2 years and a fine of up to Rs. 2,000. On found involved into the above stated offences second or more time, then the punished will be imprisonment of up to 5 years and a fine of up to Rs. 1 lakh. If the latest techniques of communication, such as internet, MMS, SMS, e-mail etc. are also included into the Act, then the women are properly protected against the offence of their indecent representation.

# The Commission of Sati (Prevention) Act, 1987 –

For the removal of deep-rooted evil of Sati in the society, Parliament of India has passed a law, named as “Sati (Prevention) Act, 1987”. In 1988, the Act
became “The Commission of Sati (Prevention) Act, 1987”. The object of the Act is to totally prohibit the trend of *Sati*, which include both forced and voluntary burning and burying of alive widows. In addition to this, the Act is focused on the prevention of the organization of any function or ceremony, in which such evil can be happened. Even providing the monetary assistance or participation in any such function or ceremony or doing any act in the remembrance of the *Sati* is also an offence. Before this Act, the only law available on the subject matter was The Bengal Sati Regulation, 1829, which was provided in the tenure of Lord William Bentinck.

The Act provides a wide range of effective powers to the District Magistrate or the Collector. Some are as follows:

- To prevent the practice of *Sati* in any form.
- To destruct the temples or any other monuments, used for the promotion of the practice of *Sati*.
- To seize the funds or property, used for the elevation of the practice of *Sati*.

The government is bound to take such steps, from which it can ensure that women will not have to face any evil against them. S. 2 (c) also provides that:

“The burning or burying alive of—
(a) any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or
(ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or other-wise.”

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The Act states that the person, who forces or coerces someone for Sati, will be punished with death penalty or life imprisonment.\textsuperscript{63} Promotion of such evil in any form will be punished with the imprisonment of one to seven years. A number of statutes are available for the protection of the interests of women, but a meager are for widows. There should be some more statutes with effective implementation system to eradicate such evil absolutely from the society.

\textbf{# The Factories Act, 1948 –}

This is the Act, which provides for the regulations relating to the conditions at the workplace in the factories, so that the workmen can get the better facilities as to their health, safety and welfare. It also provides the provisions relating to the working hours, holidays, overtime, employment of children, women etc. The Act contains the general provisions along with some specific provisions exclusively for women. These are as follows:

- Change of shifts shall not be made generally for women workers. But, it can be made after a weekly holiday or any other holiday.
- Women workmen, who are of major age, shall not be directed to lift the load of more than 65 lbs, and in case of female children, the load shall not be more than 30 lbs.
- Women workmen shall not be ordered to employ in night shifts, generally.
- Each and every factory has to arrange and maintain separate latrine and urinal facilities for working women. These facilities shall be available at the easily approachable place.
- According to s. 22 (2) of the Act, women workmen shall not be employed to do the hazardous works in the factories, such as for cleaning, lubricating or adjusting any part of a prime mover or of any transmission machinery, when such instrument is in active position. In \textbf{B. N. Gamadia v.} \textsuperscript{63}

\textsuperscript{63} \url{www.letstalkaboutthelaw.wordpress.com}, Last visited on June 11, 2015.
Emperor,\textsuperscript{64} Bombay High Court observed the degrading situation of the working places and facilities there, regarding women, and stated that “both legislature and judiciary have shown concern about the security of women workers and every precaution is being taken to protect them against the risks of employment”.

- Under s. 42 (1) (b) of the Act, there shall be arrangements of separate bathing and screened washing facilities for men and women workmen.
- S. 48 of the Act provides for the arrangement of crèches in the factory, where the number of women workmen are more than 30, so that the care of their children, below the age of 16 years, be properly made by a trained women.

\# The Mines Act, 1952 -

It is the Act, which provides for the regulations relating to the working conditions in mines and safety of workers in mines. These regulations ensure the health, safety, working hours, leave and such other matters. There are some specific regulations related to women employed in mines. These are as follows:

- Under s. 46 (1) (b) of the Act, women employed are not directed to work during night hours.
- According to s. 57 (j) of the Act, women employed are not directed to work in any part of the mine, which is below the ground.
- The employer is bound to make the arrangements for the crèches at the workplace for the caring of the children of women employed in mines, where women workmen were employed on any day in the past period of 12 months.
- According to s. 20 of the Act, the employer is bound to make the arrangements for the properly lightened and clean latrine facility in the mines, separate for men and women employed in the mines.

\textsuperscript{64} AJR 1926 Bom. 57
# The Plantation Labour Act, 1951 –

This Act historically provides for the working conditions of plantation workers and their welfare activities. It is applicable to the coffee, tea, cinnamon and rubber and such other plantations. All the offices, hospitals, schools and other premises, which are generally used for the purpose of plantation, come under the purview of this Act. Some specific provisions for women workers are as follows:

- According to s. 25 of the Act, women workers are not to be employed before 6 am and after 7 pm in any type of plantation, except with the permission of Central Government.
- The employer has to ensure the availability of crèches in the plantation place, if more than 50 women workers were employed on any day in the past 12 months.
- According to s. 9 (1) of the Act, such employer has also to provide for easily approachable latrine and urinal facilities.

# The Minimum Wages Act, 1948 –

This is the Act of the Central Legislation, which prohibits making of any kind of differentiation between the men workers and women workers and regarding their minimum wages also.\(^65\)

# The Maternity Benefit Act, 1961 –

This Act provides for the better rates, eligibility for availing the maternity benefits, duration of maternity etc. Some benefits provided under the Act are as follows:

\(^65\) [www.edugeneral.org](http://www.edugeneral.org), Last visited on July 10, 2016.
- Under s. 5 (1) of the Act, the employer is bound to pay the maternity benefits to the pregnant women worker for the day of the delivery, before such day, when she remain absent and after such day for six weeks, at the average daily wages.

- Such payment shall be made by the employer to him sufficient time before the probable date of delivery on proof of pregnancy. Rest of the amount, if any, should be paid within 48 hours after presenting the proof of delivery.

- Under s. 12 (1) of the Act, the employer cannot dismiss or discharge the women worker, who remain absent from the employment due to the pregnancy or delivery.

- If the woman worker has to face the situation of her miscarriage or medical termination of pregnancy, then she has the right to avail the leave with wages till six weeks after such miscarriage or medical termination of pregnancy on presenting the proof.

- Woman worker has also the right to avail the leave with wages till two weeks, in case she has to face tubectomy operation.

- She can also avail leave upto one month, in case of fever due to pregnancy, delivery, premature birth of child, miscarriage, medical termination of pregnancy or tubectomy operation.

- She has the right to receive Rs. 2,500 as medical bonus from her employer.

- After spending the maternity leave, she has the right to take 15 minutes break two times per day during her working hours for the purpose of nursing the child. These breaks are in addition to the already available breaks to other women workers.

- There shall be no deduction from the total wages of such worker, due to nursing breaks or light work assigned to her.

# The Equal Remuneration Act, 1976 –
The year of 1975 was celebrated as the International Women’s Year. The object to enact this Act is both men and women workers will get equal remuneration for the same type of work or work of similar nature. The Act has the view that the equal remuneration for both sexes can only be possible, when there is no differentiation on the basis of sex in the employment against women. Although the Act has been into effect since 1976, yet this the least used statute by women workers. S. 5 of the Act puts bar on the employer to make discrimination between men and women workers at the time of recruitment, for the same work or work of similar nature. Even after recruitment, the employer cannot make any discrimination between men and women workers regarding their conditions of service for the same work or work of similar nature, as per s. 6.

2.1.1.3. The Criminal Law (Amendment) Act, 2013

In addition, to the above stated provisions in The Indian Penal Code, 1860, our parliament has provided to the citizens of India some new updated provisions in the criminal law, through The Criminal Law (Amendment) Act, 2013. There was a revolution all over the country after the incident of gang rape and death of a physiotherapy intern at Delhi – the capital of India. That huge revolution forced the Government of India to make amendments in our criminal law on large scale, as earlier the provisions in the criminal law were more than a century old and were of no use in the present situation. The government of India had to take the step of amending the criminal law, so that the violence against the women can be prevented. These amendments provide for some changes in the earlier provisions and also provide for some new offences, such as Stalking, Sexual Assault etc., of which there was no particular section in the law. These amendments changed the picture of The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973 and The Indian Evidence Act, 1872.

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[66] [www.spaceandculture.in](http://www.spaceandculture.in), Last visited on Nov 29, 2013.
This Amendment Act is generally known as the Anti-Rape Bill also.\textsuperscript{67} It came into effect from Feb. 03, 2013 after the brutal gang rape, followed with the death of the girl on Dec. 16, 2012. The Amendment Act made the unseen changes and made the history, as the amendments provides for the punishment of such police official, who fails to lodge an FIR of the rape victim also, put the offence of rape into the category of rarest of the rare cases, give open powers in the hands of the judicial system to award harsh punishments, provide punishments for the infringement of the right of privacy of women.

The rape and death incident of the girl was covered not only by the media in India only, but also covered by the international media. Even the United Nations Entity for Gender Equality and Empowerment for Women also condemned the incident in India and strongly called India to take stringent action over the matter.\textsuperscript{68} Due to the national and international outrage against the said incident, the Government of India had to constitute a committee, named as Justice Verma Committee, under the headship of retired Chief Justice of India, Justice J. S. Verma. Retired judge of Delhi High Court, Justice Leila Seth and Retired Solicitor General of India, Gopal Subramaniam were the members appointed in the committee.\textsuperscript{69} The committee called the ideas and suggestions from the general public, legal professionals, jurists, groups related to the matters of women, NGOs and civil society, so that the proper required changes could be done for speedy investigation procedure, harsher punishments for crime against women and smooth trial proceedings for the victim women. In the UN Women, Justice Verma stated that, “to ensure its success, it is important that the Act be implemented with dedicated human and financial resources, and clarity in roles and responsibilities. A law is only as good as the systems and individuals that implement them.
Mindsets and attitudes need to change so women can truly be respected equally and value in society.”

On the basis of the recommendations of the Verma Committee, following amendments were made by our parliament, through The Criminal Law (Amendment) Act, 2013:

(i) **Section 354A, I. P. C.: Sexual harassment** –

Under this section, the definition and punishment of offence of “Sexual Harassment” is specifically provided. Earlier there was no specific section for the above stated offence. Every act is treated as the offence of Sexual Harassment, in which “a man makes unwelcome sexual advances, forcefully shows pornography or demands or requests sexual favours from a woman. In detail, a man committing any of the following acts –

- Physical contact and advances involving unwelcome and explicit sexual overtures; or
- A demand or request for sexual favours; or
- Showing pornography against the will of a woman; or
- Making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.”

The man will be punished with the maximum imprisonment of three years or fine or both. Further, if some man makes the sexual comments regarding the colour of the woman, then he will be punished upto the imprisonment of one year or fine or both. Sexual harassment also violates the fundamental rights of a woman, as provided under Article 14 and 21 of Indian Constitution.

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(ii) **Section 354B, I. P. C.: Assault or Use of criminal force to woman with intent to disrobe** –

Earlier there was also no specific provision for the commission of this offence. The matters were dealt under s. 354, I. P. C., in which there was a maximum punishment of two years for the commission of this offence. S. 354B provides that “If a man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, he commits an offence under section 354B, which is punishable with imprisonment of at least three years, and it may be raised upto seven years”.

S. 354B takes some contents from the already existing s. 354, I. P. C. and remaining contents are newly added into it. This section is very much helpful for the cases, in which punishments of stripping women between general public are given in far flung areas.71

(iii) **Section 354C, I. P. C.: Voyeurism** –

The subject matter of this section was earlier dealt somewhat under The Information Technology Act, 2000 and the punishment was imprisonment upto three years or fine upto two lakhs rupees or both. The new s. 354C provides, “Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished under s. 354C. In case of first conviction, imprisonment is not to be less than one year, but may extend to three years, and shall also be liable to fine, and on a second or subsequent conviction, punishment with imprisonment of either

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description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.”

(iv) **Section 354D, I. P. C.: Stalking** –

Before the enactment of such provision, there was no specific section for the punishment of the commission of stalking. S. 354D first time provides the punishment for the commission of stalking against a woman. It states, “If a man, who –

- Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- Monitors the use by a woman of the internet, email or any other form of electronic communication,

shall be deemed to have committed the offence of stalking.

Provided that such conduct shall not amount to stalking if the man who pursued it proves that –

- It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- In particular circumstances such conduct was reasonable and justified.”

First time, the accused of the offence of stalking may be punished with imprisonment of up to three years, and if the same accused again found guilty of the same offence of stalking, then he may be punished with the imprisonment of up to five years. However, the offence is subject to certain exceptions like where a person can show that the acts done were in
pursuance of some law, amounted to reasonable conduct or in order to prevention of some crime.

S. 354D is a gender-specific provision, available only to women in case commission of stalking against them. The definition of the term “Stalking” has been derived mostly from s. 2A of The Protection from Harassment Act, 1997 of Britain, which was enacted on Nov. 25, 2012.  

(v) **Section 375 and 376, I. P. C.: Rape –**

Before this amendment, only the penile-vaginal intercourse was punishable under s. 376, I. P. C. But, this amendment brought the wide scope of s. 376, including in it those acts also which involves non-penetrative offences, such as oral sex, insertion of an object or any other body part into the vagina, anus or urethra of a woman. In Rafiq v. State of U.P., even Justice Krishna Iyer made an observation that “a murderer kills the body, but a rapist kills the soul”.

The newly amended s. 375 provides that “A man is said to commit “rape” if he –

- Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

- Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

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72 [www.rostrumlegal.in](http://www.rostrumlegal.in), Last visited on Feb 12, 2014.

73 1981 SCR (1) 402
Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,”74

“under the circumstances falling under any of the following seven descriptions :-

First – Against her will.

Second – Without her consent.

Thirdly – With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly – With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly – With or without her consent, when she is under eighteen years of age.

Seventhly – When she is unable to communicate consent.”

The accused of the commission of rape in any of the above stated situations, shall be punished with R.I. of at least seven years and which may be raised up to life imprisonment, and the fine also. S. 376A to 376D were also reviewed by our parliament and amended as per the need of the

74 [www.ai.eecs.umich.edu](http://www.ai.eecs.umich.edu), Last visited on April 01, 2014.
society. In addition to this, one more s. 376E was also added into the group of s. 376, I. P. C.\(^{75}\)

The punishment become harsher, if the accused of the commission of the rape is some police officer, army personnel, medical officer, public officer, jail officer or public servant. In above stated case, the punishment will be raised to ten years. Death penalty may also be awarded if the prosecutrix dies or goes into the vegetative position, after being raped. A severe punishment of 20 years in case of gang rape is also provided by the amendment. Further, if the wife is above the age of 18 years, then the marital rape is now considered as the exception to s. 375. Medical examination is generally done after the commission of rape to examine whether the rape has been committed with the prosecutrix or not, and if yes, then to which extent. Such examination is also kept into the box of exception. Supreme court in April, 2013, in *Lillu @ Rajesh v. State of Haryana*,\(^{76}\) condemned the present medical tests, i.e. two-finger test, for the rape victims. In the same case, Justice B. S. Chauhan and Justice Kalifulla gave the directions to the union government to arrange for better medical tests for the rape victims, so that their dignity will not get violated, so they can being saved from the “second rape” during such medical examinations.

(vi) **Section 53A, The Indian Evidence Act, 1872: Evidence of character or previous sexual experience not relevant in certain cases –**

According to s. 53A, “If in any case, related to s. 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D or 376E of The Indian Penal Code, or in any of its attempt, there is issue is on the question of consent,


\(^{76}\) AIR 2013 SC 1784
then the evidence of the character of the victim or of such person’s previous sexual experience with any person, shall not be relevant on the issue of such consent or the quality of consent.” This new section was inserted in 2013 with an amendment in The Indian Evidence Act, 1872. It states that in the cases of rape or in any of its aggravated form, or in case of outraging the modesty of woman or in any of its aggravated form, the consent or the previous experience of the victim with any other person is irrelevant.

(vii) S. 114A, The Indian Evidence Act, 1872: Presumption as to absence of consent in certain prosecution for rape –

Parliament has inserted this section in The Indian Evidence Act, 1872 by amendment of 2013. The section states that, “In prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.”

This section provides such a power in the hands of women as the nuclear bomb in the hands of Pakistan, who can use it any time, whether needed or not. Under this section, a prosecutrix need not to prove that she did not give her consent before or at the time of rape. The court will automatically presume just over her statement in the court. On the other hand, the men have to prove beyond doubt that she had given her consent before or at the time of sexual intercourse, to become discharged from the charge of rape, otherwise they shall be deemed to be guilty of the offence of rape.
2.1.2. Special initiatives by the Government for women

2.1.2.1. National Commission for Women:

The Government established this commission in January 1992 with a special purpose to study and supervise the matters relating to the constitutional and legal safeguards provided for women and review the existing laws to recommend amendments, wherever needed, etc.

2.1.2.2. Reservation for Women in Local Self –Government:

The Parliament passed 73rd Constitutional Amendment Acts in 1992. That amendment ensures one-third of the total seats for women in all elected offices in local bodies, either in rural areas or urban areas.


The plan of Action is to ensure survival, protection and development of the girl child. The ultimate objective of the plan is to build up a better future for the girl child.

2.1.2.4. National Policy for the Empowerment of Women, 2001:

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001 with an object of bringing about the advancement, empowerment and development of women.  

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78 Empowerment of Women in India, K. D. Gour

A good thing of a modern society is that its laws are impartial for all the persons, irrespective of caste, community, and gender. The government of India was planning to make a policy, which would allow married couples to divorce, if there would be ‘irretrievable breakdown of marriage’. This ground of divorce was now become a battleground between both the sexes. Man and woman, married under the Hindu Marriage Act and the Special Marriage Act, will be allowed to divorce immediately without passing of the six months waiting period. The foremost question was that whether removing the requirement of the mandatory waiting period of six months before allowing the divorce was a good change? Now, the spouse would approach the court for seeking the divorce in the moments of anger, by showing that their marriage had irretrievably broken down, which actually not. While, a period of waiting gives opportunity to both the parties to resolve their marital dispute and to decide what is beneficial for their future. As one can see the laws in the US. There the law requires a mandatory waiting period before the decree of divorce, especially when spouse use the no-fault divorce, which is similar to the irretrievable breakdown of marriage in India. The question is that why is India removing this rule?

Second, some groups claimed a partiality against men in the proposed law, as the divorce on the base of irretrievable breakdown permitted women to oppose the same, but men were not permitted to do so. According to women groups, such a change would make women vulnerable. They were demanding that equal division of the matrimonial property should be given to the divorced women. If she would decide to keep children in her own custody, then she should have the right to reside in that property. It could not be denied by anyone that women clearly deserved a share of the matrimonial property, as she had also done for building it. Rather than depending on mere law, such cases should be decided on merit of the particular case. Is it possible that a wife, who has married just one month before, have the same claim as a wife, who was married two decades before, except where the property was purchased with her money? These questions cannot be answered easily. The implementation of the law with equity is more important, then the mere implementation of just the law.
Our laws are required to change with changing times, as our society is also modernizing. All our laws should have the provisions, including the needed amendments, to deal with men and women equally. Therefore, in laws relating to divorce, any provision that favours men over women is not liable to be admitted. Similarly, we cannot bypass the rule of equity by enacting laws that favour women over men. The law relating to irretrievable breakdown of marriage was proving to be a ground to test for our sense of impartial play. Any society, which has the assumptions and hidden agendas in its foundation and design, may lead to serious problems over the years. Men themselves made the world believe that they cannot suffer, as they deemed as the protector, the provider and the adventurer of the world. That’s why, parents tell their son to be like a man, stop crying and learn to do things your own way.

That path is good, which promotes man to become self dependant because he will have to secure himself on becoming grown. But, the man as he grows up almost starts feeling sorry for feeling bad, abused, harassed, tortured because the imbibitions of this line of thought are engraved and deep rooted. He starts feeling as he has no right to do so, which is not a healthy sign. Even, psychologists and relationship experts have voiced out their concerns over these behavioral traits of men and have enchanted it umpteen numbers of times that it is fine to feel bad and share the same and accept that something is bothering them. But, sadly enough of it falls on deaf ears due to age-old stereotypes, which are rock-engraved, take centuries of time and loads of sufferings, realizations and metamorphosis to take a new and desired form.

It is generally seen that if a man wants to discuss his problems pertaining to a relationship, he is not heard seriously and ignored by saying either, “You are a man, stop cribbing like a woman,” or, “She is a woman, it will be like this only.” Such wordings led to the establishment of an opinion in the society, the legislature and the executive body that men do not want anything. They have all the things. This observation was also recently given in a judgment by the hon’ble Delhi High Court, where a writ petition was filed for challenging the tenacity of the Domestic Violence Act, 2005. The hon’ble court also dismissed the petition. It said that the argument in the petition held no merit, because the court was of the opinion, “Though men are victims of violence, such incidences are
few and far between, thus, ruling out the possibility of protection for men from the parliament”. This statement of the hon’ble court reflected a very tragic, in which in the one side the court acknowledged the existence of domestic violence against men, and on the other side refused to admit it due to the lack of proper evidence to prove a claim, which is lesser known to the public.

According to the data of the National Crime Records Bureau, 1,50,000 men had committed suicides in the year 2005 and 2006. These numbers of men is very shocking because just 50,000 women had committed suicide in those years. All this data shows the pitiable state of affairs of Indian men. Around 1,08,000 out of these 1,50,000 men, were suicides by husbands. The government, that is earning 82 % of taxes from these men, can easily explain the reasons behind all this. Opposite to it, the government has ignored the position of men. The men have the lack of protection and proper voice. Men are aggrieved of the domestic violence and also the victims of the misuse of these laws. 1% cases of domestic violence and dowry harassment, filed against men and their families, are true and rest of the cases is false and fake. These fake cases are filed with wrong intention to extort money and it is unfortunate to say that all is done in the premises of the court itself. In last, woman wins the case, which was fake and false from the first moment. All due to the presumption by the court that women are in the weaker position in the society.

The harassed husband is generally taught by the men, close to him, that the woman needs money, protection, etc. These men do not tell the harassed husband that in this society actual perpetrator is treated as the victim and vice versa. Here, actual victim himself has to compensate the deemed victim, who is actually the perpetrator. These men also think that they are doing right by saving a woman from the man. But, it is not good to save the rights of a woman at the cost of rights of a man. It is unfortunate to say that this is becoming the trend now. It is highly difficult for a man to exist in a society, where the persons have the two faces. The court itself has the two views. In one side, it gives its opinion that the Domestic Violence Act 2005 should also apply over men as victim, in case of domestic violence with them and on the other side that there are no or a little
incidents of domestic violence over men, so they cannot be considered as the victim under the Domestic Violence Act 2005.

It can be seen through the newspapers that the effect of such views of the court over men is that men have to fear of law while committing suicide and murder. One should ask from this civil society and the government that whether they want such a trend in the society, where the harassed men shall end up their lives for resolving the issues? Is this the civilized solution of the any dispute?

2.2. International Perspective

2.2.1. International Conventions, Treaties and Declarations, related with the welfare of women

There are a number of instruments, drafted, created, signed and ratified by various countries at international level, for ensuring the protection to the interests and rights of women on all aspects all over the world. Civilized countries have the obligation to secure human rights of all persons, so some of the conventions, treaties, declarations etc. held at international level are explained hereinafter.

2.2.1.1. The United Nations:

United Nations is an international organization, which is working at the international level in different fields. The atrocities against women all over the world, are supervised and monitored by UNO.

2.2.1.2. The Charter of the United Nations, 1945:

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80 International Law and Human Rights (A NUTSHELL), Dr. S. K. Kapoor.

81 Criminalisation, Modernisation, and Globalisation: The US and International Perspectives on Domestic Violence, Shahid M. Shahidullah and Nana Derby.
The Preamble of the Charter clearly states about the human rights of women. It emphasizes over the concept of equality, especially with respect to women. The Preamble states, “We the People of The United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” The main object of the UN is, “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. The Charter focused on the theme that there should be no differentiation on the basis of sex, race, religion and language.

Some main articles of the Charter are as follows:

- **Article 1**: It provides the object of the UN is to encourage and promote respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

- **Article 8**: It provides equal opportunity to women with men to participate in any of the organs of the UN.

- **Article 55**: It provides for the obligations of the UN for the promotion of equal rights of having the employment, standard of living, solutions of international social, economic and health problems.

### 2.2.1.3. The Commission on the status of Women, 1946:

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82 The Charter of the United Nations, 1945  
83 Human Rights – A Protean Perspective, Pradeep Ranjan Patnaik  
84 Human Rights Women and Law, Dr. Devinder Singh
It was constituted in the year 1946. It was the branch of Economic and Social Council of the UN.\textsuperscript{85} Presently, there are 45 members in it. It has done a commendable job till now. Some functions of the commission are as under:

- It has to promote the economic, social, political, civil and educational rights of women.
- It fights for providing equal rights to women as of men.

\textbf{2.2.1.4. The Universal Declaration of Human Rights (UDHR), 1948:}

UDHR is the unprecedented work of the UN. To encourage and secure the human rights at international level, the UDHR was a step forward.\textsuperscript{86} Every human being takes birth free and has the equal rights and respect.\textsuperscript{87} This declaration emphasizes on the equality among the human beings. All the persons should take care the rights and dignity of other persons without making any differentiation on the basis of sex.\textsuperscript{88} Every human being has the equal right to have the protection of the law, in case of any discrimination, violating the basic principles.

Some main articles of the UDHR are as follows:

- **Preamble:** It recognizes that every person in this world has his or her dignity to have the freedom, justice and peace. Both male and female have the equal rights in various aspects.\textsuperscript{89} The UN is bound to promote the better standards of life and social progress.

\textsuperscript{85} The Commission on the status of Women, 1946
\textsuperscript{86} The Universal Declaration of Human Rights (UDHR), 1948
\textsuperscript{87} Protection of Women’s Rights under International Law, Ajay Kumar Singh
\textsuperscript{88} The Dialectics and Dynamics of Human Rights in India (Yesterday, Today and Tomorrow), Krushna V. R. Iyer.
\textsuperscript{89} Human Rights Women and Law, Dr. Devinder Singh
- **Article 2**: It provides the equal rights to both male and female to have the benefits of the rights and freedoms under the UDHR, even without making any differentiation on the basis of sex, race, colour etc.

- **Article 7**: It states that all persons have the right of equality before the law and equal protection of the law.

- **Article 16**: It provides that both male and female have the equal rights to marry and to dissolve it.

- **Article 25**: It provides to both male and female to have a dignified life. Even both the mother and child has the right to special care and assistance.

### 2.2.1.5. The American Declaration of Human Rights and Duties of Man, 1948:

This declaration was adopted in the year 1948. Under Article I to XXVII, it has enumerated the broader list of rights for all human beings, which is as follows:

- Right to life, liberty and personal security.
- Right to equality before law.
- Right to religious freedom and worship.
- Right to freedom of investigation, opinion, expression and dissemination.
- Right to protection of honor, personal reputation, and private and family life.
- Right to a family and to protection thereof.
- Right to protection for mothers and children.
- Right to residence and movement.
- Right to inviolability of the home.

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90 The American Declaration of Human Rights and Duties of Man, 1948
- Right to the inviolability and transmission of correspondence.
- Right to the preservation of health and to well-being.
- Right to education.
- Right to the benefits of culture.
- Right to work and to fair remuneration.
- Right to leisure time and to the use thereof.
- Right to social security.
- Right to recognition of juridical personality and civil rights.
- Right to a fair trial.
- Right to nationality.
- Right to vote and to participate in government.
- Right of assembly.
- Right of association.
- Right to property.
- Right of petition.
- Right of protection from arbitrary arrest. Right to due process of law.
- Right of asylum.

2.2.1.6. The International Convention for the Suppression of the Traffic in Persons and exploitation of the Prostitution of others, 1949:

The object of this convention was to prevent the practice of prostitution and trafficking of human beings for illegal purposes.\textsuperscript{91} It also provides for the punishment for the wrongdoers. The signatory countries have to take steps, so that the general public will get aware of the ill effects of such practice in the society. A part of the convention is also on the rehabilitation of the prostitutes and trafficked persons.

\textsuperscript{91} The International Convention for the Suppression of the Traffic in Persons and exploitation of the Prostitution of others, 1949
2.2.1.7. **The Convention on the Political Rights of Women, 1952:**

The convention was an attempt to provide equal political rights to both male and female. The women should also have the right to vote, fight election, speak etc. on equal footing with the men.

2.2.1.8. **The Convention on the Nationality of Married Women, 1957:**

On the recommendation of the Commission on the Status of Women, a convention was held in 1952, with an object to look into the problem of nationality of women after marriage with men, outside their country. The convention states about stateless status of such women after such marriage should be prohibited.

2.2.1.9. **The International Covenant on Civil and Political Rights, 1966:**

The said convention was specifically focused on the encouragement of civil and political rights among both men and women equally without any discrimination on the basis of sex, race, religion etc. Some main articles related to the interests of men and women are as follows:

- **Article 2:** This Article binds the signatory countries to ensure that the rights, described in the present covenant, will be implemented without making any differentiation on the basis of race, sex, religion etc.

- **Article 3:** This Article binds the signatory countries to ensure that both men and women will have the equal opportunity to have the rights, provided under this Covenant.

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92 The Convention on the Political Rights of Women, 1952

93 The Convention on the Nationality of Married Women, 1957

94 The International Covenant on Civil and Political Rights, 1966
- **Article 14**: All human beings are to be treated equally by the judicial and quasi-judicial authorities, and all have the right to an impartial trial before the law.

- **Article 16**: All human beings are to recognized as a person before the law at all places.

- **Article 18**: All human beings have the right to thought freely, have conscience and adopt any religion.

- **Article 23**: All human beings have the right to marry after attaining the age of marriage and giving free consent.

- **Article 26**: Law is to ensure all persons that all have the right of equal protection of law in case of discrimination.

2.2.1.10. **The Declaration on the Elimination of Discrimination Against Women, 1967**:

This declaration was the document, which discussed about the human rights, related to women all over the world.\(^9\) The General Assembly was adopted on Nov. 07, 1967. This declaration later became the precursor for The Convention on the Elimination of All Forms of Discrimination Against Women of 1979.

Some of the main articles of the convention are:

- **Article 1**: It will be deemed as not reasonable and a crime against human dignity, if someone makes discrimination against women.

- **Article 2**: The laws and customs, which are promoting and encouraging the discrimination against women, are to be abolished. Further, the signatory nations are to make the ratification and implementation of the instruments of the UN, relating to human rights.

- **Article 3**: General public is to be provided with the system of education, so that the biasness against women can be eradicated.

- **Article 4**: Women shall also have all the political rights, as the men have.

\(^9\) The Declaration on the Elimination of Discrimination Against Women, 1967
- **Article 5**: Women shall also have the right to change their nationality.
- **Article 6**: Women shall also have the right to marry and to have the divorce, if necessary.
- **Article 7**: The laws, which makes differentiation between the men and women, are to be repealed.
- **Article 8**: Nations to fight against the practice of trafficking in women and harassment as prostitution.
- **Article 9**: Women shall have also the right to get education, as men can.
- **Article 10**: Women shall have also the equal right of opportunity to jobs, to have non-discriminated environment of working and to have salary at par.
- **Article 11**: Nations are bound to take steps for the better implementation of the principles of this declaration.

2.2.1.11. **The World Conference on Women’s Human Rights, 1975:**

In 1975, the world’s first international conference on women was organized at Mexico.96 It was considered in the conference that the development of women is necessary along with the development of the country. The prime focus was on the following points in the declaration:

- Violence and harassment against girl child and female should be stopped.
- Female and girl child should be provided with better primary health care.

2.2.1.12. **The International Covenant on Economic, Social and Cultural Rights, 1976:**

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96 The World Conference on Women’s Human Rights, 1975
This was the important covenant to promote the equal economic, social and cultural rights among men and women. Some of the main articles for welfare of women are as under:

- **Article 2**: This Article binds the signatory countries to ensure that the rights, described in the present covenant, will be implemented without making any differentiation on the basis of race, sex, religion etc.

- **Article 3**: This Article binds the signatory countries to ensure that both men and women will have the equal opportunity to have the rights, provided under this Covenant.

- **Article 10**: The signatory nations to the Covenant will have to ensure that the every possible assistance will be provided to protect the family and to the mother before and after the delivery.

- **Article 12**: The signatory nations to the Covenant will have to take steps to provide both men and women the right to enjoy a standard life with good mental and physical health.

### 2.2.1.13. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979:

This convention asserts for having the equal treatment for women, and removing the theory of discrimination against women in the society in different aspects, which may either be the education, employment, trial, politics, health etc. The convention have the importance also as it was specifically over the subject matter of women and related topics. It states that the signatory nations should implement the principle of parity for men and women through the Constitutions in their country.

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97 The International Covenant on Economic, Social and Cultural Rights, 1976

98 The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979

99 CEDAW and the Human Rights - Based Approach to Programming, Arab L. Waldorf, Arab C. and M. Guruswamy.
Some of the main articles of the convention are as follows:

- **Article 2**: States to take steps in their country to remove the discrimination against women, so that they can avail all the civil, political, economical, social and cultural rights.
- **Article 3**: States to take steps through the legislative methods to give the opportunity of growth and advancement of women.
- **Article 4**: Maternity is not to be discriminated at any aspect.
- **Article 5**: States to change those social and cultural activities, which put women in inferior complex.
- **Article 6**: States to take steps to eliminate the practice of trafficking in women and prostitution.
- **Article 7**: States to work on the matter, so that all women will get the equality in opportunities in political and public sphere.
- **Article 8**: States to take appropriate steps for providing women the equal chances of representing their nation at international level.
- **Article 9**: States to ensure to its women that they have the right to possess their nationality.
- **Article 10**: States to take steps so that all women have equal right to education with men.
- **Article 11**: States to take steps to provide equal opportunity of jobs to all women.


The charter was centered over the protection of basic human rights of girls and females.\(^{100}\) The charter provides for the respect for life and integrity of females.\(^{101}\) It also recognizes to have the best mental and physical health to each

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\(^{100}\) The African Charter on Human and People’s Rights, 1981.

person.\textsuperscript{102} It bound the nations to eradicate the discriminatory activities against the female in their sphere and to implement all the rights, enumerated in various conventions and declarations.\textsuperscript{103} Every person has the obligation to give due respect to each other and not to discriminate with any person.\textsuperscript{104}

2.2.1.15. **The Declaration on the Elimination of Violence Against Women, 1993:**

This declaration was made to remove the practice of violence against women, which is biased due to sex, race, religion etc.\textsuperscript{105} Such violence includes physical injury, mental or sexual harassment, force, violating their right of freedom etc. Some highlights of the declaration are as under:\textsuperscript{106}

- **Article 3**: All women have the right to life, equality, liberty, security and best dignified life.
- **Article 4**: State to take steps to eradicate the evil of such customs, traditions or any religious ceremony, which promotes violence against women.
- **Article 5**: All the organs of the UN are bound to work for the better implementation of the rights, mentioned in this declaration.

2.2.1.16. **The Vienna Declaration and Human Rights of Women, 1993:**


\textsuperscript{103} Article 18 (2), The African Charter on Human and People’s Rights, 1981.


\textsuperscript{105} Women and Domestic Violence: Human Rights Perspective, Jeebanlata Salam.

\textsuperscript{106} The Declaration on the Elimination of Violence Against Women, 1993.
In 1993, World Conference in Human Rights adopted this declaration.\textsuperscript{107} The World Conference in Human Rights stated, “The full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations.\textsuperscript{108} The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout the relevant United Nations bodies and mechanisms”. Every step, which is fruitful for the equal status of women, should be taken.

2.2.1.17. \textbf{The Beijing Declaration, 1995:}

In the declaration, stress was given on the removal of all the things, which become hurdles in the path of the development and progress for women and their equal status.\textsuperscript{109}


This is the recent international instrument for the welfare of the women. It bound the signatory nations to take those steps in their social, legislative, administrative and economic arenas, which helps in the elimination of all types of violence, done against women.\textsuperscript{110} It also forces these countries to restrict and eradicate the evil practices of Female Genital Mutilation (FGM) in their jurisdictions. This protocol is also known as “Maputo Protocol”.

\textsuperscript{107} The Vienna Declaration and Human Rights of Women, 1993

\textsuperscript{108} Bases of Human Rights and Rights of the Trans Gender, Amit Tyagi

\textsuperscript{109} The Beijing Declaration, 1995

2.2.1.19. The Cairo Declaration for the Elimination of FGM, 2003:

The said declaration is centered on the measures by the countries for the protection of the human rights of girls and females, so that the persons promoting and doing the acts of FGM can be penalized. As per the declaration, the evil practice of FGM can only be prevented if the behavior of the residents change and a strong legislation made for the problem. The statutes, related to prevention of FGM, should have the provisions of equality among genders, punishment for all types of violence against women and rights ensuring the good health of women.

2.2.1.20. The Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011:

This convention is also known as “Istanbul Convention”. It was followed by the Council of Europe. Nations might sign it since May, 2011. It bound the signatory nations to amend and reform their statutes, so that the victim women can properly receive the help in case of violence against them has committed.

2.3. The causes of advancement of women and gender equality

Women should be helped to grow and express themselves as human beings. There should be gender equality. Just because one is “Against” harassment of women does not mean, he is

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111 The Cairo Declaration for the Elimination of FGM, 2003

112 The Violence Against Women Act of 1994: The Federal Commitment to Ending Domestic Violence and Sexual Assault, Roberta L. Valente, Barbara J. Hart, Seema Zeya and Mary Malefyt

113 The Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011
automatically “For” punishing men, without giving them a fair chance for telling their side. This is too much power for any gender. Reverse the roles here. If a woman stopped a man and asked him to get a cup of coffee with her, and he filed a complaint for harassment. Police cops, friends, other men, and his own friends and family would make fun of him. He’d be thought insane. Just marinate over that for a minute. How many times have we heard about a woman being thrown into a prison for asking a man out? No matter how creepy she is, generally if she leaves a man alone, nothing happens to her. This is a cause for concern. In Ajay Patel @ Sarvan v. The State of U.P., Justice Ranjana Pandya while deciding the appeal, against the judgment convicting the accused under s. 363, 366-A, 376 (2), I.P.C., observed the principle laid down in Mohd. Ali @ Guddu v. State of U.P. that, “Be it clearly stated here delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective. The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the scene. It is the mother who was required to inform the police about missing of her grown up daughter. In the absence of any explanation, it gives rise to a sense of doubt.”

Justice Pandya further stated that, “In the present appeal, the prosecutrix lady was taken on a two wheeler, her mouth was opened. Nobody was pressing it. There is no reason why the victim did not raise alarm when her mouth was opened and the accused were unarmed. In cross-examination, this witness has further stated that she had stated to the Magistrate that on the next day of occurrence at 11:00 p.m., she was left near her house. She has stated that on the next day, the accused left her at her house. If this would have been actual position, there was no reason

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114 Criminal Appeal No. 4846 of 2014, Decided on May 02, 2016.
115 2015 (3) SCC (Criminal) 82
why the written report could not have been lodged the next day when the victim had returned home and had narrated the whole incident to her family members. Thus, what has been stated and discussed above, I conclude that the prosecution case is bundle of false allegations and improbable facts, due to which the learned trial court misled itself and has incorrectly convicted the accused, such conviction cannot be sustained in the eyes of law, as such the accused is entitled to be acquitted and the appeal is liable to be allowed. Hence, the impugned judgement and order of conviction and sentence dated 23.09.2014 passed by the learned Additional Sessions Judge, Court No. 2, Varanasi in Sessions Trial No. 21 of 2012 (State vs Ajay Patel alias Sarvan) arising out of Case Crime No. 210 of 2011, under sections 363, 366A, 376 IPC, Police Station Rohaniya, District Varanasi, is hereby set aside.”

We are not empowering women by enslaving men to some random woman’s whimsical attention seeking agenda.\textsuperscript{116} We are weakening society as a whole. If our society looks down upon honest and direct, straightforward communication, then so be it. Women have too much power, when no one will even listen to a man. All a woman has to do is to pick up the phone and tell cops that a man has harassed her. And that man is already done for. Even if he didn’t do anything. In such environments, lives of men, or at least their reputations and their careers are being destroyed by the undue power bestowed upon women.

In Sandeep Kaur v. State of Punjab and another,\textsuperscript{117} the wife had made a complaint under the Protection of Women from Domestic Violence Act, 2005 against her husband, by which she got an order in her favour of getting two rooms in the house of her husband, for living separately. On Sep. 24, 2013, she lodged a fake F.I.R. against her husband under s. 376-B and s. 506, I.P.C. at Police Station Division No.8, Jalandhar (Punjab). The trial court struck off the charges of the respondent husband under s. 376-B and s. 506, I.P.C. and acquit him by giving benefit of doubt. In an appeal, the Double bench, of Justice T. P. S. Mann and Justice Ramendra Jain, of High Court of Punjab and Haryana, on Jan. 11, 2016 observed that, “there is difference between the initial version of the appellant wife regarding the date of offence and her statement

\textsuperscript{116} Empowerment of Women in India with Allied Law’s & useful Appendices, K. D. Gour

in her cross examination. She did not tell about the incident for around 8 days to any person. The above conduct of the appellant wife is highly improbable and unnatural because huge litigation i.e. divorce petition, proceedings under Section 125 Cr.P.C. as well as the complaint under the Act was going on between the appellant wife and respondent husband. If respondent husband had got opened the door of her room on the pretext of illness of their baby, in such an eventuality, it cannot be expected from a man of prudence that she will not raise any grouse or disclose her forcible rape by respondent husband to anyone. It is unexplained on record that she was forcibly raped by him and why the appellant wife kept on opening the door for respondent husband on the subsequent dates i.e. from 15.09.2013 to 20.09.2013, more particularly when relations were strained in between them and their children were also not staying with her and she kept on allowing respondent husband to commit rape with her against her wishes. Admittedly, on earlier occasion also the appellant wife got registered false FIR No. 300 dated 27.10.2009 under Sections 376/498A/120B, I.P.C. against respondent husband and his parents in which they were acquitted. Hence, the above conduct of appellant wife also puts a dent in the prosecution story. Even otherwise, F.I.R., in the present case, was lodged belatedly by the complainant wife, because as per her complaint, respondent husband had committed rape with her on 14.07.2013, but F.I.R. in the instant case was lodged on 24.09.2013. Even if, it is presumed that the dates of occurrences i.e. 14.07.2013 to 24.07.2013 were mentioned wrongly, in that eventuality, there is no explanation on the file why the prosecutrix kept mum for four days and got lodged the F.I.R. on 24.09.2013. Admittedly, the respondent is the husband of appellant wife and their relations were not healthy. Thus, it can safely be presumed that the appellant wife for taking revenge got lodged the present false FIR against respondent husband. The appellant in her cross examination also admitted that tenants were also residing on the upper floor of the same house in which she was residing. Thus, it is quite unnatural and improbable that she does not raise any hue or cry or to inform anyone of them about her rape by respondent husband. More particularly, when she was free to move anywhere without any restriction from any corner. Since, there was no restriction upon her to go anywhere so it was very easy for her to go to the police station to complain about her rape by respondent husband, but she did not do so which requires to draw an adverse inference against her that things did not happen in the manner as narrated by her. In cross examination, the appellant wife also deposed that after the occurrence, respondent husband visited her on last Friday, as he usually comes to her after a week or ten days. Her above
deposition clearly proves beyond doubt that respondent husband was usually visiting the appellant wife even after the occurrence, but she did not take any action against him, which means that with her consent, alleged intercourse was committed by respondent husband with her. Hence, the order of the trial court was upheld by the double bench also, and the respondent husband was rightly acquitted from the charges under s. 376-B and s. 506, I.P.C.”

No matter what tactics or precaution one take, nothing works in India in current situation, when it comes to Law and Police. Even if one agrees to all terms by the women concerned, police try to create confusions in between. In the end it all boils down to how much money the women gets. If one fights and wins, one pays less. If one loses, one loses big. If one compromise, one still pay, but in installments. Best way for Indian Men to avoid extortion is to only marry a woman with better financial state (among other obvious reasons like love). Middle class gold-digger educated women are most dangerous, when it comes to exploiting laws and use them to extort money on trivial issues. In India, there is no penalty on women, even if husband has video evidence of adultery, all she has to do is say that he ignored her that's why she had to stray.

According to Indian laws, a man is always guilty of harassing his wife for dowry. Indian society, including policemen and judiciary, would never believe a man, if he complains of a woman harassing, blackmailing or beating him, even if he has complete evidences. It is presumed that it must have been his fault. Indian laws consider all men as regular sex-offender, women is always treated as a victim. Almost all cases of rape and molestation are fake, everyone knows it, but no one wants to talk of it. All our laws are framed to favor women. If a man accidentally looks at a woman, then according to Indian laws he is staring and molesting her. As an Indian man, he should stay at least 100 meter away from women because this man would be arrested for touching a woman. Forget about relations, marriage and commitment, think a lot before a man start talking to a woman in India. Because of the one sided laws, many men now-a-days started worrying about marriages. Because he never know, when he will be a rapist or impotent for her wife. If a man do something wrong to woman, it will become a public issue, everyone will come out hold candles, and they say that will you rape or harass your mother and sister and media will do a round table conference in the night with some brain-dead. After sometime, if they found out that the woman is wrong, why no one is talking about that. Finally if
you want a peaceful, pleasant and stress less life, better stay single always. Of course, there are some exceptions here.