Chapter-IV

An analysis of theoretical perspectives with reference to rights of women under Constitution
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AN ANALYSIS OF THEORETICAL PERSPECTIVES
WITH REFERENCE TO RIGHTS OF WOMEN
UNDER CONSTITUTION

"India with all its thousand of years of cultural heritage
and Vedic Vintage, has not been able to assure to its people
even a pretence of the preamble's grand undertaking of
Justice, Liberty, Equality and Fraternity to every citizen"

-Justice Krishna Iyer V.R.

4.1 General

This chapter examines the adequacy of Constitutional provisions in
protecting the rights of women India. The Constitution of India is the
supreme code of conduct, governing the nation founded on the cardinal
principles of justice, liberty, equality and fraternity. The Constitutional law is
a fundamental law of the country. All the enactments, orders, rules,
regulations, notifications or ordinances shall work within the purview of the
Constitution and any deviation from the provisions of the Constitution is void
and is not enforceable. From the President of the country to the ordinary
citizen, all are subject to the Constitution and shall conduct themselves in
accordance with it. Thus, it is considered to be the paramount law of the
country. The Indian Constitution thus adopted, was a fundamental social
document designed to achieve planned social change. Political
participation, right to elect and be elected is guaranteed irrespective of sex,
creed, race or caste. The achievement of social and economic revolutions
were planned through part III Fundamental Rights and part IV Directive
Principles of State Policy which are considered to be core and conscience of
the Constitution. It may be noted that at the time of adoption of Constitution,
India inherited two primary social evils namely, discrimination based upon caste and sex. The makers of the Constitution sought to remove injustice through various provisions of the Constitution. Social justice, economic justice and political justice are the prime goals of the Constitution. Equality is yet another goal of the Constitution, an aspect of justice is expected to be achieved with reference to the status and of opportunity. Liberty of thought, expression, belief and worship is considered valuable in realisation of full potentialities both physical and intellectual.

Perhaps the first explicit demand for fundamental rights appeared in the Constitution of India Bill, 1895. The Bill envisaged for India a Constitution, guaranteeing to everyone of her citizens freedom of expression, inviolability of one's house, right to equality before law, right to property, right to personal liberty, and right to free education etc. Equality of the sexes was also another important step while drafting of Mrs. Besant's Commonwealth of India Bill of 1925.

The preamble of the Constitution reads "We, the people of India, having solemnly resolved to constitute India in to a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens, Justice, social, Economic and Political, Liberty of though, expression, belief, faith and worship, Equality of Status and Opportunities, and to promote among them all Fraternity assuring the 'Dignity' of the individual and the unity and integrity of the nation...". "The framers of the Indian Constitution bestowed sufficient thought on the position of women in the Indian social order, women under

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Ibid, Article 17.
Ibid, Article 20.
Ibid, Article 23.
Ibid, Article 19.
Ibid, Article 25.
the present Constitution have equal rights and opportunities with men. The State has granted preferential signs in order to aid them to attain equal position with men in all competitive fields."

In explaining the Preamble of the Indian Constitution and its background Pathanjali Shastri C.J observed in A.K. Gopalan v. State of Madras that there can be no doubt that the people of India have, in exercise of their sovereign will as expressed in the Preamble, adopted democratic ideal which assumes to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality and in delegating to the legislature, the executive and the judiciary their respective powers in the Constitutions, reserve to themselves certain fundamental rights, so called, I apprehend because they have been retained by the people and made paramount to the delegated powers as in the American Model. In Maneka Gandhi's case it is observed that the State cannot by law or otherwise, deprive any person of the rights to live with basic human dignity and hence torture or cruel, inhuman or degrading treatment or punishment which trenches upon human dignity would be impermissible under the Constitution. The court held that the right to live with basic human dignity be preserved. Following this extended interpretation, the Apex court and other High Courts have decided a good number of PILs.

Justice V.R Krishna Iyer observed that everyone has the right in all circumstances to be treated with humanity and with respect for the inherent dignity of the human person. A formal declaration of fundamental human rights is a characteristic feature of many modern written Constitutions. Thus, the inclusion of a Chapter on Fundamental Rights in the Constitution of India is in accordance with the U.N Charter on Human Rights. The idea behind such inclusion is that the preservation of certain basic human rights against State interference is an indispensable condition of a free society.

Women in India are born free but chained in every sphere of activity owing to traditional, cultural, social, political and economic inhibitions. “Though constituting half of the population of the world and often euphemistically referred to as the ‘better half of man’, women in fact, had the worst deal at the hands of society, till very recently. They were physically and sexually abused and exploited, denied a say in the governance; denied equal wages and were always treated as an appendage of man. She was a wife, mother and an unpaid worker in the household. When old, she was discarded and disregarded. When widowed, she was considered to be a fair game for all."10 “It has been seen in Andhra Pradesh that as soon as an armed police camp is set up in a village most of the men of village abscond fearing torture, women who are left alone in the house become the source of pleasure for the police. Every year scores of such instances come to the notice of Civil Liberties Committee, but the fear of reprisal from the police prevent the victims from talking to a fact-finding committee."11

In Sheela Barse v. State of Maharastra, which was initiated by a freelance journalist Ms Sheela Barse by addressing a letter to the court and which dealt with the questions of treatment of women in police lock ups, Dr. Desai, J gave detailed direction with a view to improving the conditions in the lock ups and providing adequate protection to the arrested persons and particularly to women confined in the police lock-up. Vicar Deo Singh Tumar v. State of Bihar is another notable case dealing with right to human dignity. A social action group called Yuva Adhivkta Kalyan Samiti, Bihar addressed a letter to one of the judges of the Supreme Court, alleging inhuman treatment of the inmates of Care Home, Patna. The Court held that right to life includes right to human dignity and every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is

10 Subramanlyan, Dr. S Human Rights International Challenges, 1997 Ed Madras Publications p. 172
11 Bajwa. Dr. G.S Human Rights in India: Implementation and Violations, Anmol Publications Pvt. Ltd
the fundamental rights of every Indian citizen. And so, in the discharge of its responsibilities to the people, the State recognizes the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, therefore, necessity provisions must be made for the protection and welfare. In Rajasthan Kisan Sangtha v. State of Rajasthan which was initiated by a letter written by tribal women to Chief Justice of High court alleging illegalities and atrocities committed by police personnel, the court observed: it is now well settled that a person even during lawful detention is entitled to be treated with dignity befitting any human being and the mere fact that he has been detained lawfully does not mean that he can be subjected to ill-treatment, much less to any torturous beating. The right to be treated even during lawful detention in a manner commensurate with human dignity is a well-recognized right under article 21 of the Constitution.

In another case of Vishal Jeet v. Union of India, Supreme Court observed that the matter is one of great importance warranting a comprehensive and searching analysis and requiring a humanistic rather than a purely legalistic approach from different angles. The question involved causes considerable anxiety to the court in reaching a satisfactory solution in eradicating such sexual exploitation of children. Restoring to judicial activism, the Supreme Court has expanded the scope of 'right to life' to new horizons by reading many more rights into it as integral and essential part thereof. Thus, women also have fundamental right to human (feminine) dignity,' to privacy,' to health,' to primary education,' to free legal aid,' to speedy trial' etc., as adjuncts to right to life.

12 Francis Coralie v. Union Territory of Delhi (AIR) 1981 SC, 746
13 People's Union for Civil Liberties v. Union of India (AIR 1997 SC 558
14 Indian Council for Enviro-Legal Action v. Union of India (1968) 3 SCC 212
17 Ibid
Article 51-A declares it a fundamental duty of every Indian citizen to renounce practices derogatory to the dignity of women. Thus, the spirit of gender equality, dignity and justice pervades the entire framework of the Indian Constitution. Independent India saw men and women on equal pedestal with the Constitution of India declaring, in unequivocal terms, the right to equality for all citizens irrespective of caste, creed, sex or place of birth. However, the public-private dichotomy in the performance of the traditional wife-mother role continued to remain as strong as ever. The gradual rise in the number of educated women as well as formal job holders in the organized and unorganized sectors and the elevation of a handful of them to the topmost rung of the technological, administrative and legislative sphere have not transformed the general dismal situation of women in general and their illiterate counterparts in particular. Religious practices, traditional social norms and the socialization process of the girl child have continued from generation to generation. To top it all, the latest methods of sex-determination test and the Medical Termination of Pregnancy have played havoc with the girl child, since these methods loom large as the Damocles’ sword on their very chance of coming to the world. Out of 100 abortions, 99 foetuses were found to be of female.

4.2 FUNDAMENTAL RIGHTS

Constitutional rights reflecting as they do in various Sections and articles are guidelines protecting and promoting human rights. They are the pointers of right conduct while bestowing freedom in different walks of life. The preamble of the Constitution resolves secure to all its citizens with Justice, Liberty, Equality and Fraternity. Part III of the Constitution, which guarantees the Fundamental Rights of men and women. Articles, 14, 15 and 16 of Part III of the Constitution guarantee rights to equality to women too. These articles provide protection based on the principle of equity to
protect the dignity of women. In *Maneka Gandhi v. Union of India,* Justice Bhagwati said that Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. *Giridha v. State,* *Yusuf v. State of Bombay,* *Choki v. State,* and *Shahbad v. Abdulla.* Similarly, provisions providing for reservation of seats for women in local bodies or in educational institutions have been held valid in *Dattatraya v. State of Bombay,* and *Sagar v. State.* Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. Article 19 which is considered to be the bull-work of any democratic nation, guarantees six fundamental freedoms, namely, freedom of speech and expression, freedom of assembly, freedom of association, freedom of movement, freedom of residence, and freedom of trade and business. It may be noted that these rights are not absolute rights but are subject to reasonable restrictions. Article 20 of the Indian Constitution provides for safeguards against ex post facto laws, double jeopardy and self-incrimination. Article 21 guarantees that no person shall be deprived of life and personal liberty except by procedure established by law. It has been interpreted in recent times that the word life includes right of privacy. Right to live with human dignity in fact gives a gamut of rights which are mostly beneficial for women including the right against torture, custodial violence, right to livelihood, right to medical-aid and health care and life. Article 21 guarantees the protection of life and personal liberty. This is the most crucial right for the very existence and survival. This right has been widely interpreted by the courts and has been held to include the right of privacy and the right of an individual to live with dignity.

18AIR 1978 SC 597
19AIR 1953 MB 147 (Section 354, Indian Penal Code)
20AIR 1954 SC 321, 322 (Section 497, Indian Penal Code)
21AIR 1957 Raj 10 (Bail)
22AIR 1967 J&K 120, 127 (Service of summons on men only in civil cases)
23AIR 1953 Bom 311
24AIR 1968 AP 165, 174
25*T. Sareetha v. T. Venkata Subbaiah* AIR 1983 AP 356, the court held that the remedy of restitution of conjugal rights violates the right to privacy and human dignity guaranteed by and contained in Article 21 of our Constitution.
Article 14 declares that 'State shall not deny to any person equality before law or equal protection of the laws within the territory of India'. This principle in general prohibits discrimination. It may be pertinent to note that equality enshrined in this article as noted earlier is not absolute equality but it permits reasonable classifications based on intelligible differentia and rational relation to the object sought to be achieved under any Act. Thus a law may be Constitutional even when it relates to a single person if that person is situated in peculiar circumstances and can reasonably classified. Classification can also be made on different bases for e.g. geographical distinction, historical reasoning, according to objects occupations, or the like. It may also be noted that the principle of equal pay for equal work comes under this article and unequal pay among men and women for the same work violates Article 14. Discrimination arises where men and women doing the same or similar kind of work are paid differently.

Thus it would not be violative of Article 15, if educational institutions are established by the State exclusively for women and reservation of seats for women in any educational institution does not offend Article 15(1).\textsuperscript{26} It may also be noted that even with reference to awarding punishments for committing crime, women may be exempted, for example in the case of committing adultery only male is punishable under Section 497 of Indian Penal Code and not the women and this has been sustained by the courts in \textit{Yousuf Abdul Aziz v. State of Bombay},\textsuperscript{27} \textit{Sowmitri Vishnu v. Union of India},\textsuperscript{28} and \textit{Revathi v. Union of India}.\textsuperscript{29} Similarly a provision under Criminal Procedure Code providing for maintenance in favour of women and children in certain circumstances under which the men are not entitled is considered to be saved by virtue of Article 15(3).\textsuperscript{30} In \textit{Air India v. Nargeesh Meerza}\textsuperscript{31}

\textsuperscript{26} \textit{Dattatreya v. State} AIR 1953, Bom 311
\textsuperscript{27} AIR, 1954 S.C 321
\textsuperscript{28} AIR, 1985 S.C 1618
\textsuperscript{29} AIR, 1986 S.C 835
\textsuperscript{30} Mt. Choki v. State AIR 1957 Raj. 10
\textsuperscript{31} AIR 1981, S.C 1829
and C.B. Mutthamma v. Union of India\textsuperscript{32}, the arbitrary rules in working conditions against women are held void under Article 16. Similarly the rules denying the opportunity for women apprentice trainees to write internal examinations the ground for restrictions imposed on the working hours of women by Sec.66 of Factories Act was considered as the denial of opportunity merely based upon sex and hence violative of Article 16(1).\textsuperscript{33} Further, a rule requiring unmarried women to give up her position when married was given to be violative of Article 16.\textsuperscript{34} The justification put forward by the company for this rule was the need to work in teams that attendance must be regular and that there is greater absenteeism among married women. But the Supreme Court held that there was no evidence that married women were more likely to be absent than unmarried women and struck down the restriction on women’s employment.\textsuperscript{35} Similarly married women should obtain the husband’s consent before applying for employment was held violative of Article 14, 15 and 16.\textsuperscript{36} The Supreme Court held that ‘this is a matter purely personal between husband and wife. It is unthinkable that in social conditions presently prevalent a husband can prevent, a wife from being independent economically just for his wish or caprice.’ The Court emphasised the importance of economic independence for women and the importance, not creating conditions that discouraged such independence. Thus the consent requirement was held to be unconstitutional as it amounts to one anachronistic obstacle to women’s equality. Article 14 guarantees equal pay for equal work, which is considered to be only a directive principle under Article 39(c).\textsuperscript{37} However it may be pertinent to note that equal pay for equal work depends upon the nature of the work done and cannot be judged based upon volume of work. There may be qualitative difference with regard

\textsuperscript{32} AIR 1979, S.C 1868
\textsuperscript{33} Omena Omena v. FACT Ltd AIR, 1951, Ker, 129
\textsuperscript{34} Bombay Labour Union v. International Franchise AIR 1996 SC 942
\textsuperscript{35} Maya Devi v. State of Maharastra AIR 1986 S.C 743
\textsuperscript{36} Rajuben Sudegar Singh v. State of Punjab AIR 1972 P & H 117
\textsuperscript{37} Randhir Singh v. Union of India AIR 1982 S.C 879
to reliability and responsibility. Duties may be similar, but functions may be different.\textsuperscript{38}

Article 21 coupled with Public Interest Litigation (PIL) has brought into light certain humiliations meted out to women, for instance, through PIL it was brought to the notice of the court that the female inmates of Care Home, Patna were compelled to live in inhuman conditions in old ruined buildings. The court directed the State to take immediate steps for the welfare of the inmates and immediately ordered for renovations of the ruined buildings pending new constructions and to provide for the facilities. The court directed the State to appoint a full time superintendent to take care of the home and ensure that a doctor visits the home daily.\textsuperscript{39}

Similarly, Upendra Baxi, brought to the notice of the Court about the flesh trade in the protective homes of Agra and the Supreme Court has given necessary direction to protect the women and to ameliorate the conditions of women.\textsuperscript{40} Yet another petition was filed by Delhi Domestic working Women Forum to expose the pathetic life of poor domestic servants who were subject to severe sexual assaults by seven army personnel when these women were travelling by Maruti Express from Ranchi to Delhi. The court besides giving necessary directions to book the culprits has ordered for the establishment of Criminal Injuries Compensation Board to ameliorate the conditions of victims of rape.\textsuperscript{41} Similarly the court awarded compensation of Rs.10,000/- to the victim of police atrocities against a married woman.\textsuperscript{42} Article 21 can be meaningfully utilised towards getting necessary protection for the problems of women including procreational privacy. Under the similar

\textsuperscript{38} FAIC and CES v. Union of India AIR 1988 S.C 91
\textsuperscript{39} F.A.I.C and C.E.S v. Union of India (1988) SCC 91
\textsuperscript{40} Upendra Baxi v. State of U.P (1983 2 SCC 308
\textsuperscript{41} Delhi Domestic Women's Forum v. Union of India (1995) ISCC 14
provision in America it has been interpreted that the woman was entitled to
the right of procreational privacy.43

Judiciary is the Supreme institution to interpret the Constitutional
provisions. The task of interpreting gender justice over a period of legal
history is astoundingly superb and the role assigned to them in judicial
interpretations and judgements marks an era of gender justice. Judicial
attitude has been changing from time to time keeping in view the needs of
changing circumstances and many a time ignoring the traditional
procedures. This has resulted in 'judicial activism' in the Indian legal system.
Article 21 guaranteeing the right to life and personal liberty, after the post
internal emergency era, has been infused with infinite potential as a result of
which this provision has assumed the character of a reservoir of legal norms
to be drawn upon by the judiciary to sustain a wide range of claims and
interests which has led to the development of a new Constitutional
jurisprudence. The Supreme Court of India for the first time in Maneka
Gandhi v. Union of India,44 pressed Article 14 and 19 into the ambit of Article
21 in order to evolve the principle that the procedure for the deprivation of
personal liberty had to be 'fair, just and reasonable'. This has proved to be
the Indian counterpart of American doctrine of 'due process of law'.
Therefore, the Supreme Court has expanded the scope of Article 21 to
include certain rights, though they are not specifically incorporated in the
Constitution of India. They are guaranteed under Indian Constitution. The
Constitution guarantees the principle of equality of gender. The Constitution
is interpreted in several cases without any gender bias and held that women
deserve protection rather than promotion of their rights. However, violations
of women's rights continue in practice, aided by the legal system, which is
slow, often expensive, and often procedurally biased against women who
face restrictions on their mobility and access to resources.

43 Roe v. Wade
44 AIR 1978 SC 597
While employers are bound by laws regarding maternity benefits, provision of crèches and so on, the only other law that binds public institution concerns the matter of custodial rape, where the minimum sentence has been set for a higher period than that of non-custodial rape, where the burden of proof rests on the perpetrators.

The issue of indecency continues to be a difficult terrain for legislation. Indecency, much like obscenity, has been a subjective standard, determined primarily by those who have the power to decide what constitutes indecency. The dilemma results from the distinction that needs to be drawn between regulating public morality and promoting women's right to equality. The standard of obscenity and indecency is inherently vague and can only be given content by reference to notions of public morality, sexual or otherwise. The history of the obscenity law in particular has consistently shown that giving the State the power to censor has often been abused.

Social and economic revolutions are sought to be achieved through part III and IV of the Constitution. Though they provide necessary impetus for women and women's emancipation, there are some inadequacies, which have to be overcome to realise the emancipation and empowerment of women. "Empowerment can be considered a change in the context of a woman or man's life that enables her/him increased capacity to lead a fulfilling human life, characterised by external qualities such as health, mobility, education and awareness, status in the family, participation in decision making, and level of material security, as well as internal qualities such as self awareness and self-confidence." If a fundamental law falls in a country to protect women it would be well neigh impossible to achieve any progress in any direction. Thus the Constitution of India requires to be

supplemented with additional provisions in favour of women in order to secure the Constitutional goal of gender justice. Article 23 of the Constitution prohibits traffic in human beings. It means selling men and women like goods and it includes immoral trafficking of women and children for other purposes. In pursuance of this the Parliament passed Suppression of Immoral Traffic Among Women and Girls Act, 1956 (SITA) that was subsequently changed to Prevention of Immoral Traffic Act, (PITA). The evil of prostitution is sought to be overcome by virtue of these enactments.

Articles 25 and 28 of the Indian Constitution guarantees right to freedom of religion. However, the State had retained the power to make laws for social welfare and reforms thus enforcing monogamy among Hindus were held not to be violative of freedom of religion. The soul and heart of the Constitution lies in Article 32, which provides for enforcement of the fundamental rights, which have been noted so far. If facilitates the grant of various writs in the nature of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quowarranto under Articles 32 and 226. Habeas Corpus can be granted against the wrongful deprivation of individual liberty. Mandamus is a direction to any public authority to do or not to do anything, which is in the nature of public duty or in certain cases statutory duty. Writ of Certiorari is granted against judicial or quasi-judicial bodies that act in excess or without jurisdiction. Writ of Prohibition is similar to that of writ of Certiorari and the difference lies only in time. Writ of Prohibition is issued to temporarily stop the proceedings, where as, Certiorari is issued after wrongful exercise of the power. Writ of Habeas Corpus is issued in the form of an order calling upon a person by whom another person is detained to bring that person before the court and let the court know by what authority he has detained that person.

46 State of Bombay v. Varasu Bapmali (AIR 1953 Bombay 84)
4.3 DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution; contain the Directive Principles of State Policy that are fundamental guidelines for governance, although they are not enforceable in a court of law. It reflects the ideals of India's liberal democratic policy and secures a just, social, political and economic order geared to promote the welfare of the people. These directive principles in general provide for socio-economic order based on principles for securing economic justice, social security and community welfare. Article 39(a) states that 'the citizens, men and women equally, have the right to an adequate means of livelihood'. Article 39(e) states that 'the health and strength of workers men and women... are not abused....'. Article 39(d) states that 'there is equal pay for equal work for both men and women'. A reflection of the observance of the principle is found in the enactment of Equal Remuneration Act, 1976 by the Parliament to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women in the matter of employment. The Section 4(1) of the Act states that 'no employer shall pay to any worker, employed by him in an establishment or employment remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature'. Besides this, the Act also prohibits making any discrimination against women while making recruitment for the same work or work of a similar nature. While these four articles, together with the omnibus provision of Article 38, which, in brief, directs the State to ensure a just, social, political and economic order directly for equality for women, there are several other Articles that protect and cover the equality of women indirectly, or by implication. These are Article 39 (b)(c)(f) relating to ownership of material resources; Article 40 tells about the organisation of Panchayats for self-government; Article 41 the right to work, employment
and public assistance; and Article 42 directs that the State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 gives the provision of work, a living wage etc; Article 44 prescribes a uniform civil code; and Article 45 free and compulsory education for all children up to the age of 14 and Article 47 raising the standard of nutrition, standard of living and public health. Article 39, which ensures right to an adequate means of livelihood for men and women equally, equal pay for work for both men and women and health and strength of workers, men, women of tender age and children. They are not forced by economic necessity to enter into avocations unsuited to their age and health. The court in *State of U.P v. Chaurasia*\(^7\) held that it is the responsibility of the State to ensure that there is no exploitation of the poor and ignorant. Article 42 directs for just and humane conditions of work and maternity relief. On the contrary women's mortality will increase in the absence of maternity benefits and congenial human considerations.

Article 44 endeavours to secure uniform civil code for all the citizens in the context of diversified religious faiths in secular India. These directive principles in general provide for socio-economic order based on principles for securing economic justice, social security and community welfare. Articles 325 and 326 give men and women equal rights and responsibilities for electing democratic government to fulfil the democratic aspirations and realisations of their basic human rights. The 73\(^{rd}\) Constitutional Amendment also provides for the reservation of one-third seats in all tiers of local government for women. It's a good augury that the 42\(^{nd}\) amendment to the Constitution imposes a duty on every citizen of India to renounce practices derogatory to the dignity of women. This is a right step in this direction to expand the scope of protection of women.

\(^7\) AIR 1989 SC 19
4.4 FUNDAMENTAL DUTIES

The Constitution after the 42nd amendment in the year 1976 has incorporated a separate chapter on "fundamental duties" under Article 51-A. Article 51-A (e), which restricts the observance of 'practices derogatory to the dignity of women'. It specifically directs the citizens to renounce practices degrading to the dignity of women. This provision found its manifestation through the enactment of 'The Indecent Representation of Women (Prohibition) Act, 1966'. Section 2 of the Act stands to prohibit any indecent representation of women whether it is through advertisements or in publications, paintings, figures and the like. The representation is considered indecent if the figure of a woman is portrayed in such a manner which is derogatory and which will deprave or injure public morality. The term 'advertisement' covers notices, circulars, labels and other visual representation. Hence books, pamphlets or even films that portray women in an indecent manner, come under the purview of this Act. However, it will not be applicable to representations, which are justified on the ground that they serve some scientific, artistic or religious purposes. Ancient monuments and temples, which come under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, are also outside the purview of the Act.

The goals, values and aspirations of the Constitution, are sought to be realised through the provisions of part III and part IV of the Constitution. The court invalidated a rule under Indian Foreign Service Rules which required that a woman member in the service should obtain permission from the government in writing before the solemnisation of marriage and that no married women shall be entitled as of right to be appointed to the service. It was observed that such a regulation was a hangover of masculine culture of menacing to the weaker sex.\(^{48}\) It would not be violative of Article 15 if

\(^{48}\) C.B. Muthamma v. Union of India AIR 1979 SC 1868
educational institutions were established by the State exclusively for women and reservation of seats are made for women in any educational institution.\textsuperscript{49} It may also be noted that even with reference to awarding punishments for committing crime women may be exempted, for e.g., in the case of committing adultery only male is publishable under Sec. 497 of Indian Penal Code and not the women and this has been sustained by the courts.\textsuperscript{50} The Report of the Committee on Status of Women in India recommended that adultery should be regarded only as a matrimonial offence, the remedy for which may be sought in divorce or separation...continuing to regard adultery as a criminal offence is against the dignity of an individual and should be removed from the Penal Code. Court speaking through Bose J, observed that Article 14 is general in its application and must be read with other provisions set out within the ambit of fundamental rights. Sex is a sound classification and although there can be discrimination in general, the Constitution itself provides for special provisions in the case of women and children. Thus reading together all these provisions, Section 497 of IPC is valid. Similarly a provision under Criminal Procedure Code providing for maintenance in favour of women and children in certain circumstances under which men are not entitled is considered to be saved by virtue of Article 15(3)\textsuperscript{51}.

The dark shadows of custom and tradition in the conservative social structure water down the letter and spirit of the Constitutional guarantees bestowed on women. \textit{Son-preference} is one of the key aspects underlining social values that view girls as burden. Women are viewed as dependants within the family and face severe restrictions on their mobility, which further impedes their ability to gain access to education, economic opportunities, to move freely and settle anywhere, to form unions or groups and so on, which

\textsuperscript{49} Dattatreya v. State AIR 1953 Bom. 311


\textsuperscript{51} Mt. Choki v. State (AIR 1957 Raj 10
are all fundamental freedoms under the Indian Constitution. Freedom of speech and expression is often denied to women within the family, and women are kept out of decision-making processes even within the community and State institutions. Cultural norms regarding appropriate behaviour for women often reinforce images of docility, passivity and subservience, severely curtailing for women the exposure and confidence they require to participate on an equal footing with men to public life. Practices like foeticide, infanticide and the constant if not increasing incidences of violence on women also constitute consistent assaults on women's right to life and personal liberty. There is lack of effort to secure for women the basic economic rights in the family, in relation to property, income and shelter, prerequisites of women's right to dignity and a measure of autonomy. Assets that have been created out of public resources for poor households have been largely granted to male heads, while the responsibility for social costs of child care, household maintenance and survival oriented productive tasks are laid on women's shoulders. The Government of India largely considers the household to be the basic unit or structure in development assistance, despite evidence to show that intra-household inequalities take a great toll on women and girl children, inhibiting their access to basic rights in development such as food, health, education, freedom of movement and right to autonomy.52

In Maya Devi v. State of Maharashtra53 a requirement that married women should obtain the husbands consent before applying for employment was held violative of Articles 14,15, and 16. The Supreme Court held that it is a matter purely personal between the husband and the wife. It is unthinkable that in social conditions presently prevalent, a husband can prevent a wife for his whim or caprice.54 The Court emphasised the importance of economic independence for women and the importance of not

53 Maya Devi v. State of Maharastra (1986 ISCR 748)
54 Ibid (1986 ISCR 748)
creating conditions that discourage such independence. Thus, the consent requirement was held to be unconstitutional as it amounts to an anachronistic obstacle to women's equality.

In addition, there are some Articles that have been described by commentators on the Indian Constitution as "Women-specific". These are Article 16(2), which forbids discrimination in respect to any employment of office under the State on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any one of them. Article 39(1) promises the right to an adequate means of livelihood to men and women equally. Article 39(d) prescribes equal pay for equal work for both men and women. Article 39(e) instruct the provision of protection of the health and strength of workers, and protection of men, women and children from abuse and entry into avocations unsuited to their age and strength. Article 42 ensures just and humane conditions of work and maternity relief and Article 325 which says that no special electoral rules can be made on the grounds of religion, race, caste and sex and above all Article 15 (3) in fact provides for affirmative action and for protective discrimination by empowering the State to make any special provision for women and children.\textsuperscript{55} In \textit{Abdul Aziz v. Bombay},\textsuperscript{56} a man charged with committing adultery under Section 497, challenged the Section as discriminating on the basis of sex, and in violation of Articles 14 and 15 and the High Court concluded that the difference of treatment was not based on sex but rather, on the social position of women in India. On appeal, the Supreme Court held that any challenge under 15(1) was met by 15(3).\textsuperscript{57} The court rejected the argument that 15(3) should be confined to provisions which are beneficial to women and cannot be used to give them a licence to commit and abet crimes. The Court held that Article

\begin{itemize}
\item \textsuperscript{55} Protective Discrimination \textit{Article 15(3) of Indian Constitution}
\item \textsuperscript{56} AIR 1954 SC 321
\item \textsuperscript{57} \textit{Article 15(3) provides "Nothing in this Article shall prevent the State from making any special provision for women and children."}
\end{itemize}
is general and must be read with the other provisions, which set out the ambit of fundamental rights.

Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The Court thus upheld the adultery provisions as beneficial to women. The Court's approach to equality rights can be seen to be informed by a formal model. Articles 14 and 15 of the Constitution require that no distinction be made on the basis of sex—that the women and men be treated as same. Legislation designed to promote women's position and or to provide for the financial needs of the economically dependent women should not be seen as discrimination against women. Commenting on the Constitutionality, while considering Constitutionality of Section 497 of Indian Penal Code in Sowmithri Vishnu v. Union of India the other provisions, the court said that the law as it is does not offend article 14,15 or 21 of the Constitution. The special provisions benefiting the women and children are made in lieu of Article 15(3) of the Constitution. Therefore Section 354 of IPC is not invalid, merely because it protects the modesty only of women but not men. On similar grounds special provisions for women were held valid, for example Sections 228 A of the IPC relates to the disclosure of identity of the victim of the offence under Section 376, 376-A, B, C and D, dowry death and subjecting a women to cruelty under Section 498-A. Dowry deaths, although publishable under the law, do not attract the serious attention of law enforcement agencies. Under these Sections special protection is given to women. This protection became inevitable to curtail the unlimited or unqualified privileges of the husband, which caused severe trauma into the

58 Supra note 2 at 322
60 AIR 1985 SC 1618
61 Anjali Roy v. State of West Bengal, AIR 1952 Calcutta 825
physical and mental 'person' of the women. Article 14 is the genus and Articles 15 and 16 are considered to be the species. However, in *Kerala v. N.M.Thomas*, the Supreme Court held, that Article 16(4) was not an exception to Article 16(1) but these are different facets of Article 14.

In another case, the court was critical of the doctrine of classification within formal equality, and held to observe that the technique of classification would obscure the question of inequality. It has been observed that if the group requires different treatment for disadvantaged persons, they can be given differential treatment in order to treat them equally. It was further stated that those who are unequal couldn't be treated by identical standards; it may be equality in law, but not real equality. A woman has been defined under the Indian Penal Code to include a female human being of any age. It may be noted that the penal code is applicable equally to all. Thus it does not make any distinction based on sex. But there are special provisions in the code giving special protection to women, which can be treated as forming exceptions to the general rule. It has been viewed, that these are not actually exceptions but they are special provisions meant to protect and to suit the peculiar way of life of women.

Article 15(3), however, is seen as an exception to this general rule, in providing that special provisions for women and children do not violate this injunction on differential treatment. As such, special provisions for women are not seen as a part of equality, but rather, as an exception to it. The special provisions in various Labour Legislations like Factories Act, Mines Act, and Plantation Labour Act are the result of this provision of the Constitution. Article 15(1) has been paramount in appropriating to women socio-economic equality through the protection of their rights.

AIR 1976 SC 490

Roop Chand Adiakha & others v. Delhi Development Authority, AIR 1989 SC 307

Section 10 of Indian Penal Code, 1860

reverberations of the Constitutional principle of equality are again heard in
Article 16. The banner of equality, the hallmark of our Constitution is foisted
in the realm of public employment. Article 16(1) states that there shall be
equality of opportunity for all citizens in matters relating to employment or
appointment to any office under the State. Article 16(2) states that no citizen
shall on grounds only of religion, race, caste, sex, descent, place of birth,
residence or any of them be ineligible for or discriminated against in respect
of any employment of office under the State.

Thus Articles 14, 15, and 16 underline the significance, which our
Constitution makers attached to the principle of equality. The term 'equality'
carries a very special significance in matters of public employment. It was
with a view to prevent any discrimination in that specific realm that an
express provision was incorporated to guarantee equality in that field.
Articles 14, 15 and 16 taken together are found to supplement each other.
The Articles 16(1) and 16(2) really give effect to the principle of equality
before law under Article 14 and to the prohibition of discrimination
guaranteed by Article 15(1). The three provisions are the part of the same
Constitutional code of guarantee. These Articles are so interwoven that one
Article can be invoked to construe the scope of other.

Article 14 could be considered as genus and Articles 15 and 16 as the
species. Article 14 guarantees the general right of equality. Articles 15 and
16 are instances of the same right in favour of citizens in some special
circumstances. Articles 15(1) and 16(2) prohibit that discrimination should
not be made only and only on the ground of sex. In Yusuf Abdul Aziz v. State of Bombay, it was held 'sex is a sound classification and although
there can be no discrimination in general on that ground, the Constitution
itself provides for special provision in the case of women...' Supreme Court
took the same view in a later decision in Miss C.B. Muthamma v. Union of

\[\text{AIR 1954 SC 321}\]
In this case Miss Muthamma, the petitioner had been denied promotion to Grade-I of the Indian Foreign Service illegally and unconstitutionally. The Indian Foreign Service Rules were found utterly discriminatory against married women. The question arose why a married woman should not be allowed to stand on the same footing as a married man? Justice V.R. Krishna Iyer observed that this misogynous posture is a hangover of the masculine culture of manacling the weaker sex for getting how the struggle for national freedom was also a battle against women’s thraldom. The most radical approach came in the case of Air India v Nargesh Meerza,\(^6\) The Court forbade discrimination only on the ground of sex, but it was not so when some other consideration were coupled with it. The most important ruling was that of declaring the pregnancy bar to airhostesses unconstitutional. The Court observed that after having utilized her services for four years, to terminate her service, if she becomes pregnant amounts to compelling the poor hostess not to have any children and thus interfere with and divert the ordinary courts of human nature. The termination of service under such circumstances is not only callous and crude act but is an open insult to the Indian womanhood and abhorrent to the notion of civilised society. Sex life race and national origin is a characteristic determined solely by accident of birth. Hence imposition of special disability upon the members of a particular sex appears to violate the basic concept of equality, which is the cornerstone of the Indian Constitution and legal system. Pregnancy is not a disability but one of the natural consequences of marriage. So any distinction on the ground of pregnancy cannot but be held to be extremely arbitrary. Their Lordships observed that by making pregnancy a bar to continuance in service of an airhostess, the corporation seems to have made an individualised approach to a woman’s physical capacity to continue her employment even after pregnancy, which undoubtedly is a most unreasonable approach. Thus where the law has

\(^{6}\) AIR 1979 SC 1868

\(^{6}\) AIR 1981 SC 1829
been found to be unfavourable to the socio-economic status of women, the attitude of the Supreme Court has been critical in no uncertain terms.

In *Sarala Mudgal v. Union of India*\(^7^0\) four petitions were filed by a registered society working for the welfare of women as public interest litigation, and three others by the respective affected women. The importance lies in the fact, that despite the 41 years lapse since the introduction of Hindu Code Bill in the Parliament in 1954, the rulers were not in a mood to retrieve Article 44 from its cold storage where it was lying. The observations in *Shah Bano’s case* were considered in *Ms Jordan Diengder v. S.S. Chopra*\(^7^1\) where O.Chinnappa Reddy, J speaking for the court referred them and approved it by emphasizing the need to infuse life into Article 44 and the concept beyond the religious and personal laws. The court observed that there is a separate provision in the form of Article 25 guaranteeing religious freedom, while Article 44 seeks to divest religion from social reform and personal laws. Even though under personal law matter like marriage, succession have sacramental flavour the Hindus along with their counterparts like Sikhs, Buddhists and Jains have forsaken this sentiment for the sake of the Constitution which enjoins a uniform civil code. Tracing the history, the court found that at the time of passing of Regulating Act 1781, the legislation was considered to be an authority but not the religion, by the then Governor General, *Warren Hastings*. In the light of these factors, the court requested the Government of India, to have a fresh look at Article 44 and its endeavour to secure for the citizens a uniform civil code throughout territory of India. Justice R.M.Sahai also stated it in this concurrent judgement that there is none like *Raja Ram Mohan Roy* or *Pundit Nehru* to pilot successfully the ambitions of the Constitution. The full bench of the Mumbai High Court has struck down Section 10 of the Indian Divorce Act as discriminatory. The court further added that, such a provision violates

\(^{70}\) AIR 1995 SC 1531
\(^{71}\) AIR 1985 SC 935
the fundamental right of the Christian women and to live with human dignity under Article 21 of the Constitution. The court further observed that under the said provision, a wife could be compelled to live with the man who has deserted her or has treated her with cruelty. Such a life is subhuman, thus there is denial to dissolve the marriage in spite of irretrievable breakdown of marriage.

The movement towards a Uniform Civil Code has become so complex with a plethora of heterogeneous religious faith and practices relating to Christianity, Islam and Zoroastrianism etc. Therefore any step in this direction of introducing an Uniform Civil Code with peaceful dialogue with different religious leaders will go a long way to bring about Uniform Civil Code. Meanwhile, all the earlier labour legislations together with the more recent Maternity Benefit Act, 1961, as well as the special Marriage Act, 1954 and the Medical Termination of Pregnancy Act, 1969 provide for all women, Hindu and non-Hindu, some basic rights towards freedom.

The legislative protection, thus, provided to Indian women has, consistently, been supported in all the Five Year Plans by a series of provisions, financial allocations and programmes aimed at promoting the education of women and thus providing funds for their development and welfare along with welfare programmes of other ministries both at Centre and State levels. The objective of facilitating the progress of women was institutionalised in the establishment of the Central Social Welfare Board in 1958. This apex organization, with division in every State, is specifically geared to promote the education, employment and welfare of women.

A new effort has of late been made towards understanding empirically, the impediments involved in elevating the position of women. All these concerted efforts as well as various enactments, which have tried to bring certain degree of emancipation of Indian women in legal sense; the
legal position, however, is far from being satisfactory. Women are not enjoying these rights and suffer from a number of socially inexorable disabilities and inhibitions. The position of women in rural areas is even worse. They usually do not exercise their rights owing mainly to ignorance and are, therefore, unable to achieve the legal equality with men. The other factor, which precludes exercise by women of their rights, is the nature of social structure. The social norms and values which govern human behaviour in rural areas do not favour women using their rights and thus create obstacles towards the enforcement of legislations which aim at improving the status of women.

The Hindu Succession Act, 1956 has relaxed the property laws for women. Hindu women from the time of ancient lawgivers were debarred from possessing property in their own right. A woman could only own her stridhan or bridals, etc., which were settled on her at the time of her marriage. The Dayabagha system allowed sons to have an equal share in the father's property in Bengal, but a daughter had no right of inheritance. The Mitakshara, on joint family system, also allowed no share to women. Thus, economically handicapped women naturally remained subordinate to men right through the British period, though the Hindu Women's Right to Property Act was passed in 1937, allowing a wife to benefit with her husband's share in coparcenary property during her life time. The country had many forms of succession such as the marumakattaym, the aliyasantana, nambudiri and others when a matriarchal system was followed. Here the daughter shared equally with the son, except among the Nambudiri, where the married daughter could not claim any property from her father. The Hindu Succession Act allows the widow and the mother to inherit the property of the deceased. Each takes an equal share except in the case of coparcenary property, when the son takes his own share plus a share of his father's property. With this Act, women can hold their property,
and have the right to sell, mortgage or give away their property, if they wish.

The following were the decisive changes brought about by the Act;

- The Act abolished the *Dayabhaga* and the *Mithakshara* school of Hindu law relating to succession.
- The Act has repealed provisions of different Acts relating to succession under matriarchal system which was prevailing in the South India.
- The Act has abolished divergent kinds of *stridhan* and rules relating to its succession.
- The Act has abolished Hindu woman's limited estate, and made her the absolute owner of the property.
- The Act has provided uniform order of succession governing the property of a male Hindu, with a few changes in respect of the *marumakattayam* and *aliyasanta* law.
- The Act abolished importable estate, not created by statute.
- The Act has provided uniform order of succession governing the property of a female Hindu, with a few changes in respect of the *marumakattayam* and *aliyasanta* law.
- The order of succession provided by the Act, is based according to the standard of love and affection, and the rule of preference based on the right to offer *pinda*, which was followed, by the *Dayabhaga* or propinquity of blood, which was followed by the *Mitakshara*, has been discarded by the Act.
- The Act provides, simple rules of preference, and where no preference can be made, heirs take simultaneously.
- The Act entitles, even the remotest agnate or cognate to be the heir.
- The Act makes no distinction between male and female heirs.
The Act has given right to certain female heirs, to succeed to the interests of the deceased in the coparcenary property. Disease defect or deformity is no ground of exclusion from inheritance under the Act. The Act entitles a male to dispose of his interest in a Mitakshara coparcenary property by a will.

The Act eliminates the foundations on which the joint family was based by declaring that birth in the family does not give right to property. It also makes woman an absolute owner of the property and not a limited owner. By this measure, it has placed woman on equal footing with man with regard to the right of use of the property. Hindu Women's Right to Property Act, 1973 conferred the right to enjoy her husband's share in coparcenary property for lifetime without a right to alienate property. Under the new Act the daughter, the widow and the mother can inherit the property of the deceased simultaneously. As between them each takes an equal share, except that where there are more widows than one, all the widows together take one share. This is the position with respect to the self-acquired property of the deceased. With respect to coparcenary property, the son takes his own share in such a property and in addition takes a share in the father's share of such property as well, unless he had separated himself from the coparcenary during the lifetime of his father. Nevertheless, the acceptance of the right of the daughter to inherit is itself a big step forward. Another step forward is that women will now hold their property absolutely with full right to sell, mortgage, give away and dispose of, as they desire.

Muslim women enjoy rights of inheritance to property as full and absolute as those of men. As a general rule, the share of inheritance of a female is half the share of a male of the same degree. This difference is, however, offset by a claim, which every Muslim wife has against her husband and an absolute obligation to maintain which every Muslim
husband owes to his wife. Mother, wife and daughter qualify for a share under all circumstances. The share of the mother varies from a sixth to a third depending on the existence of other heirs. The wife's share varies from a quarter to an eighth depending upon the absence of presence of children or lineal descendants. The daughter is also a primary heir. Under Special Marriage Act of 1954, the only condition necessary for a valid marriage under this Act is that the man must be over twenty-one years of age and the woman over eighteen and neither has a spouse living at the time of marriage. Lunatics and idiots are debarred from contracting a marriage under the Act. The marriage has to be registered by a Marriage officer and a certificate issued.

The solemnization does not entail any religious ceremony. Each of the parties has to declare, in the presence of the Marriage Officer and the witnesses, in any language understood by those present. Hindus too may marry according to the Special Marriage Act, but in this case the parties will be bound by the Indian Succession Act of 1925 and not by the Hindu Succession Act of 1956, according to the former the wife takes a greater share in the intestate property of her husband. A marriage performed with religious ceremonies can also be registered under the Special Marriage Act provided the parties wish to take advantage of the Indian Succession Act of 1925.

After independence, the recommendations of the Rau Committee, which was set up in 1941, came up for consideration by the Government. The Committee had recommended that the entire Hindu written and customary laws should be codified in order to ensure equity in marital relations and in succession. Following this recommendation, the Hindu Code was drafted in 1947 and a Select Committee of the Provisional Parliament considered this draft. One of the main conditions of a marriage under this Act is that neither party has a spouse living at the time of
marriage. Thus both polygamy and polyandry, practiced under the old laws, were, once for all, abolished as the Bill has over riding effect on all previous laws.

The Indian Penal Code declared that it included the offence under rape and prescribed the punishment, which might extend to transportation for life for the husband who consummated the marriage when the wife was below ten years. An Act was passed for the first time in 1925, which made distinction between marital and extra-marital sexual consummation. It also raised the age of consent to 13 in the case of former and 14 in the case of the latter. In 1928, age of consent committee under the president ship of N.M. Joshi was appointed. The Committee recommended 15 years as the age of consent in the case of marital relations and 18 years in the case of extramarital relations. It did not, however, result into any further positive legislation except the enactment of The Sarada Act, which tried to fix the minimum age for marriage.

The Child Marriage Restraint Act XIX of 1929 i.e. The Sarada Act, extended the operation of the Act to the whole of India. The Act punished the parties concerned if the marriage was performed in contravention of the law, which prescribed 14 years for the girl and 18 years for the boys as minimum ages. In Biswanath Das v. Maya Das,\(^72\) the husband filed a petition for divorce on grounds of desertion and cruelty. This case gives an example of the prevalence of one of the evils still rampant at the threshold of the twenty first century like the victimization of the girl child in the performance of child marriage. This case underscores the urgent need for law reforms to protect the status and rights of the child brides in India. The Supreme Court declared that 'right to life' does not mean mere animal existence, but it is something more that it is to live with human dignity. Right to life includes all those aspects of life, which go to make the life meaningful,

\(^72\) AIR 1979 SC 363 pp.365-366
complete, and worth living. Coming to the position of women, the court said, they are in a disadvantageous position due to several social barriers and impediments. Therefore they have been victims of tyranny in the hands of men with whom, they fortunately under the Constitution enjoy equal status, women also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life.73

The Widow Remarriage Act XV, which validated the marriage of widows, was passed in 1856, with the zealous co-operation of Ishwar Chandra Vidyasagar. It also demanded all rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property with no power of alienating the same, shall upon her remarriage cease and determine as if she had then died and the next heirs of her deceased husband or other persons entitled to the property on her death shall thereupon succeed to the same. The guardianship of the children should devolve upon the male relative of the deceased.

Regarding hours of work, it was in 1891 that a law was passed limiting the hours of work for women workers in factories to eleven per day including a recess interval of one and half hours. Under the pressure of prolonged struggle for further reduction of the working hours for factory workers including women workers in the subsequent period, a law was passed in 1934 reducing the number of working hours per day to 10 hours. In the same year, a law was passed fixing the hours of work per week to 54. A further reduction was made by legislation in 1948, which fixed the number

73 Bodhisathwa Gautam v. Miss Subharata Chakroborthy, AIR1996 SC p. 922, 926 Para 8
of hours of work per week to a maximum of 48 hours. The law also fixed 9 hours as the maximum length of the working day. It also prohibited employees to engage woman workers in night shifts. Regarding wages of women workers, the principle of equal wages for women and men for the same kind of work for the same period was not accepted till recently. The women workers used to get lower wages than men. Special legislation regarding equal wages has been passed only recently. The award of adjudication and industrial tribunals has also laid down the same wages for men and women on the grounds of equity and justice. Still, in large number of enterprises, lower payments to the women workers for the same type of work persist.

Despite constituting 50 per cent electorates of the world's largest democracy, the representation of the women in the Lok Sabha has varied from 4.4 per cent to 9.1 per cent which is even below the world percentage of 11.7 per cent. If this paralysis of the legislative bodies has to be rectified then 33 per cent reservation, as recommended by the United Nations in its Fourth World Women Conference, 1995 at Beijing, seems to be desirable and justified solution. The present Bill, after the failure of the 81st Bill, proposed to attain only this. Through an amendment 33 per cent of the constituencies were proposed to be reserved on rotation basis for a period of 15 years. On the Bill becoming the Act, 1/3 of the SCs/STs constituencies reserved under Part XVI of the Constitution would have automatically been reserved for women. However, the politics of reservation once again made the destiny of the Bill a Trishanku. Regarding the issue of reservation within reservation, it can be said at the threshold that if this is done on the basis of religion, race, caste, sex or place of birth, Article 15(1) hits the same. However, such provisions for women of socially and educationally backward classes of citizens, protected by Article 15(3) and 15(4), respectively. Thus, it seems that reservation for OBC women within the 33 per cent limit would be Constitutionally permissible, though it's desirability may demand political
consensus. According to Justice K. Ramaswamy in *Madhu Kishwar v. State of Bihar*, the history of suppression of women in India is very long. Indian women have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination. Though the Indian Constitution provides equality of status and of opportunity to women, discrimination is persisting in one form or the other. Discrimination against women continues to exist even today, as it is so deep rooted in the traditions of Indian society. As per Justice Bhawati, these fundamental rights represent the basic values cherished by the people of India since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.

One of the fundamental obstacles in promoting gender equality in development remains at the community level where attitudinal bases often prevent women from realizing their rights. Theoretical projections and oratorical gimmicks do not help solve the problems relating to the status of women. Their impact remains less than effective, particularly since there is little action taken against advertising or campaigns that are affecting the dignity of women. Stern action against the offenders of women's dignity will be a panacea for those who defy Constitutional law.

The critical analysis of Constitutional provisions reveals that although the Constitutional provisions are adequate in general to safeguard the interests of women in India, but specific rights to women to meet the growing challenges of womenfolk are inadequate. The principle of equality is not applied in strict sense. The sensitive issues relating to dignity of women are implicit in the Constitutional law such as right to privacy, right to dignity

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74 AIR (1996) 5 SCC 148
75 *Maneka Gandhi v. Union of India*, AIR 1978 SC 597
under Article 21. In the absence of explicit provisions, Constitution is prone to be misinterpreted by vested interests. Thus gender justice is delayed and sometimes denied to women.

The representation of women in the legislative bodies both at the Centre and the States is deplorably low. It is the same case in civil and judicial services. This is the problem that needs immediate attention in the agenda of development to bring about gender justice and equality. The very fact that women are equally potent and suitable for many positions that men are competent.