Chapter - III

Women and Legislation

Constitutional and Legal Safeguards for Women Empowerment

Important and far reaching efforts to emancipate women were made during the period of freedom movement in our country. It is during this period and that women made their presence felt and positively demonstrated it by participating in the movement that they were in no way unequal to men. Many women played decisive role in freedom struggle and as a result, the Indian National Congress recognised equality of sexes as early as in 1931.¹

But the real break through for betterment of women, was made only after independence. The struggle for legal equality has been one of the major concern of women's movement all over the world. Whether in the internal situtation of her position in parental or matrimonial house or in the external situation of acquiring education, skills, profession, employment etc. all these involve the law.

The government articulated the norm of equality through the constitution and using law as an important agent for social change and for formal equality. Legal rights are a precondition for raising the socio - economic status of women. progressive legislation is the harbinger of social change and should be one step ahead of current thinking.

In India, the first movement on women's rights centred round the three major problems of infant marriages, enforced widowhood and property rights for

women. The second major debate took place during freedom struggle and the
discussion on the Indian Constitution, focusing on Hindu Code Bill and within a
framework which recognises that women are not accepted as men's social,
economic and political equals and that these discriminations could be effectively
reduced if not eliminated, by passing appropriate laws and evolving an effective
machinery to implement these laws. The latest phase started in the seventies
focusing on gender bias in the law and making society aware of the oppression,
exploitation, subordination of women within the home and how widespread
domestic and outside violence is, resulting in several important amendments to
existing as well as fresh legislation.

**Constitutional Rights of Women:**

The basic provisions regarding women's rights are enshrined in the
Indian Constitution. The constitution of India not only grant equality to women
but also empowers the state to adopt measures of positive discrimination in favour
of women for neutralizing the cumulative socio-economic, educational and
political disadvantages faced by them.

The preamble to the constitution of India resolves to secure to all its
citizens:

JUSTICE, social, economic and political;
LIBERTY, of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunities; and to promote among them all
FRATERNITY assuring the dignity of individual and the unity and integrity of
the Nation.

The attain these national objectives, the constitution guarantees certain Fundamental Right to all its citizens. Again the directive principals of state policy enunciated in the constitution embody the major policy goals of a welfare state. They concretize together with Fundamental Rights, the vision of a new India socio - political order. The state is expected to take notice of these principles while formulating laws. Free and compulsory education for all children upto the age of fourteen, right to an adequate means of lively hood for men and women equally, equal pay for equal work, and maternity relief are some of the women - specific directive principles.

While the Fundamental Rights are justiciable and enforceable in courts of law, the Directive Principles are non - justiciable and non - enforceable in courts but the directive principles are :

"Nevertheless Fundamental in governance of the country and the state is charged with a duty to apply these principles in making laws". 2

The Indian constitution guarantees certain Fundmental Rights and freedom such as freedom of speech, expression, protection of life and personal liberty Indian women are the beneficiaries of these rights in the same manner as Indian men. Article 14 confess equal rights and opportunities on men and women in the politial, economic and social spheres. It ensures that the state shall not deny to any person equality before law or the equal protection of law within the

2. (Artical 37 of the constitution)
Article 15 (1) prohibits discrimination against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Article 15 (2) says that no citizens shall on grounds only of religion, race, caste, sex, place of birth be subject to any disability, liability, restrictions or condition with regard to -

(a) access to shops, public restaurants, hotels and place of public entertainment.
(b) the use of wells, tanks, bathing ghats, roads and places, of public resorts, maintained wholly on partly out of state funds or dedicated to the use of general public.
(c) nothing in this article shall prevent the state from making any special provisions for women and children. ³

The article 15 (3) empowers the state to make any special provision for "women and children" even in violation of the fundamental obligation of non-discrimination among citizens, interalia of sex. This provision has enabled the state to make special provision for women, particularly in the field of labour legislation like the Factories Act, Mines Act etc. Thus, it would support a provision like that in section 497 of the Indian Penal Code which says that in an offence of adultery, though the man is punishable, for adultery, the women is not permissible as an abettor. ⁴ Restrictions upon the right of alienation of women have


similarly been upheld. Similarly reservation of seats for women in local bodies or educational institutions has been held to be valid in view of the provision of Article 15 (3).

Article 16 (1) guarantees that "there shall be equality of opportunities for all citizens in matters relating to employment or appointment to any office under the state". Article 16 (2) guarantees that, "no citizens shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state". This obligation not to discrimination in matters relating to employment or appointment to any office under the state has thus ensured a significant position and status for Indian woman.

Right Against Exploitation:

Article 23 of the constitution specifically prohibits traffic in human beings. In this context traffic in human beings includes "Devadasi, System". Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing human beings for a price just like vegetables. On the strength of Article 23 (1) of constitution the legislation has passed the suppression of Immoral Traffic Act, 1956 which aims at abolishing the practice of prostitution and other forms of trafficking. Recently the Andhra Pradesh legislature has enacted the devadasi (Prohibition of Dedication) Act 1988 to prohibit

the practice of dedicating women as devadasis to Hindu deities, idols and temples etc. which invariably results in evils like prostitution.

Article 44 directs the state to secure for citizens a uniform civil code throughout the territory of India. This particular goal is towards achievement of gender justice. Even though the state has not made any efforts to introduce uniform civil code in India, the judiciary has recognised the necessity of uniformity of application of civil laws like law of marriage, succession, adoption and maintenance etc. in the case of Sarala Mudgal Vs. Union of India and other cases.

Women Reservations in Election of Local Bodies:

The 73rd and 74th amendments to the Indian Constitution effected in 1992 provide for reservation of seats to women in elections to panchayats and the municipalities. Perhaps, this is the first attempt by parliament to provide reservation for women in legislature. According to Article 243 D of constitution of India, not less than one third of total number of seats to be filled by direct election in every panchayat shall be reserved for women. Not less than one third of total number of offices of chairpersons in the panchayats at each level shall be reserved for women.

According to Article 243 T of Constitution of India which was added by constitution (74 amendment) Act 1992 makes similar provisions for reservations of seats to women in direct election to every municipality.

The parliament introduced the 81st Amendment Bill Seeking to reserve

one third of seats in Lok Sabha and State Assembly for women in month of September 1996. The bill has been referred to a joint committee of parliament and is yet to be passed. In a way, this move is only an extension of 73rd and 74th constitution amendment, under which a similar quota has been provided for women in the elected bodies of various levels in the Panchayat Raj and Nagar Palika Systems and as such represents a big step forward in empowering the women to play their rightful part in democratic government and in the political process at the decision making level. This measure is towards correcting the gender injustice.

Coming to the directive principles of state policy, some of them concern women indirectly or by necessary implication. There are a few others which are specific to women. The ones which concern women directly and have a special bearing on their status are --

* Article 39 (a) which directs the state to frame its policy for ensuring that the citizens, men and women equally have the right to an adequate means of livelihood;

* Article 39 (d) which directs the state to ensure that there is equal pay for equal work for both men and women;

* Article 39 (e) which directs the state to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter the work unsuited to their age or strength; and

* Article 42 which directs the state to make provision for ensuring just and
humane conditions of work and maternity relief.

Thus the Fundamental Rights and Directive Principles are the instruments for attaining our national objectives of justice, liberty and equality. By adopting the principle of adult franchise, it seeks to establish a democratic republic by giving the adult population direct or indirect share in the government. The special attention given to the needs of the women to enable them to enjoy and exercise their constitutional equality of status, along with other special provisions aimed at their participative role in society make the Indian Constitution a 'social' document embodying the objectives of a social revolution. It is clear that the constitution contemplates attainment of an entirely new social order where all citizens are given equal opportunities and no discrimination takes place on the basis of race, religion, creed or sex.

After independence, deliberate efforts have been done by the state to raise the status of women in all spheres of life. Besides constitutional provisions, a number of legislative measures have been enacted towards this end.

Progressive legislation in various areas relating to women's rights and well-being such as marriage, divorce, abortion, guardianship of children, maintenance, inheritance, matrimonial property, criminal law etc has been the hallmark of the decades following the independence.

Although there is criticism that we rely too heavily on legislation in

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order to bring about social change. But no one can deny the fact that progressive legislation is the harbinger of social change and should be generally one step ahead of current thinking.

Although all laws enacted by the government are not gender specific, the major provisions of these laws affect women significantly. Amendments have been carried out periodically to keep pace with emerging demands. They include among others, the following -

* Hindu Marriage Act, 1955.
* Provisions Relating to Divorce.
* Special Marriage Act, 1954.
* Widow Remarriage Act, 1856.
* Hindu Succession Act, 1956.
* Hindu Adoption and Maintenance Act, 1956.
* The Dowry Prohibition Act.
* The Workmen's Compensation Act, 1923.
* The Pre-natal Diagnostic Techniques (Regulation of Prevention and misuse), Act, 1994.

* Prevention of Immoral Traffic and Women.


The legal land constitutional edifice thus effectively affirms and promotes the principles of equity, justice and equality of women and takes care of their special needs. The major provisions under these laws are as follows --

**Hindu Marriage Act, 1955**

The Hindu Marriage Act applies to all the Hindus by religion which includes vaishnav, Lingayat, and members of the Brahmo, Prarthana and Arya Samaj. This Act also applies to any person who is a Buddhist, Jain or Sikh by religion and to legitimate and illegitimate children of parents who belong to the above religions and sects. All Hindu who do not marry under the special marriage Act are governed by this Act. It extends to the whole of India except the state of Jammu and Kashmir.9 Under Hindu Marriage Act, the condition for marriage are --

* Either spouse should not have an earlier living spouse. Thus both polygamy

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9. The Act was applied to the state of Jammu & Kashmir by the J & K Hindu Marriage Act, 1955 (J & K Act 8 of 1955)
and polyandry practised under old laws were abolished as the bill has overriding effect on all previous laws.

* Either spouse should not have mental problem, mental illness. Lunatics and idiots are debarred from contracting a marriage under this Act.

* The bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of marriage.

* The parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two.

* The parties are not spindas of each other, unless the custom or usage governing each of them permit of a marriage between the two.

A Hindu cannot contract a second marriage with another till the first marriage is dissolved by divorce or decree. If this is done he/she can be prosecuted by law. A report given to police by a near relative is entertained. If such a second marriage is proved, he/she can be imprisoned and fined. Under the Act, certain types of marriages are declared void and fraudulent.

Divorce

When the spouses find it difficult to live with each other, either of the spouse can apply for divorce under the law. Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground
that the other party\footnote{Paras Diwan (1992) "Modern Hindu Law", Allahabad Law Agency, Allahabad.}

* has after solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
* has after the solemnization of marriage, treated the petitioner with cruelty, or
* has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
* has ceased to be a Hindu by conversion to another religion; or
* has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

However, the dissolution of a marriage cannot be applied for, before the expiry of one year of marriage or of passing of the decree of judicial separation unless permitted by the court under special circumstances.

The Hindu Marriage Act makes provisions both for judicial separation as well as for divorce. The grounds are less stringent for judicial separation since unlike divorce it does not put an end to the marriage but merely excuses the parties from cohabitation. According to the law as it exists today if either the husband or wife refuses to live with the other without just cause, the aggrieved party may apply to the court, which may grant a decree for restitution of conjugal rights. Such a decree cannot be enforced by detention in prison.

An additional ground for divorce has been granted to women where
there is a co-wife or co-wives living. A wife can also apply for divorce, if after the marriage, the husband is guilty of rape, sodomy, cruelty, desertion.

Divorced person may not marry again until the expiry of a minimum of one year from the date of the decree of divorce or till the period prescribed for appeal is over or any appeal filed is disposed of.

**The Special Marriage Act, 1954**

The act permits marriage of people from different religions without changing their religion.

**Conditions relating to Solemnization of Special Marriage**

- **Neither Party** —
  
  (a) Neither party has a living spouse.
  
  (b) Neither party is of unsoundness of mind.
  
  (i) has been suffering from mental disorder of such a kind to be unfit for marriage and the procreation of children.
  
  (ii) has been subject to recurrent attacks of insanity or epilepsy.
  
  (c) the male has completed the age of 21 years and the female the age of 18 years.
  
  (d) the parties are not within the degrees of prohibited relationship.

**Notice of Intended Marriage**:

When a marriage is intended to be solemnized under this Act, the partner to the marriage shall give notice to the marriage officer of the district in which at least one of the parties to the marriage has resided for a period of not less than
thirty days immediately preceding the date on which such notice is given.

The marriage officer shall keep all notices given in a book prescribed for that purpose and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

The marriage officer shall cause every such notice to be published by affixing a copy to some conspicuous place in this office.

Before the marriage is solemnized, the parties and three witnesses shall, in the presence of marriage officer, sign a declaration in the form specified in the third schedule to this Act and the declaration shall be countersigned by the marriage officer.

The marriage may be solemnized at the office of the marriage officer or at such other place within a reasonable distance there from as the parties may desire, and the payment of such additional fees as may be prescribed.

The marriage shall not be complete unless each party to other in the presence of marriage officer and the three witnesses in any language understood by the parties, "I (A), take the (B), to be my lawful wife (or husband)".

Certificate of Marriage:

When the marriage has been solemnized, the marriage officer shall enter a certificate in marriage certificate book and such certificate shall be signed by the partner to the marriage and the three witnesses. The certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses
have been complied with.

**Widow Remarriage Act, 1856:**

Widow Remarriage Act, which validated the marriage of widows, was passed in 1856 with the zealous cooperation, efforts of Ishwar Chander Vidya Sagar. It is enacted as follows --

(i) **Marriage of Hindu Widows Legalised:**

No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate by reason of the women being previously married or betrothed to another person who was dead at the time of such marriage.

(ii) **Rights of Widow in Deceased Husband's Property to Cease on her Remarriage:**

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 by virtue of any will, upon her remarriage cease and determine as if she had then died and the next heirs of her deceased husband or other person entitled to the property on her death, shall thereupon succeed to the same.

A childless widow shall not be capable of inheriting the whole or any share of the property of the deceased husband. Ceremonies constituted or engagements made on the marriage of a Hindu female who has not previously married are sufficient to constitute a valid marriage shall have the same effect on marriage of a Hindu widow and no marriage shall be declared invalid on the ground that such words, ceremonies or engagements are inapplicable to the case.
All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or to fine or to both.

**Property Rights : Hindu Succession Act, 1956**  

This act has relaxed the property laws for women. Hindu women from the time of ancient law givers, were debarred from possessing property in their own right. A woman could only own her 'stridhan' or bridal ornaments etc. Thus economically handicapped women naturally remained subordinate to men, right through the British Period also.

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 so wish.

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

* The Act has repealed provisions of different Acts relating to succession under matriarchal system (Prevailed in the South)

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13. Renu Chakravarti, "The Law as it affects women".
* The Act abolished the Dayabhaga and Mitakshara school of Hindu Law relating to succession.

* The Act has abolished Hindu women's limited estate and made her absolute owner of the property, even with regard to existing properties.

* The Act has provided uniform order of succession governing the property of a male Hindu, with a few changes in respect of the marumakktayam and 'aliyasantana' law.

* 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 'aliyasantana' law.

* The Act provides simple rules of preference and where no preference can be made, heirs take simultaneously.

* 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.

14. The Dayabhaga allowed sons to have an equal share in father's property in Bengal, but a daughter had no right of inheritance.

15. Mitakshra, on Joint Family System, also allowed no share to women.

The Act entitles, even remotest agnate 17 or cognate 18 to be heirs.

The Act eliminates the foundations on which Joint Family was based by declaring that birth in the family does not give right to property. It also makes women an absolute owner of property and not a limited owner. It has placed women on equal footing with men with regard to right to use of property. Under the new Act the daughters, the widow, can inherit the property of the deceased simultaneously.

The Hindu Adoptions and Maintenance Act, 1956 19

Capacity of a male Hindu to take in adoption: Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. Provided that if he has a wife living, he shall not adopt without the consent of her unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Capacity of a female Hindu to take in adoption:

Any female Hindu -

(a) Who is of sound mind.

(b) Who is not a minor.

(c) Who is not married or if married, whose marriage has been dissolved or whose husband is dead or has finally renounced the world or has ceased to

17. If two persons are related by blood or adoption wholly through males.

18. If two persons are related by blood or adoption but not wholly through male.

19. Received the assent of the President on 21st Dec. 1956, and published in the Gazette of India, Part II Sec. I dated 22nd Dec. 1956.
be a Hindu or has been declared by a court of competent Jurisdiction to be of unsound mind - has the capacity to take a son or daughter in adoption.

Persons Capable of giving in adoption:

(i) No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption

(ii) The father, if alive, shall alone have the right to give in adoption, with the consent of the mother, unless the mother has completely and finally renounced the world or has ceased to be a Hindu or to be of unsound mind.

(iii) The mother may give the child in adoption if the father is dead or renounced the world or has ceased to be a Hindu or declared to be of unsound mind.

(iv) Where both father and mother are dead or declared to be of unsound mind or where the parentage of child is not known, the guardian of child may give the child in adoption with the previous permission of court to any person including the guardian himself.

Persons who may be adopted:

Following conditions are fulfilled:

(i) He or she is Hindu.

(ii) He or she has not already been adopted.

(iii) He or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption

(iv) He or she has not completed the age of fifteen years.

Maintenance Act, 1956

Maintenance of Wife:

(a) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(b) A Hindu wife shall be entitled to live separately from her husband and having claim to maintenance.

(i) If he is guilty of desertion, abandoning her without reasonable cause.

(ii) If he has treated her with such cruelty that it will be harmful or injurious to live with her husband.

(iii) If he is suffering from a virulent form of leprosy.

(iv) If he has any other wife living.

(v) If he keeps a concubine in the same house in which his wife is living on habitually resides with a concubine elsewhere.

(vi) If he has ceased to be Hindu by conversion to another religion.

(c) A Hindu wife shall not be entitled to separate residence and maintenance if she is unchaste or ceases to be a Hindu by conversion to another religion.

Maintenance of Widowed Daughter-in-Law:

(a) A Hindu wife shall be entitled to be maintained after the death of her husband by her father-in-law.

Provided that she is unable to maintain herself out of her own earning or other property -
(i) from the estate of her husband or her father or mother.

(ii) from her son or daughter, if any, or his or her estate.

(b) Any obligation shall not be enforceable if father-in-law has not the means to do so from any coparcenary property and any such obligation shall cease on the remarriage of the daughter-in-law.

**Maintenance of Children and Aged Parents**

(a) Subject to the provisions of this section, a Hindu is bound, during his or her life time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(b) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(c) The obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extends so far as the parent or unmarried daughter, as the case may be, is unable to maintain himself out of his own earnings or property.

The amount of maintenance depends on the position and status of parties, the value of claimant property, degree of relationship between the two, the reasonable wants of dependent etc.

**The Dowry Prohibition Act, 21**

In Dowry Prohibition Act, 1961, a narrow definition of dowry as

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"Property given in consideration of marriage and as a condition of marriage taking place" was given. It excluded presents in the form of cash, or naments, clothes etc. from its purview. Both giving and taking dowry was a offence under the Act non-cognisable and bailable. The maximum punishment was six months and / or fine of Rs. 5000/- prior sanction of government was necessary for prosecuting a husband. The aggrieved person only could file a complaint within a year of the offence.

To plug the loopholes, amendments were made in 1984 and 1986 -

* The limitation of one year was removed and now girls, parents, relatives or social organisations could file a complaint on her behalf.

* Increase in punishment to five years and a fine upto 10000/-

By the Amendment of 1986, the Act was made more deterrent -

* Fine was increased to 15000/-

* The burden of proving the offence was shifted to the accused.

* It was made a non-bailable, non commendable offence.

* In case of unnatural death of women, her property devolved on her children, of childless the property would be reverted to her parents.

* The advertisement in newspaper, periodicals etc. offering a share of property as consideration for marriage is punishable.

* The minimum punishment for taking or abetting taking of dowry has been raised to five years.

* The amendment proposes appointment of Dowry prohibition officers by the
state governments.

A new offence of "Dowry Death" has been included in the Indian Penal Code consequential to the amendment in the Act 1986. In the Indian Penal Code Section 304 B, Dowry Death -

"Where the death of a women 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.

Whoever commits dowry death shall be punished with imprisonment for a term which shall not less than seven years but which may extend to imprisonment for life"

The Factories Act, 1948

The first factories Act was enacted in 1881. Since then the Act has been amended on many occasions. The working of Factories Act 1934, revealed a number of defects and weaknesses. Therefore, the Factories Act, 1948 amending the law relating to labour in factories was passed by Constituent Assembly on August 28, 1948 and came into force on April 1949.


Changes introduced by Factories Act 1948 -

(a) The definition of the term 'factory' was widened to cover all industrial establishments employing ten or more workers where power was used and 20 or more workers in all other cases.

(b) The Act specified clearly the minimum requirements under three heads that is health, safety and welfare of worker.

(c) The basic provisions of the old Act relating to health, safety and welfare are extended to all work places irrespective of number of workers employed.

(d) The minimum age for the admission of children was raised from 12 to 14 years and minimum permissible daily hours of work of children were reduced from five to four and a half hours.

(e) Employment of children and women between 7-00 P.M. and 6 A.M. is prohibited. For overtime work the workers are entitled to twice their normal rate of wages.

(f) The state governments are empowered to make rules regarding association of workers in management for the welfare of workers.

Health Provisions:

Section 11 of the Act deals with health provisions. Every factory shall be kept clean and free from affluvia arising from any drain or other nuisance, accumulation of dirt and refuse shall be removed daily. In every factory effective arrangements shall be made for drinking water at suitable points.

Sufficient Latrine and urinal accommodation accessible to workers at all
limits while they are at work will be provided. Separate enclosed accommodation shall be provided for male and female.

Safety Provision:

In every factory, prime movers, electric generators, dangerous parts of a machinery etc. shall be securely fenced by substantial construction, employment of women and children has been prohibited near cotton openers.

Adequate facilities for washing and bath shall be provided for workers. Separate and adequately screened facilities shall be provided for the use of female and male workers. Suitable shelters, rest rooms, lunch rooms shall be provided.

Creches:

In every factory wherein more than thirty women workers are ordinarily employed, suitable rooms for the use of children under the age of six years of such women shall be provided.

Relevant Provisions of Mines Act 1952 regarding Women Employment 24

(a) No women shall not with standing any thing contained in any other law, be employed -

(i) In any part of a mine which is below ground.

(ii) In any mine above ground except between the hours of 6 A.M. and 7 P.M.

(b) Every women employed in a mine above ground shall be allowed an interval of not less than eleven hours between the termination of employment on

any oneday and the commencement of the next period of employment.

(c) Notwithstanding anything contained in sub section (l) the central government may, by notification in the official gazette, vary the hours of employment on above ground of women in respect of any mine or class or description of mine, so however, that no employment of any women between hours of 10 P.M. and 5 P.M. is permitted thereby.

The Workmen's Compensation Act, 1923

The workmen's compensation Act 1923, is a mechanism for providing relief to victims of work connected injuries. It imposes a liability upon the employer to pay compensation at specified rates to the workmen or his/her dependents if he or she suffers a personal injury occurring by accident arising out of and in the course of employment subject to certain exceptions laid down in the Act.

Certain diseases contracted in the course of employment are also regarded as injuries caused by accident. The Act applies to certain specified employments including 25.

(a) Farming by tractors or contrivances driven by steam or other mechanical power or by electricity or

(b) Working, repair or maintenance of a tubewell or

(c) Working on any estate maintained for the purpose of growing cardamom, cincona, coffee, rubber or tea.

However, the Act failed to provide the much needed relief to vast

poverty stricken, agricultural workers who could become victims of accidents arising out of and in the course of employment.

**The Employees State Insurance Act, 1948**

The Employee's State insurance bill providing for compulsory sickness, maternity and employment injury benefits for workers in perennial factories was introcuded in the central legislature on 6 Nov. 1946. It was passed in 1948. The Employee's State Insurance Act is a legislation which aims at bringing about social and economic justice to the poor labour class of the land. It aims at the labour welfare. These welfare activities need to be considerably extended so as to cover workers of every Factory, Industries, Mines, Plants and communication etc. A definite minimum standard of welfare should be laid down, which has to be observed by all employers. For an employee to be insured two conditions are provided -

(a) He must be employed in a factory or an establishment.

(b) Contributions must be either paid or payable to him under the Act.

The contribution payable under this Act shall comprise the contribution partly paid by the employer and party by the employee. The contributions shall be paid as such prescribed by central government.

The purpose of Employee's State Insurance Act is to provide benefits as detailed in section 46 of the Act -

(a) Sickness benefit

(b) Maternity benefit
(c) Disablement benefit

(d) Dependents benefit

(e) Medical benefit

(f) Funeral expenses

**Sickness benefit**

Periodical payment to any insured person provided his sickness is certified by a duly appointed medical practitioner.

**Maternity benefit**

The benefit in the form of periodical payment available to an insured women, payable in case of -

(i) Confinement; or

(ii) Miscarriage

(iii) Sickness arising out of pregnancy

(iv) Premature birth of a child

**Disablement benefit:**

Any insured person shall be entitled to periodical payment if -

(i) He suffers from disablement

(ii) The disablement results from an employment injury.

(iii) He sustained injury as an employee under conditions mentioned in the Act.

**Dependents benefit**

This benefit is available to such dependents of an insured person who dies of employment injury sustained as an employee as are entitled to compensation
under this Act.

Medical benefit

(i) Outpatient treatment and attachment in the hospital

(ii) As an inpatient in a hospital or other institution

Funeral expenses

Funeral expenses are payable to the oldest surviving member of the family or to such person who actually incurs funeral expenses. Any claim for funeral expenses must be made within three months of the death of the insured person.

The Maternity Benefit Act, 1961 26

The Maternity Benefit Act, 1961 was enacted to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. The Maternity Benefit Act is intended to achieve the object of doing social justice to women workers, to enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output 27

It applies -

(a) To every establishment which is a factory, mine or plantation including any

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such establishment belonging to government.

(b) To every shop or establishment in a state where ten or more person are employed.

Under Section of the Act, No women shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage.

No pregnant women shall be given any work -

* Which is arduous nature.
* Any work which involves long hours of standing.
* Any work which in any way is likely to interfere with her pregnancy or the normal development of foetus or likely to cause her miscarriage or otherwise adversely affect her health.

The maternity benefit to which every women shall be entitled and her employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.

Section 5(3) provides that a women shall be entitled to maternity benefit for a minimum period of twelve weeks, that is six weeks upto and including the day of her delivery and six weeks immediately following that day.

Provided that where a woman dies during this period, the maternity benefits shall be payable only for the days upto and including the day of her death where as women having been delivered of a child, dies during her delivery, leaving
behind the child, the employer shall be liable for maternity benefit for the entire period of six weeks.

The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to women on production of such proof as may be prescribed that the women is pregnant and the amount due for the subsequent period shall be paid by the employer to the women within forty eight hours of production of such proof as may be prescribed that the women has delivered of a child.

Equal Remuneration Act, 1976

Article 39 of Indian Constitution Specifically directs the state to secure equal pay for equal work for both men and women. To give effect to this constitutional position the Equal Remuneration Act, 1976 has been enacted. This Act provides for the payment of equal remuneration to men and women workers for the same work or work of similary nature and for the prevention of discrimination on ground of sex. 28

Applicability :

The Act is applicable to various establishments mentioned under section 1 of Act. The Act came into force in respect of employments in those establishments on different dates.

Duty of Employer to Pay Equal Remuneration :

According to section 4 of the Act, every employer is under a statutory

obligation to pay remuneration at equal rates to men and women employees if they perform the same work or work of a similar nature. Section 16 clearly authorises restrictions regarding remuneration to be paid by the employer if a declaration under it is made by the appropriate government that there shall be a difference in remuneration payable to the men and women based on a factor other than sex. 

Prohibition of discrimination in recruitment:

No employer shall while making recruitment for the same work or work of a similar nature make any discrimination against women unless employment of women is prohibited or restricted by law. This in the matter of recruitment or any condition of service subsequent to recruitment such as promotions, training or transfer, the employer is prohibited from making a discrimination against women only on ground of sex. This prohibition is similar to one contained in Indian Constitution in Article 16(1).

Penalties:

If any employer does any one the following acts he shall be punished with minimum fine of ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment not less than three months which may extend to one year or both for first offence. For the second or subsequent offence the employer may be imprisoned upto two years.

(a) Making any recruitment in contravention of the provision of this Act.

(b) Making any payment of remuneration at unequal rates to men and women workers for the same work or work of equal nature.

(c) Making any discrimination between men and women workers in contravention of provision of the Act.

(d) Omitting or failing to carry out any directions made by appropriate government under section 16 (5) of this Act.

The Criminal Law (Amendment) Act, 1983 regarding Rape:

While the scourge of rape continues to wreck havoc on nation's thousands, of innocent women, the legislators, journalists the public are hard put to suggest measures to halt the rising trend. Higher Caste Hindus rape harijans, teachers rape their students as well as their colleagues, students rape their colleagues, doctors rape their patients, and nurses in hospital. Oldmen and youngmen alike enjoy the pleasure of sex out of wedlock and law enforcement officials rape those, they are enjoined to protect, even fathers rape their daughters! News headlines, everyday, are flushed with cases of rapes, gangrapes. A 15 year old boy may rape a sixty year old women and a sixty year oldman may rape a two months old child!

According to section 375 of IPC, a man is said to commit rape who has sexual intercourse with a women under circumstances falling under any of the following descriptions.

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(a) Against her will

(b) Without her consent

(c) With her consent when her consent has been obtained by putting her in fear of death or hurt.

(d) With her consent, when the man knows that he is not her husband and her consent is given because she believes that he is another man to whom she is or believes her self to be lawfully married.

(e) With her consent when, at the time to giving such consent, by reason of unsoundness of mind or intoxication, she is unable to understand the nature and consequences of that to which she gives her consent.

(f) With or without her consent, when she is under sixteen years of age.

Section 376 of IPC, deals with punishment for rape - whoever, commits rape shall be punished with imprisonment which shall not be less than seven years but which may be for life or for a term which may extend to 10 years. When the women raped is his own wife and is under twelve years of age, imprisonment may extend to two years or with fine or both.

Criminal Law (Amendment) Act, 1983 introduced several reforms concerning punishment for rape, the procedures and the rules of evidence -

(a) New Section was added which made sexual intercourse by person in custody (of policemen, public sevants etc.) an offence even if it was with the consent of women.
(b) For the first time the minimum punishment for rape was laid down ten years in cases -

(i) Being a police officer commits rape

(ii) Being a public servant, takes advantage of his official position and commits rape on a woman in his custody.

(c) Being on management or on the staff of a jail remand home.

(d) Being on management or on staff of a hospital.

**Medical Termination of Pregnancy Act, 1971**

The Medical Termination of pregnancy Act, 1971, is another legal provision which needs mention in the context of legislation related to women. It has few provisions which were enacted with the sufferings of women. The termination of pregnancy by quacks and unregistered and unqualified medical practitioners caused irreparable damage to the women concerned and also caused death in many cases. In most of cases abortion was forcefully carried out to prevent the birth of a female child and in the process most of women also lost their lives besides other medical damages. That is why parliament prompted to make a law to regulate termination of pregnancy only in certain cases and only by registered medical practitioners.

The two explanations which have been offered in the enactment are as follows -

(a) When any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute
a grave injury to the mental health of the pregnant women.

(b) Where a pregnancy occurs as a result of failure of any device of method used by any married women or her husband for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant women.\textsuperscript{31}

\textbf{Circumstances in which pregnancy may be terminated :}

(a) Where the length of pregnancy does not exceed 12 weeks that is three months it may be terminated by a single registered medical practitioner.

(b) Where the length of pregnancy exceeds 12 weeks but does not exceed 20 weeks, it may be terminated by not less than two registered medical practitioners.

Such termination can take place only when such medical practitioner(s) form an opinion in good faith that -

(i) The continuance of pregnancy would involve a risk to life of the pregnant women or of grave injury to her physical or mental health ; or

(ii) There is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be serious handicapped.\textsuperscript{32}


The Prenatal Diagnostic Techniques (Regulation of Prevention and Misuse) Act:

With the advent of modern techniques developed in the recent times, it became quite possible to ascertain the sex of child in the womb even in the early stages of pregnancy. The techniques used to diagnose the conditions and sex of the foetus is medically called 'amniocentesis'. Which is one of the many pre-natal diagnostic techniques. These techniques are actually intended to test or analyse the amniotic fluids, blood or any tissue of a pregnant women for the purpose of detecting any genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or sex linked diseases. The procedure used for conducting any pre-natal diagnostic tests includes all gynaecological or obstetrical or medical procedure such as ultra sonography, foetoscopy, taking or removing samples of blood or any tissue of a pregnant women etc.

Misuse of Techniques:

Instead of using these techniques for medical purpose, the medical practitioners started using them only for the purpose of determining the sex of the child in the womb. In most of the cases, once it was determined that the foetus was female, it was miscarried deliberately so as to prevent the birth of a female child. These advanced medical techniques were misused to serve the purpose of female foeticide i.e. killing or aborting the foetus, in a society dominated by male.

The government has realised that abuse of techniques for determination of sex of the foetus leading to female foeticide is discriminatory against the female sex and also affects the dignity and status of women. With this objective, the parliament has passed the 'Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, which came into force from Jan, 1996.

The legislation seeks to achieve the following objectives -

(a) Prohibition of the misuse of Pre-Natal diagnostic techniques for determination of sex of foetus leading to female foeticide.

(b) Prohibition of advertisement of the techniques for detection for or determination of sex.

(c) Regulation of the use of techniques duly for the specific purposes of detecting genetic abnormalities or disorders.

(d) Permission to use such techniques only under certain conditions by the registered institutions.

(e) Punishment for the violation of the provisions of the Act.

(f) To provide deterrent punishment to stop such inhuman acts of female foeticide.

These techniques may be used only when any of the following conditions is satisfied -

(i) When the pregnant woman is above 35 years, of age,

(ii) where the pregnant woman has already undergone 2 or more abortions or foetal loss.
(iii) Where the pregnant women has been exposed to potentially dangerous agents like drugs, radiation, infection or chemicals.

(iv) Where the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease etc.

Section 6 of the Act absolutely prohibits the determination of the sex of a foetus and communication thereof by any genetic centre, laboratory or clinic. Therefore, techniques like ultra sonography can be used only for detecting the genetic disorders or abnormalities and not for determination of the sex of the foetus.

Panel Provisions:

Any contravention of the provisions of this Act, is made an offence. The guilty individual is liable to be punished with various punishments depending on the nature of contravention.

If a company commits such an offence, any person who is the incharge of such company at the time of offence shall be deemed to be guilty of the offence. Thus vicarious liability is imposed on the individuals heading the companies of organisations violating the provisions of the Act. The Act makes every offence under the Act a cognizable, non-bailable and non-compoundable.

Prevention of Immoral Traffic and Women:

The prostitution is said to be the oldest among the professions in the world of human beings and is rampant throughout the world. Over a period of time the sexual factor ceased to be the only factor in prostitution and other reasons
also contributed to the growth of this evil practice such as unemployment, poverty, exploitation at work, lure of luxury, moral degradation etc.

The parliament passed the suppression of Immoral Traffic in women and girls bill 1954 which became the Immoral Traffic in Women and Girls Act 1956 and it was shortly known as SITA. This Act was covering only the females and children.

Subsequently it has been realised that prostitution is not confined only to the females and children but also covers the males. In order to cover even the males, the Act was renamed as the Immoral Traffic (Prevention) Act, 1986 by an amendment in 1986. Now the Act covers, both the males as well as females, as it uses the expression "Person". The Act underwent two major amendments in 1978 and 1986 which introduced radical changes in the scopes of the legislations, the persons covered there under and the definition of prostitution etc.

**Purpose of Legislation:**

The purpose of the enactment was to inhibit or to abolish commercial vice namely traffic in women, men and children for the purpose of prostitution as an organised means of living. The aim was not to render prostitution "perse" a criminal offence or punish a women merely because the prostitute herself. A careful scrutiny of the Act clearly reveals that it was aimed at the suppression of commercialised vice. 34 What is punishable under the Act is sexual exploitation for commercial purpose, or to make a living thereon.

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34. Ratnamala, in AIR 1962 Madras 31 (33).
**Penal Provisions:**

Punishment for keeping a brothel etc. Section 3 of the Act punishes any person who keeps or manages or assists such keeping or manages a brothel. Under this section any landlord, owner, lessor, tenant occupier, or lessee is punishable if he knowingly uses the premises for prostitution or allows it for such use. The knowledge of the person is very important.

**Punishment for living on the earnings of prostitution:**

Section 4 provides that any person who is over 15 years of age, who lives wholly or in part on the earnings of prostitution of a person is liable to be punished. A person is liable to be punished if he acts as pimp or tout on behalf of the prostitute.

A person who procures a person, for the purpose of prostitution, who induces a person or takes a person from one place to another with a view to his/her carrying on prostitution also is liable to be punished.

According to section 7 of the Act, carrying on of prostitution in any premises within a distance of two hundred metres from any place of public religious worship, educational institution, hostel, hospital, nursing home or public place notified as such by the police commissioner or the district magistrate, an offence. Section 8 of the Act makes it a penal offence for any person to seduce or solicit for the purpose of prostitution in any public place or within sight of it.

**Punishment for Custodial Seduction:**

Section 9 of the Act punishes custodial seduction i.e. seduction by any
person having the custody, charge or care of or in a position of authority over any person. It is a grave offence which attracts a minimum imprisonment of 7 years and also fine.

Rehabilitative and Remedial Provisions:  

This Act is not a Pure Penal legislation. It is also a social welfare legislation and aims at the rehabilitation and correction of the female and child offenders found guilty of indulging in prostitution. According to section 10-A of the Act, a female found guilty of an offence of carrying on prostitution at a public place etc., may be ordered to be detained in a corrective institution for a term not less than two years and not more than 5 years.

The Indecent Representation of Women (Prohibition) Act, 1986.  

This Act is to prohibit indecent representation of women through advertisements, or in publications, writings, paintings, figures or in any other manner and for matters connected there with or incidental there to.

"Advertisement" includes any notice, circular, label, wrapper, or other document and also includes any visible representation made by means of any light, sound, smoke, or gas.

Indecent representation of women means the depiction in any manner of the figure of a women, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to or denigrating, women, or is


36. Published in Gazette of India, Section 1, dated 23rd Dec. 1986.
like to deprave corrupt to injure the public morality or morals.

The Act Prohibits advertisement containing indecent representation of women

According to section 3 of the Act, no person shall publish or cause to be published, or arrange or take part in the publication of exhibition of any advertisement which contains indecent representation of publication of women in any form.

Prohibition of Publication of Sending by Post of books, Pamphlets, etc. Containing indecent representation of women:

Under section 4, no person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph representation or figure which contains indecent representation of women in any form.

Penalty:

Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

Offence by Companies:

Where an offence is committed by a company under this Act, every
person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct, of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. If it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer shall be proceeded against and punished accordingly.

The central government, may by notification in official Gazette, make rules to carry out the provisions of this Act.

Protection of Action taken in good faith:

No suit, prosecution or other legal proceeding shall lie against the central government or any state government or any officer of central government or any state government for anything which is in good faith done or intended to be done under this Act.

The Commission of Sati (Prevention) Act, 1987

The first legislation against the practice of sati was formulated in 1827. The Act was challenged in privy council by the advocates of Sati and pleaded for repeal of the same on religious grounds. The argument was centered on the ground that there could be no freedom of religion which could go beyond claims of humanity and justice. Incidence of Sati of Roop Kanwar in Deorala Rajasthan caused furore amongst various voluntary and women groups and led to

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37. The Voluntary or coerced immolation of women with her deceased husband.

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wide spread protests demanding legislative protection in matters relating to practice of Sati.

The commission of Sati (Prevention) Act 1987 was passed by parliament in Dec. 1987 to provide for more effective prevention of the commission of Sati and its glorification and for matters connected there with or incidental there to. Some of the salient features are -

* The Act defines Sati to include not only the burning or burial alive of a wife widow with a deceased husband but also of a widow or women with the body of any other relative or any article associated with the husband or relative.

* Anyone who abets the commitment of Sati by inducement, encouragement, participation in procession, preventing the widow from saving herself etc. would be punishable by the maximum penalty i.e. death or imprisonment for life. The abetment of an attempt to commit Sati would be punishable with imprisonment for life.

* In the case of persons prosecuted under these offences, the burden of proof that he had not committed the offence shall be on him.

* Those convicted for such offence shall be disqualified for a further period of five years after release.

* Glorification of Sati has been defined in details. The Act of glorification includes observation of ceremonies, collection of funds and construction of temples; punishment by imprisonment which may extend to seven years for
the offence of glorification of Sati has been prescribed.

* While the provision of the Act necessarily have to be prospective, acts of glorification carried out in future would be covered.

* The propagation by a candidate or his agent shall be deemed a corrupt practice under the representation of people's Act.

* Power have been specifically provided to the collector / state government.

**Power to prohibit certain acts:**

(a) Where the collector or the District Magistrate is of the opinion that Sati or any abetment is being, or is about to be committed, he may, by the order prohibit the doing of any act towards the commission of Sati by any person in any area or areas specified in the order.

(b) The collector or District Magistrate may also, by order prohibit the glorification in any manner of Sati by any person in any area or areas specified in the order.

(c) Whoever contravenes any order shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

**Powers to remove certain temples or other structures:**

The state government may, if it is satisfied that in any temple or other structure which has been in existence for not less than twenty years, any form of worship or the performance of any ceremony is carried on with a view to perpetuate
the honour of or to preserve the memory of, any person in respect of whom Sati has been committed, by order, direct the removal of such temple or other structure.

Where the collector or District Magistrate has reason to believe that any funds or property have been collected or acquired for the purpose of glorification of commission of any Sati or which may be found under circumstances which create suspicion of the commission of any offence under this, he may seize such funds or property.


This Act provides for the establishment of family courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

Establishment of family courts:

(a) For the purpose of exercising the jurisdiction and power conferred on a family court by this Act, the state government after consultation with the high court and by notification:

(i) Shall, as soon as may be after the commencement of this Act, establish for every area in the state comprising a city or town whose population exceeds one million, a family court.

(ii) May establish family courts for such other areas in the state as it may deem necessary.

(b) The state government shall, after consultation with the high court specify, by notification, the local limits of the area to which the jurisdiction of a
family court shall extend and may, at any time, increase, reduce or alter such limits.

**Jurisdiction:**

Subject to other provisions of this Act, a family court shall -

(a) Have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) Be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or as the case may be, such subordinate civil court for the area to which the jurisdiction of the family court extends.

The suits and proceedings referred to these courts are of the following nature -

(a) A suit or proceeding between the parties to a marriage for decree of a nullity of marriage or restitution of conjugal rights on judicial separation or dissolution of marriage.

(b) A suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person.

(c) A suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.

(d) A suit or proceeding for an order or injunction in circumstances arising out of a marital relationship.
(e) A suit or proceeding for a declaration as to the legitimacy of any person.

(f) A suit or proceeding for maintenance.

(g) A suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

**Duty of family court to make efforts for settlements:**

(a) In every suit or proceeding, endeavour shall be made by the family court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a family court may, subject to any rules made by the high court, follow such procedure as it may deem fit.

(b) If in any suit or proceeding, at any stage, it appears to the family court that there is a reasonable possibility of a settlement between the parties, the family court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

In every suit or proceedings, to which the Act applies, the proceedings may be held in camera if the family courts so desires and shall be so held of either party so desires.

**The National Commission for Women Act, 1992.**

The Act came into force on 31-1-1992 vide notification number S.O.99(E) as a national apex statutory level body to review the constitutional
and legal safeguards for women,

**Constitution of National Commission for Women:**

The central government shall constitute a body to be known as the National Commission for women to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

The commission shall consist of a chairperson, committed to the cause of women to be nominated by the central government and five members to be nominated by the central government from amongst persons of ability who have had experience in law or legislation, trade unionism, women's, voluntary organisations, economic development, health, education or social welfare.

**Functions of the Commission:**

(a) Investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws.

(b) Present to the central government annually and at such other times as the commission may deem fit, reports upon the working of these safeguard.

(c) Review, from time to time, the existing provisions of the constitution and other laws affecting women and recommend amendments there to as to suggest remedial legislative measures to meet any lacunae, inadequacies in such legislation.

(d) Take up the cases of violation of the provisions or the constitutions and of

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39. The National Commission for women was constituted on 31-1-1992 vide notification no. S.O.100(E)
other laws relating to women with the appropriate authorities.

(c) Look into complaints and take suo moto notice of matters relating to -

(i) Deprivation of women's rights.

(ii) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development.

(iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women.

* Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal.

* Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres.

* Participate and advise on the planning process of socio-economic development of women.

* Evaluate the progress of development of women under the union and any state.

* Inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary.

* Make periodical reports to the government on any matter pertaining to women and in particular various difficulties under which women toil.

* Any other matter which may be referred to it by the central government.
The commission shall while investigating any matter have the powers of a civil court trying a suit and in particular, in respect of the following matters -

(a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath.
(b) Requiring the discovery and production of any document.
(c) Receiving evidence in affidavits.
(d) Requisitioning any public record or copy thereof from any court or office.
(e) Issuing commissions for the examination of witnesses and documents.
(f) Any other matter which may be prescribed.

Thus enacting various legislations regarding women's rights having multiple dimensions and relating to various facts of their lives, the state has upheld the constitutional mandate, intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support service especially to working women. However, there is the growing realization that the objective can not be achieved by legislation alone, unless women in different parts of the country are aware of their rights, their conditions cannot improve. Besides awareness problem, there is the problem in the enforcement of the rights. The social structure had and has been militating against these enactments. Therefore, the failure of enforcement system and lack of awareness even among educated women about their legal rights as well as the inability and incapacity of women to demand their rights due to various socio-economic-cultural reasons, have been some important factors for the low socio-economic status of Indian women.