CHAPTER –III

PIL - GENDER EQUALITY & GENDER JUSTICE

“Public Interest Litigation” is directly connected with the legal term *locus standi*. As per Black’s Law Dictionary, 7th Edition, 1999, P.952, the ‘Locus Standi’ has been defined as a place of standing; the right to bring an action or the right to be heard in a given forum. As per P.Ramanatha Iyer’s Law Lexicon, second edition, P.1145, ‘Locus Standi’ has been defined as a place of standing, a right of appearance in a Court of justice and which signifies a right to be heard. Lexically the expression “PIL” means a legal action initiated in a court of Law for the enforcement of public interest or general interest in which the public or a class of community has pecuniary interest or some interest by which their legal rights or Liabilities are affected93.

Gender equality and Gender justice are basic human rights, declared by the General Assembly of United Nations, by way of Universal Declaration of Human Rights, 1948 and also granted by our Constitution under Articles 14, 15 (1), 16 and 21. Both Gender equality and Gender justice are complimentary to each other. In fact, Gender equality is that all persons should be treated equally by the State or other authorities, irrespective of their sex, whether they are men or women.

As per the traditional system, to approach any Court of law, one should have legal right or “standing”, which is otherwise known as locus standi. Without “locus

"Locus standi" or “standing”, no one can approach the Court, as per the traditional system for seeking judicial redressal. However, in order to render justice to the poor and the needy, considering their disadvantaged position, the Courts have liberalised the concept of locus standi.

“Locus standi” is the right of a party to appear and to be heard on the question before any Court or Tribunal, frequently disputed in private bill legislation; consult the Works of Smethurst, or of cliffood and stepheus, on this subject.94

In order to have gender equality, empowerment of women is indispensable. The Universal jus cogens obligations to respect human dignity and inalienable human rights require not only empowerment of individuals through constitutional rights, but also constitutional restraints on all abuses of public and private powers.95

In fact, human dignity, as empowerment requires respect for the legal and democratic autonomy of citizens to define their respective human rights and other fundamental freedoms. The constitutionalism rests on the premise of limiting abuses of liberty.96 Persons seeking right should also realise their duties. Even in respect of personal freedom guaranteed under Article 19, the law imposes reasonable restrictions. In fact, absolute freedom, without any restriction, leads to abuse of liberty. In a male-dominated society, normally, abuse is against women, which has to be protected, as per procedure known to law and also by way of public interest litigations. If the abuse is committed by authority or any other person and the authority remains silent spectator.

Kantian view of dignity as empowerment\(^7\) and Sen’s conception of freedom as social empowerment\(^8\) appear more consistent with the universal recognition of human rights, especially on women.

The Constitutional law and various enactments in India are safeguarding the rights of women. However, the women in India face inequality of status, inequality in property rights, lack of opportunity to participate in all the fields, on par with men.

Towards Equality Report on the status of women in 1975 recommended towards equal status of women to provide access to higher education, facilitating suitable employment, conduct massive campaign on rights and status and to set up social commissions to check up the implementation of various welfare legislations relating to women.

Without having gender equality, the ideals of human liberation and freedom cannot be achieved. The empowerment of women refers to increasing political, social, economic or legal strength of women.

In the western societies, the women empowerment is much rationally understood, where women come to social and political leadership through a process of educational and cultural attainments of women. In the USA, women have made the top of the corporate administration. In fact, women are holding the post of Chief Executive Officer in various reputed organisations.

\(^7\) A W Wood, *Kant’s Ethical Thought* (Cambridge, Cambridge University Press, 1999)
JUDICIAL ACTIVISM, WHETHER JUDICIARY IS USURPING THE POWER OF THE EXECUTIVE AND LEGISLATURE IN RESPECT OF PIL

It is considered that the development of PIL is due to judicial activism by the Supreme Court and various High Courts in India. However, public interest litigation cannot be construed as deviation from the judicial process. In fact, neither the Apex Court nor the High Courts have expanded their powers or usurping the powers of Executive and Legislature. Though Democracy is said to be an edifice on the pillars of Executive, Legislature and Judiciary, there is no demarcation of power between these three organs.

As per the Constitution of India, the legislature with Parliament and State legislatures have powers in enacting laws. As the federal form of Government has been recognised under the Constitution, supremacy cannot be claimed by Parliament, in respect of the powers enumerated in the State list. The Government is ruled by electorate representatives of the people as Prime Minister and other Ministers in the Union, Chief Minister and other Ministers at the state level and the Executive functions are done in the name of the President and the Governor respectively in the Centre and the States. There is no correct demarcations in the powers of the legislature and the Executive Government, since some of the prominent legislators are the Executives to take policy decisions and to run the Government with the assistance of the Government machinery, by way of promulgating ordinance and passing Government Orders (G.O). Executives are vested with the power of making subordinate legislation. Ministers including the Prime Minister at centre level, Chief Minister and other Ministers at the State level are Executives as well as Parliamentarians in their respective legislature. So long as they command majority in the legislature, one can be a ruling party and
therefore, in all practical purposes, the view of the ruling party is prevailing in the Executive Government as well as in the legislature, as the majority of the legislators are empowered to enact laws. Hence, as per the Indian Constitution, legislators and the executives are more or less inseparable.

The Judiciary in the strict sense is not empowered to enact any law but only interpret the laws. While interpreting laws, it is the endeavour of the judiciary to interpret the provisions of law, in such a way to render justice without violating the Constitutional mandates.

The Fundamental Rights guaranteed under Part-III of the Constitution are mostly the human rights, declared by the United Nations General Assembly on the 10th December 1948.

As per the Constitution, the custodian and the watchdog of the fundamental rights of the citizens is only the Courts. Dr. Ambedkar, Chief Architect of the Constitution has categorically expressed his view that the most important Article in the Constitution is Article 3299.

The aforesaid reply shows the patriotism and the interest of the Chief Architect in implementing the fundamental rights of the people. According to him, the power vested on the Supreme Court of India is paramount in the Constitution but for which even the Constitution could be repealed, by invoking the amended power under Article 368. The view of the eminent jurist came to be true in the year 1973, in view of the landmark decision rendered in Kesavananda Bharati v. State of Kerala100, whereby it was declared that the basic structure of the Constitution cannot be amended by the Parliament by invoking Article 368 and it was also

99 Reply by Dr. B. R. Ambedkar in the Constituent Assembly Debate, 1948
100 AIR 1973 SC 1461
categorically emphasised in the Judgment that Parliamentary democracy of adult franchise, secularism, fundamental rights guaranteed under the Constitution and the independence of judiciary, including judicial review. The Supreme Court of India is constitutionally vested with the important duty of safeguarding the rights of the people as custodian of the fundamental rights and the noble ideologies in the name of basic structure of the Constitution.

Immediately, after the Constitution coming into force, it was commended by various persons that the directive principles of state policy, incorporated as Part-IV of the Constitution would not serve any purpose, since the same were only guidelines to the State and not justiciable through court of law. However, the same has got importance as that of fundamental rights, since the issue relating to fundamental rights are interpreted in terms of the directive principles of state policy, which are available in the form of guidelines from various international conventions and also declaration of human rights.

It is a settled judicial view that law is only the means and justice is the end. In fact, law is a weapon in rendering justice uniformly to every one, in case of violation of any fundamental rights or facing atrocity to women, children or any other in a disadvantaged position, on account of developing helplessness or any possibility. When it is brought to the notice of the Supreme Court of the concerned High Courts, it is the duty to render justice, accordingly, the *locus standi*, or the legal grievance of a person approaching the Court has got relaxation by the Courts, in order to render real social justice to fulfil the Constitutional mandate, which was otherwise stated as judicial activism. In fact, judicial activism is not against law but only a tool in case of public interest litigation to render justice to the needy.
Various decisions rendered by the Apex Court of India towards gender equality, gender justice, prevention of dowry death, harassment on women at workplace, domestic violence, compensation for the victims in case of rape, preventing child labour, bonded labour, prevention of acts committed against child welfare, by way of Public Interest Litigation are the result of proper judicial activism. Though the judiciary is not empowered to encroach upon the powers of the Executive and Legislator, it is its duty to render justice to the people, without violating the mandates of the Constitution.

DIFFERENCE BETWEEN GENDER EQUALITY AND GENDER JUSTICE

After the Universal Declaration of Human Rights in 1948, gender equality was properly realised and recognised by various countries.

As per Article 1 of the Declaration of Human Rights, it is made clear that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 of the Declaration emphasize that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth of place or other status.

The concept of gender equality is recognised as a human right by the world community. As per Article 14 of the Constitution of India, the State shall not deny any person, equality before law or equal protection of laws, within the territory of India.
Article 15 (1) in general and Article 16 (1) in respect of opportunity in the matters of public employment emphasises equal rights of men and women, without any discrimination, based on religion, race, caste, sex and place of Birth.

Article 15 (3) clearly makes the difference of gender equality and gender justice. Though Articles 14 and 15 (1) speaks about gender equality, Article 15 (3) reads that nothing in this Article shall prevent the State from making any special provision for women and children. Though it is an enabling provision, to make appropriate enactments, to provide certain special benefits and concessions to women and children, which would not be against equality. Such special provisions are made in favour of women and children, however, that would not be against the mandate of gender equality, enshrined under the Constitution and further, such laws, so enacted pursuant to Article 15 (3) would become part of Article 15 (3). Therefore, based on the Constitutional provision, certain special enactments in favour of women and children are made. Hence, social activists can safeguard the rights of women against denial of such rights, since the enactments made pursuant to Article 15 (3) would also be construed only as Constitutional right and the violation of which, any person in the public could approach the High Court or the Supreme Court, by way of Public Interest Litigation.

In fact, gender justice is more than gender equality, since apart from gender equality, to maintain gender justice, special care and attention shall be taken by the State in favour of women and children, in order to safeguard their rights. Hence, providing hospital only for women and children or maternity benefits etc., given only in favour of women are not violative of gender equality and such enactments are legally sustainable, since the welfare legislations are within the purview of Article 15 (3), towards gender justice.
In *Bradwell v. State of Illinois*¹⁰¹, Bradley J of the US Supreme Court said thus:

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

In the earlier decision in *Muller v. Oregan*¹⁰², it was held as follows:

“That women’s physical structure and the performance of maternal functions places her at a disadvantage for subsistence is obvious. History discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength and this control in various forms, with diminishing intensity, has continued to the present. Education was long denied to her, and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and consequent increase of capacity for business affairs, it is still true that in the struggle for subsistence, she is not an equal competitor with her brother. She will still be where some legislation to protect her seems necessary to secure a real equality or right.”

¹⁰¹ 21 L Ed 442 : 83 US 130 (1972)
¹⁰² 208 US 412 : 52 L Ed 551 (1908)
In 1961, the US Supreme Court in *Hoyt v. Florida*\(^{103}\), upheld that a law placing a woman on the jury list only if she made a special request because, as put by Harlan J, “[a] woman is still regarded as the centre of home and family life”.

Dicey\(^{104}\), in the Constitutional the constitutional theories of rule of law and the fundamental rights stemmed from the struggle for individual liberty and were intended to curb the power of the State. For a long time, gender issues were not in the limelight. But as pointed out by Felix Frankfurter\(^ {105}\), which reads thus:

“Our constitutional guarantees of individual freedoms are not static but are expressions of basic human values. They transcend day-to-day shift in majority wishes and, hence, require redefinition from time to time to meet narrowly recognised, if not narrowly created, human needs.”

A Constitution is the basic document of a country, having a special legal sanctity, which sets the framework and the principal functions of the organs of the government of a State and declares the principles governing the operation of these organs. The Constitution aims at creating legal norms, social philosophy and economic values, which are to be effected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals\(^ {106}\).

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\(^{103}\) 7 L Ed 2d 118: 368 US 57 (1961)


\(^{105}\) Felix Frankfurter, *Mr. Justice Holmes and the Supreme Court* (Harvard University Press, Cambridge, Massachusetts 1938)

Political empowerment of women has been brought by the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992, which reserve seats for women in Gram panchayats and municipal bodies. Due to illiteracy, lack of political awareness, physical violence and economic dependence are other reasons, women could not take part in the political process of the country. The demand of 33% seats for women in Lok Sabha and Rajya Sabha is pending for a long time and yet to be implemented.

In *Madhu Kishwar v. State of Bihar*¹⁰⁷, the Supreme Court observed as follows:

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

In order to maintain gender equality, there should be no discrimination on the basis of sex, in case of appointment in providing legal protection etc., Article 14, enshrines that the State shall not deny any person, equality before law or equal protection of law. Various decisions by the Apex Court is that gender inequality is against Article 14. Similarly, Gender equality includes the rights pertaining to women, such as political rights, economic rights and equal pay for equal work etc.,

The Preamble of the United Nations Charter, 1945 emphasizes the equal rights of men and women as follows:

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¹⁰⁷ *(1996) 5 SCC 12 : AIR 1996 SC 1864*
“Faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women and of nations large and small.”

Similarly, Article 13 of the U.N. Charter empowers, the general assembly, to initiate studies and make recommendations to foster the realisation of human rights and fundamental freedoms, inclusive of gender equality.

As per the Human Rights Declaration, women along with men are entitled for all civil and political rights. The term “no one” or “every one” denotes both men and women and the same is only towards gender equality.


The representation in the Lok Sabha is far below the expected numbers of women representatives. The inadequate representative of women in Parliament lead to the demand for reservation of 33% seats for women in Lok Sabha and Rajya Sabha and the same has to be achieved for gender equality and gender justice, in favour of women.

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GENDER EQUALITY

Empowerment of women is one of the most important factors towards Gender equality. The U.N. General Assembly adopted the Declaration on the elimination of Discrimination against Women on 7th November 1967; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 was adopted by the world community. However, women still face all kinds of indignity and prejudice and inequality in the social setup. The malady sometimes pounces with ungenerous monstrosity giving a free play to the inferior endowments of nature in a man thereby making the whole concept a ridicule, destabilising the entire edifice. The recent incident in the Capital of the Nation not only exhibits how such treatment is basically an anathema to the concept of gender justice but also exposes the barbaric mindset annihilating the values of basic civilization. The days or yore when women were treated as fragile, feeble, dependent and subordinate to men, should be a matter of history. Gender equality and women empowerment are the call of the day and attempts are to be made to achieve satisfactory results.

INTERNATIONAL CONVENTIONS AND TREATIES ON GENDER EQUALITY

The Universal Declaration of Human Rights, 1948, various International Conventions and various provisions of the Constitution of India emphasize for gender equality and gender justices towards women.
The Covenant on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, is the United Nations’ landmark treaty marking the struggle for women’s right. It is regarded as the Bill of Rights for women. It graphically puts what constitutes discrimination against women and spells out tools so that women’s rights are not violated and they are conferred the same rights.

At the Vienna, Second World Conference on Human Rights in June 1993, the equality principles were reaffirmed and in the Fourth World Conference on Women held in Beijing in 1995. India was a party to this Convention and other Declarations and is committed to actualise them. In 1993, Conference, gender-based violence and all categories of sexual harassment and exploitation were condemned. It is seen that part of the Resolution reads thus:

“The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community…The World Conference on Human Rights urges governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection of human rights of women and the girl child.”

COMPREHENSIVE STATEMENT OF WOMEN

The Declaration on the Elimination of Violence Against Women (1993) is a comprehensive statement of international standards with regard to the protection of
women from violence. The Declaration sets out the international norms which States have recognised as being fundamental in the struggle to eliminate all forms of violence against women.


**GENDER JUSTICE ENSHRINED IN THE CONSTITUTION OF INDIA**

The Preamble of our Constitution is “a key to open the mind of the makers of the Constitution”, which may show the general purpose for which they make the Constitution. It declares the rights and freedoms which the people of India intended to secure to all citizens, both men and women. The Preamble beings with the words “WE, THE PEOPLE OF INDIA…”, which includes men and women of all castes, religions, etc. It wishes to render “EQUALITY of status and opportunity” to
every man and woman. The Preamble again assures “dignity of individuals” which includes the dignity of men and women. On the basis of the Preamble, several important enactments have been brought into operation, pertaining to every walk of life – family, succession, guardianship and employment – which aim at providing to protecting the status, rights and dignity of women.

Our Indian Constitution, especially by its Preamble, Fundamental Rights (part III) and the Directive Principles of State policy (part IV) of the Constitution, makes it clear that it is the foundation and basis of all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

The Constitution of India not only provides gender equality for both men and women, under Articles 14, 15(1) and 16, but also empowers the State to adopt measures of positive discrimination or protective discrimination in favour of women, as per Article 15 (3) for neutralizing the cumulative socio economic, education and political disadvantages faced by women and to render gender justice. It is apt to refer to certain constitutional provisions, which are significant in safeguarding the rights of women towards gender justice, which are as follows:

1. Equality before law and equal protection of laws (Article 14)
2. The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))
3. The State is empowered to make special provision in favour of women and children (Article 15 (3))
4. The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39 (a)); and equal pay for equal work for both men and women (Article 39 (d)).

5. The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)

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

7. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51 (A) (e))\textsuperscript{109}.

Similarly by way of Seventy–third Amendment Act, 1992, inserting provisions in Part IX, creating Reservation for women in all categories in the Elections relating to village panchayat, municipalities and municipal corporations, drastic positive steps have been taken by the Parliament for the implementation of gender justice at the level of local bodies.

As per Article 243-D(3), Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat\textsuperscript{110}.

\textsuperscript{109} Inserted by the Constitution (Forty-second Amendment) Act, 1976, S.11 (w.e.f.3-1-1977)

\textsuperscript{110} Inserted by the Constitution (Seventy-third Amendment) Act, 192, S.2 (w.e.f 24-4-1993)
As per Article 243 D(4), Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

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

As per Article 243 T(4), Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide.

Reservations under Articles 243 D(3), D(4), T(3) and T(4) are towards the empowerment of the woman politically at the grass root level.

**ENABLING PROVISION TO ENACT LAWS FOR WOMEN AND CHILDREN**

The Supreme Court has made it clear in various decisions that discrimination in favour of women and children is not against Articles 14, 15 (1) and in view of Article 15 (3) of the Constitution.

Article 15 (3) empowers the State to make special provisions for women and children. The well-being of a woman is an object of public interest and it is to be achieved to preserve the strength and vigour of the enacting welfare legislations in favour of women. This provision has enabled the State to make special statutory provisions, exclusively for the welfare of women.
Article 39 (a), requires the State to direct its policy towards securing that the citizens, both men and women equally have the right to an adequate means of livelihood. Under Article 39 (d), the State shall direct its policy towards securing equal pay for equal work for both men and women. This Article draws its support from Articles 14 and 16 and its main objective is towards building of a welfare society and an equalitarian social order in the Indian Union. In order to give effect to this Article, the Parliament has enacted the Equal Remuneration Act, 1976, which provides for payment of equal remuneration to men and women worker and prevents discrimination on the ground of sex. Further, Article 39 (e) is aimed at protecting the health and strength of workers, both men and women.

**JUST AND HUMANE CONDITION FOR WOMEN (ART.42)**

One of the very important and useful provision for women’s welfare and well-being is incorporated under Article 42 of the Constitution. It imposed an obligation upon the State to make provisions for securing just and humane conditions of work and for maternity relief. Some of the legislations which promoted the objectives of this Article are the Workmen’s Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965 etc.,

**HUMAN RIGHTS FOR WOMEN**

In Valsamma Paul\(^{111}\), it has been ruled that human rights for women comprehends gender equality and it is also traceable to the Convention for Elimination of All Forms of Discrimination Against Women. Human rights for women, including girl child are inalienable, integral and an indivisible part of

\(^{111}\) (1996) 3 SCC 545 : 1996 SCC (L&S) 772
universal human rights. The full development of personality, fundamental freedoms and equal participation by women in political, social, economic and cultural life are held to be concomitants for national development, social and family stability and growth - cultural, social and economical. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights.

Conferment of equal status of women, apart from being a constitutional right has been recognized as a human right. In Bodhisattwa Gautam\textsuperscript{112}, the Court observed that women have the right to be respected and treated as equal citizens. Accentuating on the concept, it proceeded to state thus:

Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are Mother, Daughter, Sister and Wife and not play things for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.

\textsuperscript{112} (1996) 1 SCC 490
In Kharak Singh\textsuperscript{113}, the Court has recognized that a person has complete rights of control over his body organs and his ‘person’ under Article 21. It can also said to be including the complete right of a woman over her reproductive organs, which is recognised as a Fundamental Right, as enshrined under Article 21 of the Constitution and also one of the important Human Rights, declared by the Charter of U.N.

**FUNDAMENTAL DUTIES TOWARDS WOMEN ENSHRINED IN THE CONSTITUTION**

Article 51-A under Part IV-A of the Constitution of India lays down certain Fundamental duties upon every citizen of India, which were added by the Forty-second Amendment of the Constitution in 1976. The later part of Clause (e) of Article 51-A, which relates to men, given a mandate and imposes a duty on Indian citizens “to renounce practices derogatory to the dignity of women”. The duties under Article 51-A are obligatory on citizens, but it should be invoked by the courts, while deciding cases and also should be observed by the State while making statutes and executing laws.

**GENDER EQUALITY**

The Chartered of the United Nations is the first ever international agreement to proclaim general equality a fundamental human right. Nations. The UN Charter is the first ever international agreement to proclaim gender equality a fundamental human right. Intergovernmental Commission on the Status on Women (CSW) met for the first time in 1947 to discuss implementation of the UN Charter, to raise International Covenant of Economic, Social and Cultural Rights, 1966 and the

\textsuperscript{113} AIR 1963 SC 1295
International Covenant of Social and Political Rights, 1966 lay stress on equality between men and women. At the time of the drafting of the Indian Constitution and during Constituent Assembly Debate, the demand for equality between men and women is completed recognised. The other Covenant relating to labour have also referred to the equality to women and the need for special action to provide justice to women. Covenant on Elimination of Discrimination Against Women, 1981 (CEDAW) adopted by the General Assembly in 1979 has come to be recognised as an International Bill of Rights for Women. The Covenant prohibits all distinctions and restrictions and the exclusion of the enjoyment and exercise of empowering women, their rights and freedom, such as civil, political, economic and cultural rights.

THE INTERNATIONAL BILL OF RIGHTS FOR WOMEN

The preamble to Covenant on Elimination of Discrimination Against Women, 1981 (CEDAW) emphasise that "the full and complete development of a country, the welfare of the world and the cause of peace requires the maximum participation of women on equal rights with men in all fields". In the Second World Conference on Human Rights at Vienna in June 1993 and in the Fourth World Conference on Women held in Beijing in 1995, the equality principles were reaffirmed. India was a party to this Convention and other Declarations and is committed to bring the equality concept of women in practise.

In the Landmark Judgment, Kesavananda Bharati v. State of Kerala\textsuperscript{114}, the Chief Justice Sikri observed thus:

"148-49. I may here mention that while our fundamental rights and directive principles were being fashioned and

\textsuperscript{114} (1973) 4 SCC 225
approved of by the Constituent Assembly, on 10-12-1948, the General Assembly of the United Nations adopted a Universal Declaration of Human Rights. The Declaration may not be a legally binding instrument but it shows how India understood the nature of human rights."

The fundamental rights and the directive principles of state policy have themselves incorporated the equality principles, that have been perceived to have been influenced by the Universal Declaration of Human Rights.

In fact, Article 1 of the Universal Declaration of Human Rights says that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. As per Article 2 of the Declaration, everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

As per Article 15 (1) of our Constitution, the State shall not discriminate against any citizen on the grounds only of religion, caste, sex, place of birth or any other. However, as per sub-article (3) of Article 15, there shall be no bar under Article 15 for the State to make any special provision or law in favour of women and children and therefore, it is seen that Article 15 has been incorporated in consonance of Articles 1 and 2 of Universal Declaration of Human Rights. Article 15 (3) goes further that if there is any special law or provisions enacted in favour of women and children by the State that would not be a violation affecting equality. In fact, the special concession given to women and children would be a
discrimination towards social and economic development and not against human rights.

The Constitution makers found just and reasonable to maintain equality between men and women, as per Articles 14, 15(1) & (2) and 6(1) & (2) which prohibits discrimination against women. However, make is possible for affirmative action, which is equivalent to the provisions of CEDAW. Though the directive principles of State policy was originally thought that it was only the guidelines to the State, in the exercise of duty and not justiciable through Court of law. The development of Public Interest Litigation would show that the fundamental rights are interpreted, based on the directive principles of state policy available at Part-IV of the Constitution, to protect human rights of women, including right to equal pay for equal work, the right to health and work in the right to health and work in hygienic conditions, right to maternity benefits, etc. The Equal Remuneration Act, 1976, the Maternity Benefit Act, 1961, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Dowry Prohibition Act, 1961 and the Immoral Traffic (Prevention) Act, 1956 are some of the enactments which held in existence to those provisions of the Indian Constitution.

As per the Constitutional mandate, the State, as defined under, is in application to bring about gender equality and gender justice and further, the importance of international covenants cannot be lost sight of, since India being signatory to the conventions.

Article 253 of the Constitution provides:

"253. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing
any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

It cannot be disputed that India is a sovereign country and its domestic laws, subject to the Constitutional mandate are sovereign and no international covenant can be preferred to the domestic law, however, the Parliament is empowered to enact law, without affecting the fundamental rights, directly under Part-III of the Constitution, keeping in mind the basic structure concept of recognising and incorporating the guidelines given by international conventions on treaties, relating to women and children. The Parliament is empowered to enact appropriate domestic laws. The Constitution has thus made arrangements by empowering the Parliament to make laws, in view of Article 253 of the Constitution.

In Kesavananda Bharathi’s case, the Supreme Court has categorically observed the Universal Declaration of Human Rights for proper understanding of the Constitutional provisions, which reads as follows:

“"It seems to me that in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and solemn declaration subscribed to by India. It may be mentioned here that Article 51, inter alia, calls upon the State to make endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another.""
In *D.K.Basu v. State of W.B*\(^{115}\), the Hon’ble Apex Court has observed thus:

"42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that 'anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation'. Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 had made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life."

It has been ruled by the Supreme Court in *Nilabati Behera v. State of Orissa*\(^ {116}\) that the victim of unlawful arrest is entitled to compensation, as Article 21 has given Constitutional guarantee and accordingly, no person shall be deprived of his life or personal liberty, except in accordance with the procedure established by law. An arrest against law is certainly against the Constitutional mandate, accordingly, a victim of an unlawful arrest was awarded compensation, as per the decision referred to above. This safeguard is available irrespective of the person, being men or women or even a foreign national, as Article 21 is applicable to any person in the territory of India.

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\(^{115}\) (1997) 1 SCC 416

\(^{116}\) (1993) 2 SCC 746
EQUAL PAY FOR EQUAL WORK FOR BOTH MEN AND WOMEN

Equal pay for equal work is also one of the important Constitutional mandate. The Equal Remuneration Ordinance, 1975, promulgated by the President and The Equal Remuneration Act, 1976, enacted by the Parliament have got guidance from Article 39 (d) of the Constitution, which says that the State shall in particular practise its policy for securing equal pay for equal work for both men and women. The said ordinance and the Act are also towards the compliance of the Equal Remuneration Convention of 1951. The convention concerning equal remuneration for men and women workers for work of equal value (for short the Equal Remuneration Convention, 1951), that was adopted by the General Conference of the International Labour Organisation on 29.06.1951, have been given effective by the welfare legislation of the Equal Remuneration Act, 1976.

In case of public interest litigation, the concept of equal remuneration for both men and women for both of equal value is relevant, accordingly, gender equality has been established by the Apex Court in case of PIL.

The Equal Remuneration Ordinance, 1975 was promulgated, in order to ensure that the provision of Article 39 (d) of the Constitution, might be implemented in the year, which was being celebrated as the International Women’s Year. The same was approved by the Parliament, by enacting Equal Remuneration Act, 1976. In this regard, the Court observed that there was discrimination in payment of wages to lady stenographers and such discrimination was being perpetuated under the garb of a settlement between the employees and the employer. The Court finally not only made it mandatory to pay equal remuneration to lady stenographers as their male counterparts but also observed that the ground
of financial incapability of the management cannot be a ground to seek exemption from the Equal Remuneration Act, 1976.

In Sheela Barse v. Secy., Children's Aid Society\textsuperscript{117}, the Supreme Court emphasised the need to give effect International Covenant and held thus:

"In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognised. India as a party to these International Charters having ratified the Declarations, it is the obligation of the Government of India as also the State machinery to implement the same in the proper way."

\textbf{SAFEGUARDING GENDER EQUALITY}

It is well settled that gender equality is recognised as a fundamental right, in view of Articles 14, 15 and 16 and 39 (d) of the Constitution. Pursuant to the Constitution mandate and also based on various conventions, relating to equality of woman, Equal Remuneration Act, 1976 was enacted. In this regard, Equal Pay Act, 1970 (in England) and subsequently Equal Pay (Amendment) Regulations, 1983 also implemented in England.

In \textit{Associate Banks Officers’ Assn. v. State Bank of India}\textsuperscript{118}, Mrs. Justice Sujata v. Manohar, while delivering the Judgment held as follows:

\textsuperscript{117} (1987) 3 SCC 50
\textsuperscript{118} (1998) 1 SCC 428
“Equal pay for equal work for both men and women” is one of the Directive Principles of State Policy laid down in Article 39 (d) of the Constitution. Article 37 makes it non-justiciable. Yet it must be borne in mind by the legislature while making laws. In Randhir Singh vs. Union of India, this Court construed Articles 14 and 16 in the light of the preamble to the Constitution to read into their scheme the principle of equal pay for equal work. The principle has since been applied in cases of irrational discrimination in the pay scales of workers doing the same or similar work in an organisation. It has not been applied when there is a basis or an explanation for the difference.”

It is well settled that there must be equal pay for equal work, irrespective of the work being done by men and women, otherwise, it would be construed as gender inequality or gender discrimination.

Referring Randhir Singh v. Union of India\textsuperscript{119}, and Union Territory, Chandigarh v. Krishan Bhandari\textsuperscript{120}, it was held by the Apex Court that when the benefits, which are conferred in accordance with the agreements reached between the union of employees and the management of each Bank, it cannot be said that there is violation on the principle of equal pay for equal work, based on the set of facts relating to the writ petitions.

\textsuperscript{119} (1982) 1 SCC 618 : 1982 SCC (L&S) 119
\textsuperscript{120} (1996) 11 SCC 348 : 1997 SCC (L&S) 391
The Equal Remuneration Act, 1976 provides for equal remuneration to men and women workers and is meant to prevent discrimination on the ground of sex, against women in the matter of employment. The Equal pay Act, 1970 and the Equal Pay (Amendment) Regulations, 1983 in Great Britain are for a similar purpose. The doctrine of equal pay for equal work has sought to protect disadvantaged groups against discrimination. The doctrine has been interpreted and applied even more widely to prevent discriminatory pay scales, within an organisation, which is owned by or is an instrumentality of the State, provided that the different pay scales exist in one organisation, are applied to employees doing the work of equal value, and there is no rational explanation for the difference.

In U.S.A, it was easier to identify such discriminated group, when the discriminated group is sex-based (women) or colour-based (Blacks in USA), or case-based, but more difficult to identify in other cases. However, unless there is such identifiable discrimination, the doctrine should not be applied.

In case of men and women, when both are doing the same work in the same cadre, there could be no discrimination in the pay scale. If there is any such discrimination, that would be violative of the provisions of the Equal Remuneration Act, 1976 and also the fundamental rights, guaranteed under Articles 14, 16 and the directive principles of state policy under Article 39 (d) of the Constitution of India.

In *State of M.P. v. Pramod Bhartiya*121, the Supreme Court held that it is not enough to say that the qualifications are the same or the schools are the same status or the service conditions are similar. What is more important and crucial is whether they discharge similar duties, functions and responsibilities. The quality of work

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121 (1993) 1 SCC 539
may vary from post to post. It may vary from institution to institution. This reality cannot be overlooked or ignored. In the definition of ‘same work or work of a similar nature’ in Section 2 (h) of the Equal Remuneration Act also the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. The aforesaid Act is mainly directed against discrimination against women, when similar work is done by men are paid more.

In this Judgment, the decision in *Federation of All India Customs and Excise Stenographers v. Union of India*\(^\text{122}\) and *Mackinnon Mackenzie v. Audrey D’Costa*\(^\text{123}\) were relied on. It has been made clear in the decision that equal pay for equal work is implicit in the doctrine of equality, enshrined in Article 14, it flows from it. Because clause (d) of Article 39 spoke of “equal pay for equal work for both men and women” it did not cease to be part of Article 14. To say that the said rule having been stated as a Directive Principle of State Policy is not enforceable in a court of law is to indulge in sophistry. Parts III and IV of the Constitution are not supposed to be exclusionary of each other.

Equality of opportunity guaranteed by Article 16 (1) necessarily means and involves equal pay for equal work. It means equally it is neither a mechanical rule nor does it mean geometrical equality. Hence, the concept of reasonable classification and all other rules evolved with respect of Articles 14 and 16 (1) will come into play, when there is a complaint of infraction of this rule and sought for consideration.

\(^{122}\) (1988) 3 SCC 91 : 1988 SCC (L&S) 673
\(^{123}\) (1987) 2 SCC 469 : 1987 SCC (L&S) 100
Mr. Justice B.P. Jeevan Reddy, who delivered the decision made it clear that the concept of reasonable classification and all other rules evolved with reference to Articles 14 and 16 (1) are affirmed in *Randhir Singh v. Union of India*124.

In *Randhir Singh’s* case, Mr. Justice Chinnappa Reddy speaking for the Bench of Three Judges observed as follows:

“We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons, holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the power, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.

Construing Articles 14 and 16 in the light of the Preamble and Article 39 (d), we are of the view that the principle ‘equal pay for equal work’ is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer.”

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The principle laid down in Randhir Singh’s case was followed in *P.K.Ramachandra Iyer v. Union of India*\(^{125}\), *P.Savita v. Union of India*\(^{126}\), *Dhirendra Chamoli v. State of U.P*\(^{127}\), *Surinder Singh v. Engineer-in-Chief, CPWD*\(^{128}\), *Jaipal v. State of Haryana*\(^{129}\) and in *Federation of All India Customs and Excise Stenographers v. Union of India*\(^{130}\).

Mr. Justice S. Mukharji, speaking for himself and R.S. Pathak, C.J, in the last decision referred to above has observed as follows:

“The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for, as reiterated before, a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact. In the light of the averments made in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved.”

\(^{125}\) (1983) 2 SCC 141 : 1984 SCC (L&S) 214
\(^{126}\) 1985 Supp SCC 94 : 1985 SCC (L&S) 826
\(^{127}\) (1986) 1 SCC 639 : 1986 SCC (L&S) 189
\(^{128}\) (1986) 1 SCC 639 : 1986 SCC (L&S) 189
\(^{130}\) (1988) 3 SCC 91 : 1988 SCC (L&S) 673
Similarly, the very same principle was reiterated by Mr. Justice K. Jagannatha Shetty, in *State of U.P v. U.P. Chaurasia*\(^{131}\), held as follows:

“In matter of employment, the government of socialist State must protect the weaker sections. It must be ensured that there is no exploitation of poor and ignorant. It is the duty of the State to see that the underprivileged or weaker sections get their due. Even if they have voluntarily accepted the employment on unequal terms, the State should not deny their basic rights of equal treatment. It is against this background that the principle of ‘equal pay for equal work’ has to be construed in the first place. Second, this principle has no mechanical application in every case of similar work. It has to be read into Article 14 of the Constitution. Article 14 permits reasonable classification founded on different bases. It is now well established that the classification can be based on some qualities or characteristics of person grouped together and not in others, who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the object sought to be achieved. In service matters, merit or experience could be the proper basis for classification to promote efficiency in administration. He or she learns also by experience as much as by other means. It cannot be denied that the quality of work performed by persons of longer experience is superior than the work of newcomers.”

\(^{131}\) (1989) 1 SCC 121 : 1989 SCC (LL&S) 71
Mr. Justice B.P. Jeevan Reddy, delivering the Judgment observed as follows:

In this context, it would be appropriate to refer to the definition of the expression “same work or work of similar nature” contained in clause (h) of Section 2 of the Equal Remuneration Act, 1976. The said Act was enacted by Parliament (as pointed out by this Court in Mackinnon Mackenzie vs. Audrey D’Costa) to implement Article 39 (d) of the Constitution and the obligation created by “The Convention concerning Equal Remuneration for Men and Women Workers” for work of equal value (generally referred to as “Equal Remuneration Convention, 1951”) adopted on June 29, 1951, to which India is a signatory. Article 2 of the Convention obliged the signatory States to effectuate the said rule by all means including the machinery of law. The said Act is applicable to such establishments and employments as may be notified by the Central Government under Section 1 (3) of the Act. Though the said Act is mainly directed against discrimination against women and is also not applicable to the employments or establishments to which the Respondents herein belong, yet the relevance of the said definition cannot be denied, occurs as it does in an enactment made to give statutory shape to the rule of “equal pay for equal work both for men and women”.

The definition in Section 2 (h) of the Equal Remuneration Act, 1976 reads thus:

2(h) ‘same work or work of a similar nature’ means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions,
by a man or a woman and the difference, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment.

Referring the view of Mr. Justice Mukharji, in *Federation of All India Customs and Excise Stenographers v. Union of India*\(^{132}\), held that the burden is upon the petitioners to establish their right to equal pay or the plea of discrimination as the case may be.

**INEQUALITY IN PERSONAL LAWS**

As per Hindu Law, women are not recognised as coparceners in the joint Hindu family and the law relating to Succession are glaring examples of inequality, being followed in the system. The self-acquired property devolves on survivors as per Schedule 1 of the Act. Class I heirs include mother, widow and daughter as successors of a Hindu male dying intestate. In Dayabhaga school, women have some better right than that of Mitakshara as they become the coparceners. However, on account of the freedom to bequeath by a will very often the female's right to property by succession gets curtailed. In practise, it cannot be disputed that patriarchal sentiments are so strong that the father would rather write a will bequeathing all his properties to his sons in order to ensure that no part of his property falls in the hands of his daughter/daughters. However, in respect of Muslim, it is some what in a better footing, since only 1/3rd of a man's property can be given away by Will. However, under the Mohamedden Law, a daughter is getting only ½ of the share that is available to a son. Similarly, mother is entitled to

\(^{132}\) (1988) 3 SCC 91 : 1988 SCC (L&S) 673
get half of the share, comparatively, as that of her husband’s share. But those type of gender inequalities under the said right only by persons having faith, in view of the religious freedom guaranteed under the Constitution.

**INEQUAL TREATMENT OF WOMEN IN VILLAGES**

It is the fact that women in various section of the rural society is for their men and children. There source are primarily food, their children, health of their family members. However, they are affected by men and their behaviour, due to various factors in their life. If the husband is a drunkard of the illiterate, poor woman, it would be a perennial harassment in her life, since the husband would not earn and spend any money for the family, whereas he may spend the money, that is earned by the hardwork of his wife. In the aforesaid circumstances, social awareness must be created. Enforcement of prohibition laws, preventing offences relating to illicit arrack is also paramount to safeguard their basic rights. In order to improve their income, steps are being taken by the Government by enacting various laws, that are inadequate to bring equality of the suffering, rural, illiterate woman on par with the male members.

In order to safeguard the human rights, Courts normally give special attention to women and children, when their rights are involved in any litigation. A Journalist, Sheela Barse herself filed a Public Interest Litigation, alleging custodial violence to women suspects in police lock up.

In *Sheela Barse v. State of Maharashtra* 133, the Hon’ble Apex Court, having gone through the facts and circumstances, laid down guidelines for the protection of female suspects and also ruled that every under-trial has the right to legal aid.

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133 AIR 1983 SC 378
under Article 21. In this regard, the following guidelines were issued for the benefit and protection of female suspects in police lockup or in prison:

1. There should be separate lock ups for female suspects prisoners guided by female constables.

2. Interrogation of females should be carried out only in the presence of female police officers / constables.

3. Sessions Judge, preferably a lady judge nominated by him shall make surprise visits to police lock ups periodically to provide arrested persons an opportunity to air their grievances and ascertaining for himself / herself the conditions of police lock up and whether directions of Supreme Court and provisions of law are being properly observed.

Besides some general guidelines applicable to both male and female prisoners were also given by the Court as:

(a) Whenever a person is arrested and taken to police lock up, the police shall immediately inform the nearest legal aid office to provide legal assistance at state cost, if he is willing to accept such legal assistance.

(b) As soon as a person is arrested, the police shall immediately obtain from him the name of the relative or friend whom he would like to inform.

(c) The Magistrate before whom the arrested person is produced must inquire from the arrested person, if he has any complaint of torture or mal-treatment in police custody, and inform him that he has a right under Section 54 of the Code of Criminal Procedure, 1973, to be
medically examined. It is necessary because very often the arrested person is not aware of his right.

By way of Public Interest Litigation, sexual harassment and abuse of women has been brought to light and steps have been taken to eradicate the menace. Based on a letter addressed by an Advocate in West Bengal, appending the news report of sexual exploitation in a school at Berhampur, the Court directed the Judicial Magistrate to make enquiry and submit report. The Report indicated a solitary suspicious case of sexual exploitation. In that case, the Court decided Union of India is a necessary party and notice should be issued for the appearance of Union of India.

In a case of Rape, Public Interest Litigation filed by Delhi Domestic Working Women’s Forum\textsuperscript{134} to espouse the pathetic plight of four domestic servants, who were subjected to indecent sexual assault by seven army personnel, the Court held that Rape is an experience which shakes the foundations of the lives of the victims and for many its effect is a long term one, impairing their capacity for personal relationship, altering their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have to suffer further agony during legal proceedings. In this regard, the Court indicated inter alia the following broad parameters in assisting the victim of rape:

1. Complainants of sexual assault cases should be provided with legal representation.

2. Legal assistance must also be provided at the police station when the victim comes to lodge a complaint.

\textsuperscript{134} Delhi Domestic Working Women’s Forum \textit{v.} Union of India, (1995) 1 SCC 14
3. The police should be under a duty to inform the victim of her right to legal representation before any questions are asked.

4. In all rape trials, anonymity of the victim must be maintained.

5. In accordance with Article 38 (1), a Criminal Injuries Compensation Board should be set up. This board should award compensation to the rape victims.

The Hon’ble Apex Court has given six months time for framing a scheme according to the above broad parameters.

In Bodhisattwa Gautam v. Subhra Chakraborty\textsuperscript{135}, in a petition to the Hon’ble Supreme Court, wherein the appellant developed sexual relations with the respondent on false assurance of marriage and twice forced her to undergo abortion, the Apex Court held that Rape is violative of the dignity of women, which is a fundamental right under Article 21 of the Constitution and Court can enforce Fundamental Rights even against private bodies or individuals and also award compensation for violation of Fundamental Rights. As an interim compensation, the appellant was ordered to pay Rs.1,000/- p.m to the respondent.

PROTECTION OF PROPERTY RIGHTS AND EQUAL TREATMENT IN EMPLOYMENT

Economic empowerment is a necessary fulcrum of empowerment. The Constitutional Courts in many an authority have laid emphasis on said conception and interpreted the provisions to elevate the status of women and to empower them.

\textsuperscript{135} (1996) 1 SCC 490 : AIR 1996 SC 922
In Thota Manikayamma\textsuperscript{136}, the Court, while interpreting Section 14 of the Hindu Succession Act, 1956, converting the women’s limited ownership of property into full ownership, has observed as follows:

“21…Article 15(3) relieves from the rigour of Article 15 (1) and charges the State to make special provision to accord to women socio-economic quality….It would means that the court would endeavour to give full effect to legislative and constitutional vision of socio-economic equality to female citizen by granting full ownership or property to a Hindu female. As a fact Article 15 (3) as a forerunner to common code does not animate to make law to accord socio-economic equality to every female citizen of India irrespective of religion, race, caste or religion.”

When the matter relating to another as natural guardian was questioned, the Court held that relegation of mother to inferior position to act as a natural guardian is violation of Articles 14 and 15 and hence, the father cannot claim that he is the only natural guardian. The guardianship right of women has undergone a sea change by this interpretation given by the Court in \textit{Gita Hariharan}\textsuperscript{137}.

In \textit{Gayatri Devi Pansari}\textsuperscript{138}, the Court has also upheld an Orissa Government Order, reserving 30% quota for women in the allotment of 24 hours medical stores as part of self-employment scheme. Thus, the language of Article 15 (3) is in

\textsuperscript{136} (1991) 4 SCC 312
\textsuperscript{137} AIR 1999 SC 1149
\textsuperscript{138} AIR 2000 SC 1531 : (2000) 4 SCC 221
absolute terms and does not appear to restrict in any way the nature or ambit of special provisions, which the State may make in favour of women or children.

In this context, it is useful to refer to the decision rendered in the case of Sellammal\textsuperscript{139}, wherein the Court held that the Hindu Marriage Act will override the U.P. Jamindari Abolition and Land Reforms Act and also held that exclusive right to male succession may be suspended till female dependant adopt another mode of livelihood.

Many a time question arises with regard to rights of women qua property. Various High Courts have interpreted Section 27 of the Hindu Marriage Act in a different manner. As far as the High Court of Madhya Pradesh is concerned, the Court in the case of Ashok Kumar Chopra\textsuperscript{140}, held that ‘Stridhan’ is the property of the wife in her individual capacity and the husband is merely trustee of that property and the husband is liable to return that property and value thereof under the substantive law and in equity. The power has been conferred by the M.P. High Court on the matrimonial courts in respect of certain properties.

In this regard, it is necessary to refer the Hindu women, who were not entitled to right to property have been given equal share along with male heir and they have presently been given equal rights.

The concept of equality is the bedrock of gender justice. In the case of Neera Mathura\textsuperscript{141}, a female candidate was required to furnish information about her menstrual period, last date of menstruation, pregnancy and miscarriage. When the matter came before the Court, their Lordships held that such declarations were

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{139} AIR 1977 SC 1265
\item \textsuperscript{140} AIR 1996 MP 226
\item \textsuperscript{141} AIR 1992 SC 392
\end{itemize}
\end{footnotesize}
improper. The Court directed that the Corporation would do well to delete such column in the declaration.

In the case of *Gayatri Devi Pansari*\(^{142}\), the Court, while setting aside the decision of the High Court, ruled thus:

“Otherwise, by the mere fact of any lapse or omission on the part of the ministerial officers to identify a shop, the legitimate claims of a lady applicant could not be allowed to suffer defeating the very purpose and object of reservation itself. The view taken by the High Court has the consequence of overriding and defeating the laudable object and aim of the State Government in formulating and providing welfare measures for the rehabilitation of women by making them self-reliant by extending to them employment opportunities. Consequently, we are of the view that the High Court below ought not to have interfered with the selection of appellant for running the 24 hours’ medical store in question.”

In *Miss C.B.Muthamma, IFS*\(^{143}\), the constitutional validity of Rule 8 (2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 and Rule 18 (4) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 was challenge before the Court. The impugned provision Rule 8(2) requires a woman member of the service to obtain permission of the Government in writing before her marriage is solemnized and at any time after the marriage, a woman member of the service may be required to resign from the service, if the

\(^{142}\) *(2000) 4 SCC 221*  
\(^{143}\) *AIR 1979 SC 1858 : (1979) 4 SCC 260*
Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her same as a member of the service. Further, Rule 18(4) also runs in the same prejudicial strain, which provides that no married woman shall be entitled as a right to be appointed to the service. The petitioner complained that under the guise of these rules, she had been harassed and was shown hostile discrimination by the Chairman, UPSC from the joining stage to the stage of promotion. The Court held that these Rules are in defiance of Articles 14, 16 and 21.

In Maya Devi\textsuperscript{144}, the requirement that a married woman should obtain her husband’s consent before applying for public employment was held invalid and unconstitutional. The Court observed that such a requirement is an anachronistic obstacle to women’s equality.

However, in Associate Banks Officers Association\textsuperscript{145}, wherein the Court held that women workers are in no way inferior to their male counterparts, and hence, there should be no discrimination on the ground of sex against women.

In Yeshaswinee Merchant\textsuperscript{146}, the Supreme Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour. The Constitution does not prohibit the employer to consider sex while making the employment decisions, where this is done pursuant to a properly or legally chartered affirmative action plan.

\textsuperscript{144} (1986) 1 SCR 743
\textsuperscript{145} AIR 1998 SC 32
\textsuperscript{146} (2003) 6 SCC 277
The Court in *Vijaya Lakshmi*\(^{147}\), has observed that Rules 5 and 8 of the Punjab University Calender, Vol.III providing for appointment of a lady principal in women’s or a lady teacher therein cannot be held to be violative of either Article 14 or Article 16 of the Constitution, because the classification is reasonable and it has a nexus with the object sought to be achieved. In addition, the State Government is empowered to make such special provisions under Article 15 (3) of the Constitution. This power is not restricted in any manner by Article 16.

In *Nargesh Meerza*\(^{148}\), the Air India and Indian Airlines Regulations were challenged as violative of Article 14. Regulation 46 provided that an air hostess was to retire from service upon attaining the age of 35 years or on marriage if it took place within four years of her joining service or on first pregnancy, whichever occurred earlier. Regulation 47 empowered the Managing Director, at a time beyond the age of retirement, upto the age of 55 years, if an air hostess was found medically fit. The Court struck down the Regulation providing for retirement of the air hostess on her first pregnancy, as unconstitutional, void and violative Article 14. The Court explained that the Regulation did not prohibit marriage after four years of joining service and if an air hostess after having fulfilled the first condition became pregnant, there was no reason why of her continuing in service. After utilizing her service for four years, to terminate her service if she became pregnant, court said, amounted to compelling the poor air hostess, not to have any children. If thus amounted to interfere with and divert the ordinary course of human nature. It was held not only a callous and cruel act but an open insult to Indian womanhood. Court also said that it was not only manifestly unreasonable and arbitrary but contained the equality of unfairness and exhibited naked depotism and was, therefore, clearly violative of Article 14.

\(^{147}\) AIR 2003 SC 3331
\(^{148}\) AIR 1981 SC 1829
In *M/s. Mackunnnon Mechenize and co.*\(^{149}\), the question involved was getting of equal pay for equal work. In the said context, the Court ruled that when lady stenographers and male stenographers were not getting equal remuneration that was discriminatory and any settlement in that regard did not save the situation. The Court also expressed the view that discrimination between male stenographers and lady stenographers was only on the ground of sex and that being not permissible, the employer was bound to pay the same remuneration to both of them when they were doing practically the same kind of work.

**RESERVATION OF SEATS FOR WOMEN IN LOCAL BODIES**

The Parliament has succeeded in its efforts to provide for reservation of seats for women in elections to the Panchayat and the Municipalities. Reservation of seats for women in Panchayats and Municipalities have been provided in Article 243D and 243T of the Constitution of India. Parts IX and IXA have been added to the Constitution by the 73\(^{rd}\) and 74\(^{th}\) Amendment Acts with Articles 243, 243A to 243D and Articles 243P to 243ZG. According to Article 243D(3), “not less than one-third, (including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled up by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. Article 243T(3) of the Constitution provides similar provisions for reservation of seats for women in direct election in the government.

\(^{149}\) AIR 1987 SC 1281
There are also provisions in the State enactment, by virtue of the constitutional mandate, to reserve the office of Chairperson and the Presidents in certain Municipal Corporations and Municipalities, District panchayats and village panchayats for women. Similarly, under the Consumer Protection Act, there is a provision that one of the members shall be a woman and under the Family Court Act, preference is given to women for appointment. Sometimes question arises as to what extent equality is to be extended. The people who put this elementary question forget or deliberately do so that all men are born equal; and the division of bifurcation by the society between man and women is the craftsmanship of male chauvinism. It has to be borne in mind that in the absence of equality of gender, human rights remain in an inaccessible realm. In most of the nations, women are ascribed a secondary role. The secondary role has to be metamorphosed to the primary one to bring woman at the equal stratum. To achieve so, a different outlook in law has to be perceived. The perceptual shift is absolutely essential, in a way mandatory. For this reason, various provisions have been engrafted in the Constitution to confer some special and equal rights on women. Presently, it is essential to sit in a time machine and penetrate to the past.

In *T. Sudhakar Reddy*¹⁵⁰, the petitioner challenged the validity of Section 31 (1) (a) of the Andhra Pradesh Cooperative Societies Rules, 1964. These provisions provide for nomination of two women members by the Registrar to the Managing Committee of the Cooperative Societies, with a right to vote and to take part in the meetings of the committee. These provisions were upheld in the interest of women’s participation in cooperative societies and opined that it will be in the interest of the economic development of the country.

¹⁵⁰ 1993 Supp. (4) SCC 439
In *P.B.Vijayakumar*\textsuperscript{151}, the legislation made by the State of Andhra Pradesh providing 30% reservation of seats for women in local bodies and in educational institutions, was held valid by the Court and the power conferred upon the State under Article 15 (3) is so wide, which would cover the powers to make the special legal provisions for women in respect of employment or education. This exclusive power is an integral part of Article 15 (3) and thereby, does not override Article 16 of the Constitution.

In Rakesh Kumar Gupta, the Court while concurring with the view taken by the High Court of Allahabad in respect of reservation of 50% passed in favour of female candidate has opined thus:

“14. The Division Bench took the view that Article 15 (3) of the Constitutional enables the State Government to make special provision for women and children notwithstanding the prohibition contained in Article 15 (1). Particularly, viewed in the background of the fact that a large number of young girls below the age of 10 years were taught in the primary school and recognizing that it would be preferable that such young girls are taught by women, the reservation of 50% of the posts in favour of the female candidates was held to be justified. The classification made was justified and cannot be styled as arbitrary or liable to be hit by the Article 14.”

\textsuperscript{151} AIR 1995 SC 1648
In Madhya Pradesh State an amendment was brought into force in the M.P.Municipal Corporation Act, 1956 and the M.P.Municipaliaties Act, 1962, by enhancing the reservation in favour of women from 30% to 50% in municipal corporation and municipalities. The constitutional validity of the amended provisions was challenged on the backdrop of Articles 14 and 15 of the Constitution of India. In Ashok Kumar Malpani\textsuperscript{152}, the High Court, after adverting to the concept of reservation and the decisions relating to reservation in various fields, upheld the constitutional validity. In that context, the Court observed:

“The legislation, in our considered opinion, is a real deep inroad into encouraging the participation of women in the decision making process at the ground level of democracy. Women in India are required to participate more in a democratic set-up ground democratic polity not for nothing, it has been said “educate a man and you educate an individual; educate a woman and you educate a family.’’

Democracy is a basic feature of our Constitution and it has to develop from the ground reality level. The participation of socially and educationally backward classed and women could really nurture and foster democracy in the country. Be it noted, though the issue of gender justice has been gaining ground in many nations and in many an area for some centuries and the traditional view of gender injustice has been given quite a quietus and treated as an event of bygone days, yet the malady still remains and deserved to be remedied.

\textsuperscript{152} 2009 (IV) MPJR 179
The policy of reservation for women has to be understood in the proper perspective. In fact, it would be quite clear that the number of women representatives at various layers of democratic setup is really quite low, hence, for gender equality, there should be adequate reservation for women to have equality in exercising political power at the local level.

DECISION MAKING POWER OF WOMEN

Only by way of reservation, women have entered into the Indian Panchayat Raj Institutions, as per the Constitutional Amendment\textsuperscript{153} but their active participation in the decision making process in actuality remains at abysmal level. It is because their interest in the democratic set up of election has still not been accentuated for the simon pure reason that they have to negotiate and wrestle with the powerful members of the society. Women are contesting in the election is of utmost significance and that would irrefragably exposit that they are conscious and there is no justification to marginalize the equality clause. We are of the view that participation in the election and losing the same can never be equated with the decision making process. One can only be a party to the decision making when one is on the floor of the House as a representative and that is how the recognition of decision making process can be conferred on women. It is the view of the right thinkers of gender equality and gender justice that the reservation is an act of special affirmation and a protective discrimination, which has been done by the Legislature in its wisdom to implement gender equality. Therefore, the submission that such reservation is not necessary, do not deserve acceptance.

\footnote{\textsuperscript{153} Constitution (Seventy-third Amendment) Act, 1992, Sec.2 (w.e.f 24.4.1993)}
It cannot be totally ostracised from the compartment of equality that unless law assists women in an accentuated manner, the basic tenet of the concept of gender equality would not be achieved and women will be put in the category of non-achievers. In a true democracy, where Rule of Law governs, the democratic policy could be advanced in a cultivated civilized society, by accepting gender equality. It is absolutely imperative to have the help of women where they are given proper rights and the truth is self-evidence and that is how the fathers of the Constitution had perceived it.

In Ashok Kumar Malpanis case\textsuperscript{154}, the High Court eventually ruled that Article 243T does not put a ceiling by using the terms ‘not less than 1/3\textsuperscript{rd}’. In fact, it prescribes for the minimum reservation but does not create any kind of impediment on the part of the State Legislature to enhance the percentage of reservation for women and that the stand of the petitioners to the effect that if the reservation of seats for women upto 50\% is sustained, it will usher in bad governance as the bureaucratic set up would take up the entire policy making decision is totally baseless and, in fact, is absolutely premature.

**OFFENCES AGAINST WOMEN AND ISSUE OF GENDER JUSTICE**

In Stree Atyachar Virodhi Parishad\textsuperscript{155}, the Court observed thus :

“We are referring to these provisions only to emphasize that it is not enough if the legal order with the sanction above moves forward for protection of women and preservation of societal values. The criminal justice system must equally respond to the needs and notions of the society. The investigating agency

\textsuperscript{154} 2009 (IV) MPJR 179  
\textsuperscript{155} (1989) 1 SCC 715
must display a live concern. The Court must also display greater sensitivity to criminality and avoid on all courts ‘soft justice’.”

In Rupen Deo Bajaj\textsuperscript{156}, the Court said that the offence under Section 354 IPC should not be treated lightly as it is quite a grave offence. In certain western countries privacy to person and even privacy to procreation are regarded as very sacrosanct rights and if this offence is studied in that prospect, the offence would clearly show that it affects the dignity of women, and therefore, the accused of this offence, when proved, should be appropriately dealt with.

The Court dealing with rape cases should refrain himself from giving stigmatic observations on the character of the prosecutrix. It should be kept in mind that a finding recorded in this sphere is to be treated as irresponsible. It cannot be disputed that a woman, who is even acquainted to sexual intercourse has every right to refuse to submit herself to sexual intercourse as a woman is not a vulnerable object or prey for being sexually assaulted by any one. This is the view expressed by the Apex Court in the case of Ganula Satya Murthy\textsuperscript{157}. It is appropriate to mention here that in the said case, the Supreme Court also observed that it is an irony that while celebrating women’s rights in all spheres, there should be concern in protecting their honour. Their Lordships further observed that the Courts must deal with rape cases with utmost sensitivity and appreciate the evidence of the totality on the background of the entire case and not in isolation.

\textsuperscript{156} (1995) 6 CC 194
\textsuperscript{157} AIR 1997 SC 1588
Recently in Jugendra Singh\textsuperscript{158}, the Court, while commenting on rape and its consequences, observed thus:

“Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one’s physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu. The cry of the collective has to be answered and respected and that is what exactly the High Court has done by converting the decision of acquittal to that of conviction and imposed the sentence as per law.”

In Gurnaib Singh, decided on 10.5.2013, Court has opined that respect of a bride in her matrimonial home glorifies the solemnity and sanctity of marriage, reflects the sensitivity of a civilized society and, eventually, epitomizes her aspirations dreamt of in nuptial bliss. But, the manner in which sometimes the brides are treated in many a home by the husband, in-laws and the relatives creates a feeling of emotional numbness in the society. It is a matter of great shame and grave concern that brides are burnt or otherwise their life-sparks are extinguished.

by torture, both physical and mental, because of demand of dowry and insatiable 
greed and sometimes, sans demand of dowry, because of the cruelty ad harassment 
meted out to the nascent brides treating them with total insensitivity destroying 
their desire to live and forcing them to commit suicide a brutal self-humiliation of 
“Life”.

Offence of rape is regarded as one of the most heinous crimes. Every 
person’s physical body is a temple in itself. No one has the right to encroach and 
create turmoil. When there is any kind of invasion or trespass, it offends one’s 
right. The right of a woman to live in her physical frame with dignity is an 
epitomization of sacrosanctity. An impingement or incursion creates a sense of 
trauma in the mind of the person. Not only does the body suffer but the mind also 
goes through such agony and tormentation that one may not be in a position to 
forget throughout her life. She becomes a different person in the eyes of the society 
for no fault of her. That apart the offence of rape is an offence which creates a dent 
in the social marrow of the collective and a concavity in the morality of the 
society. A sense of fear looms large and the menace is extremely arduous to cross 
over. The perversity ushers in a sense of despondency and mass melancholia. 
While dealing with offences of this nature, a judge has to be exceedingly sensitive. 
A desensitised approach is not appreciated. It is the bounden duty of the judge to 
show greater sensitivity. The Judge should show careful attention and greater 
sensitivity as has been highlighted by the Court in the case of Mange Ram159.

An aspect, which needs to be stated here is that a woman, who has been 
raped is not an accomplice. She is the victim of a carnal desire. In a case of rape, 
corroboration need not be searched for by the judge if in the particular 
circumstances of the case before him he is satisfied that it is safe to rely on the

159 AIR 2000 SC 2798
evidence of the prosecutrix. The evidence of the prosecutrix should be appreciated on the basis of the probability and conviction can be based solely on such testimony, if her evidence is credible, unimpeachable and inspires confidence. There is no rule of law that her testimony can not be acted upon without corroboration in material particulars. If the prosecutrix is able to give a vivid account of how she was subjected to sexual harassment and the intercourse the same can be placed reliance upon the conviction can be recorded. This is the view of the Court in the decisions rendered in the cases of Gurmeet Singh\textsuperscript{160}, N.K\textsuperscript{161} and Padam Lal Pradhan\textsuperscript{162}.

While dealing with this offence certain more decisions are also to be kept in mind so that they can be applied in the facts of the case. In the case of M.M.Mardikar\textsuperscript{163}, it has been emphatically laid down that there is no rule of law of prudence requiring corroboration of the victims in a case of rape.

Lack of corroboration by medical evidence, non-raising of alarm, no-evidence of showing resistance and such other ancillary factors. From these angles, the prosecution is disbelieved or the Court arrives at the conclusion that there is consent. The Court in the case of Mange Ram, has clearly laid down that if the prosecutrix submits her body under fear or terror, the same would never amount to consent. In the said case their Lordship’s also held that in the absence of any violence to the body of the victim in all circumstances would not give rise to inference of consent. In this context, it is profitable to refer to the observation made in the case of N.K\textsuperscript{164}, wherein the Court held that the absence of injuries on the person of the prosecutrix is no necessary to falsify the allegation or be regarded

\textsuperscript{160} (1996) 2 SCC 384
\textsuperscript{161} AIR 2000 SC 1812
\textsuperscript{162} (2000) 10 SCC 112
\textsuperscript{163} AIR 1991 SC 207
\textsuperscript{164} AIR 2000 SC 1812
as an evidence of consent on the part of the prosecutrix. Their Lordships have further held that it would depend upon the facts and circumstances of each case. In the aforesaid case, the statement of the father of the prosecutrix was treated to be admissible under Section 157 of the Evidence Act, as her father’s statement corroborating her testimony under Section 8 of the said Act as evidence of her conduct. The Court laid stress on the testimony of the father keeping in view the tradition of the society, where a father would not come to depose to jeopardise the prospects of marriage of his daughter.

A victim of rape suffers from deathless shame. To acquit an accused because of loopholes in the prosecution would be adding insult to injury. In the case of defective investigation, the court has to be circumspect in evaluating the evidence but it would not be correct in acquitting the accused for the said defect. If the courts pave that path it would tantamount to playing into the hands of the investigating officer, if the investigation has been designedly made defective. Another aspect which, I intend to highlight is that as per law laid down by the Court and also the provisions in the statute book, the trial of a rape case is to be held in camera and it should be the duty of the Court to see that she is not harassed. In the case of Gurmeet Singh165, the Court observed as under:

“There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring

165 (1996) 2 SCC 384
out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence.

In Gyan Chand\textsuperscript{166}, the Court reiterated the principle that minor inconsistencies should not be given weightage. In the same case, their Lordships also emphasized that the Court should shoulder a great responsibility while considering a rape case and such cases must be considered with utmost sensitivity. The Court should examine broader probabilities of the case and not get swayed away by minor contradictions.

\textsuperscript{166} AIR 2001 SC 2075
Another fact is delay in filing of FIR. In a case of rape, it is dependant upon the facts of each case. The prosecutrix does not immediately rush to the police station to lodge and FIR. She has to overcome the trauma. There is consultation with the family members and a decision is taken. All these circumstances are to be kept in mind.

It is noticed that some judges unnecessarily give emphasis on the presence of spermatozoa in the victim’s private parts. It is to be borne in mind that the definition of rape has a different connotation. A mild penetration would meet the ingredients of the crime. There may be several circumstances, which affect the presence of the spermatozoa, and hence, emphasis on the same is unwarranted.

Every trial Judge should be vigilant and alert. He should see to it that the trial is properly conducted and the prosecutrix is not unnecessarily harassed. In this context, one may profitably quote a line by Edmund Burke:

“A Judge is not placed in the high situation merely as a passive instrument of the parties. He has duty of his own, independent of them and that duty is to be investigate truth.”

In this regard, reference to the observation of Lumpkin, J, in the case of Epps V. State is seemly:

“Counsel seek only for their client’s success, but the Judge must watch that justice triumphs.”
At this stage, it is apposite to refer to a passage from the decision rendered in the case of Bharwada Bhoginibhai Hirjibhai\textsuperscript{167}, wherein the Court observed thus:

“Corroboration is not the sine-quo-non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Viewing the evidence of the girl or the women who complains of rape or sexual molestation with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion, is to justify the charge of male chauvinism in a male dominated society.”

The Court further proceeded to hold as under:

“A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. She would have to brave the whole world. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be, difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors the victims and their relatives

\textsuperscript{167} AIR 1983 SC 753
are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built in assurance that the charge is genuine rather than fabricated.”

When one talks about gender equality one cannot be unobservant with regard to the dowry problem, which has become an incurable menace to the society. One would not be very much incorrect to say that it has corroded the core and kernel of the society. Enactments have been made to check the evils of dowry. Definition has been given defining dowry death. Section 113 (b) has been inserted in the Evidence Act raising presumption as to dowry death in certain circumstances. All force and energy should be exerted to repress and check the move of this despot. Sometimes, it is felt that despite denunciation from all quarters the malignancy of dowry permeates. It appears to be wholly ubiquitous. While dealing with the offence relating to this sphere, the Court has to adopt a realistic yardstick.

In this context, I may refer with profit to the reflection of a woman author, who has spoken with quite a speck of sensibility:

“Dowry is an intractable disease for women, a bed of arrow for annihilating self-respect, but without the boon of wishful death.”

In these lines the agony of the woman is writ large.

In Madhukar Narayan Mardikar\textsuperscript{168}, the High Court observed that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government official to be put in jeopardy up on the uncorroborated

\textsuperscript{168} (1996) 1 SCC 57
version of such a woman, who makes no secret of her illicit intimacy with another person.

In *A.K.Chopra*, the accused-respondent tried to molest a woman employee (Secretary to Chairman of a Delhi based Apparel Export Promotion Council) Miss X, a clerk-cum-typist on 12th August, 1988 at Taj Hotel, Delhi. The respondent persuaded Miss X to accompany him while taking dictation from the Chairman, so that her typing was not found fault with. While Miss X was waiting in the room, the respondent taking advantage of the isolated place tried to sit too close to her and touched her despite her objections; and tried to molest her physically in the lift while coming to the basement, but she saved herself by pressing emergency button, which made the door lift open. In appeal of the case, Court held that in a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of case and not swayed away by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression ‘molestation’ or ‘physical assault’… The sexual harassment of a female employee at the place of work is incompatible with the dignity and honour of a female and need to be eliminated and that there can be no compromise with such violation.

**COURT’S CONCERN IN EVE-TEASING CASES**

In *S.Samuthiram*¹⁶⁹, the Court observed that every citizen in this country has right to live with dignity and honour, which is a fundamental right, guaranteed under Article 21 of the Constitution of India. Sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Articles 14 and 15 as well. Eve-teasing today has become pernicious, horried and disgusting practice.

¹⁶⁹ (2013) 1 SCC 598
Consequences of not curbing such a menace are at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. The necessity of a proper legislation to curb eve-teasing is of extreme importance. Thereafter, taking note of the absence of effective uniform law, certain directions were issued to curtail the menace. The said directions include to depute plain-clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship, etc., so as to monitor and supervise incidents of eve-teasing. The persons in charge of educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, to establish women helpline in various cities and towns and also to control eve-teasing in public service vehicles either by the passengers or the persons in charge of the vehicle.

**FUTURE PROTECTION : FEMALE FOETICIDE**

While dealing with violation of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994, apart from giving series of directions, emphasis was also made on practice of female foeticide in Voluntary Health Association of Punjab\textsuperscript{170}. In the said case, it has been said that Female foeticide has its roots in the social thinking, which is fundamentally based on certain erroneous notions, egocentric traditions, pervert perception of societal norms, and obsession with ideas which are totally individualistic sans the collective good. All involved in female foeticide deliberately forget to realize that when the foetus of a girl child is destroyed, a woman of future is crucified. To put it differently, the present generation invites the sufferings on its own and also sows

\textsuperscript{170} 2013 (3) SCALE 195
the seeds of suffering for the future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems. I may hasten to add that no awareness campaign can never be complete, unless there is real focus on the prowess of women and the need for women empowerment.

Further, discussing about the repercussion of female foeticide, it has been opined that every women, who mothers the child must remember that she is killing her own child despite being a mother. That is what abortion would mean I social terms. Abortion of female child in its conceptual eventuality leads to killing of a woman. Law prohibits it; scriptures forbid it; philosophy condemns it; ethics deprecate it, morality decries it and social science abhors it.

**RECENT CRIMINAL LAW (AMENDMENT) ACT, 2013**

The Criminal Law (Amendment) Act, 203 has been recently passed by Parliament on 19th March, amending IPC, Cr.P.C., and the Indian Evidence Act to counter crimes against women. Certain acts of violence like Acid attacks, voyeurism, stalking have been made punishable. Further, rigorous imprisonment of minimum 20 years for gang rape has been prescribed.

The amended law places additional duties on magistrates to ensure fair and speedy disposal of crimes against women, especially in heinous offences like rape. It may be appropriate to highlight some of these amended provisions.

(i) Newly amended Section 164(5A) expects the Judicial Magistrate to record the statement of the person accused in offences punishable under Section 354, 376 and 509 as soon as the commission of the offence is brought to the notice of the police.
(ii) In Section 273 CrPC, a new proviso allows the Court to take appropriate measures to ensure that a woman below the age of 18 years is not confronted by the accused during cross-examination.

(iii) Section 309 (1) now (year 2013) mandates completion of inquiry or trial for rape within a period of 2 months from date of filing of chargesheet as compared to earlier proviso (inserted in 2009), which contemplated relevant date from commencement of examination of witnesses.

**ROLE OF COURTS**

The role of Courts in cases dealing with women and children assume great importance in view of changing mindset. The women and children are heading the victims’ tally in recent crime related incidents. Though there are many reasons for the declining values, we can identify some of them, viz., lack of awareness, patriarchy, male chauvinism, subjugation, certain deep rooted traditions and custom, lack of effective enforcement etc.

Sensing the alarming trend, the Supreme Court had said that ‘we are failing to treat women with dignity, equality and respect’. Recently, a Special Bench of the Supreme Court (of which Mr.Justice P.Sathasivam was also one of the members) allowed a curative petition filed against a judgment in Bhaskar Lal Sharma & Ors., vs. Monica (2009) 10 SCC 605, which held that kicking daughter-in-law is not cruelty under Section 498A and had set aside the Judgment ordering for a *deno vo* hearing.

Our Constitution contains many Articles on the welfare of women. Article 15 (3) deals with special protection for women, Article 16 ensures equal opportunity of public employment, irrespective of the sex of the person, Article 39 deals with securing adequate means of livelihood equally for men and women, equal pay for equal work among men and women, Article 42 deals with securing humane conditions of work and maternity relief and Article 51-A(3), a Fundamental duty, insists on renouncing practices derogatory of women.

Section 294 of the IPC deals with obscenity, Section 304-B deals with Dowry Death and Section 498-A deals with cruelty. The provisions of these legislations are to be complied with in their letter and spirit fulfilling the objects of the Act.

A Judge needs to show understanding and consideration whenever women and children appear either as a party, or as witness, or as victim so as to inculcate confidence in his / her during the court proceedings. Any comment, gesture or other action on the part of any one in or around the court room that would be detrimental to the confidence of them should be curbed with a heavy hand by the presiding Judge. Adhering to following acts by the presiding judges may make the court room setting more conducive to women and children:

(i) They should be treated with courtesy and dignity, while appearing in the court. Any gender bias must be carefully guarded against in
the court room and this protection should be extended to any female present or appearing in the court, either as a member of the staff or as party or witness or member of legal profession.

(ii) The examination and cross-examination must be conducted by the court itself or under the direct supervision of the presiding judge.

(iii) Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae briefs, so that they have more empathy and understanding towards the case.

(iv) Crime against women and children ought to be dealt with on priority basis because delay in delivery of justice will defeat the very purpose.

Section 26 of the Code of Criminal Procedure, 1973 has been amended by prescribing that the offences under Section 376, 376A to D of IPC are to be tried, as far as practicable, by a court presided by a women.

Section 173 (1A) has been amended to state that the investigation of a case of rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of a police station.

Section 327 (2), which prescribed in camera trial in cases of offences under Section 376, 376 A to 376D has been amended by providing that ‘in camera’ trial shall be conducted as far as possible by a woman judge or magistrate.

Section 327 (2) in the Code of Criminal Procedure, 1973 provides that “(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Sections 376, 376A, 376B, 376C or 376D of the Indian
Penal Code shall be conducted in camera; provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in the room or building used by the Court.”

Section 327(3), which bars printing / publishing any matter in relation to such ‘in camera’ proceedings, except with the previous permission of the court has been relaxed by mandating that the ban may be lifted subject to maintaining confidentiality of names and addresses of the parties.

Section 137 of the Indian Evidence Act, 1874 provides for the Examination-in-Chief, Cross-examination and Re-examination of witnesses appearing from the opposite side, basically to extract the truth behind the statement made by the witness.

Where a lady witness appears before the Court, it shall be the duty of the Judicial Officer to keep watch on the counsel conducting the cross-examination that he / she should not ask any question to the witness, which apprehends her modesty.

The questionnaire round with the victim of rape / sexual assault, shall not be conducted in the open court, as it directly challenges the modesty of a woman. Such procedures shall be conducted only by a lady advocate, in the chamber of the Judge in presence of the parents or guardian of the victim.

Section 309 gives the power to the court to adjourn the proceeding for a future date. Section 309, proviso to sub-clause (1) (added by 2008 Amendment Act) provides that when the enquiry or trial relates to an offence under Section 376A to 376D of the IPC, the inquiry or trial shall, as far as possible be completed
within a period of two months from the date of commencement of the examination of witnesses.

Section 309 proviso to sub-clause (2) (added by 2008 Amendment Act) provide that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

The provision inserted under Section 309 as proviso to sub-clause (1) & (2) are to be strictly followed in its letter and spirit by the trial courts, so that the very intention of the legislature to pass such amendment cannot be defeated.

The proviso added to sub-clause (2) provides discretion to the court, so far as adjournment of a proceeding is concerned. But such power shall be exercised very carefully and judiciously by the trial courts. The Court has to keep an eye on the party, seeking adjournment, to ensure that the party is rightly praying for it and it is not for the purpose of benefiting the ill intentions of the accused. The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.

Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in the Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders, as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness.

GUIDELINES LAID DOWN BY THE SUPREME COURT

In *Delhi Domestic Working Women Forum v. Union of India*, the following guidelines have been issued by the Supreme Court to be followed:
“directives to the police to maintain a list of lawyers capable of handling the cases of rape victims and to provide them help in rehabilitation.”

It shall be the duty of the District and Sessions Judge, of a district to prepare and maintain a list of lady advocates’, to be circulated to every Sessions Court in the district, who are well reputed an acquainted with the cases and respective laws relating to women like domestic violence, dowry matters, dowry deaths, rape matters and matters relating to the modesty of a women.

With the help of such an extensive list prepared by the District & Sessions Judges, lady counsels can be engaged on behalf of the women victims of crime and a proper honorarium is paid from a fund created for this purpose or under Section 12 of the Legal Services Authorities Act, 1987, they can be engaged for providing legal aid to the victims at State cost.

**Bail of women prisoners – Section 437 provides for**

When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without any warrant by a officer in charge of a police station or appears or is brought before a court, other than the High Court or Court of Sessions, he may be released on bail, but –

1. such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

2. such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had
been previously convicted on two or more occasions of a non-bailable and cognizable offence.

Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail, if such person is under the age of sixteen years or is a woman or is sick or infirm.

**Rape of Domestic Working women – Right to compensation**

PIL was raised by Delhi Domestic working women’s forum to espouse the pathetic plight of four domestic servants, who were subjected to indecent sexual assault by seven army personnel, wherein the Supreme Court held that Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long term one, impairing their capacity for personal relationship, altering their behaviour and values and generating endless fear. In addition to the trauma of the rape, victims have to suffer further agony during legal proceedings. Hence, the Supreme Court indicated inter alia, the following broad parameters in assisting the victim of rape:

1. Complainants of sexual assault cases should be provided with legal representation.
2. Legal assistance must also be provided at the police station when the victim comes to lodge a complaint.
3. The police should be under a duty to inform the victim of her right to legal representation before any questions are asked.
4. In all rape trials, anonymity of the victim must be maintained.
In accordance with Article 38 (1), a Criminal Injuries Compensation Board should be set up. This board should award compensation to the rape victims.

The Apex Court had given six months time for framing a scheme according to the above broad parameters.

**Rape is a violation of fundamental right under Article 21 – Compensation payable by private parties**

Petition to the Supreme Court. Appellant developed sexual relations with the respondent on false assurance of marriage and twice forced her to undergo abortion. Complaint of rape was given by respondent. The Apex Court held that Rape is violative of the dignity of women, which is a fundamental right under Article 21 of the Constitution and the Court can enforce Fundamental Rights even against private bodies or individuals and also award compensation for violation of Fundamental Rights. As interim compensation, the appellant was ordered to pay Rs.1000 p.m to the respondent.\(^{171}\)

**COMPENSATION FOR A FOREIGN NATIONAL RAPE VICTIM**

H, a Bangladeshi, had been raped in Railways Yatri Niwas by some of the railway employees. Later she was taken out to a rented house by another railway employee and was raped.

A practising lady advocate of Calcutta High Court (respondent) filed a writ petition before the High Court against the appellants claiming compensation for the victim.

The High Court awarded a sum of Rs.10 lakhs as compensation of H as it was of the opinion that the rape was committed at the building (Rail Yatri Niwas) belonging to the Railways and was perpetrated by the railway employees.

The contentions raised by the Railway Authority before the Supreme Court were:

1. H was a foreigner and not Indian National, so Railways would not be liable to pay compensation;
2. Commission of the offence by the person concerned would not make the Railways or the Union of India liable to pay compensation to the victim of the offence;
3. It was the individual act of those persons, they alone would be prosecuted and on being found guilty would be punished and be liable to pay fine or compensation, and the railways or the Union of India would not be vicariously liable;
4. For claiming damages for the offence perpetrated on H, the remedy lay in the domain of private law and not under public law and therefore, no compensation to be awarded by the High Court in proceedings under article 226 of the Constitution and, that too, at the instance of a practising advocate having no concern or connection with the victim.

In the landmark decision, the Supreme Court, ruled that the order passed by the Calcutta High Court, under Article 226 was perfectly valid. It was observed that public law remedies have also been extended to the realm of tort and hence, the High Court is empowered to award compensation to the victim, who suffered physical and mental injuries, amounting to tortuous acts at the hand of officers of the Government. The violation of victim’s right was not considered to be a mere
violation of any ordinary right of a person, but a grave violation of human rights, recognised as fundamental rights, as per Article 21 of the Constitution. Offence of “Rape” is violative of the fundamental rights, hence, the remedy is towards enforcement of public duties and the remedy would be available under the public law notwithstanding that a suit could be filed, seeking damages under private law and the pendency of criminal case is not a bar in approaching the High Court, by way of Public Interest Litigation. Similarly, by way of ‘PIL’, rights of children have been safeguarded in so many cases.

COMMISSION ON THE STATUS OF WOMEN

The Commission on the Status of women is a functional commission of the Economic and Social Council (ECOSOC) established by the Council in 1946. The functions of the Commission are as follows:

1. To prepare recommendations and report to the ECOSOC on promotion of women’s rights in political, economic, civil, social and educational fields.

2. To make recommendations to the Council on urgent problems requiring immediate attention in the field of women’s rights, with the object of implementing the principle that men and women shall have equal rights; and to develop proposals to give effect to such recommendations. Originally, the Commission on the Stats of women was composed of 15 members. Subsequently, the membership increased to 21 and then to 32 and finally to 45. Thus, at present, the Commission is composed of 45 representatives of the UN members elected by the ECOSOC for a three-year term. It meets biennially for its session of three weeks. As in the case of the Commission on Human Rights, the Commission on the Status of Women adopts its own resolutions and recommends draft resolutions and declarations for adoption
by the ECOSOC. The Commission submits a report on each session to the Council\textsuperscript{172}.

In \textit{V.Revathi v. Union of India}\textsuperscript{173}, the Supreme Court held that Section 198 (2) of the Criminal Procedure Code, 1973 (Cr.P.C), which gives the husband of an adulteress, the right to prosecute the adulterer but does not give the wife of the adulterer a similar right, is not discriminatory following the afore mentioned Judgment.

In \textit{Government of A.P v. P.B.Vijayakumar}\textsuperscript{174}, a discriminatory provision in a statute was adjudicated under the U.P. Court of Wards Act, 1912. According to this Act, a male proprietor could be declared incapable of managing property on only one out of the five grounds, after giving him a notice. A female proprietor on the contrary would be declared incapable to manage property on any one of the five grounds without notice. The Allahabad High Court declared the provision discriminatory on the basis of sex and in violation of Article 15 of the Constitution.

In \textit{Toguru Sudhakar Reddy v. Government of A.P}\textsuperscript{175}, the nomination of women in Co-operative societies to bring in their guaranteed minimum representations was upheld.

In \textit{Nithya v. University of Madras}\textsuperscript{176}, the educational authorities were asked to condone a shortfall in the attendance of a woman candidate caused due to pregnancy.

\textsuperscript{172} S.K.Kapoor, \textit{Human Rights under International Law and Indian Law} (Central Law Agency, 1999)
\textsuperscript{173} (1988) 2 SCC 72 : 1988 SCC (Cri) 308
\textsuperscript{174} (1995) 4 SCC 520 : 1995 SCC (L&S) 1056
\textsuperscript{175} AIR 1992 AP 19
\textsuperscript{176} AIR 1995 Mad 164
The Supreme Court of India in *Savita Samvedi v. Union of India*\(^{177}\), held invalid a provision of the Railway Board Circular, dated 27.12.1982, which restricted the eligibility of a married daughter of a retiring official for out-of-turn allotment of a house to situations where such a retiring official had no son, or where the daughter was the only person prepared to maintain the parents and the sons were not in a position to do so. This was held to be discriminatory on the ground of sex.

**30% RESERVATION TO WOMEN IN A.P**

In the Historic case in *Government of A.P v. P.B.Vijayakumar*\(^{178}\), the Supreme Court held that reservation of seats for women in local bodies or educational institutions are valid, where the A.P Government made reservation to an extent of 30% in the State services of Andhra Pradesh Government for women candidates. When it was challenged, the Apex Court declared that the power conferred upon the State by Article 15 (3) is wide enough to cover the entire range of State activity, including empowerment under the State. It was held that the power conferred under Article 15 (3) is not whittled down in any manner by Article 16.

In *Dattatraya Motiram More v. State of Bombay*\(^{179}\), the Bombay High Court held that the State can establish educational institutions only for women.

**MOTHER CAN ACT AS NATURAL GUARDIAN**

In the landmark Judgment, in *Geetha Hariharan v. RBI*\(^{180}\), it was held that the mother can act as natural guardian, even when the father is alive. The word

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\(^{177}\) (1996) 2 SCC 380 : 1996 SCC (L&S) 521  
\(^{178}\) (1995) 4 SCC 520 : 1995 SCC (L&S) 1056  
\(^{179}\) AIR 1953 Bom 311  
\(^{180}\) (1999) 2 SCC 228 : AIR 1999 SC 1149
“after” in Section 6 (a) of Hindu Minority and Guardianship Act, 1956 was read to mean “in the absence of father”, so that the section is consistent with the Constitutional safeguard of gender equality. In this regard, the Supreme Court held thus:

“Gender equality is one of the basic principles of our Constitution and in the event the word ‘after’ is to be read to mean a disqualification of a mother to act as a guardian during the lifetime of the father, the same would definitely run counter to the basic requirement of the constitutional mandate and would lead to a differentiation between male and female. Normal rules of interpretation shall have to bow down to the requirement of the Constitution, since the Constitution is supreme and the statute shall have to be in accordance therewith and not dehors the same. The father by reason of a dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category ad in that view of the matter, the word ‘after’ shall have to be interpreted in terms of the constitutional safeguard and guarantee so as to give proper and effective meaning to the words used.”

**RIGHT TO MARRIAGE OF ONE’S CHOICE**

According to law, there is a freedom to marry a person of one’s choice, local religious bodies or panchayats express their opinion to the contrary, which is an issue challenging the society today in respect of inter caste marriages.
In another landmark Judgment in *Ashok Kumar Todi v. Kishwar Jahan*\(^\text{181}\), the Supreme Court held that the right to marry a person of one’s choice, if he is a major, outside one’s caste is guaranteed under Article 19 of the Constitution. Therefore, it is the duty of all persons in the administration or police authorities to ensure that their marital life is not disturbed or they are not harassed. The police officials have no role in their conjugal life, and the law enforcing authorities have no right to interfere in their conjugal life.

In *Lata Singh v. State of U.P*\(^\text{182}\), it was observed that the petitioner, being a major, is free to marry any one she likes, or live with any one she likes. There is no bar to inter-caste marriage under the Hindu Marriages Act, 1955 or any other law.

The Court failed to understand the offence committed by the petitioner, her husband or husband’s relative in inter-caste marriage. The criminal case filed against them was an abuse of the process of court as well as administrative machinery. In fact the Supreme Court expressed its distress and noted that instead of taking actions against the petitioner’s brothers for their unlawful and high-handed acts, the police has instead proceeded against the petitioner’s husband and his relatives. The administration and the police authorities were instructed to see that the couples who marry inter-caste are not harassed, nor any violent act is committed against them. If found so, criminal proceedings can be initiated and stern action be taken against such persons, as provided by law.

In the aforesaid decisions, the Supreme Court has recognised the fundamental right to marry any person, according to the choice under the Hindu Marriages Act, 1955 or any other law.

\(^{181}\) AIR 2011 SC 1262

\(^{182}\) (2006) 5 SCC 475
In the case of *Air India v. Nagesh Mirza*\(^\text{183}\), the Supreme Court, while dealing with fixation of different ages of retirement for male and female employees and preventing female employees from having children, expressed the view that the retirement of air hostesses in the event of marriage taking place within four years of service does not suffer from any irregularity or arbitrariness. However, the Apex Court held that retirement of air hostesses on first pregnancy is unconstitutional. It was considered that such a provision was callous, cruel and an insult to Indian womanhood.

Payment of equal pay for equal work has also been justified under Article 14. Unequal pay for materially equal work cannot be justified on the basis of an artificial classification between the two kinds of work and employment\(^\text{184}\).

Article 15 widens the scope of Article 14. Article 15 (1) prohibits the state from discriminating on the grounds of religion, race, caste, sex, place of birth or any of them. The Supreme Court has held that a law which deprived a female proprietor to hold and enjoy her property on the ground of her sex was held violative of Article 15\(^\text{185}\).

In *Yusuf Aziz v. State of Bombay*\(^\text{186}\), the validity of Section 497 of IPC (adultery) was challenged under Articles 14 and 15 (1) of the Constitution. Section 497 of the IPC only punishes a man for adultery and exempts the women from punishment though she may be equally guilty as an abettor and this section was held by the Supreme Court to be valid since the classification was not based on the ground of sex alone, thus relying on the mandate of Article 15 (3). Even Section 354 of IPC (assault or criminal force to women with intent to outrage her modesty)
is not valid because it protects the modesty only of women and Section 125 is valid although it obliges the husband to maintain his wife but not vice versa. Similarly, Section 14 of the Hindu Succession Act, 1956 converting the women’s limited ownership of property into full ownership has been found in pursuance of Article 15 (3)\(^{187}\).

It is noteworthy to mention the case of *Associate Banks officers Association* v. *State Bank of India*\(^{188}\), wherein the Apex Court held that women workers are in no way inferior to their male counterparts and hence, there should be no discrimination on the ground of sex against women. In *Air India Cabin Crew Association* v. *Yeshaswinee Merchant*\(^{189}\), the Supreme Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour.

Article 19 (1) (g) of the Constitution guarantees that all citizens have a right to practice any profession or to carry on any occupation or trade or business. Sexual harassment in exercise of this right at the work place amounts to its violation. In the case of Delhi Domestic Working Women’s Forum vs. Union of India, relating to rape and violence of working women, the Supreme Court called for protection to the victims and provision of appropriate legal representation and assistance to the complainants of sexual assault cases at the police station and in courts.

To realize the concept of gender equality, the Supreme Court has laid down exhaustive guidelines in the case of *Vishaka* v. *State of Rajasthan*\(^{190}\), to prevent sexual harassment of working women at their work place. The Supreme Court held

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188 AIR 1998 SC 32
189 AIR 2004 SC 187
190 AIR 1997 SC 3011
that it is the duty of the employer or other responsible person to prevent sexual harassment of working women and to ensure that there is no hostile environment towards women at their working place. These guidelines were framed to protect the rights of working women to work with dignity under Articles 14, 19 and 21 of the Constitution. The Supreme Court had also observed: “each incident of sexual harassment of women at workplace results in violation of fundamental rights of Gender Equality and the Right to Life and Liberty.”

Article 21 contains provisions for protection of life and personal liberty of persons. In the case of State of Maharashtra v. Madhukar Narayan Mandikar\(^{191}\), the Supreme Court has held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy. This article has also been invoked for the upliftment of and dignified life for the prostitutes.

The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women\(^{192}\).

Article 23 (1) of the Constitution of India prohibits traffic in human beings and beggars and other similar forms of forced labour. To curb the deep rooted social evil of prostitution and to give effect to this Article, the Parliament has passed the Immoral Traffic (Prevention) Act, 1956. This Act protects the individuals, both men and women, not only against the acts of the State but also against the acts of private individuals and imposed a positive obligation on the State to take all measures to abolish these evil practices. Another evil practice of the Devadasi system, in which women are dedicated as devadasis to the deities and temples, was abolished by the State of Andhra Pradesh by enacting the Devadasi (Prohibition of Dedication) Act, 1988. The Supreme Court has also held that traffic

\(^{191}\) AIR 1991 SC 207, 211  
\(^{192}\) Bodhisattwa Gautam v. Subhra Chakraborty, AIR 1996 SC 922
in human beings includes devadasis and speedy and effective legal action should be taken against brothel keepers\textsuperscript{193}.

From the aforesaid analysis, it is concluded that PIL has played a significant role in promoting gender equality and gender justice India. The constitutional obligations of the government are being discharged by the activist judiciary by entertaining PIL.

\textsuperscript{193} Vishal Jeet v. Union of India, AIR 1990 SC 1412