

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

LEGISLATIONS ON GENDER EQUALITY.

AUTHORED BY: DR. KHUSHBOO

Designation- Assistant Professor (Law) at Amity University Punjab, Mohali.

ABSTRACT

Women constitute almost half of the world's population. Their contribution at all levels of the social milieu is immeasurable. Erstwhile treated as a weaker sex, women have fought for their rights, overcome barriers and become force to be reckoned with. Today, women form a dominant proportion of the workforce in any field. From holding together a household to running business empires and becoming nation builders, their role in all aspects of a civilized society cannot be emphasized enough. Despite their pivotal role in the world, women in general are not treated equal to men in various aspects. Patriarchal ways of life render women at a socially disadvantageous position. In terms of education, healthcare and overall growth they often get ignored. Deprived of even the most basic necessities, women are often forced to live a life of subjugation and prejudice. Women often face bias at the workplace particularly in male dominated spheres and in unorganized sectors. There is a significant gap in the distribution of income and resources and the same is evident from the fact that women are often paid less than their male counterparts. This goes against the basic principle of "equal pay for equal work". Such inequalities have been prevalent since long and are deep rooted to the extent that they have almost taken the shape of an accepted norm. Over time, such differences have gotten ingrained in our social systems and sprouted various problems such as "Female Foeticide, Sexual Offences against Women, Domestic Violence, Sexual Harassment at Workplace, Dowry Offences" etc.

Keys Words : women, rights, bias ,inequality

INTRODUCTION

Women constitute almost half of the world's population. Their contribution at all levels of the social milieu is immeasurable. Erstwhile treated as a weaker sex, women have fought for their rights, overcome barriers and become force to be reckoned with. Today, women form a dominant proportion of the workforce in any field. From holding together a household to running business empires and becoming nation builders, their role in all aspects of a civilized society cannot be emphasized enough. Keeping that in mind, one would assume that discrimination against women

would now be a thing of the past. But that is not so. Despite their pivotal role in the world, women in general are not treated equal to men in various aspects. Patriarchal ways of life render women at a socially disadvantageous position. In terms of education, healthcare and overall growth they often get ignored. Deprived of even the most basic necessities, women are often forced to live a life of subjugation and prejudice.

Women often face bias at the workplace particularly in male dominated spheres and in unorganized sectors. There is a significant gap in the distribution of income and resources and the same is evident from the fact that women are often paid less than their male counterparts. This goes against the basic principle of “equal pay for equal work”. Such inequalities have been prevalent since long and are deep rooted to the extent that they have almost taken the shape of an accepted norm. Over time, such differences have gotten ingrained in our social systems and sprouted various problems such as Female Foeticide, Sexual Offences against Women, Domestic Violence, Sexual Harassment at Workplace, Dowry Offences etc.

In the year 2002¹, 1878 cases were registered under the Dowry Prohibition Act, 1961 and 794 incidents of dowry deaths. The Dowry Prohibition Act ²was enacted as early as possible as 1960 but still this problem exists in our so called civilized society. The modernization of tradition from 19th century onwards did not help to improve things till date. Custom is still the same and the constitutional rights and privileges have been able to create only an illusion of equality, liberty and dignity of women. Discrimination, degradation and drudgery depict the deplorable situation of women. The changing social structure instead of controlling gender violence has helped in institutionalizing women values and belief systems.

PROVISIONS UNDER INDIAN CONSTITUTION

Preamble

The significance of three concepts of Liberty, Equality and fraternity in the preamble, it is liberty of thought expression, belief, faith and worship, equality of status and of opportunity and to promote among all fraternity assuring the dignity of individuals. Dr. Ambedkar observed “in his closing speech said, the principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot

¹ National Crime Record Bureau Report 2002.

² ACT NO. 28 OF 1961

be divorced from liberty. Nor can both be separated from fraternity. Without equality liberty would produce the supremacy of the few over many. Equality without liberty would kill individual initiative.”³

As Dicean concept rule of law in Britain. Justice Thommen in *Indra Sawhey v. Union of India*⁴ the constitution of India guarantees the Right to equality through 14 to 18 “ Equality is one of the magnificent corner- stones of Indian democracy. Article 14 has been given a highly activist magnitude in recent years by the courts and thus it generates a large number of court cases. In *Badappanavar v. State of Karnataka*⁵ it is stated that equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equally will be violation of basic structure of constitution of India.

Fundamental Rights

Article 14 states that: The State shall not deny to any person equality before law or equal protection of laws within the territory of India. In *Faridabad C.T Scan Centre v. D.G.Health*⁶ Services we are a country governed by rule of law. Our Constitution confers certain rights to citizens. Every person is entitled to equality before law and equal protection of the laws. Article 15 specifically bars “ the State from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(3) the State is not prevented from making any special provision for women and children.”

The Constitution insists on equality of status to females and it negates gender bias. With the virtue of Article 15(3) State is permitted despite of Article 15(1) to make special provision for women. Article 15(3) recognises the fact that the women in India have been socially and economically handicapped for centuries they cannot participate in the socio-economic activities of the nation on a footing of equality. Reason behind Article 15(3) is to eliminate this socio-economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women .Sole objective of Article 15(3) is to strengthen and improve the status of women. This article makes clear that State may discriminate in favour of women against men it may not discriminate in favour of men against women.⁷

Article 16 and 14 are closely interconnected Article 14 applies to all persons, “citizens as well as non citizens whereas Article 16 applies only to citizens and not to non citizens. This Article

³ In constituent assembly on November 25, 1949.

⁴ AIR 1993 SC 477.

⁵ AIR 2001 SC 260

⁶ AIR 1997 SC 3801.

⁷ M.P. Jain, *Indian Constitutional Law*, Wadhwa Publications Nagpur, 2008, p 903.

guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. According to Article 16(2) no citizen can be discriminated against or be ineligible for any employment or office under the State on the grounds only of religion, race, caste, sex, descent, place of birth or residence or any of them”.

In the case of *Apparel Export Promotion Council v. A.K. Chopra*⁸ court held that An incident of sexual harassment of a female at the place of work, amounts to violation of her fundamental right to gender equality under Article 16(2).

Directive Principles of State Policy

Article 39(d) of the Indian Constitution is provision relating to principal of gender equality⁹ Article 42 requires the State to make provisions for securing just and human conditions of work and for maternity relief. *U.P.S.E Borad v. Hari Shankar*¹⁰ Referring to Article 42 and 43 the Supreme Court has emphasized that the Constitution express a deep concern for the welfare of the workers. The courts may not enforce Directive Principles as such but they must interpret laws so as to further and not hinder goals set out in Directive Principles.

Article 47 obligates the State to regard as among its primary duties the raising of the level of nutrition and standard of living of its people and the improvement of public health. In particular the State is to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and drugs which are injurious to health. Lately the Supreme Court has read Article 47 and 21 together and has culled out there from the obligation on the state to provide better health services to the poor.¹¹

The Constitution 42nd Amendment Act, 1976 breaks new ground by introducing the concept of fundamental duties of Indian citizens in the Constitution. Part IV consisting of Article 51A has been added to Constitution which talks about renouncing practices derogatory to dignity of female. Despite all these provisions the position of women is still very sympathetic. She is not treated well by her in laws, family members and discarded in the every field of the society. Only reason behind such is non-implementation of the laws. Very little effort has been made by the State to curb violence despite of having legislations and bye-laws. Lack of awareness among women is the

⁸ AIR 1999 SC 625.

⁹ “Article 39 (d): It states equal pay for equal work for both men and women”.

¹⁰ AIR 1979 SC 65.

¹¹ *Kirloskar Brothers Ltd v. Employees State Insurance Corp.*, (1996) 2 SCC 682.

main cause of non-accessibility of these rights.¹²

POSITION OF WOMEN UNDER OTHER LEGISLATIONS

Dowry Prohibition Act, 1961

The dowry system is prevailing in the Hindu community since ages. Bride is considered as bringing fortune to the family not by way of dowry but on account of the grace the lady carries with and around her. The implied ideology governing dowry was that it was a means of pre-mortem inheritance for girl from her parents wealth. Under Mitakshara system a woman was not entitled to share in the parental wealth and the system of bestowing the daughter with handsome dowry seemed to have been introduced to overcome this restriction. According to Webster's New Dictionary dowry means the money, goods or estate which a woman brings to her husband in marriage. Dowry in today's society is a deep rooted social evil in the community at large. The parents of bride and their relations out of affection and good intention used to provide the couple something. The dowry system began at the time when the girls were generally not very much educated and even if they are educated they were unwilling to take up gainful employment. There was yet another reason for such customary gifts as daughters was not entitled to a share in the joint family properties when she had a brother. Present time the dowry system has taken the ugliest form now it has become the only consideration for settlement of marriage. It is now prevalent in upper, middle as well as lower class.

The object behind enactment of the Dowry Prohibition Act, 1961¹³ was explained in *Bachni Devi v. State of Haryana*¹⁴ the object of the Act was to prohibit the giving and taking of dowry and the protection of married woman against cruelty and violence in the matrimonial home by her husband and her in laws. The mere demand for dowry before marriage, at the time of marriage or any time after marriage is an offence.

Demanding, giving, taking or agreement to give or take dowry, no doubt, are all invalid as per section 3, 4, 5 of the Dowry Prohibition Act, 1961. But, if in violation of such provisions dowry is given and received the consequence is that the receiver is bound to transfer the property to the woman and he is a trustee, until such transfer for the woman.

¹² Article 51 a (e) of Indian Constitution: "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women".

¹³ (Act No.28 of 1961).

¹⁴ (2011) 4 SCC427.

In this Act term dowry has been explained and inclusive definition is given as it contemplates that dowry means property or valuable security must be given in consideration. It should be given or agreed to be given by one party to a marriage to the other party to the marriage or by parents or any other person, at or before or (any time after the marriage).

Section 3 of the Act explains giving or taking dowry and mention penalty of the offence. Section 4 makes demanding dowry an offence. It is a penal provision which lays down that if any person makes demand for dowry whether directly or indirectly from parents or other relatives or guardians of a bride or even bridegroom it amounts to offence under this section which is punishable as per the terms provided therein. Section 5 makes agreement for giving or taking dowry shall be void. According to section 7 of the Act offences committed under the Act are cognizable offences and no court inferior to that of Metropolitan Magistrate or JMFC shall try offences either on its own knowledge or on police report or on complaint sued by an aggrieved person. Section 8 of the Act declares offences committed under the Act as cognizable, non-bailable and non-compoundable.

Immoral Traffic (Prevention) Act, 1956 ¹⁵

Undoubtedly the prostitution is the oldest profession in the world and it prevails throughout the world. This profession is being carried out in all civilized countries though it is prohibited. Factors like unemployment, greed for luxury, population explosion and sex mania etc are responsible for this evil. In *Vishal Jeet v. Union of India* ¹⁶ Supreme Court said that prostitution always remains a running sore in the body of civilisation and destroys all moral values. The Immoral Traffic (Prevention) Act, 1956 contains sections as well as provisions are supplemented by the rules framed there under. Aim of the Act is to curb and abolish traffic and prostitution of women, children as an organized means living.

In this Act, word prostitution is explained as sexual exploitation or abuse of persons for commercial purposes. Brothel includes house, room, conveyance or place or portion which is used for the purpose of prostitution for the gain of another person or for mutual gain of two or more prostitutes. Section 3 of the Act makes provision for punishment regarding any person who keeps or manages or assigns such keeping or manages a brothel. Section 4 punishes a person who lives on the earnings of prostitution partly or wholly.

¹⁵ Act No. 104 of 1956

¹⁶ 1990(3) SCC 318.

All the offences committed under this Act are cognizable, without affecting the provisions of Code of Criminal Procedure. The constitutional mandate under Article 23¹⁷ is prohibition of trafficking and all forms of trafficking in human beings including prostitution and beggary. India being signatory to International Convention for the Suppression of Traffic in Persons and exploitation, 1950 passed central laws on trafficking.

Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994

As earlier scientific techniques are not much advanced and it was not possible to determine the sex of the child, killing of female child took the form of adding opium to infant's milk or by suffocating the infant. Now scientific and medical techniques were used for killing female foetus which directly affect male -female ratio.

The main objectives of the Acts are:-

- I. Prohibiting the misuse of Pre-natal diagnostic techniques for determination of sex of foetus leading to female foeticide.
- II. Prohibiting advertisements of the techniques for detection or determination of sex.
- III. Regulating the use of techniques only for the specific purposes of detecting genetic abnormalities or disorders.
- IV. Permitting the use of such techniques only under certain conditions by registered institutions.
- V. Providing punishment for violation of the provisions of the Act.
- VI. Providing deterrent punishment to stop such inhuman acts of female foeticide.

Centre for Enquiry into Health and Allied Themes v. Union of India Supreme Court moved in to stop illegal sex determination and directed all states to confiscate ultra-sound equipments from clinics that are being run without licences. The Health Secretaries of Punjab, Haryana, Delhi, Bihar, UttarPradesh, Maharashtra, Gujrat, Andhra Pradesh, Kerala, Rajasthan and West Bengal were present to explain the steps taken to implement PNDT (Regulation and Prevention of Misuse) Act, 1994.

Section 6 of the Act, Prohibits Genetic Centres, Laboratories and Genetic Clinics from conducting any Pre- natal diagnostic technique tests, including Ultra-Sonography for determining the sex of a foetus. Section 5 of the Act and Section 6 both prohibit the determination or communication of

¹⁷ Article 23 of Indian Constitution: Prohibits the traffic in human beings and forced labor such as begar. The Human Trafficking is the illegal trade in human beings for the purposes of commercial sexual exploitation, prostitution or forced labour.

sex of the foetus.

The seriousness of the offence committed under this Act is reflected by section 27 which makes every offence under this Act cognizable, non-bailable and non-compoundable. Section 28 of the Act specifies that no court other than that of Metropolitan Magistrate or JMFC shall try any offence under this Act.

Sexual Harassment of Women at Workplace Act, 2013

As we know now a day's woman try to become independent then new form of crimes emerges sexual harassment at the workplace. Sexual harassment is recognised as violation of women's bodies may extend to harm dignity and honour of women. The Government of India ratified the CEDAW. The Declaration on Elimination of Violence Against Women states any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. *Vishakha v. State of Rajasthan* gender equality includes protection from sexual harassment and right to work with dignity which is universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are therefore of great significance in the formulation of the guidelines to achieve this purpose.

The Sexual Harassment Act was enacted with the objective of providing women protection against sexual harassment at workplace and for the prevention and redressal of complaints of sexual harassment. It is violation of fundamental right of a woman to equality as guaranteed under Article 14 and 15 of Constitution of India and her right to life and to live with dignity as per Article 21.

Medical Termination of Pregnancy Act, 1971

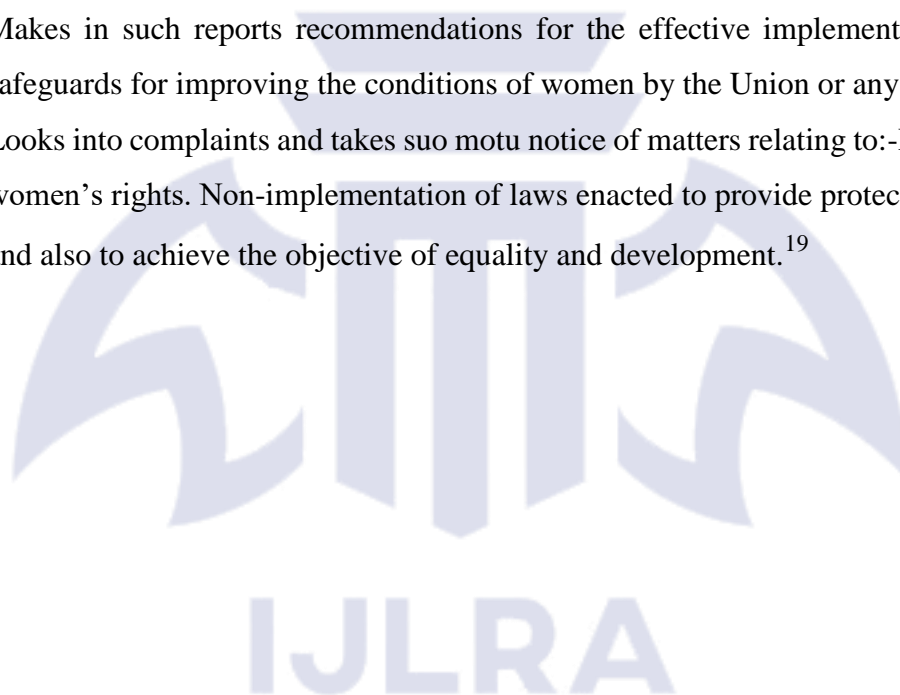
The objective of this Act is to provide for the termination of pregnancy by registered medical practitioners where its continuance would involve a risk to the life of the pregnant woman or would cause grave injury to her physical or mental health or where there is substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. Where the pregnancy is alleged to have been caused by rape or as a result of failure of a contraceptive used by married woman or her husband it would be presumed to constitute grave injury to the mental health of the pregnant woman. The Act contains eight sections dealing with various aspects like the time, place and circumstances in which a pregnancy may be

terminated by registered medical practitioners legally.

National Commission for Women Act, 1990¹⁸

The object of the Act was to constitute a National Commission for Women and to provide for matters connected or incidental thereto. The National Commission for Women was constituted under the Act on 31 January 1992 to exercise powers and perform functions assigned.

- I. Investigates and examines all matters relating to the safeguards provided for women under Constitution and other laws.
- II. Presents the Central Government annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.
- III. Makes in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State.
- IV. Looks into complaints and takes suo motu notice of matters relating to:-Deprivation of women's rights. Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development.¹⁹



¹⁸ Act No. 20 of 1990.

¹⁹ Dr. Anjani Kant, *Law Relating to Women and Children*, Central Law Publications, Allahabad, 2006.