



KAMKUS COLLEGE OF LAW

LL.B.VI SEM

WOMEN AND CHILD LAW

CODE-(K-6006)

UNIT -1

LONG QUESTIONS

Q1. Write a note on the status of women in Ancient and modern India?

Ans. The position of women in ancient India has been a very complicated one because of the paradoxical statements in different religious scriptures and sometimes in the same text at different places. Some have described their status as 'equals to men', while others have held not only in disrespect but even in positive hatred.

This is why it has presented many problems to sociologists while evaluating women's status in India. The cultural history of India reveals that in India theoretically women enjoyed the status of devi (goddess) as described in many religious texts of Hindus, the majority community in India.

Though woman enjoyed the theoretical importance which these texts outline for the wife who was defined ardhagini (better-half), but in practice she had a subservient position than man. She was regarded as a 'chattle' (a corporal moveable property) with no rights.

It was generally seen and believed that women had lower status with reference to power and influence than men in all spheres of life—family, community, religion and politics. Till recently, it was held that up to marriage, she is protected by her parents, during married life, she is looked after by her husband, and after the death of her husband, she was used to spend remaining years of her life under the roof of her children without any will or desire and rights in the family.

She was not allowed to decide how money would be spent or invested. She did not have any money at her disposal. She had to take permission to spend money from her elders—father, brother or husband or any other male or female elder person in the family.

In brief, she had no personality of her own. Some scholars have explained this inferior status of women as a result of patriarchal code of living. The rigid codes of behaviour as outlined for women in Brahmanical texts were also responsible for the low status of women in India. In the



following paragraphs we will survey, in brief, the position of women in India from Rigvedic period to modern times.

Rigvedic Period:

It is generally upheld on the basis of the instances depicted in religious texts (e.g., Vedas, Upanishads, Smritis, epics like Ramayan and Mahabharat and other Dharmasastras) that in ancient India, especially in Rigvedic period, women enjoyed equal status with men.

They had an honourable place in the society. They were not secluded from men and freely participated in public life. They attended great assemblies and state occasions. They studied the Vedas and composed hymns. They also distinguished themselves in science and learning at their times. They were considered intellectual companies of their husbands, as the friends and loving helpers in the journey of life of their partners, in their religious duties and the centre of their domestic bliss.

In Vedic times, women were not treated as inferior or subordinate but equal to men in all matters of life. They were given education and had a voice in the selection of their husband. Marriage was regarded as a religious bond. Child marriage was unknown. Often there were love marriages known as Gandharva Vivaha. Monogamy was a general rule. Polygamy was almost unknown.

Women enjoyed complete freedom in household matters. In the religious field, women enjoyed all rights and regularly participated in religious ceremonies. In fact, the performance of religious ceremonies was considered invalid without wife joining her husband as she was regarded as ardhagini (better-half).

The references in the Rigveda to the life of a widow are very few but it was not characterized by restrictions and austerities as in the post-Vedic days. Remarriage of widows was allowed. There are a number of references to the custom of Niyoga where a brother of the deceased husband/or any other person could marry the widow.

The earlier Dharmasastra writers allowed divorce; Kautilya gave detailed rules of divorce. As regards sati, burning of the widow, Shakuntala Rao Sastri writes that the Rigveda does not mention anywhere the practice of the burning or burial of widows with their dead husbands.

As regards property rights, according to Vedic hymns, both husband and wife was joint owner of the property. Women inherited and possessed property, but their rights were limited. As a daughter, she had no share in her father's property. Similarly, as a wife, a woman had no direct share in her husband's property.



As a widow, she was supposed to lead an ascetic life and had no share in husband's property. Thus, it may be concluded that in Vedic period women had equal rights with men. Their status was fairly high and they were treated as equals with men in almost all spheres of life.

Post-Vedic Period (Upanishads, Puranic and Smriti Periods):

The position enjoyed by women in Vedic period deteriorated in post-Vedic period. It was gradually degraded in the Puranic and Smriti periods. The description of position before BC 300 shows that she enjoyed a fairly high status, though not to the extent that she enjoyed in Vedic period.

It appears that several drastic changes that took place in the Indian society from about BC 300 to the beginning of the Christian era led to the curtailment of freedom of women. Imposition of Brahminical rules and code of conduct, rigid restrictions imposed by caste system and joint family system were the main reasons for lowering of status in this period.

A daughter began to be regarded as curse. They were denied the right of inheritance and ownership of property. Pre-puberty marriages came to be practised. She was forbidden to offer sacrifices and prayers and undertake pilgrimages. Practice of polygyny came to be tolerated.

Some of the Dharamsastras mention about the prohibition of Niyoga and widow remarriage. The widow was asked to devote herself to an ascetic life at home. Marriage became an irrevocable union as far as the wife was concerned.

The Smriti writers preached that the wife should look upon her husband as God. Widows were required to spend a life of penance and austerity. Sati had become popular by the 7th century AD. In this period, women were regarded just as a means of satisfying the physical desires of men.

Just to refer one instance of Mahabharata, it is said that 'there was no creature more sinful than man ... woman is the root of all ills'. This simple quotation is sufficient to prove that how disrespect was shown towards women. However, it is not out of place to mention here that Indian scriptures are full of paradoxical statements.

At one place, women were regarded as goddess, held in high esteem, where at other place in the same scripture, in some other context, they were regarded, no better than just slaves or chattels. Disregarding what was practised at any particular time, the ancient Indian scriptures and documents (Mahabharata, Ramayana, Vedic hymns, and various codes of the law of Manu) gave women a very high and protected place in their basic moral codes.

Husband and wife stood as equals before God. Up to this period purdah (veil) was not commonly observed by women. Divorce was, however, not permissible to them. But then, it was not



permissible to men either. Their position was not one of complete disability but one dictated by justice and fairness. Women used to help their male members of their family in economic pursuits. They sometimes accompanied their husband or other members of the family in hunting and agricultural pursuits.

Medieval Period:

The period between 11th century to 18th century witnessed further deterioration in the position of women due to the impact of Muslim culture. In this period, female infanticide, child marriage, purdah system, sati and slavery were the main social evils affecting the position of women.

The birth of a female child began to be regarded as curse, a bad luck. They were almost confined to the doors of their homes. There was further curtailment of freedom of women in matters of education, mate selection, public appearances, etc.

Purdah system came to be rigorously followed. Women education was almost banned. More and more feeling of conservatism increased about women. She not only continued to hold low status in and outside home rather her position worsened in this period.

It is often said that in India the purdah (veil) system came into existence only after the arrival of Moghuls. A.S. Altekar, in his book. *The Position of Women in Hindu Civilization* (1962) writes: 'This for nearly 2000 years from BC 20 to 1800 AD, the position of women steadily deteriorated though she was fondled by the parents, loved by the husband and revered by her children.

The revival of Sati, the prohibition of remarriage, the spread of Purdah and the greater prevalence of polygamy made her position very bad.' Thus, there was a vast difference between the status of women in the early Vedic period and the subsequent periods, stretching from post-Vedic to the medieval period. The dual standards of morality set by Manu Smriti and other Smritis continue to prevail right up to now though some changes are visible in urban educated women.

British Period:

During the period of British rule of about 200 years (early 18th century to the first half of 20th century) some substantial progress was achieved in eliminating inequalities between men and women in matters of education, employment, social and property rights and so forth.

Sati, purdah, female infanticide, child marriage, inheritance, slavery, prohibition of widow remarriage and the lack of women's rights in different fields were some of the problems which attracted the attention of British Raj.



Though the British rulers initially decided not to interfere with the traditional social fabric of Indian people (Hindus) and as such they took no steps to bring any change in the status of women in India. It is only in the latter half of the 19th century and the first quarter of the 20th century that they took some steps to abolish or change some social customs through legislative measures.

For such measures incentive was provided to them by some social reformers, such as Raja Ram Mohan Rai, Ishwar Chandra Vidyasagar, Dayanand Saraswati, Keshab Chandra Sen, Swami Vivekanand, Maharashi Karve, Justice Ranade, Mahatma Gandhi and others.

Through the efforts and the various movements launched by these great social leaders of the 19th century before independence, it had been possible to get many legislations passed and public opinion mobilized in favour of some issues of social reforms.

These steps have paved the way in removing the obstacles in the progress of women. Not only this, it had helped in eliminating inequalities between men and women and giving proper respect to the other-half of the society.

The most significant legislations relating to the problems faced by the Indian (Hindu) women passed during British period were as follows:

1. Abolition of Sati Act, 1813.
2. The Hindu Widow Remarriage Act, 1856.
3. Civil Marriage Act, 1872.
4. Married Women's Property Act, 1874.
5. The Child Marriage Restraint Act (Sharda Act), 1929.
6. Hindu Law of Inheritance Act, 1929.
7. Hindu Women's Rights to Property Act, 1939.
8. Hindu Marriage Disabilities Removal Act, 1946.

Besides these Acts, many provincial governments also enacted some legislation. In 1779, infanticide was declared to be a murder by the Bengal Regulation XXI. In 1804, this was extended to other parts of the country.

Another significant feature of the 19th century was the attempt made by social reformers to educate Indian girls. For more than 2,000 years, from about BC 300, there was practically no



formal education for women. Only a few women of the upper castes and classes were given some education at home.

The ideas of imparting education in a formal manner first emerged during the British period. Christian missionaries took great interest to impart education to the girls. It was in 1824 when the first girl's school was started in Bombay (Mumbai). In 1882, girls were allowed to pursue higher education. Since then, to pursue there has been a continuous progress in the field of education of girls in India.

In the last decades of 19th century, a marked change took place in the outlook of both men and women about the education and employment of women as teachers, nurses, doctors, etc. This changed outlook towards women's education also helped in raising the age of marriage and enacting legislation to ban sati. Thus, the ground prepared by the 19th century social reformers and their untiring efforts led to the emancipation of women. This also helped them to take their rightful place in society.

After Independence:

In addition to the measures to uplift the status of women in India initiated by Britishers, many vigorous steps (legal, social, economic and political) have been taken by Government of India after independence by removing the hurdles put in their way by traditional past. The efforts of the social reformers and their movements launched in the pre-independence period also bore fruits. The Indian National Movement also led to the emancipation of Indian women.

The leaders of the national movement realized that the liberation of the country from the bondage of imperialism was impossible without the active participation of women who constituted half of the population of the country.

Most of the social reformers and thinkers of the 19th and 20th centuries were influenced by the tenets of the liberal philosophy of the West, which emphasized the principle of contract rather than status, a rational outlook of life and problems, freedom of speech, criticism of authority, questioning of accepted dogmas and finally the recognition of the value of the individual and insistence on the rights of man as opposed to his duties. They also got impetus from Upanishads and other Hindu scriptures.

The decades after independence have seen tremendous changes in the status and position of the women in Indian society. The Constitution of India has laid down as a fundamental right the equality of sexes.

But, the change from a position of utter degradation of women to a position of equality is not a simple case of the progress of women in the modern era. To uplift the status of women, many



legislations pertaining to women were enacted after independence. These were mainly related to marriage, divorce, inheritance of property and employment.

Some of the important Acts are mentioned below:

1. The Hindu Marriage Validity Act, 1949.
2. The Special Marriage Act, 1954.
3. The Hindu Marriage Act, 1955 (amended in 1986 and 2010).
4. The Hindu Succession Act, 1956.
5. Immoral Traffic (Prevention) Act, 1956.
6. The Sati Prevention Act, 1987.
7. The Dowry Prohibition Act, 1961.
8. Indecent Representation of Women (Prohibition) Act, 1986.
9. Prohibition of Child Marriage Act, 2007.
10. Protection of Women from Domestic Violence Act, 2005.
11. Compulsory Registration of Marriage Act, 2006.

Besides, the Acts especially related to employment are:

1. The Factory Act, 1948.
2. Employees Insurance Act, 1948.
3. The Maternity Benefit Act, 1961.
4. The Equal Remuneration Act, 1976.

The above legislations and many other emancipatory actions of the social reformers have no doubt raised the status of women in India but still much is to be done in this field. The institution of bigamy (man marrying any number of women) has almost come to an end; if detected, it has become a punishable offence. Today, both sexes have the right to a civil marriage.

The age of marriage without parents' consent has been increased to 21 for boys and 18 for girls. Thus, monogamy along with facility of judicial separation, nullity and divorce (even on mutual consent), inheritance (equal share in paternal property), adoption, widow remarriage and sati



abolition are some of the salient features of post-independence era which put men and women on equal footings from the point of view of legislative measures.

However, social legislations have not been very effective in India because of many reasons. One important reason is that most of the women are not fully aware of the measures adopted by the state for their upliftment and even if aware they do not use them because of the old social values that are still persisting. These traditions and values inhibit them to take any revolutionary steps.

Legal or legislative sanctions alone cannot bring any substantial change in the downtrodden position of women unless there is a marked change in their attitude and consciousness of men and women both. In this regard, their illiteracy is one of the great hindrances. According to the 2001 Census, 45.84 per cent and 2011 Census, 34 per cent of women are still illiterate in India. Even literate women also do not exercise their right of equality wherever it is required.

Thus, the status of women has been raised in the eyes of law, but they are still far from equal to men in every sphere of life. In practice, they continue to suffer discrimination, harassment, humiliation and exploitation in and outside home.

Q2. Indian constitution aims to protect Indian women through different articles. Discuss?

Ans. Presently Indian women are facing toughest time as far as their routine personal and life is concerned. Mental and physical torture of women has become quite common and their safety is at stake. One of the problems behind this situation is lack of knowledge of legal and constitutional rights of a woman. Most unfortunate part of this is even women are not fully aware about their rights.

Introduction

Our Indian constitution was written in an era when the social condition of Indian women was very poor and need an urgent reform. She was mentally and physically tortured in the society. She was struggling to find her social status and a respectable place in the society. At that time Indian women were in a need of some laws in order to improve their social position and to ensure proper safety against mental and physical torture. At that time Dr. B. R. Ambedkar, author of our Indian constitution, took certain constructive and much needed steps in favor of



Indian women to make them independent and socially strong and today we can see the revolutionary change in the position and image of Indian women.

Due to the revolutionary changes brought by our constitution and efforts made by Indian women, they have earned themselves a respectable position in the society. Now they are treated equally with men. Today women are everywhere and to be precise women are in space, women are in corporate, women are in politics, women are in entertainment field, women are in defense field and the list goes on.

It is indeed a matter of pleasure that the position of women has improved in the last four decades. But still somewhere Indian women are again a bit struggling to maintain their dignity and freedom. Mental and physical torture of women has again become common and that is why they have started feeling unsafe. As per my personal understanding with the proper knowledge of legal and constitutional rights of a woman their position can be further strengthen in the society. There are lots of provisions in our law which protects a woman from mental and physical torture.

Provisions ensuring rights of Indian women

After Independence lots of provisions have been introduced to improve the social condition of women and to give them a platform where they can utilize their potential for their betterment and contribute positively towards the growth of their country. It is fact that the in the present era position and development of any country is dependent on the socio-economic position of its women. The provisions which enhanced the value of present women can be divided into two parts:

1. Constitutional provisions
2. Parliamentary provisions

It's a fact that awareness about constitutional and Parliamentary provisions to improve the condition of women is lacking. To ensure and spread the awareness of these provisions we will discuss them in detail.



Constitutional provisions to ensure dignity of women

Lots of provisions have been introduced through constitution to ensure dignity and self respect to the women at large. As mentioned earlier Dr. B. R. Ambedkar, author of Indian constitution, make sure that constitution of India safeguard the social and legal rights of women. Please find below some of the provisions made in favour of Indian women, in constitution of India:

Article 14:- Article 14 of constitution of India ensures equality before the law or the equal protection of the laws within the territory of India. This is a very important provision which provides equal legal protection to women against any women based crime. This provision also paves way for the introduction of various laws and acts to ensure protection and enforcement of legal rights of women in India.

Article 15:- Article 15 of constitution of India ensures that no one should create any sort of discrimination only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India. At the time of Independence there was lots of discrimination in India against women which gradually abolished after introduction of article 15. As per article 15(3) of the constitution state has the authority to make any special provision for women and children.

Article 16:- Article 16 of constitution of India ensures equal employment opportunity to every citizen of India. As per article 16 there should not be any discrimination in respect of employment opportunity under the State only on grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them. Now we can see women are doing really good work in politics and in corporate sector. Presently they are holding responsible positions in Government and Government run institutions. Let me share few good names from political and corporate field. These names are Chanda kochhar, Indira nooyi, Sonia Gandhi, Sushma Swaraj and this never ending list goes on.



Article 39:- Article 39 of constitution of India ensures the benefit of the directive principles of state policy to the women. Directive principles of state policy mean guiding principles for the framing of laws by the government at state level. Article 39(a) of directive principles of state policy ensures and directs a state to apply policies which focus on a men and women have an equal right of adequate means of livelihood and article 39(c) ensures equal pay for equal work for both men and women.

Article 42:- Article 42 of constitution of India casts a duty on every employer to ensure just and humane conditions of work and for maternity relief. In reality the position and treatment of women in corporate offices is really bad and in fact they are exploited by their seniors and bosses. In this scenario the provisions of article 42 are very important and now it is duty of employer to provide good working conditions to all the employees.

Article 243:- Article 243 of constitution of India ensures reservation of seats in gram panchayat for women. This opportunity of being a part of local level arbitration process has improved the social conditions of women in village areas.

These are few rights which are given by our constitution to the Indian women in order to ensure their dignity and social respect. Further to protect these constitutional rights there are numerous legal steps that have been taken by the state Governments which we will discuss in detail through this article.



Parliamentary provisions to ensure dignity of women

After Independence there was need to introduce some statutory laws to ensure safety and protection of women. Keeping in view this requirement, just like constitutional provisions, various parliamentary steps have also been taken by the law of India in order to ensure dignified life to the Indian Women. Parliamentary steps means and includes the enactment of various laws and statutory acts to protect the interest of women and to stop the crime against women. These acts have proved really useful towards progress and safety of women in society.

Equal rights should be awarded to women which have already been enjoyed by men in our society as women forms a major part of Indian population and for social and economic welfare on global platform women welfare is very much needed. In order to ensure adherence to constitutional provisions for women welfare, there was a need to enact specific laws by the state and central Government. Although a women can be victim of any crime in society and in fact all crimes cannot be classified as a crime against women except few crimes which affects a women largely. However major steps have been taken by the legislation which has proved as weapons for women and helped them to stand in male dominating country. Now we will discuss major crimes against women along with the legal provision which penalize the criminal.

Few crimes which are recognized as crime against women are:

Adultery :- Adultery is a very serious crime against women in India and affects married women by and large. In simple words adultery means having voluntary sexual relationship with a married person other than the spouse. The offence of adultery is dealt with by section 497 of the Indian penal Code, 1860, which says adultery means sexual intercourse of a man with a married woman without the consent of her husband when such sexual intercourse does not amount to rape. However we may find different meaning of adultery in different laws in different countries. Initially only men were punished under the law of adultery in India but now men and women both are equally responsible for committing the crime of adultery. As per section 497, the offender shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as a partner in crime.



Child marriage :-Child marriage is a very awful offence against child as it does not only harms the future of child but also damage social values. Further the doctors have also revealed that child marriage is a very big reason for bad health condition for girl child. Child marriage restricts the social development along with reduction in the educational and employment opportunities in the global market. It was like a burden on society to practice this unwritten custom. The major step was taken by the Law Commission of India by fixing the minimum age for marriage which is 18 years for girls and 21 years for boys. Another major step was mandatory primary education and moreover for girls provision for free education provided by the Government of India.

Female feticides :-Female feticide means identifying and killing of female fetus before they take birth. This is the most brutal way of killing women. The custom of female feticide is practiced by the society from ancient times and it is really shameful to note that even today, when we considers ourselves educated and civilized, this custom is practiced in a big manner. Government has taken so many steps to spread awareness among people about the consequences of this crime. Many awareness programs are conducted by the Government to spread the awareness about the physical, mental and social effect of this practice. Punishment of 3 years imprisonment and Rs. 10,000 fine has been prescribed by Pre conception and Pre Natal Diagnostic Techniques (Prohibition of Sex selection) Act, 1994, for the offence of Female feticides.

In a recently development Maharashtra government has recommend to the centre that the crime of female feticide should be treated as murder. To ensure this amendment in Pre conception and Pre Natal Diagnostic Techniques (Prohibition of Sex selection) Act, 1994, (PCPNDT Act, 1994) would become necessary. This provision will bring this crime within the category of murder under section 302 of the Indian Penal Code (IPC).

Trafficking and Prostitution :-Trafficking means import and export of humans for sex business. It is indeed very sad to learn that in India, where women are recognized as Devi and prayed by all Indian's as Devi Shakti, they are also treated as a source of earning by unethical means. Prostitution is one of the biggest problems in this world which is damaging the women in many ways. In general, the term prostitution means offer of sexual services for earning money.



Prostitution is a problem which exists across the world. There are quite a few laws in India in order to prevent the crime of prostitution like Suppression of Immoral Traffic in Women and Girl Act 1956 and Immoral Traffic (Prevention) Act 1956. There are few commissions are made by state Government to save women and specially girls to protect them from this practice.

Domestic Violence:- Domestic violence has become a very serious problem for women. In general the term Domestic violence means mental, physical, emotional and economical harassment of a woman by family members. For the purpose of domestic violence family includes spouse, his mother, father, brother, sister, his relatives and sometimes even friends. We call ourselves educated and talk too much about morality, ethics and civilization and expect others to be good to create a dream world but forget that without giving due respect to the women, a nation's growth is impossible. Now in India domestic violence is recognized as a criminal offence under section 498A of Indian Penal Code, 1860. Domestic violence means cruelty by husband towards women. Cruelty can be done by physically, mentally, economically or emotionally.

An act called Domestic violence Act, 2005 was introduced to handle the cases of Domestic violence in India. This act is a very noteworthy attempt in India to recognize domestic violence as a punishable offence. Before the introduction of this act two kinds of remedies were available to a women affected by Domestic violence. These two remedies were divorce through civil courts and application of section 498A through criminal courts.

Eve teasing: - It is a general perception that eve teasing is not a big crime like rape or murder and may be because of that we don't take it seriously. But from a women's point of view eve teasing is also a very big crime as this activity does make her feel uncomfortable most of the times. Eve teasing usually involves teasing women, passing comments on women and making vulgar signs (eshare). A woman has to face this kind of irritating behavior and deal with this on daily basis. She can't even fight back due to fear of disrespect by others as everyone will blame her and say that you must have done something to invite them. In case of eve teasing girl should not remain silent and raise her voice. She should inform her family members and simultaneously



file a complaint in the nearest police station. In this case family should also support the women instead of locking her at home.

Acid throwing:- Recently the issue of acid throwing on girls has also become a big issue. There are few types of acids and all are very dangerous for human flesh and burn. This acid attack sometimes is so dangerous that even bones and eyes are also got damaged due to acid. Few victims are forced to leave their education or occupation due to the results of acid throwing. Now a days this has become very easy for people to get these acids and the cases of acid throwing has become very regular in daily life.

It is quite sad that despite of so many cases of acid attacks on women, we do not have a dedicated and specific law to deal with such cases. The National Commission for Women (NCW) is asked for a well defined law to deal with such casualties. The NCW has introduced a draft of the Prevention of Offences (by Acids) Act, 2008, which is with now with the Union Ministry of Women and Child Development for the purpose of vetting and final recommendations. Once the Union Ministry of Women and Child Development approved the Bill, it will be sent to the law ministry to be tabled in Parliament. After the approval in Parliament it will become applicable as law.

Fraudulent Marriage:- Before going into the details of Fraudulent Marriage let me explain the general meaning of fraud in relation to crime against women. Fraud means hiding something or giving false impression about something which a person knows that knowing the fact may harm his prospective marriage. The scope of fraudulent marriage has increased in the recent past as in India parents of a girl are very fond of NRI son in law. Parents want to settle their daughter with any rich NRI. Parents of brides don't inquire too much about the NRI groom as they are happy that their daughter is going to marry a rich person who will fulfill her all demands and she will live a luxurious life in abroad. Their blind faith on NRI's may invite problems like false commitments, false details, second marriage and infertility. This is not necessary that fraudulent marriages only took place in case of NRI's even Indian grooms also do the same for money or for boy child or for any other reason.



Exploitation at work place:- Though we all accept the truth that in today's world women has come out of her image of house wife and proved herself as a better administrator then a man. In all sectors women are working hard and getting awards and rewards for that. She has crossed all the boundaries and shut the mouth of all those peoples who has ever questioned her working caliber.

But she has to pay a very heavy price of her success as she has to face exploitation at work place do we ever think what boundaries she has crossed and how. What she had paid go get this position and power? How much pain she has felt to become this person.

Rape, murder: - Rape is another very serious crime against women and this crime is increasing day by day like anything. Reporting of rape and abduction cases has become very common in print and electronic media which is indeed a very sad affair for all of us. Increasing rape cases are enough to prove that our moral values are still very low and we still to learn how to respect the dignity of women at large.

In simple terms the word 'Rape' means sexual intercourse or sexual penetration, by another person without the consent of the other person or victim. Provisions related to rape are given in section 375 and 376 of the Indian Penal Code, 1860. Section 375 explains the pre-condition which are necessary to prove the offence of rape whereas section 376 provides punishment for the offence of rape. As per section 376, whoever commits the offence of rape shall be punished with imprisonment of either for a term which shall not be less than seven years (7) but which may be for life or for a term which may extend to ten years and shall also be liable to fine.

Dowry:- The system of dowry is another social evil which dragging women back from 100 of years as this evil has a very long history especially in India. Various dowry based domestic violence cases has been reported by media. There are ample legal provisions in India to provide relief to women in case of dowry based domestic violence cases. Civil law of India has



prohibited the payment of dowry in the year 1961. Further Indian Penal Code, 1860 has introduced Sections 304B and 498A, which allows women to file complaint and seek restoration of her rights from serious harassment by the husband's family.

Dowry is one of the strong and biggest reasons of increasing domestic violence. Every year thousands of dowry deaths along with mental trauma cases reported and registered in India. In case of inadequate dowry, incidents like burning, suicides, physical and mental torture of women is very common by husband and his family. Keeping in view the increasing cases of dowry deaths another legislative provision called “Protection of Women from Domestic Violence Act 2005”, was introduced in order to reduce domestic violence cases and to protect women's rights.

Some legislative acts for women at one place

Let me also share the name of some of the legislative acts which are available in India to protect women's rights against harassment. These acts are like a boon to women at large to protect their dignity in society. Please have a look:

- 1) Dowry Prohibition Act, 1961
- 2) The Protection Of Women From Domestic Violence Act, 2005
- 3) The Commission Of Sati (Prevention) Act, 1987
- 4) The Immoral Traffic Prevention Act, 1956
- 5) Civil Procedure Code, 1973
- 6) Indian Penal Code, 1960
- 7) Hindu Marriage Act, 1955
- 8) Child Marriage Restraint Act, 1929
- 9) The Medical Termination Of Pregnancy Act, 1971



- 10) National Commission Of Women Act, 1990
- 11) The Minimum Wages Act, 1948
- 12) Bonded Labor System Abolition Act, 1976
- 13) The Special Marriage Act, 1954
- 14) Foreign Marriage Act, 1969
- 15) Indian Divorce Act, 1969
- 16) The Indecent Representation of Women Prohibition Act, 1986
- 17) Guardians & Wards Act, 1869
- 18) Equal Remuneration Act, 1976

The above list is not conclusive but inclusive. These acts have given ample provisions to ensure the protection of women rights like minimum wages, protection from domestic violence, right of equal remuneration, prevention from immoral trafficking, prevention from indecent representation of women etc. So there is no doubt that our judiciary and legislature has taken various effective steps to ensure the dignity of women.

Conclusion

Indian women has come a long way and prove that she is capable of doing anything and equal partner in the growth and prosperity of the nation. Women are one of the pillars of the society and it would be very difficult to imagine society without the presence of women. Now it is high time for all of us to understand the power of women. Even our judiciary and legislature has also accepted the fact that women are one of the most important elements of society and their exploitation would not be accepted at any cost. There is one saying that behind every successful man there is a woman. This saying is enough to prove that man and women both are necessary element of society. Women plays different role in her life which is not an easy task. During her life she acts as daughter, wife, sister and mother at different stages of life. So we must give them due care and respect and understand their efforts towards welfare of the society at large. Through



this article I tried my best to cover all the constitutional, judiciary and legislative rights of women against the crimes which they are facing from quite some time now. I hope this article will help us to understand that rights of women are very necessary and Indian law is strong enough to protect her from any kind of harassment and torture.

Q. What are the fundamental rights in Indian constitution to uplift the status of women?

ANS. Fundamental Rights to Uplift the Status of Women

The Articles under Part III of the constitution of India, relating to the Fundamental Rights which try to improve the status of women and provide equal opportunities for them are stated as follows: (Chapter III, n.d.).

According to Article 14 of the Constitution of India - All individuals, including women are equal in the eyes of the law and they are also entitled to enjoy equal protection of laws within the territorial jurisdiction of India. It signifies that all persons irrespective of gender, should be treated equally in similar circumstances. The State should not make any discrimination between one person and another, and the law should be administered equally.

Article 15 of the Constitution of India deals with prohibition against discrimination - It prohibits the state to make any types of discrimination against any citizen including women on grounds of race, caste, gender, ethnicity, religion, place of birth and socio-economic background. It states that all citizens are entitled to enjoy equal rights regarding access to shops, hotels, restaurants, banks, infrastructure, public places etc. But the state has the right to make any special provisions for women and children and also for, scheduled castes, scheduled tribes and other backward classes.

According to Article 16 of the Constitution of India - All citizens including, women will enjoy equality of opportunity in matters of public employment, irrespective of their gender, races, castes, ethnicity, religions and socio-economic backgrounds. There are certain



exceptions, i.e. Parliament may prescribe by law that residence within the state is required for a particular employment. The State is empowered to reserve certain posts for backward classes and also for the scheduled castes and scheduled tribes and appointment in connection with a religious organisation may be reserved for persons belonging to that religion.

As per Article 17 of the Constitution of India - The System of untouchability is eliminated and Untouchability (offence) Act of 1955 was enacted by the parliament. This Act was amended by Untouchability (offence) Amendment Act 1976, to make the law more stringent to remove untouchability from the society.

According to Article 19 of the Constitution of India, every citizen including women have the right to freedom of speech and expression, to assemble peacefully and without arms, to form unions or associations, to move freely throughout the country, to reside or settle down in any part of the country and to practise any profession or to carry on any lawful trade or business in accordance to one's own aspirations.

As per Article 21 of the Constitution of India - No person shall be deprived of life or personal liberty, except according to the procedure established by law. This right to life, includes right to live with dignity, right to privacy etc. Domestic violence against women is also derogatory to Article 21 of the Indian Constitution, because it weakens the self-respect and dignity of women, who are victims.

According to Article 21A of the Constitution of India - The State shall provide free and compulsory education to all children, who are between the ages of six to fourteen years in a manner, as the state may determine by law.

To provide facility to the women accused - As per Article 20 of the Constitution of India, no person including women shall be convicted of any offence except for violation of a law and any person shall not be prosecuted and punished for the same offence more than



once. Any person should not be accused of any offence, he or she shall be compelled to be a witness against himself or herself.

To prevent immoral trafficking in women and girl child Article 23 of the Constitution of India - Prohibits the traffic in human beings and forced labour. In pursuance of this Article, Parliament has passed the Suppression of Immoral Trafficking in women and Girls Act, 1956, which is now renamed as the immoral Trafficking (Prevention) Act 1956, for punishing the actions, which result in trafficking in human beings.

To prohibit child labour, especially girl child as per Article 24 of the Constitution of India - Employment of children, below the age of fourteen years in factory or mine or engaged in any other hazardous employment is prohibited.

Under Article 25 of the Constitution of India - All persons including women are equally entitled to freedom of conscience and the right of freedom to profess, practice, and propagate religion.

Legal Framework for Women and Work

India is the second most populated country in the world. The Indian constitution guarantees equality for women before the law, and institutional support for women seems advanced, with many laws to protect the right of women at work. The labour laws in India, can be industry specific, region specific or centralized. The Acts have been stated as follows: (India: The Legal Framework for Women and Work, 2012).

Equal Remuneration Act, 1976 - This law aims to prevent gender discrimination of wages, hiring, promotion, or training, and can be circumvented through wage reclassification of skilled and unskilled workers. Often, regardless of the type or skill level of a job, women are placed in the unskilled, lower paid wage category, while men are placed in the skilled, higher wage category. The Act includes, equal pay to men and women workers for same or



similar work performed. There should not be any discrimination in recruitment and service conditions, except where employment of women is restricted by the law, such as night hours or industry specific constraints.

National Commission for Women Act, 1990 (Act of Parliament) - Creates a National Commission for Women to review existing statutory protection of women, prepare periodic reports to the Central Government on matters relating to protections for women's rights, scrutinize grievances relating to the deprivation of these rights, and financially assist in the litigation of issues affecting women.

Constitutional (74th Amendment) Act, 1992 - Women in political power at the local level have struggled for mass literacy programs and for control over resources such as, water. Because the functioning of the office has become progressively affluent, parties only put forth a few women candidates, and these are often relatives. While these women are getting promoted, overall there are still not many women in national politics. The Amendment mandates one-third reservations or quotas for women in local governing bodies in state or public institutions.

The Protection against Sexual Harassment of Women at the Workplace Bill, 2010 -

This bill, would create a definition of sexual harassment within the workplace, and make it mandatory for every organization with over 10 employees to create committees, headed by women to administer sexual harassment grievances. These committees could gather evidence and would be equivalent to Civil Courts, although problematically, members do not need to have a legal background. In addition, penalties would be created for employers that include fines.

Maternity Benefits Act, 1961 – This act permits a woman to 12 weeks of leave with full pay associated with the birth of a child and there is no adoption benefit. It is unlawful for



an employer to discharge or suspend a woman during or because of maternity leave. A woman worker must be permitted to take two nursing breaks, in addition to normal breaks, until her child is 15 months old.

Factories Act, 1948 - According to the act, the employer must provide child care facilities for children, below the age of six years at the workplaces, where more than 30 women workers are employed. Prosecutions against an employer for violating the Factories Act is infrequent, and supervisors seldom examine the number of women workers employed or the mandatory creche or child care centres. In fact, on record, there is not a single case known, where an observer or a supervisor went to a worksite to check on the number of women employees. Also, employers bypass the Factories Act by employing less than 30 women or using part time and or contract labour.

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 - Provides for the well-being of the workers in beedi and cigar factories by regulating the conditions of work, including maximum hours and the safety of the working environment. In addition, child care facilities must be available for working mothers. This act requires the mandatory appointment of women to the advisory and central advisory committees.

The Plantation Labour Act, 1951 - Every plantation with more than fifty women workers must provide child care, including for those women workers, employed by a contractor. The plantation must also provide child care, when women employees have in aggregate more than twenty children. Women workers get breaks in between work to feed their children.

Employee's State Insurance (General) Regulation, 1950 - Maternity benefits are made available on the date a medical certificate is issued for miscarriage, pregnancy-related, sickness, bed rest, or pre-term birth.



The Contract Labour (Regulation & Abolition) Act, 1970 – Day care must be provided, where 20 or more women work on contract regularly.

Prohibition of Child Marriage Act, 2006 - The Prohibition of Child Marriage Act, 2006, which is the national law against child marriage, does not allow the question of consent in case of minors and treats child marriage as a punishable offence. However, it creates misperception by declaring some marriages invalid and some others voidable. Marriage of a minor formalized by use of force, fraud, deception, enticement, selling and buying or trafficking a void marriage, while all other child marriages are voidable at the option of the parties to the marriage and hence valid marriages, until they are invalidated by the court. If the law does not attribute consent to a child, it must render all child marriages invalid, as all child marriages then become marriages that have taken place either through some form of pressure, intimidation or use of fraud, trafficking and such other illegal means, or by influencing the mind-set of the child

SHORT QUESTIONS

Q1. Discuss the position of women in British period?

ANS. The status of women, at the dawn of the British rule in India, reached the lowest level in the society. The wife's position in the household was in a sorry state. The rate of literacy was so low that hardly one woman in a hundred was able to read or write. Evil social practices, dogmatic religious beliefs, inhuman superstitions and sinister customs caused the maximum degree of deterioration. Child marriage, enforced widowhood, sati, Devadasi, purdah, dowry, female infanticide and the practice of polygamy made the Indian society static.

During the period of British rule of about 200 years (early 18th century to the first half of 20th century) some substantial progress was achieved in eliminating inequalities between men and women in matters of education, employment, social and property rights and so forth.



Sati, purdah, female infanticide, child marriage, inheritance, slavery, prohibition of widow remarriage and the lack of women's rights in different fields were some of the problems which attracted the attention of British Raj.

Though the British rulers initially decided not to interfere with the traditional social fabric of Indian people (Hindus) and as such they took no steps to bring any change in the status of women in India. It is only in the latter half of the 19th century and the first quarter of the 20th century that they took some steps to abolish or change some social customs through legislative measures.

For such measures incentive was provided to them by some social reformers, such as Raja Ram Mohan Rai, Ishwar Chandra Vidyasagar, Dayanand Saraswati, Keshab Chandra Sen, Swami Vivekanand, Maharshi Karve, Justice Ranade, Mahatma Gandhi and others.

Through the efforts and the various movements launched by these great social leaders of the 19th century before independence, it had been possible to get many legislations passed and public opinion mobilized in favour of some issues of social reforms.

These steps have paved the way in removing the obstacles in the progress of women. Not only this, it had helped in eliminating inequalities between men and women and giving proper respect to the other-half of the society.

The most significant legislations relating to the problems faced by the Indian (Hindu) women passed during British period were as follows:

1. Abolition of Sati Act, 1813.
2. The Hindu Widow Remarriage Act, 1856.
3. Civil Marriage Act, 1872.
4. Married Women's Property Act, 1874.
5. The Child Marriage Restraint Act (Sharda Act), 1929.
6. Hindu Law of Inheritance Act, 1929.
7. Hindu Women's Rights to Property Act, 1939.
8. Hindu Marriage Disabilities Removal Act, 1946.



Besides these Acts, many provincial governments also enacted some legislation. In 1779, infanticide was declared to be a murder by the Bengal Regulation XXI. In 1804, this was extended to other parts of the country.

Another significant feature of the 19th century was the attempt made by social reformers to educate Indian girls. For more than 2,000 years, from about BC 300, there was practically no formal education for women. Only a few women of the upper castes and classes were given some education at home.

The ideas of imparting education in a formal manner first emerged during the British period. Christian missionaries took great interest to impart education to the girls. It was in 1824 when the first girl's school was started in Bombay (Mumbai). In 1882, girls were allowed to pursue higher education. Since then, to pursue there has been a continuous progress in the field of education of girls in India.

In the last decades of 19th century, a marked change took place in the outlook of both men and women about the education and employment of women as teachers, nurses, doctors, etc. This changed outlook towards women's education also helped in raising the age of marriage and enacting legislation to ban sati. Thus, the ground prepared by the 19th century social reformers and their untiring efforts led to the emancipation of women. This also helped them to take their rightful place in society.

Q3. "Right to life means right to live with human dignity held by Supreme Court in Menka Gandhi case." In the light of this judgment discuss the status of women as provided under the Indian Constitution.

Ans. INTRODUCTION

Article 21 reads as:

"No person shall be deprived of his life or personal liberty except according to a procedure established by law."

According to Bhagwati, J., Article 21 "embodies a constitutional value of supreme importance in a democratic society." Iyer, J., has characterized Article 21 as "the procedural magna carta protective of life and liberty.

This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.



Article 21 can only be claimed when a person is deprived of his “life” or “personal liberty” by the “State” as defined in Article 12. Violation of the right by private individuals is not within the preview of Article 21.

Article 21 secures two rights:

1) Right to life

2) Right to personal liberty

The Article prohibits the deprivation of the above rights except according to a procedure established by law. Article 21 corresponds to the Magna Carta of 1215, the Fifth Amendment to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946.

Article 21 applies to natural persons. The right is available to every person, citizen or alien. Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19 (1) (e).

MEANING AND CONCEPT OF ‘RIGHT TO LIFE’

‘Everyone has the right to life, liberty and the security of person.’ The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense. This Section will examine the right to life as interpreted and applied by the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” ‘Life’ in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man’s life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation. Under the canopy of Article 21 so many rights have found shelter, growth and nourishment. Thus, the bare necessities, minimum and basic requirements that is essential and unavoidable for a person is the core concept of right to life.



Right Against Sexual Harassment at Workplace

Art. 21 guarantees right to life right to life with dignity. The court in this context has observed that:

“The meaning and content of fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment or abuse.”

Sexual Harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental rights, namely, the Right to Life contained in Art. 21.

In **Vishakha v. State of Rajasthan**, the Supreme Court has declared sexual harassment of a working woman at her work as amounting to violation of rights of gender equality and rights to life and liberty which is clear violation of Articles 14, 15 and 21 of the Constitution. In the landmark judgment, Supreme Court in the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment laid down the following guidelines:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Where such conduct amounts to specific offences under I,P,C, or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with appropriate authority.



The victims of Sexual harassment should have the option to seek transfer of perpetrator or their own transfer.

In *Apparel Export Promotion Council v. A.K. Chopra*, the Supreme Court reiterated the Vishakha ruling and observed that:

“There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India.... In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is incompatible with the dignity and honour of a female and needs to be eliminated....”

Right Against Rape

Rape has been held to a violation of a person's fundamental life guaranteed under Art. 21. Right to life right to live with human dignity. Right to life, would, therefore, include all those aspects of life that go on to make life meaningful, complete and worth living.

In *Bodhisattwa Gautam v. Subhra Chakraborty*, the supreme court held that

“Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society, which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life with human dignity contained in Art 21”.

Right to Reputation

Reputation is an important part of one's life. It is one of the finer graces of human civilization that makes life worth living. The Supreme Court referring to *D.F. Marion v. Minnie Davis* in *Smt. Kiran Bedi v. Committee of Inquiry* held that “good reputation was an element of personal security and was protective by the Constitution, equally with the right to the enjoyment of life, liberty and property. The court affirmed that the right to enjoyment of life, liberty and property. The court affirmed that the right to enjoyment of private reputation was of ancient origin and was necessary to human society.”



The same American Decision has also been referred to in the case of State of Maharashtra v. Public Concern of Governance Trust, where the Court held that good reputation was an element of personal security and was protected by the constitution, equally with the right to the enjoyment of life, liberty and property.

It has been held that the right equally covers the reputation of a person during and after his death. Thus, any wrong action of the state or agencies that sullies the reputation of a virtuous person would certainly come under the scope of Art. 21.

KAMKUS



UNIT-II

LONG QUESTIONS

Q1. Discuss the law relating to miscarriage in India as provisioned under Indian Penal Code and Medical termination of pregnancy Act?

Ans1. Abortion may be classified into various categories depending upon the nature and circumstances under which it occurs. For instance, it may be either, (i) natural; (ii) accidental; (iii) spontaneous; (iv) artificial or induced abortion. Abortions falling under the first three categories are not punishable, while induced abortion is criminal unless exempted under the law. Natural abortions is a very common phenomena and may occur due to many reasons, such as bad health, defect in generative organs of the mother, shocks, fear, joy, etc. Accidental abortion very often takes place because of pathological reasons where pregnancy cannot be completed and the uterus empties before the maturity of fetus. Induced abortions is denied in law as an untimely delivery voluntarily procured with intent to destroy the foetus. It may be procured at any time before the natural birth of the child.

Abortion raises a variety of moral, legal, social and medical questions. If the pregnant women finds it necessary to terminate her pregnancy, does she have the right and up to what moment and on what conditions? Since such termination raises a conflict between the rights of the child and the mother (the child's right to survival and the mother's right to terminate the pregnancy), who is competent to adjudicate the claim? As a basic premise law states, that killing a foetus is not permissible. If then qualifies, this opposition by specifying a series of exceptions. These exceptions purpose to be based on some specific consideration. One such consideration is concerned with the conflict between the rights of the mother and the rights of the child. The mother's right is allowed to prevail, in some situations. The women's supposed superiority in his matter is jurisprudentially explained in terms of the "necessity" of the situation coupled with her right to self-defence. To save the life or the health of the women, on a balance of probabilities, the lesser evil is looked upon as the limitation of the foetus to that of the mother.



As per Section 81 of Indian Penal Code an act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not be otherwise be awarded and which if they had allowed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose, and that the evil inflicted by it was not disproportionate to the evil avoided. Reliance on the doctrine of self-defence is nothing new to the law. All legal systems recognize the right of a living individual to protect himself from danger to his own life and, for that purpose, to use necessary force even to the extent of causing the death of the person creating the danger.

The law most undoubtedly authorizes the man who is under reasonable apprehension that his life is in danger or his body in risk of grievous hurt to inflict death upon his assailant even when the assault is attempted or directly threatened by the apprehension must be reasonable and the violence inflicted must not be greater than is reasonably necessary for the purpose of self defence. In this case the continuation of the existence of the foetus is looked upon as dangerous to the life of the mother. The balancing of one life against another life in such circumstances may be understood by some stretch of reasoning. The difficulty arises on the issue of balancing of one person's health against another person's life. Here arise certain ingrained complexities. Life and health do not get equated on a common platform.

The fact that the women's health would be endangered if the pregnancy is carried to the full term was not (until fairly, recently) recognized as a justification for abortion. That step has not been taken but obviously it constitute a greater inroads in the sanctity of life (of the foetus) than a provision intended to guard against danger to the women's life. Section 312 of the Indian Penal Code, defines the offence of 'causing miscarriage' as follows "whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to 3 years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.

Explanation: a woman, who causes herself to miscarry, is within the meaning of this section.



The framers of the Code have not used the word 'abortion', in sec.312, which relates to an unlawful termination of pregnancy. This section speaks of 'miscarriage' only, which as not been defined in the Code. However, miscarriage, in its popular sense, is synonymous with abortion and consist in the expulsion of the embryo-foetus at any time before it reaches full growth.

Miscarriage technically refers to spontaneous abortion, whereas voluntarily causing miscarriage, which is an offence under the Code, stands for criminal abortion. Legally miscarriage means the premature expulsion of the product of conception, an ovum, or foetus from the uterus at any time before the full term is reached. A distinction is made under Section 312 of Code between causing miscarriage when a women is 'with child' and when she is 'quick with child'. As per judicial interpretation ia women is considered to be in the former stage as soon as gestation begins and in the later stage when the motion is felt by the mother. In other words quickening is the perception by the mother that movement of the foetus has started.

It obviously refers to an advanced stage of pregnancy. Sec 312 of the Code permits termination of pregnancy of therapeutic (medical) grounds in order to protect the life of the mother. The unborn child in the womb must not be destroyed unless the destruction of the child is for the purpose of preserving the yet more precious life of the mother. The provision by implication recognizes that the foetus has the right to life. When the termination of pregnancy is caused without the consent of the women, punishment may extend to imprisonment for life or imprisonment of either description for a term, which may extend to 10 years or fine.

If the death of the woman is caused by an act done with intent to cause miscarriage with her consent punishment may extend to 10 years of imprisonment and fine, and if it is done without her consent, imprisonment for life or ten years and fine. An act done with the intent to prevent a child from being born alive or to cause it to die after death is punishable upto 10 years of imprisonment or fine or both. And the causing of death of a quick unborn child by an act amounting to culpable homicide is punishable upto 10 years of imprisonment and fine.

The Medical Termination of Pregnancy Act, 1971:

During the last thirty years many countries have liberalized their abortion laws. The worldwide process of liberalization continued after 1980. Today only 8% of the world's population lives in countries where the law prevents abortion. Although the majority of countries have very



restricted abortion laws, 41% of women live in countries where abortion is available on request of women. In India, Shantilal Shah Committee (1964) recommended liberalization of abortion law in 1966 to reduce maternal morbidity and mortality associated with illegal abortion. On these bases, in 1969 Medical termination of pregnancy bill was introduced in Rajya Sabha and Lok Sabha and passed by Indian Parliament in Aug. 1971. Medical Termination of Pregnancy Act, 1971 (MTP Act) was implemented from Apr. 1972. Implemented rules and regulations were again revised in 1975 to eliminate time consuming procedures for the approval of the place and to make services more readily available. The MTP Act, 1971 preamble states "an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto".

The preamble is very clear in stating that termination of pregnancy would be permitted in certain cases. The cases in which the termination is permitted are elaborated in the Act itself. Moreover, only a registered medical practitioner who is defined in Sec.2(d) of the Act as "a medical practitioner who possess any recognize medical qualification as defined in Cl.(h) of sec.2 of the Indian Medical Register and who has such experience or training in gynecology and Obstetrics as may be prescribed by rules made under this Act" is permitted to conduct the termination of pregnancy. Also other matters connected there with the incidental thereto are incorporated, for example, the question of consent of termination of pregnancy, the place where the pregnancy could be terminated, the power to make rules and regulations in this behalf.

Grounds for termination of pregnancy:

Sec.3: When pregnancies may be terminated by registered medical practitioner.

(i) Notwithstanding anything contained in the Indian Penal Code (45 of 1860) a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act".



This makes it clear that the provisions of the MTP Act, so far as abortion is concerned suppresses the provisions of the Indian Penal Code. Sub-sec. (2) of Sec.3: "Subject to the provisions of sub-sec (4), a pregnancy, may be terminated by a registered medical practitioner.

(a) Where the length of the pregnancy does not exceed 12 weeks if such medical practitioner is,
or

(b) Where the length of the pregnancy exceeds 12 weeks but does not exceed 20 weeks, if not less than 2 registered medical practitioners are of opinion, formed in good faith that:

1: The continuance of the pregnancy would involve a risk to the life of the pregnant woman ;or

2: A risk of grave injury to the her physical or mental health ;or

3: If the pregnancy is caused by rape; or

4: There exist a substantial risk that, if the child were born it would suffer from some physical or mental abnormalities so as to be seriously handicapped; or

5: Failure of any device or method used by the married couple for the purpose of limiting the number of children; or

6; Risk to the health of the pregnant woman by the reason of her actual or reasonably foreseeable environment.

The Act does not permit termination of pregnancy after 20 weeks. The medical opinion must off course be given in "good faith". The term good faith has not been defined in the Act but sec. 52 if the IPC defines good faith to mean as act done with 'due care and caution'. It is important to note that certain loopholes exist in the provisions. Firstly, nowhere has the Act defined what would involve a risk or a grave injury to her mental health. The term grave injury or substantial risk remains undefined. The gravity of the injury or the extent of the risk being left to the interpretation of the clause by the medical practitioner. However the MTP Act provides some guidance for the doctors in the form of two explanations.

Sec 3(2) Explanation 1: where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.



Therefore, rape per se is not an indication. It is the mental anguish following pregnancy due to rape, which is the main indication. In other words, mental anguish is to be taken into consideration; proving rape and affecting her character is not necessary. Her allegation that she has been raped is sufficient. Further proof of rape like medical examination, trial, judgment is not necessary.

Explanation 2: where any pregnancy occurs as a result of failure of any device or method used by any married woman or her husband for purpose of limiting the number of children they anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman.

The Act says that mental anguish due to pregnancy due to contraceptive failure in a married woman is an indication. Can an unmarried woman avail of this clause? She cannot use this, but she can get abortion under the general clause of mental indication.

Sub Section (3) clarifies that:

Sub-Sec.3 (3) In determining that whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-sec (2), account may be taken of the pregnant woman's actual or reasonable foreseeable environment. Therefore in determining whether the continuation of pregnancy would constitute a risk to the physical or mental health of the pregnant woman the Indian Law permits the consideration of the woman actual or reasonably foreseeable environment. The terms reasonably or foreseeable being left to the interpretation of the medical practitioner. Environmental clauses could include, by interpretation, drunkard husband, low-income group, large family etc. By and large, these explanations provide for two instances where continued pregnancy is assumed to constitute a grave injury to the mental health of the pregnant woman, namely where the pregnancy is alleged by a woman to have being caused by rape and second where the pregnancy occurs as a result of failure f any device by a married woman or her husband for purpose of limiting the number of children. The provision provides the doctors with a yardstick for a broad interpretation of the basic concept of the potential injury to the mental health of the pregnant woman.



The rest of the matters come in the case of mental indication where abortion is allowed and continuation of pregnancy would involve grave injury to her mental health. This is a subjective indication and commonly restored one.

In one of the case, where a girl detained in a Women's Welfare institution applied to the High Court during the pendency of her writ petition that the Court be pleased to order termination of her pregnancy and the Court found that the Pregnancy was against her will and that unless it was terminated the girl would suffer traumatic and psychological shock, the High Court directed termination in a govt. Maternity hospital if the doctors there on examination found that the termination would not affect her life and safety.

Qualification of Doctors:

According to the Act, 'a medical practitioner who possess any recognized medical qualification as defined in cl. (h) of Sec.2 of the Indian Medical Council Act, 1956 whose name has been entered in a state medical register and who has such experience or training in gynecology or obstetrics as may be prescribed by rules made under this Act is permitted to conduct the termination of pregnancy'. Allopathic doctors who are duly registered with the State Medical Council are authorized to do abortion. Other like homeopathic, ayurvedic, unani doctors and unqualified doctors like RMP, Quacks, et al are not entitled to perform abortion. Even among allopathic doctors, only those who satisfy one or the other of the following qualifications are eligible to do MTP. Once a doctor satisfies the require qualifications, he automatically becomes eligible to do abortions. He need not apply for eligibility to any authority. A doctor cannot refuse to do abortions on religious grounds. If he does so, his name is liable to be erased from the Medical Council. If he is a Govt. doctor, he is liable for departmental action.

Consent for Abortion:

Section 3(4) of MTPA clarifies as to whose consent would be necessary for termination of pregnancy.

(a) No pregnancy of a woman, who has not attained the age of 18 years, or who having attained the age of 18 years, is a lunatic, shall be terminated except with the consent in writing of her guardian.



(b) Save as otherwise provided in cl (a), no pregnancy shall be terminated except with the consent of the pregnant woman.

It is important to note, in this section, that the consent of the woman is the essential factor for termination of her pregnancy. The husband's consent is irrelevant. Therefore, if the woman wants an abortion but her husband objects to it, the abortion can still be done. However, if the woman does not want an abortion but her husband wants, it cannot be done. However, the consent of the guardians is needed in the case of minors or lunatics.

Where the pregnancy can be terminated:

Section 4 specifies the place where, under MTP, a pregnancy can be terminated. It stipulates that an operation must take place in either "a hospital established or maintained by the government" or in "a place which has been approved for the purpose of this Act by the government." However exceptions are made for emergencies. Under section 5(1), a doctor may terminate a pregnancy if it is "immediately necessary to save the life of the pregnant woman". In such situations, the requisites relating to the length of pregnancy, the need for two medical opinions and the venue for operation do not apply. However, it needs to be pointed out that one aspect of this emergency clause tends to restrict rather than liberalize the old law. Section 312 of the IPC permitted abortions by anyone with the object of saving the life of the mother, but under MTPA only a doctor can terminate the pregnancy.

Approval of a Place:

No place shall be approved under Cl (b) of sec.4

(1) Unless the Government is satisfied that termination of pregnancy may be done therein under safe and hygienic conditions.

(2) Unless the following facilities are provided therein namely:

i. An operation table and instruments for performing abdominal gynecological surgery



- ii. Anesthetic equipment, resuscitation equipment and sterilization equipment
- iii. Drugs and parental fluids for emergency use.

Thus, the oft-argued following justifications in favour of the permissive abortions are found in the Indian law.

- (1) Therapeutics: The old restrictive Indian abortion law has permitted abortion to save the life of the mother. In addition, the reformed law, as seen above allows abortions when the mother's life is not threatened, but when continued pregnancy will cause damage to her mental and physical health.
- (2) Eugenics: the basic of eugenic abortion is that there is a justification for abortion when it is known before birth that the child will be born mentally or physically deformed. The unborn child should be relieved of a life of misery.
- (3) Pregnancy caused by rape: the problem of a pregnancy caused by rape may affect the mental health of the mother. It is assumed that the victim mother does not want the child and does not want to bear the continuing result of a crime for which she was not culpable.
- (4) Social and economic considerations: A popular argument in favour of abortion is based on the absolute right of the woman to control the use of her body. She has a right to an abortion on demand to terminate any pregnancy, which she decides she does not want. Admittedly, the right to control the use of one's body is founded on ideas of liberty, and restrictions thereon may amount to an invasion of privacy.

In countries where abortion is legal, death rates are usually below 1 per 100,000 procedures. Abortion is a very safe operation if the operation is performed by skilled medical practitioners, having proper facilities and equipments. In developing countries like India with scarce medical resources treatment of complications of abortion often poses a heavy burden on the health care system. According to recent estimates made by the World Health Organization, about one-quarter to one-third of maternal deaths are due to complications of (illegally) induced abortion. This can be prevented through offering easily accessible safe abortion services and through family planning services and education. Reliable statistics show that in many countries where



abortion is legally available, the abortion rate is much lower than in countries where it is completely illegal.

Procedural delays to conduct MTP lessened

The Medical Termination of Pregnancy Act was first enacted in the year 1971 to legalize and regulate the conditions of termination of pregnancy. This was the first step to legalize abortions which were performed by quacks and which instilled fear in the minds of pregnant woman.

The key features of the Medical Termination of Pregnancy Act, 1971 were as follows:

- # It indicated when pregnancy could be terminated i.e. upto twenty weeks of pregnancy.
- # It specified the indications when termination of pregnancy could be done.
- # It indicated that only a qualified registered medical practitioner as defined under the Act could conduct termination of pregnancy and relied upon the Indian Penal Code for punishment if conducted by any other.
- # It also indicated that termination of pregnancy could be done only in a place established, maintained or approved by the Government.

Thus it did help to legalize and regulate the termination of pregnancy and really did much for upliftment of women. Gradually, with an increasing number of centers and with new problems cropping up, the Act was amended and passed on December 18, 2002. Essential features of the amendment are as follows: -

- # In the amended Act, the word "mentally ill person" covers a wider variety of mental diseases and disorders than the word
- # "lunatic" of the Principal Act.
- # In the amended Act, recognition of a place for the purpose of carrying out MTP is now at district level rather than the state capital and hence procedural delays should be less.



In the Principal Act, there was dependence on IPC to enforce discipline. In the amended Act, the punishment is incorporated in the Act itself.

Q2. Discuss the law relating to domestic violence in India?

Ans. The domestic violence in this Country is rampant and several women encounter violence in some form or the other or almost every day. However, it is the least reported form of cruel behaviour.

A woman resigns her fate to the never-ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner, a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male relatives.

Who can file a complaint under the Domestic Violence Act

Section 2(a) of the Domestic Violence Act defines "aggrieved person" as any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

The Domestic Violence Act not only covers those women who are or have been in a relationship with the abuser but it also covers those women who have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption .

Even those women who are sisters, widows, mothers, single women, or living in any other relationship with the abuser are entitled to legal protection under the Domestic Violence Act.

What is shared household

The term shared household is defined under the Domestic Violence Act as a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which



the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

In the case of *S.R. Batra & Another Vs. Smt. Taruna Batra*, the Supreme Court with reference to definition of shared household under Section 2(s) of the Domestic Violence Act stated that the definition of 'shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting requires to be interpreted in a sensible manner.

The Court held that under Section 17(1) of the Act wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In the case, the property in question neither belonged to the husband nor was it taken on rent by him nor was it a joint family property of which the husband was a member. It was the exclusive property of mother of husband and not a shared household.

Women in Live in relationships covered under the Act

A wider meaning to an "aggrieved person" under Section 2(a) of the Domestic Violence Act was conferred by the Supreme Court in the case of *D. Veluswamy v. D. Patchaiammal*, wherein the Court enumerated five ingredients of a live in relationship as follows:

Both the parties must behave as husband and wife and are recognized as husband and wife in front of society

They must be of a valid legal age of marriage

They should qualify to enter into marriage eg. None of the partner should have a spouse living at the time of entering into relationship.

They must have voluntarily cohabited for a significant period of time

They must have lived together in a shared household

The Supreme Court also observed that not all live-in-relationships will amount to a relationship in the nature of marriage to get the benefit of Act. To get such benefit the conditions mentioned above shall be fulfilled and this has to be proved by evidence.

Status of a Keep- The Court in the case further stated that if a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or a servant it would not be a relationship in the nature of marriage.



In this case, the Court also referred to the term “palimony” which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying and is then deserted by him.

Against whom can the complaint be filed under the Domestic Violence Act

Section 2(q) of the Domestic Violence Act defines “respondent” as any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

In view of the definition of the term respondent covering adult male person, the judiciary has time and again been confronted with the argument that an aggrieved person can file complain under the Domestic Violence Act against an adult male person only and not against the female relatives of the husband i.e. mother-in-law, sister-in-law.

However, the Supreme Court in the case of *Sandhya Wankhede vs. Manoj Bhimrao Wnakhede* put at rest the issue by holding that the proviso to Section 2(q) does not exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act. Therefore, complaints are not just maintainable against the adult male person but also the female relative of such adult male.

Wife cannot implicate one and all in the family– Though the Domestic Violence Act is a beneficial legislation, the same has been many times reported to be misused by women. For instance, in several cases women register complaint under Domestic Violence Act against one and all relatives of husband even without any evidence of abuse against them. In the case of *Ashish Dixit vs. State of UP & Anr.* the Supreme Court has held that a wife cannot implicate one and all in a Domestic violence case. In this case, the complainant apart from arraying the husband and in-laws in the complaint, had also included all and sundry as parties to the case, of which the complainant didn’t even know names.

Types of abuse under the Domestic Violence Act

The Gujrat High Court in a recent case of *Bhartiben Bipinbhai Tamboli v. State of Gujrat and ors* elaborated on the types of abuse or domestic violence under the Act. The same is enumerated below:



Physical Abuse

Physical abuse is the use of physical force against a woman in a way that causes her bodily injury or hurt. Physical assault, criminal intimidation and criminal force are also forms of physical abuse like beating, kicking and punching, throwing objects, damaging property, punched walls, kicked doors, abandoning her in a dangerous or unfamiliar place, using a weapon to threaten or hurt her, forcing her to leave the matrimonial home, hurting her children, using physical force in sexual situations.

Sexual Abuse

This is also a form of physical abuse. Any situation in which a woman is forced to participate in unwanted safe or degrading sexual activity, calling her sexual names, hurting a woman with objects and weapons during sex is sexual abuse.

Verbal and Emotional Abuse

Many women suffer from emotional abuse, which is no less destructive. Unfortunately, emotional abuse is often minimized or overlooked – even by the woman being abused.

Emotional abuse includes verbal abuse such as yelling, name-calling, blaming and shaming. Isolation, intimidation and controlling behaviour also fall under emotional abuse. Calls her names, insults her or continually criticizes her.

Economic Abuse

Economic abuse is not a very recognized form of abuse among the women but it is very detrimental. Economic abuse mainly includes a woman not been provided with enough money by her partner to maintain herself and her children, which may comprise money for food, clothing, medicines etc. and not allowing a woman to take up an employment . Forcing her out of the house and not allowing a woman to take up an employment. Forcing her out of the house where she lives and not providing her rent, in case of a rented share hold also amounts to abuse.

Depriving her of all or any economic or financial resources to which the person is entitled under the law or custom, restricting the woman's access to the shared household. Disposing or alienating the assets of the women whether movable or immovable, valuables, shares, securities, bonds and the like other property in which she may have an interest. However seeking maintenance to unjustly enrich one's self and that too without providing the alleged act of domestic violence is a gross abuse of the process of law.



Duty of Courts while deciding cases under the Domestic Violence Act

In the case of *Krishna Bhattacharjee vs. Sarathi Choudhury and Another*, the Apex Court while elucidating on the duty of courts while deciding complaints under the Domestic Violence Act stated that:

It is the duty of the Court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct.

The principle “justice to the cause is equivalent to the salt of ocean” should be kept in mind. The Court of Law is bound to uphold the truth which sparkles when justice is done.

Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

Husband’s Obligation to maintain wife under the Domestic Violence Act

In a case taken up by the Supreme Court i.e. *Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and ors.* it was held that when it comes to maintenance of wife under the Domestic Violence Act read with the Hindu Adoption and Maintenance Act, 1956 it is the personal obligation of the husband to maintain his wife. Property of mother-in-law can neither be subject matter of attachment nor during the life time of husband can his personal liability to maintain his wife be directed to be enforced against such property.

Maintenance of mother under the Domestic Violence Act

In the case of *Ganesh S/o. Rajendra Kapratwar, Abhijeet, S/o. Ganeshrao Kapratwar and Parijeet, S/o. Ganeshrao Kapratwar Vs. The State of Maharashtra and Sow. Shantabai, W/o. Rajendra Kapratwar*[10], the Bombay High Court in an application preferred by the mother for maintenance and medical expenses under the and medical expenses under the Domestic Violence Act and the Hindu Adoptions and Maintenance Act, 1956 against her son and grandsons has held that:

“Grandsons would have been liable to pay maintenance to grandmother under Sections 22(1) of the Hindu Adoptions and Maintenance Act, 1956, provided their father had not been alive and not capable of paying maintenance.”



Retrospective application of the Domestic Violence Act

In the case of *V.D. Bhanot Vs. Savita Bhanot* which upheld the Delhi High Court's view that "even a wife who had shared a household before the Domestic Violence Act came into force would be entitled to the protection of the Domestic Violence Act.

Hence, the Domestic Violence Act entitles the aggrieved person to file an Application under the Act even for the acts which have been committed prior to the commencement of the Domestic Violence Act.

SHORT QUESTIONS

Q1. Cruelty against married women as provided by IPC?

ANS. During the 1980s, dowry deaths were steadily rising in India. Dowry death is the murder of a young woman; committed by the in-laws, upon non-fulfilment of their coercive demands for money, articles or property, commonly called as dowry. Cases of cruelty by husband and relatives of the husband culminating into suicide/ murder of innocent helpless women though constitute only a small but a grueling fraction of cases involving cruelty. With the increasing number of dowry deaths in India, need arose to address the matter in an effective way. Organizations across the country pressurized and urged the government to provide legislative protection to women against domestic violence and dowry. The objective was to allow the state to intervene rapidly and prevent the murders of young girls who were unable to meet the dowry demands of their in-laws. With this object, the Government of India amended the Indian Penal Code, 1860 (IPC) by way of the Criminal Law (Second Amendment) Act, 1983 and inserted a new section 498 (A) under Chapter XX-A, Of Cruelty By Husband Or Relatives Of Husband on 26th December, 1983. The amendment focuses not only on dowry deaths but also cases of cruelty to married women by their in-laws. Section 498 (A) IPC is the only section in the IPC that recognizes domestic violence against women as a crime. Subsequent amendments were also made in the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1972 by the same amendment on order to effectively deal with cases of dowry deaths and cruelty to married women by the husband, in laws and relatives.

Ingredients of Section 498A

The basic essentials to attract this section are: a) The woman must be married b) She must be subjected to cruelty or harassment; and c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband A bare glance of the section



shows that the word 'cruelty' covers any or all of the following elements: (i) Any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or (ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or (iii) any 'wilful' act which is likely to cause danger to life, limb or health whether physical or mental of the woman. Also, criminality attached to word 'harassment' is free of 'cruelty' and punishable in the following instances: (i) Where the harassment of the woman is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or (ii) Where the harassment is on account of failure by her or any persons related to her to meet such demand. It is evident that neither every cruelty nor harassment has criminal culpability for the purposes of Section 498-A. In cases of physical violence and infliction of injury likely to cause grave injury or danger to life, limb or health, the facts speak for themselves. So, we can see that, this law deals with four types of cruelty: (i) Any conduct that is likely to drive a woman to suicide, (ii) Any conduct which is likely to cause grave injury to the life, limb or health of the woman, (iii) Harassment with the purpose of forcing the woman or her relatives to give some property, or (iv) Harassment because the woman or her relatives are either unable to yield to the demand for more money or do not give some share of the property.

The nature of the offence under Section 498A is:

Cognizable: Offences are divided into cognizable and non-cognizable. By law, the police are duty bound to register and investigate a cognizable offence. 498A is a cognizable offence.

Non-Bailable: There are two kinds of offences, bailable and non-bailable. 498A is non bailable. This means that the magistrate has the power to refuse bail and remand a person to judicial or police custody.

Non-Compoundable: A non-compoundable case, e.g. Rape, 498A etc, cannot be withdrawn by the petitioner. The exception is in the state of Andhra Pradesh, where 498A was made compoundable.

“113-B: Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation-For the purpose of this section 'dowry death' shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).” This is a presumptive section which got inserted in the Evidence Act by Criminal Law (Second Amendment) Act, 1983 side by side the insertion of Section 498A to the IPC. The period of operation of this section is seven years. Hence, under this section a presumption arises when a woman committed suicide within a period of seven years from the date of marriage.



SECTION 306 OF THE INDIAN PENAL CODE

“306: Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” The Supreme Court in *Sushil Kumar Sharma v. Union of India And Ors* said that: The basic difference between the two Section i.e. Section 306 and Section 498A is that of intention. Under the latter, Cruelty committed by the husband or his relations drag the women concerned to commit suicide, while under the former provision suicide is abetted and intended. Consequences of cruelty which are likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb or health, whether mental or physical of the woman is required to be established in order to bring home the application of Section 498A IPC. Cruelty has been defined in the explanation for the purpose of Section 498A. It is to be noted that Sections 304-B and 498A, IPC cannot be held to be mutually inclusive. These provisions deal with two distinct offences. It is true that cruelty is a common essential to both the Sections and that has to be proved. The explanation to Section 498A gives the meaning of `cruelty`. In Section 304- B there is no such explanation about the meaning of `cruelty`. But having regard to common background to these offences it has to be taken that the meaning of `cruelty` or `harassment` is the same as prescribed in the Explanation to Section 498A under which `cruelty` by itself amounts to an offence. In another case of *State of Himachal Pradesh v. Nikku Ram and Ors.*, while interpreting the provisions of Section 304-B, 498-A, 306 and 324 IPC the Apex Court observed that harassment to constitute cruelty under Section 498A explanation (b) must have nexus with the demand of dowry and if this is missing the case will fall beyond the scope of Section 498A. Pre-condition for attracting the provisions of Section 498A is the demand and if the demand is missing and the cruelty is for the sake of giving torture to the woman without any nexus with the demand then such a cruelty will not be covered under explanation (b) under Section 498A IPC. It may be a cruelty under Hindu Marriage Act as held by Supreme Court in the case of *Shobha Rani v. Madhukar Reddi*, Apex Court observed that cruelty under Section 498A IPC is distinct from the cruelty under the Hindu Marriage Act which entitles the wife to get a decree for dissolution of marriage.

Q2. Explain the salient features of Dowry Prohibition Act?

Ans. Dowry is another social evil which is affecting Indian society like a disease and there seems to be no solution or cure to this. In fact, dowry is a type of violence committed against women. This is a specific crime committed only against married women.



In simple terms dowry can be understood as a demand for money or valuables by the family of the groom from the family of the bride in lieu of their marriage. It is in a sense compensation or value being demanded by the groom's family for the groom. In all possibility dowry system of harassing women is peculiar to Indian society only. Dowry is another dimension of gender inequality being practiced in our country.

In essence the system is based on the presumption that males are superior and for maintenance of the girl in her in-laws home she must bring a certain amount of money or property.

The system of dowry has become part and parcel of our collective conscience and has been accepted by the society as a whole. In a way it has become a customary rule for the society which is to be followed by everyone. The situation is such that if someone does not take dowry, people start questioning him and try to look down upon him.

Higher the income of groom or higher the status of his family, higher the amount of dowry is demanded. Caste also plays a role in this. Usually, higher the caste, higher the dowry has been the concept. But in recent times, dowry system has become an all pervasive exploitative system and it is only the economic position of groom's family which is the deciding factor in demanding dowry.

ORIGIN OF DOWRY

The origin of this social ill can be traced back to the custom or tradition of giving gifts to brides in marriage and this system of gifts was a voluntary system which had its sanction in our religious beliefs that the father of a girl has a duty to give a part of his property to his daughter in her marriage as after marriage she would be going to another home and the son would be getting the rest of the property of the father. So it was considered as a moral duty of father to gift a portion of his earnings or property to his daughter also.

But in earlier times this system was not an exploitative system where any specific demands would be made by the family of bride-groom, it was a voluntary system and family of bride would make gifts according to their capacity.

But in course of time the system of making gifts got converted and changed into an exploitative system of compulsory demands made by the family of groom. And the system took the shape of dowry system. As a societal evil it not only degrades the institution of marriage but also violates and diminishes the dignity of the women.



DOWRY DEATH OR BRIDE BURNING

Related to the system of dowry and as an outcome of it is the inhuman practice of Dowry death or bride-burning. Each year thousands of young brides are burnt or killed by their in-laws because they fail to fulfill their ever-increasing demand of money or property.

Records show that there is an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young brides. Only in 2010, more than 9,000 dowry related deaths have been reported which shows the level of violence being faced by the young brides. These deaths are, in reality, cold blood murders where an innocent girl gets killed only because could not bring the money or property demanded by her own husband and his relatives.

The most disturbing and unfortunate fact in such cases is that in most cases it is the women who plays the dominating role in said crimes and men in the family either act as passive supporters or active participants. And especially husbands have no regards of their matrimonial obligations of protecting and safeguarding their wives.

DOWRY PROHIBITION ACT

The Dowry Prohibition Act, 1986 makes both giving and demanding of dowry a punishable offence. But despite the Act, dowry system is continuing unabated and in fact it's increasing by the day.

The humiliation and hardship which the family of the bride has to face is enormous. And this results into and becomes one of the motivations for other social evils such as Female Infanticide and sex-selective abortions. For the same reason female child is always discriminated against in households because they are considered as burdens on the family and to arrange dowry for her marriage the family do not think it fit to spent money on her education or food.

The Dowry Prohibition Act, 1986 failed to check the evils of dowry system and it also lacked in providing solutions to the ever increasing menace of dowry deaths. So, the Parliament thought it fit to bring a specific provision to deal with the said crime of bride burning. Thus, through an Amendment, a new section i.e. Section 304-B was inserted in the IPC which creates a new offence in the name of 'dowry death'. The provision in detail provides ingredients which are to be looked into in case of death of a married woman and if those ingredients are there such death would be considered as dowry death. As per the provision, maximum punishment of life imprisonment has been provided for dowry death to the husband or any relative of husband.

Though the said provision is there and cases are being reported regularly but the rate of commission of crime of dowry death is not lessening. Apart from death, various other forms of harassment, exploitation and cruelties are being performed on hapless married women.



Only very few such crimes are being reported because of the societal pressure and fear of break-down of marriage. Also, police authorities are not registering FIRs in dowry related cases due to various obvious reasons such as bribery or pressure from bridegroom's side.

But above all, it's the economic dependence and low level of education among women which are the real reasons for women being not able to lodge complaints in dowry or harassment cases. And such married women are bound to bear constant harassment for dowry and suffer in misery with no ray of hope.

VERY SHORT QUESTIONS

Q1. Define bigamy?

Ans1. Black's Law Dictionary defines marriage as "the civil status of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex". Marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on. In Hindu law, marriage is considered to be sacrosanct, a holy union of two persons.

Before the enactment of Hindu Marriage Act, 1955, polygamy among Hindu men was common and enjoyed social acceptance. But this position changed with Hindu Marriage Act coming into force in the year 1955. Section 5(i) of the said Act stipulates that marriage can be solemnized between any two Hindus if "neither party has a spouse living at the time of the marriage" and Section 11 declares a marriage void if it is in contravention of section 5(i).

Further, Section 17 provides that the provisions of Sections 494 and 495 of the Indian Penal Code shall apply where either of the parties has a spouse living at the time of the marriage.[5]

Section 494 of the Indian Penal Code, 1860 states- "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The above-mentioned Section also provides that the Section does not apply where:



any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction

where the spouse has been continually absent for a period of 7 years and not heard to be alive within such period.

Thus, a combined reading of Sections 17 of Hindu Marriage Act and Section 494 of the Indian Penal Code require that to make out a case for bigamy the following essential ingredients must be established as laid down in *Nagalingam v. Sivagami* :

The accused must have contracted the first marriage

Whilst the first marriage was subsisting, the accused must have contracted a second marriage

Both the marriages must be valid.

What is important to keep in mind is that not only the first but the second marriage must also be a valid marriage in accordance with the Hindu Marriage Act. So what is meant by second marriage to be a 'valid marriage'?

Section 7(1) of the Hindu Marriage Act says-“A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.”

Therefore, for the second marriage to be valid it must fulfill the requirement of Section 7.

In the case of *Bhaurao Shankar Lokhande v. State of Maharashtra*, the Hon'ble Supreme Court held- “Prima facie, the expression ‘whoever.... marries’ must mean ‘whoever marries-validly’ or ‘whoever.... marries and whose marriage is a valid one’. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law.”

The Court, further, continued- “The word ‘solemnize’ means, in connection with a marriage, ‘to celebrate the marriage with proper ceremonies and in due form’, according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is ‘celebrated or performed with proper ceremonies and due form’ it cannot be said to be ‘solemnized’. It is therefore essential, for the purpose of s. 17 of the Act, that the marriage to which s. 494 I.P.C. applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make them ceremonies Prescribed by law or approved by any established custom.”



Q2. Differentiate between female foeticide and female infanticide?

Ans.2 Female foeticide is the process of finding out the sex of the foetus and undergoing abortion if it is a girl. Although it is illegal, many people continue to practice it. Besides this, there are some communities which practice female infanticide - the practice of killing the girl child once she is born. This fact is highlighted by the findings of census 2001 which show that there are only 933 women in this country for every 1000 men. Besides this, Census (2011) data showed a significant declining trend in the Child Sex Ratio (CSR), calculated as number of girls for every 1000 boys between age group of 0 - 6 years, with an all time low of 918 in 2011 from 976 in 1961. This decline in sex ratio means that we are not just depriving girls of human rights, we are also depriving them of their right to live.

This practice needs to be stopped as both girls and boys have an equal right to live. In order to do this, it is necessary to protect their rights by prohibiting practices like dowry, female unemployment, child marriage and caste discrimination.

LAW ABOUT FEMALE FOETICIDE AND FEMALE INFANTICIDE

According to certain sections of the Indian Penal Code, forced abortion, causing death of an unborn child or intentionally preventing a child being born alive are punishable offences. Besides this, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, considers engaging in sex selective abortion using pre-natal diagnostic techniques as a punishable offence.

ROLE OF PANCHAYAT MEMBERS IN STOPPING FEMALE FOETICIDE AND FEMALE INFANTICIDE

Panchayat members should

give accurate information on the laws pertaining to this issue

find out where it is being practiced in the village and investigate it immediately

register all births and deaths under the purview of the panchayat

raise awareness about gender sensitivity through public education programmes

prevent female foeticide with assistance from the ANM and local mid-wife.



UNIT 3, 4 AND 5

LONG QUESTIONS

1. Discuss the salient features of the child labour (Prohibition and Regulation) Act 1986?

ANS. The Child Labour (Prohibition and Regulation) Act, 1986 is one the most debated acts regarding children in India. It outlines where and how children can work and where they can not. The provisions of the act are meant to be acted upon immediately after the publication of the act, except for part III that discusses the conditions in which a child may work. Part III can only come into effect as per a date appointed by the Central Government (which was decided as 26th of May, 1993).

The act defines a child as any person who has not completed his fourteenth year of age. Part II of the act prohibits children from working in any occupation listed in Part A of the Schedule; for example: Catering at railway establishments, construction work on the railway or anywhere near the tracks, plastics factories, automobile garages, etc. The act also prohibits children from working in places where certain processes are being undertaken, as listed in Part B of the Schedule; for example: beedi making, tanning, soap manufacture, brick kilns and roof tiles units, etc. These provisions do not apply to a workshop where the occupier is working with the help of his family or in a government recognised or aided school.

The act calls for the establishment of a Child Labour Technical Advisory Committee (CLTAC) who is responsible for advising the government about additions to the Schedule lists.

Part III of the act outlines the conditions in which children may work in occupations/processes not listed in the schedule. The number of hours of a particular kind of establishment of class of establishments is to be set and no child can work for more than those many hours in that particular establishment. Children are not permitted to work for more than three hour stretches and must receive an hour break after the three hours. Children are not permitted to work for more than six hour stretches including their break interval and can not work between the hours of 7



p.m. and 8 a.m. No child is allowed to work overtime or work in more than one place in a given day. A child must receive a holiday from work every week. The employer of the child is required to send a notification to an inspector about a child working in their establishment and keep a register of all children being employed for inspection.

If there is a dispute as to the age of the child, the inspector can submit the child for a medical exam to determine his/her age when a birth certificate is not available. Notices about prohibition of certain child labour and penalties should be posted in every railway station, port authority and workshop/establishment.

The health conditions of work being undertaken by children shall be set for each particular kind of establishment of class of establishments by the appropriate government. The rules may cover topics such as cleanliness, light, disposal of waste and effluents, drinking water, bathrooms, protection of eyes, maintenance and safety of buildings, etc.

Section IV of the act outlines various remaining aspects such as Penalties. The penalty of allowing a child to work in occupations/ processes outlined in the schedule which are prohibited is a minimum of 3 months prison time and/or a minimum of Rs. 10,000 in fines. Second time offenders are subject to jail time of minimum six months. Failure to notify an inspector, keep a register, post a sign or any other requirement is punishable by simple imprisonment and/or a fine up to Rs. 10,000. Offenders can only be tried in courts higher than a magistrate or metropolitan magistrate of the first class. Courts also have the authority to appoint people to be inspectors under this act.

Rules of this act must be passed by the respective parliaments (state or central). Any changes or added provisions must be passed by the parliament. The establishment of this act also calls for a change in a number of other acts. The Employment of Children Act of 1938 is repealed. The enactment of this act changes the definition of child to one who has not completed his fourteenth year of age. Hence under provisions of this act the age of a child is also changed in the Minimum Wages Act 1948, the Plantations Labour Act 1951, the Merchant Shipping Act 1958, and the Motor Transport Workers Act 1961.



2. Discuss the criminal and contractual liability of a child in IPC and Indian Contract Act respectively?

ANS. The minimum age of criminal responsibility is the age below which a person is completely immune from any criminal liability due to lack of maturity and judgment to understand the consequences of one's actions. Next comes the age below which a person is considered vulnerable and immature and hence cannot be made fully responsible for one's actions. This is the period of childhood and adolescence and crime committed during this stage is dealt with by most nations under special laws known as juvenile justice laws. Juvenile delinquency is on the increase today and one of the major issues faced by the world. India is also struggling with juveniles committing serious and grave offences. Thus arises the question if the juvenile laws in the country are too soft and require improvements. How does one ascertain the reasonable punishment for a child? How does one ensure deterrence as well as restoration?

THE AGE OF CRIMINAL RESPONSIBILITY IN INDIA

The Criminal system in India is governed and regulated by 2 major legislations including the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure Code, 1973 (CrPC). The IPC provides the substantive part laying out the rights and responsibilities and the CrPC lays down the procedure to be followed by a Court of Law in a criminal proceeding. The IPC has set the age of criminal responsibility at 12 years. An offence committed by a child under the age of 7 years is not punishable. Also, an offence committed by a child above the age of 7 years but below the age of 12 years will not be punishable if it seems that he does not possess sufficient maturity to judge the consequence of his actions.

Further, it is believed that children cannot be put in the same category as adults under the Criminal Justice system of the country and hence require development of special provisions for them. Physical and mental immaturity and dependency on others are the most outstanding features of childhood. India has fulfilled this obligation by enacting the Juvenile Justice (Care and Protection for Children) Act, 2000 (JJ Act). A Juvenile is defined as a person who has not reached the age of 18 at which one should be treated as an adult by the criminal justice system. The JJ Act has set the age of criminal responsibility at 18 years or in other words it can deal with



offenders under the age of 18 years. This age has been set at 18 to bring it in conformity with the definition of child under the UN Convention on the Rights of Child.

The sentencing options available under the JJ Act include advice/admonition, counselling, community service, payment of a fine or, at the most, or detention in a remand home for a maximum period of three years.

Section 4 of the Act provides for setting up of a Juvenile Justice Board, consisting of a Metropolitan Magistrate or a Judicial Magistrate of First Class, and 2 social workers one of whom is a woman. Such Board/Bench has the same powers as conferred by the CrPC on a Metropolitan Magistrate or a Judicial Magistrate of the First Class. The trial of a juvenile shall be conducted before this Board and even in cases where a juvenile is produced before any other Magistrate; such Magistrate is required to forward the juvenile to the Board.

The Act has also enacted provisions to ensure that proper and appropriate treatment is meted out by the Police Authorities towards the accused juvenile. According to Section 10 of the JJ Act, any juvenile in conflict with law who has been apprehended by the police, should be placed under the charge of the Special Juvenile police unit or the designated police officer who shall produce the juvenile before the Board within a period of 24 hours.

The Act also provides for constitution of a Child Welfare Committee in every district for the care, protection, development of children in need of care and protection. It also provides for setting up of children homes, shelter homes and further makes provisions for after-care to help them restore their regular life once they leave special homes or children homes.

RELAINCE ON INTERNATIONAL JURISPRUDENCE

The first national legislation on Juvenile Justice was adopted by the Parliament in 1986 in the form of the Juvenile Justice Act, 1986. The 1986 law was the first attempt in India to create a uniform, national, body of law and system of justice and corrections for young people. This legislation however wasn't the first on juvenile justice in India. Several states and union



territories had enacted their own legislations with respect to juvenile offenders. The era of such legislations had begun in the period of British Rule with the enactment of the Apprentice Act, 1850. Next, the Indian Penal Code, 1860 set the age for criminal culpability and the CrPC also went to make provisions for separate trials for persons under the age of 15 years, and their confinement in reformatories rather than prisons. The first legislative act in specific regard to children was enacted by the State of Madras in 1920. This law defined a youthful offender as someone who is below the age of 18 years. The Children's Act was passed in 1960 and the 1986 Act is an essentially an extension to this statute.

The 1986 Act was re-modelled to bring it in conformity with the UN Convention on Rights of Child which the Government of India had ratified on 11th December, 1992 and hence, came into existence the Juvenile Justice (Care and Protection of Children) Act, 2000. The existing law relating to juveniles was re-enacted bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990). The Rights of Child Convention defines a child as every human being below the age of 18 years.

The jurisprudence underlying these legal texts is the legal philosophy that juveniles lack the physical and mental maturity to take responsibility for their crimes, and because their character is not fully developed, they still have the possibility of being rehabilitated.

CONTRACTUAL LIABILITY OF A MINOR

The term minor/minors is nowhere defined in the contract act. But taking into consideration the wordings of section 11 of Indian contract act, a minor is a person who has not attained the age of 18 years.

The age of majority of a person is regulated by section 3 of the Indian majority act, 1857.

Section 3 of the INDIAN MAJORITY ACT, 1875 provides about the age of majority. It states that a person is deemed to have attained the age of majority when he completes the age of 18 years, except in the following cases a person continues to be a minor until he completes the age of 21 years



- Where a guardian of a minor's person or property has been appointed under the Guardians and Wards Act, 1890 or
- Where the superintendence of a minor's property is assumed by a Court of Wards.

Section 11 of the act expressly forbids a minor from entering into a contract. The effect of this express prohibition is that any contract entered into by a minor is void-ab-initio regardless of whether the other party was aware of his minority or not.

A contract with or by a minor is void and a minor, therefore, cannot, bind himself by a contract. A minor is not competent to contract. In English Law, a Minor in contract, subject to certain exceptions, is only voidable at the option of the minor. In 1903 the Privy Council in the leading case of Mohiri Bibi v. Dharmodas Ghose (190, 30 Ca. 539).Held : That in India minors contracts are absolutely void and not merely voidable. Dharmodas Ghose , a minor, entered into a contract for borrowing a sum of Rs. 20,000 out of which the lender paid the minor a sum of Rs. 8,000. The minor executed mortgage of property in favour of the lender. Subsequently, the minor sued for setting aside the mortgage. The Privy Council had to ascertain the validity of the mortgage. Under Section 7 of the Transfer of Property Act, every person competent to contract is competent to mortgage. The Privy Council decided that Sections 10 and 11 of the Indian Contract Act make the minors contract void. The mortgagee prayed for refund of Rs. 8,000 by the minor. The Privy Council further held that as a minor's contract is void, any money advanced to a minor cannot be recovered.

1. An agreement entered into by a minor is altogether void:- The word void when used in relation to a minor it should be understood as "void as against the minor". Contract within or by a minor is altogether void. The Indian Contract Act simply says that only a person who is a major is competent to contract. The main reason for holding a minor's agreement void is that where an agreement by a minor involves a promise on his part or his promise is a necessary part of the agreement it is void because a minor is incapable of giving a promise imposing a legal obligation.
2. Minor can be a beneficiary:- Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act).

3. Minor can always plead minority:- A minor's contract being void, any money advanced to a minor on a promissory note or otherwise, cannot be recovered. Even when a minor procures a



loan by falsely representing that he is full age, it will not stop him from pleading his minority in a suit to recover the amount and the suit will be dismissed.

But where a minor had fraudulently mortgaged and sold certain properties, the Court held that on the cancellation of the agreement at the instance of the minor the lender and purchaser must be compensated.

4. Ratification on attaining majority is not allowed:- As a minor's agreement is void he cannot validate it by ratification on attaining majority. For instance, a minor borrows money and executes a promissory note. On attaining majority, he executes a fresh promissory note in substitution of the one executed as a minor. The second promissory note is also void being without consideration. But a person who supplies necessaries of life to a minor or to one whom the minor is legally bound to support, according to his station in life, is entitled to be reimbursed from the property of the minor not on the basis of any contract but on the basis of an obligation resembling a contract (Section 68). But a minor's property is liable for necessaries and no personal liability is incurred by him.

5. Contract by guardian - how far enforceable:- Though a minor's agreement is void, his guardian can, under certain circumstances enter into a valid contract on the minor's behalf. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be a valid contract which the minor can enforce. For instance a guardian can make an enforceable contract of marriage for a minor. Similarly, when the father of the bridegroom contracts with the father of the bride to pay the bride an allowance the bride can sue her father-in-law to recover arrears of the allowance.

But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contract for the purchase of immovable property. But a contract entered into by a certified guardian (appointed by the Court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract.

6. Liability for necessaries:- Under Section 68, any person would be entitled to reimbursement out of the minor's estate, for necessaries supplied to him or to his family. Necessaries as defined by the English Sale of Goods Act, also means, goods suitable to the condition in the life of infant as required by him at the time of sale or delivery. It includes not only food and clothing but also education and instruction. Necessaries also include 'goods' and services. If a minor had obtained payment fraudulently by concealment of age, he may be compelled to restore the payment but he cannot be compelled for an identical sum, if any, as it would amount to enforcing a void contract.



3. *Discuss the provisions of different labour laws relating to working women?*

ANS. *The Maternity Benefit Amendment Act, 2017*

Prior to this, the previous Maternity Benefit Act was passed in 1961. Just recently last year did this fresh Amendment to this act come into place. The amendment has not only expanded the term of the leave but rather has additionally prompted the presentation of numerous new provisions. A portion of the key arrangements in the altered Maternity advantage act are:

The maternity leave after the correction has been raised from the present 12 weeks to 26 weeks. Pre-natal leave has likewise been increased from 6 weeks to 2 months. However, a lady with effectively at least two kids is qualified for 12 weeks' maternity leave. The pre-birth leave, for this situation, stays a month and a half.

The correction has likewise broadened the advantage of the old represent supportive moms. A leave period of 12 weeks will be allowed to a lady who has adopted a child younger than three months. An authorizing mother is likewise qualified for a 12-week leave from the date the youngster is given over to her. An authorizing mother is characterized as a "Biological mother who utilizes her egg to make a fetus embedded in some other lady" (the lady who brings forth the youngster is called host or surrogate mother).

The Act has now made it necessary for businesses to educate a female employee of her rights under the Act at the time of appointment. The data must be given in written and in electronic form (email).

Female government employees are qualified for maternity leave for a time of 180 days for their initial two live conceived kids.

The new act has additionally presented the choice of telecommuting/work from home for new moms. Ladies could practice this arrangement after the completion of the 26 weeks leave period.



Contingent on the idea of work, ladies representatives might have the capacity to profit this advantage on terms that are commonly concurred with the business.

Crèche facility has been made obligatory under the change for each foundation utilizing at least 50 representatives. Ladies workers would be allowed to visit the crèche 4 times amid the day.

The old Maternity Act, despite its existence, was not able to give sufficient leave for new moms. Ladies needed to battle to get from the latest relevant point of interest, with numerous leaving their jobs. Execution issues are one of the numerous issues that ladies confront when they join work too early. Thus, it was about time ladies were given the advantages they required. The new act won't just positively affect working ladies, it will likewise prompt a more advantageous and upbeat work culture.

2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (“SHA”)

Sexual harassment at work is not uncommon and we come across various cases dealing with harassment in the workplace. India finally enacted its law on prevention of sexual harassment against female employees at the workplace in 2013. The statute was enacted almost 16 years after the landmark judgment of the Supreme Court of India, in the matter of Vishaka and others v. State of Rajasthan (“Vishaka Judgment”). The Vishaka Judgment laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to sexual harassment at work and enforce the right to gender equality of working women (“Guidelines”). Till the enactment of the Sexual Harassment Act, organizations were expected to follow the Guidelines, but in most instances, they fell short. The enactment of the sexual harassment act has brought the much-needed relief to the women workforce.

The definition of sexual harassment in the Sexual Harassment Act is in line with the Supreme Court’s definition in the Vishaka Judgment and includes any unwelcome sexually determined behaviour (whether directly or by implication) such as:

physical contact and advances,



demand or request for sexual favours,

sexually coloured remarks,

showing pornography,

or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Apart from dealing with sexual harassment complaints, an employer has additional obligations in the nature of:

providing a safe working environment,

display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee (ICC),

organize workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of sexual harassment in the workplace and organizing orientation programmes for members of the ICC,

treat sexual harassment as a misconduct under the service rules and initiate action for misconduct.

3. The Factories Act, 1948 (“Factories Act”)



The Factories Act is a legislation to secure to the workers employed in a factory, health, safety, welfare, proper working hours, leave and other benefits. The Factories Act aims at protecting workers employed in factories from unfair exploitation by their employers. The Factories Act also has exclusive provisions for women workers.

Working hours for women

The Factories Act stipulates the working hours for all adult workers. It also provides for overtime pay to workers who work beyond the prescribed hours of work.

It also contains provisions pertaining to intervals or rest period during a working day, weekly off, annual leaves, etc.

Generally, in factories, it is observed that work happens on a shift basis, and there are requirements for workers to work night shifts. However, night shifts are required to be on a rotational basis. Further, shift timings and hours of work is required to be fixed beforehand by the management and displayed on the notice board of the factory.

No woman worker shall be allowed to work in a factory except between 6 a.m. and 7 p.m. The State Governments may by notification vary the limits as set out in this point, but in no circumstance will women employees be allowed to work between 10 p.m. and 5 a.m.

The shift timing of a woman worker cannot be changed except after a weekly holiday or any other holiday. Hence, women employees are entitled to get at least a 24-hour notice for their shift timing change.

There are prohibitions for women workers to work in a hazardous occupation, in pressing cotton where a cotton-opener is at work, and limits to the maximum permissible load.



The Factories Act also stipulates the employers employing 30 or more women workers to provide for cheques for children of the women workers, aged 6 years and below.

There are various other facilities which are required to be given to workers in a factory such as washing and bathing facilities for women, toilets (latrine and urinals separate for women), restrooms and canteens.

State Governments from time to time issue notifications for amending provisions of the Factories Act, which would be applicable to workers in factories in that particular State. For instance, on 1st December, President Pranab Mukherjee gave his assent to the Maharashtra Factories (Amendment) Bill, 2015, wherein, amongst other amendments, it is allowing women to work in factories in night shifts. Prior to the amendment, the Factories Act did not allow women employees to work in the factories in night shift between 7 PM and 6 AM. With this amendment, it also makes mandatory for factory management to ensure the security of women working night shifts.

4. The Equal Remuneration Act, 1976 ("Equal Remuneration Act")

We time again come across discussions and instances of pay discrimination, where women workers are getting paid lesser than their male counterparts. This is a story across the globe, even in developed nations. Article 39 of our Constitution directs that States shall, in particular, have policies towards securing equal pay for equal work for both men and women,

Under the Equal Remuneration Act:

Employers shall pay equal remuneration to its male and female employees who are carrying out the same or similar work.

Employers cannot discriminate between men and women while recruiting unless there is a restriction under the law to employ women in certain industries



4. Write a note on human rights of child at international law.

ANS. Over history there have been a number of international treaties and documents that outline the rights of a child. Prior to World War II the League of Nations had adopted the Geneva Declaration of the Rights of the Child in 1924. The United Nations (UN) took its first step towards declaring the importance of child rights by establishing the United Nations International Children's Emergency Fund in 1946 (The name was shortened to United Nations Children's Fund in 1953, but kept the popular acronym UNICEF). Two years later the UN General Assembly adopted the Universal Declaration of Human Rights, making it the first UN document to recognise children's need for protection.

The first UN document specially focused on child rights was the Declaration on the Rights of the Child, but instead of being a legally binding document it was more like a moral guide of conduct for governments. It was not until 1989 that the global community adopted the United Nations Convention on the Rights of the Child, making it the first international legally binding document concerning child rights. The convention consists of 54 articles covering all four major categories of child rights: Right to life, Right to development, Right to protection, and Right to participation. It came into force on the 2nd September 1990.

The initiative to create a body of rights for children came from the draft document submitted by the Government of Poland to the Commission on human rights in 1978. A decade was spent drafting the Convention by an alliance of a number of small NGOs including Radda Barnen of Sweden, the International Child Catholic Bureau, and Defence for Children International, and United Nations human rights experts. Today the convention has been ratified by 192 countries becoming the most ratified of all international Human Rights treaties. India signed and ratified the convention in 1992. The only two countries who have not ratified the treaty are the United States and Somalia. Somalia has been unable to ratify due to the lack of a stable government and the US has signed the treaty showing their intention to ratify.

Following is an overview of the convention.



Preamble: Recognises many of the principles outlines in the Declaration on the Rights of the Child such as family as the best environment for a child to grow, the importance of child protection, best interest of the child, recognising child participation, etc.

Article 1: According to the convention a child is any person how has not reached the age of eighteen unless a different age of maturity is specified in any country's law.

Article 2: It is the duty of the state (each country) to uphold the articles in the convention and apply it to all children regardless of the child's or the family's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. The state should protect the child against all forms of discrimination.

Article 3: the state will always act in the best interest of the child while taking into consideration the rights and duties of the guardians. The state shall ensure all institutions government or not adhere to this dictum.

Article 4: The state must make laws, implement policies and programmes and undertake other measures to unsure the rights set out in the convention are fulfilled.

Article 5: The state will keep in mind the rights of the guardians of the child or any other family member or community as in accordance with local customs

Article 6: States recognise that every child has the inherent right to life, and must work to ensure the survival and development of the child.

Article 7: Every child has the right to a name, birth registration and nationality. As far as possible every child has the right to know and be cared for by his/her parents. The state should make laws and provisions especially for stateless children.



Article 8: A child has the right to preserve his/her identity including nationality, name and family relations without unlawful interference.

Article 9: Every child has the right not to be separated from their parents against his/her will unless it is in his/her best interest. Any legal proceeding of separation shall be attended by all involved parties including the parents. The child has the right to maintain contact with his/her parent as long as it's not against his/her best interest. If the state is the cause of separation than the parents, child or any other family member has the right to know the whereabouts of the absent member.

Article 10: Every child and family has the right to enter or leave a state at any time they wish as long as it is in accordance with the laws of each state. If a child is in the different state as the parents the child has the right to maintain contact with his/her parent as long as it's not against his/her best interest

Article 11: The state shall combat child trafficking.

Article 12: The state shall ensure the child's right to form and express views with regard to things that affect him/her in accordance with the maturity and age of the child. A child shall hence be allowed to be heard in any judicial proceeding concerning the child directly or indirectly through a representative

Article 13: Children have a right to free expression and this includes right to information and ideas of all kinds and in any medium. This is only restricted by the violation of others rights or a threat to national security.

Article 14: Every child has the right to freedom of thought, conscience and religion. The state must respect the parents' right to guide the child in this regard. Freedom to manifest ones religion is only restricted if the act is harmful to others.



Article 15: Every child has the right to freedom of association and peaceful assembly unless the act is illegal or harmful to others.

Article 16: Children have the right to privacy and the right to be protected by law against such interference of attacks

Article 17: The state shall ensure that a child has access to national and international information that is aimed at the child's well being. For example they may encourage mass media to produce programmes that are informational for children and encourage the production of children's books and magazines.

Article 18: The state shall ensure the recognition of responsibility of both parents to care for a child as long as it is in her/his best interest. The state shall give appropriate guidance and assistance to parents to uphold the rights of the child. Children of working parents have the right to access child-care services.

Article 19: The state shall take all types of actions to protect the child from any form of abuse, exploitation or neglect. The state shall create system to ensure the child receives all needed support in form of prevention, protection and rehabilitation.

Article 20: Children have the right to protection by the state when they temporarily or permanently deprived of their family environment or if the environment has proven to be harmful for them. The state shall find alternate care for the child such as foster care, adoption or kafalah of Islamic law. The cultural, linguistic and religious background of the child should be continued as far as possible.

Article 21: All states shall permit and recognise the process of adoption. Adoption will be carried out only by a competent authority who will sure the adoption is permissible. Inter-country adoption will be permitted as an alter form of care only if that care cannot be provided for in the child's own country. The state must ensure that inter-country adoption does not result in financial



gain, and that both national and international adoption is held to the same safeguards and standards.

Article 22: Children seeking refugee status and recognised as refugees with or without their parents shall be granted such a status by the state and have the same rights as all children in accordance with this convention and any other human rights treaty. The state shall with the assistance of other international bodies try and reunite the child with his family or provide the child with the appropriate care.

Article 23: States recognise that children with disabilities (mental or physical) have the right to a life with dignity and all other rights of this convention. The State also recognises the need to provide children with disabilities with special care, family assistance, free education, health, training, etc in accordance with the family's financial situation and aim for the child's social integration. The state shall also take measure to prevent the disabilities in children.

Article 24: Every child has the right to access health services and attain the highest degree of health. To do so the state shall reduce the infant mortality rate, ensure medical assistance, provide prenatal and post natal care of mothers and child, combat diseases and malnutrition, create awareness of correct health practises, and development preventive measure to protect children from possible risks. The state shall also abolish all traditional practises detrimental to a child's health.

Article 25: All treatments administered to children are subject to periodic review.

Article 26: Every child has the right to social security and social insurance. Benefits under state laws should take into account the economic and social needs of the families.

Article 27: Every child has the right to a standard of living required for his/her development. Parents have the duty to ensure this standard to the best of their ability. The state shall assist parents or others responsible for the child who require the help, and secure the maintenance of the child from those financially responsible within the state or abroad.



Article 28: All children have the right to education. The state shall endeavour to provide free primary education, encourage different forms of secondary education, make higher forms of education accessible, make vocational information available and encourage school retention and prevent drop outs. School discipline should not be in violation of child rights.

Article 29: Child education should be geared towards the complete development of the child, in accordance with the child's cultural identity and human rights treaties, and to prepare the child for responsible life in society. It should not be detrimental to the environment. People may be allowed to establish educational institutes in accordance with these standards.

Article 30: Children of minority communities have the right to practise and adopt the culture, languages and traditions of their community.

Article 31: Every child has the right to leisure, play and participation in cultural events. The state should encourage child participation in such events.

Article 32: Children have the right to be protected from economic exploitation or any work that is harmful to their physical and mental development or considered hazardous or dangerous work. The state must constitute a day that dictates minimum age of employment, conditions of employment and hours of employment with regards to children.

Article 33: The state should take measure to protect children from substance abuse and prevent the use of children in the illegal trafficking of such substances.

Article 34: Every child has the right to be protected from sexual exploitation and sexual abuse. The state must hence prevent the coercion and prostitution of children for such activities as well as safeguard children from pornographic performances and materials.



Article 35: States shall take measure to prevent the abduction or sale of children for any purpose.

Article 36: The state shall protect children against any other form of exploitation.

Article 37: The state shall ensure that no child is subject to torture or any other cruel inhuman treatment, no child is deprived of his liberty unlawfully, and a child deprived of his liberty is entitled to proper care and humane circumstances, and be provided with legal consult if necessary.

Article 38: The state ensures and respects the rules of humanitarian law during times of conflict. The state should also ensure that children below 15 do no participate in the hostilities, and refrain from recruiting them in armed forces.

Article 39: The state should ensure the recovery, rehabilitation and reintegration of child victims of neglect, exploitation, or abuse, etc.

Article 40: The state shall recognise the right of every child who has committed a crime under the law to a proper care and reintegration into society. No child shall be accused or penalised for an act which is not a recognised crime. A child who has been accused of a crime are presumed innocent, should be informed of the charges against him/her, have the juvenile justice proceeding immediately without delay, not be compelled to give testimony or admit guilt and the right to privacy of all proceedings. States should endeavour to establish laws specifically catered to the needs of children who have been accused or found guilty of any criminal activity and establish a minimum age of guilt. Article 41: The articles of this convention will not take priority over any laws national or intentional that better safeguard the rights of a child.

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Articles 42-54: outline the establishment, composition and responsibilities of the Committee on the Rights of the Child.

5. Discuss the salient features of U.N Convention on Elimination of All forms of Discrimination Against Women, 1979?

ANS. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.



The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

VERY SHORT QUESTIONS

1. What do you mean by uniform civil code?

ANS. A uniform civil code administers the same set of secular civil laws to govern all people irrespective of their religion, caste and tribe. The need for such a code takes in to account the constitutional mandate of securing justice and equality for all citizens. A uniform criminal code is applicable to all citizens irrespective of religion, caste, gender and domicile in our country. But a similar code pertaining to marriage, divorce, succession and other family matters has not been brought in to effect. The personal laws vary widely in their sources, philosophy and application. Therefore, there is an inherent difficulty and resistance in bringing people together and unifying them when different religions and personal laws govern them.

The Supreme Court for the first time directed the parliament to frame a Uniform Civil Code in 1985 in the case of Mohd Ahmed Khan v Shah Bano Begum. In Sarla Mudgal v Union of India 1995, Justice Kuldip Singh reiterated the need for the Parliament to frame a Uniform Civil Code, which would help the cause of national integration by removing contradictions based on ideologies. Therefore, the responsibility entrusted on the State under Article 44 of the Constitution whereby a Uniform Civil Code must be secured has been urged by the Supreme Court repeatedly as a matter of urgency.

A uniform civil code is of an absolute necessity for individuals belonging to different religions and denominations and it is imperative for the promotion of national unity and solidarity. Thus, divergent religious ideologies must merge and culminate in to common and unified principles and objectives, adhering to the true spirit of secularism. However, after more than 60 years of independence the aspiration of a Uniform Civil Code remains unrealized.



The idea and principle of having a uniform civil code, governing personal laws is to treat every person equally and also so that just, fair and predictable laws protect everyone. Moreover, a uniform civil code would put in place a set of laws that would govern personal matters of all citizens irrespective of religion, which is the cornerstone of secularism. It would enable to put an end to gender discrimination on religious grounds, strengthen the secular fabric and also promote unity. From Shah Bano to Shayara Bano who recently filed a PIL in the Supreme Court the emphasis has always been on gender friendly reforms of personal laws.

Therefore, given the current political and social scenario, the more progressive and liberal sections are demanding for a uniform civil code, which would govern individuals across all religions, caste and tribe uniformly, and also protect their fundamental and constitutional rights. Whether it would be the endeavor of the state, the mandate of the court or the will of the people is a pertinent issue which only time will unfold.

2. Equal pay for Equal work.

ANS. 'Pay Gap' or unequal pay is an issue which has become a matter of concern these days due to an increase in the instances of discriminatory pay scales for the same type of work. India still lacks a comprehensive and transparent wage policy for all the sectors of the economy. This makes the issue of potential demand for equal pay a matter of concern in recent times. Equal pay here relates not only to basic pay but includes other benefits and allowances too.

The Indian Constitution recognized the principle of 'Equal Pay for Equal Work' for both men and women, and 'Right to Work' through Article 39(d) and 41. These Articles are inserted as Directive Principles of State Policy. This means that, they will serve as guidelines to the Central and State governments of India, which are to be kept in mind while framing laws and policies.

Efforts are employed even on legislative fronts - Equal Remuneration Act, 1976 being the prime one amongst them. The Act by means of Section 4 not only emphasizes on equal pay for equal work but even bars the employer from reversing the pay scales in order to attain equilibrium.

The principle of Equal Pay for Equal Work was first considered in *Kishori Mohanlal Bakshi v. Union of India*¹ in the year 1962 where the Supreme Court declared it incapable of being enforced in the court of law. However, it received due recognition only in 1987 through



Mackinnon Mackenzie's case². Here the issue of concern was a claim for equal remuneration for Lady Stenographers and Male Stenographers. This was ruled in favour of lady stenographers as the Court was in favour of equal pay.

Although, times have passed but crisis still remain. The report published by International Trade Union Confederation (ITUC) in March 2009, reveals existence of gender pay gap to the extent of 30 percent in India in 2008.³

Agreed that the issue is more rampant in case of gender pay gap and is being dealt with, but this is not the complete picture. There are instances where such pay inequalities exists even in case of persons of the same gender. This is despite the fact that they are deploying same efforts and time and doing same kind of work as their counterparts.

Surprisingly, where on one hand legislature is propagating for equality, on the other judiciary recently has made a controversial move. Supreme Court here quashed an order of the Punjab and Haryana High Court. It denied paying daily-wage drivers at par with the regular drivers working for the Punjab government. It ruled that, "A daily wager cannot claim salary equal to that of a regular worker even if the two are discharging the 'same functions' It further ruled that, "Even if a daily wage employee is discharging the same functions as a regular employee the authorities are not bound to grant equal pay to such a person."⁴

In spite of having made endless efforts still there is lack of a subsequent and meaningful legislation. Also factors like ignorance and uniform interpretation of law act as barriers in demolishing pay gap. In order to resolve this issue, it is important to not only create awareness for, but also effectively implement the legislative enactments.

3. Women reservation

ANS. The question of a women's quota in India is distinct from any other nation because the Constitution of India has already provided for quotas for the 'Scheduled Castes' (SCs) formerly untouchable castes in the Hindu community and the 'Scheduled Tribes' (STs). It has provisions for similar measures for the socially and educationally backward classes now termed as the



'Other Backward Classes' (OBCs). These quotas are for admissions to educational institutions, public sector employment and political representation. The 73rd and 74th Constitutional Amendments provided for 33% quotas for women's representation in the local self-government institutions. These Amendments were implemented in 1993. They were enacted without any pressure or persistent demand from women or any other section. Prior to these Amendments the State of Karnataka had introduced 25% women's quota in Panchayati Raj Institutions.¹ First elections after the implementation of quotas were held in 1987 (Jain 1996). Later, State of Maharashtra passed a law providing for 30% reservation of seats for women in rural as well as urban local self-government institutions. It is curious that, in spite of over 1,000,000 elected women representatives flooding the local governments; the women's movement in India was totally silent over this issue till 1996.

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The smooth passage of the 73rd and 74th

Constitutional Amendments encouraged all major national political parties to commit themselves to extending 33% women's quota to state legislatures and Parliament. The 81st Constitutional Amendment Bill, popularly known as the Women's Reservation Bill, was introduced in the



Parliament in 1996 to that effect. The women's movement had no role in bringing about this Bill. It did offer some inputs in the Committee hearings but it became vocal and visible on this issue only after its first debacle in eleventh Lok Sabha. Even then, this visibility was in the form of demonstrations and sit-ins in front of the Parliament and not by way of proactive intervention in the electoral process by supporting women candidates or recruiting movement's spokespersons in elective roles on various levels.

4. National women commission

ANS. National Commission for Women is also one of the significant statutory bodies established by the Government of India. It was established in 1992 under the provisions of the National Commission for Women Act, 1990.

The Central Government took the initiative to establish this Commission by keeping in view the provisions of India's constitution to strengthen the women in country through addressing plights, suppressions and other types of violence they use to face.

National Commission for Women also takes the initiatives for overall development of women community in whole country.

Main aim of National Commission for Women is to raise the concern for the women and to represent itself for their rights. This Commission takes into account the issues and concerns of women community and advises for the authentic solution of all the problems they face.

This Commission takes into consideration many common issues associated with women and their repression from dowry to religious or political factors and most importantly their equal representation in job market and other exploitations.

Working of National Commission for Women



National Commission for Women became statutory body and kept taking many steps for the protection of women. It also makes a point to work under the National Commission for Women Act, 1990 which is the key guideline for this Commission to suggest and explore initiatives meant for women and their overall growth.

Composition of National Commission for Women

The Commission shall consist of

- (a) A Chairperson, committed to the cause of women, to be nominated by the Central Government.
- (b) five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry potential of women, women's voluntary organizations (including women activist), administration, economic development, health, education or social welfare;

Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;

Functions of National Commission for Women

Work as the coordinating agency to receive and process all the complaints related to Indian Women deserted by their Overseas Indian husbands.

Shall render all possible assistance to the complaints including conciliation, mediation between the parties and advising the complainant on related issues.

Associating, networking with NGOs, community organizations in India and overseas and State women Commissions for wider area coverage, so as to assist easy access and provide support services.



Shall endeavour towards a coordinated response amongst various Government agencies/organizations such as State Governments, The National Human Rights Commission, Indian Embassies and Mission, concerned Ministries etc.

Provide assistance to the distressed woman in litigation and other issues pertaining to the complainant/case.

Shall maintain a data bank record of cases registered.

Seek reports from the State Government and other authorities on the complaints filed and action taken thereon.

Shall advice and recommend the government on any policy or issue relating to the NRI marriages.

Investigate various legal treaties on the issue and advice the Government on the subject, wherever required.

Shall constitute an advisory committee panel of reputed advocates/NGOs, both in India as well as abroad, which shall intermittently review the functioning of the cell, cases filed and policy issues.

Shall constitute a panel of experts (All India) to support the aggrieved wife and rendering legal services and other assistance, including mediation and conciliation

Planning of training modules and conducting training on sensitisation on the subject to the various agencies entrusted with the task of providing justice, viz. Judiciary, police, administration, etc.

Shall organize awareness campaigns for the masses on the issue.

This commission has responsibility to encourage /support research and study in the related field like issues of grievances associated with dual citizenship, enactment of new legislation or signing of international treaties, marriage laws of other countries, etc.

NCW must look into complaints and take suo-moto notice on any issue brought to the notice of the NRI Cell in accordance with Section 10 (1)(f) of the National Commission for Women Act , 1990 read with sub-section 4 of Section 10 and Section 8 of the Act.

The cell shall control its own procedures in accordance with the National Commission for Women Act 1990.

NCW must perform any other function as assigned to it by the Commission/Central Government.



5. *Vishakha case guidelines*

ANS. Vishaka case of sexual harassment at workplace is a case of landmark judgement by Supreme Court of India. Not because it was attack on working women's fundamental right to work without fear and prejudice. Not because it is a saga of immense torture of a naïve working woman. Not because a woman showed exemplary courage to fight against the male ego our immoral society.

It is a landmark case because first time ever it was officially recognized at such a high level of need for laws for sexual harassment and laying down of guidelines of sexual harassment of working woman. Till 1997 even after India's independence of 50 years there was hardly any law to safeguard sexual harassment of working women. As I write this, I'm very much ashamed of being an Indian and even more being an Indian woman. It is no less than a curse.

The women harassment bill, 2010 is still being worked out. And there no special laws to safeguard sexually harassed working women. Just some guidelines from different courts in India, more importantly from Supreme Court of India.

However I want to narrate short summary of Vishaka case guidelines of Supreme Court for a layman. I'm not a legal expert, but only a layman like you, but yes a victim of sexual harassment.

You should try to understand it in simple terms and please don't contact any lawyer in the first place. Yes, please do contact nearby women cell, women right activists or at least contact us or raise the issue in our non-profit Indian working women's forum. If you raise it in the working women's forum then we'll try to contact appropriate women cells/activists or lawyers to answer you query(eventhough the forum may be empty, but we're watching it for support requests)

General Points

Gender equality includes protection from sexual harassment and right to work with dignity as per our constitution.



Extra hazard for a working woman compared her male colleague is clear violation of the fundamental rights of Gender Equality & Right to Life and Liberty.

Safe working environment is fundamental right of working woman.

In no way working women may be discriminated at workplace against male employees. (If a woman is, then it must be documented in company policies, for example limitation of women in police and armed forces)

Working with full dignity is the fundamental right of working women.

The right to work as an inalienable right of all working women

The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction (pregnancy, maternity & nursing etc) is fundamental right of working women

Following can be termed as sexual harassment

Anything at work that can place the working woman at disadvantage compared to other male employees in her official career just because she is a woman – can be termed as sexual harassment

Unwelcome sexually determined behaviour & demands from males employees at workplace:

any physical contacts and advances

sexually colored remarks

showing pornography

passing lewd comments or gestures

sexual demands by any means

Any rumors/talk at workplace with sexually colored remarks about a working woman. Even spreading rumour about a woman's sexual relationship with anybody

Employers Duty

It is an obligatory requirement for employers:



Appropriate notification/advertisement to be issued for prohibition of sexual harassment at workplace for the employees of the company.

State government, central government and PSU bodies to include in their conduct and discipline rules/regulations prohibiting sexual harassment plus mention of penalties for those found guilty of sexual harassment.

For private employers, prohibition of sexual harassment and penalties to be included in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

Employers need to provide conducive & appropriate work conditions for women staff in the view of : work, health, hygiene & leisure. In short there mustn't be any conditions creating hostile environment towards working women staff and any conditions which could put women at an disadvantage position with regards to her career compared to other male employees of the company.

The employer will need to have a written complaint mechanism which will need to include time frame of resolution of sexual harassment claims.

Employer should help the victim psychologically with counselling etc.

Employer should maintain confidentiality of the complaint and the identity of the woman who raised the complaint and complaint specifics.

Employers are bound to inform the details of sexual harassment complaints to appropriate government bodies/labour department etc, every year. In short it'll be illegal to hide any sexual harassment complaints raised in the company or with the employer and not report to government authorities.

Employer should allow and encourage the employees to raise sexual harassment issues in worker's meetings and at appropriate forums. And all those complaints need to be affirmatively discussed. In other words the employer must provide easy way to discuss sexual harassment issues and should not show any lack of interest.

Employer should take steps to make working women aware of their rights to equality in everything in workplace by prominently notifying the guidelines by appropriate means (like sending emailers, sending letters, displaying rules on notice boards)

If the sexual harassment is due to third party that is not anything related to the employer but by another person from different organization which you interacted with him as part of discharging your official duties whether in office space or outside, then the employer will need to take all necessary steps to assist and help the victim in the terms of support & preventive action



Employers duty after receiving a sexual harassment complaint

The employer must assess the crime and if required legally, it must register complaint with appropriate government authorities. For major sexual harassment cases, it behooves on the employer to immediately bring the issue to notice of local Police and also nearby women cells. The employers should not delay filing a police complaint just try to save it's company's image.

The employer will need to ensure that the victim is not further traumatized or victimized. Employer must not persecute the victim in any way due to a woman's complaint.

Setting up of Complaint Committee by the employers

Committee should be headed by a woman

More than 50% of committee members should be women

The committee should also consist of third party members not affiliated to the company or employer in anyway. Preferably from NGO's, women right activists who are familiar to the issue of sexual harassment. If you're a victim then you should be quite vigilant to this member as every company/employer tries to include their "friends" in such committees which will not object to the decisions made by the committee members on their payrolls and loyal to the company, prejudicing the sexually harassed woman. If it is the case, then please contact us immediately.

Advantage to the victim

The victim of sexual harassment should be given the option to seek the transfer of the culprit or her own transfer to another department/place etc.