

CONSTITUTIONAL OBLIGATION TOWARDS WOMEN AND CHILDREN

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INTRODUCTION

Civilized humanity considers the norms of equality and liberty as the basis of a just society free from arbitrariness. Despite odds, a great deal of transformation has taken place in the position of women international as well as nationally global jurisprudence, epitomized through various instruments, had made its contribution in this equalization process. In India after independence, a new vision was incorporated in the Supreme lex which is reflected, inter alia; in Preamble, Fundamental Rights, and Directive Principles of State Policy. Now we are in the 21st century and the present position of the Indian women and children is the ultimate result of the efforts already made till now towards the amelioration of women and children. The Constitution of India, 1950 has certain provisions relating to women and children. The legislatures enacted a number of laws to give meaning to the ideals enshrined in the constitution. Also, various women's rights have been the priority areas of recommendation of the Law Commission. This legislative intent are backed by resounding judgments of the Supreme Court and High Courts, trying to remove the orthodoxies conflicting with the concepts of equality, liberty, dignity and humanity. The courts in various judgments reiterated the laws where they were unambiguous, enhancing the concepts of gender equality and justice; but they were conflicting and against the dignity of women, the omission was readily applied. Therefore, for women's emancipation and socio-economic development, progressive legislation and positive judicial pronouncement are an integral part.

WOMEN AND CHILDREN UNDER INDIAN CONSTITUTION

According to a report of the United Nations published in 1980- "Women Constitute half of the world population, perform nearly two-thirds of works hours, receive one tenth of the world income and own less than one hundred per cent of world's property." The Constitution of India, 1950 has certain provisions relating to women. It makes special provisions for the

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treatment and development of women in every sphere of life¹. The Indian Constitution is the most comprehensive and complete document containing the provisions of equality and justice which aims at protecting the dignity of each individual irrespective of class, caste, religion etc. This fundamental laws of the land through various provisions particularly as laid down in the Preamble, in Part III dealing with the Fundamental Rights and in Part IV which deals with Directive , thrive for securing gender justice thereby putting women at par with men². In *Madhu Kishawar v. State of Bihar*³, the dissenting judgment of K. Ramaswamy said “legislative and executive actions must be conformable to and for effectuation of the fundamental rights guaranteed in PART III, directive principles enshrined in the part IV, and the preamble of the constitution which constitutes the conscience of the constitution. Covenants of the United Nations add impetus and urgency to eliminate gender based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of the women in socio-economic restructure for establishing egalitarian socio order.

Our Constitution makers wise and sagacious as they were, had known that the India of their vision would not be a reality if the children of the country are not nurtured and educated. For this, their exploitation by different profit-makers for their personal gain had to be first made punishable⁴. Considering the fact that India is a welfare state, the founding father of the Constitution recognised the importance of the rights of the child in a nation’s development. Dr Ambedkar was far ahead of his time and in his wisdom projected these rights in the directive principles, including children as beneficiaries. Thus the Constitution mandates that every child shall have the right to health, well-being, education and social protection without any discrimination on the ground of caste, birth, colour, sex, language, religion, social origin, property or birth alone⁵. The principle of gender equality is enshrined in the Constitution in its Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. Let us start with the Preamble itself.

Preamble

¹ S.C.Tripathi and Vibha Arora, *Law relating to women and Children*, Central Law Publications, Allahabad,2010.

² Sukanta K. Nanda, *Law Relating to Women & Children*, The Law House, Rajabagicha, Cuttack-9,2011.

³ AIR 1996 5 SCC 125

⁴ Mamta Rao, *Law relating to Women and Children*, Eastern Book Company, Lucknow,2012.

⁵ Ibid.

The preamble is the key to the Constitution. It does not discriminate men and women but it treats them alike. Undoubtedly, the preamble appended to the Constitution of India, 1950 contains various objectives including “the equality of status and opportunity” to all the citizens⁶. The Preamble starts by saying that we, the people of India, gives to ourselves the Constitution. The source of the Constitution is thus traced to the people, i.e. Men and women of India, irrespective of Caste, community, religion or sex. The Preamble contains the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity. The aspect of social justice is further emphasised and dealt with in the directive principles of state policy⁷.

Fundamental Rights

Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution. Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. *Justice Bhagwati in Maneka Gandhi v. Union of India*⁸ says, “These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.”

Article 14 guarantees that the State shall not deny equality before the law and equal protection of the laws⁹. In its landmark judgment the Apex Court has held that a woman shall not be denied employment merely on the ground that she is woman as it amounts to violation of Article 14 of the Constitution¹⁰.

Article 15 prohibits discrimination against any citizen on the ground of sex and Article 15 (3) empowers the state to make positive discrimination in favour of women and child. *Cal HC in Mahadeb v. B.B.Sen j Mukherjee*¹¹ observed the “words women and children used in Article 15 (3) means making special provision in favour of women and children and not against

⁶ S.C. Tripathi and Vibha Arora, *Law relating to women and Children*, Central Law Publications, Allahabad, 2010.

⁷ S. Alladi Kuppaswami, *The Constitution: What it Means to the People*, Gogia & Company, Hyderabad, 2000.

⁸ AIR 1978 SC 597

⁹ Article: 14 Equality before Law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁰ *Air India v. Nargesh Meerza* (AIR 1981 SC 1829)

¹¹ AIR 1951 Cal. 563.

them.” Its object is to strengthen and improve the status of women¹². The State in the field of Criminal Law, Service Law, Labour Law, etc. has resorted to Article 15(3) and the Courts, too, have upheld the validity of these protective discriminatory provisions on the basis of constitutional mandate¹³. In *Government of Andhra Pradesh v. P.B. VijayKumar*¹⁴, the court upheld the government’s notification reserving 30% seats for women in public services and also the treatment in posts better suited for women. Giving wide meaning to the term ‘special provision’ under Article 15(3) to include both reservation and affirmative action, the Court observed that: “*Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16*”.

Article 16 provides for equality of opportunity in matter of public employment. The Constitution, therefore, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the Courts realize that these Articles reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent the Constitution intended¹⁵. Reflecting this in *Dimple Singla v. Union of India*¹⁶, the Delhi High Court expressed its apprehension that unless attitudes changes, elimination of discrimination against women cannot be achieved. Article 16 guarantees equal opportunity in matters of public employment as Article 16(1) declares that “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”. In this case a reference may be made to the case of *C.B. Muthamma v. Union of India*¹⁷, where the rules requiring female employees to get permission before marriage and denial of right to employment to married women were held discriminatory and violative of Article 16 of the Constitution. Justice V.R.Krishna Iyer declaring this rule to be in defiance of Article 16 went on to be observe: “*If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle*

¹² Govt. Of Andhra Pradesh v. P.B.Vijay Kumar (AIR 1995 SC1648)

¹³ Article: 15 Prohibition of discrimination on grounds of religion, race, cast, sex, or place of birth (1) The state shall not discrimination against any citizen on grounds only of religion, race, cast, sex, or place of birth or any of them.(3) Nothing in this article shall prevent the State from making any special provision for women and children.

¹⁴ (1995) 4 SCC 520

¹⁵ “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

¹⁶ (2002)2SLJ161

¹⁷ AIR 1979 SC1868

for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-à-vis half of India's humanity, viz. our women, is a sad reflection on the distance between Constitution in the book and Law in action¹⁸". In *Air India Cabin Crew Association v. Yeshaswinee Merchant and Ors*¹⁹, the Supreme Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour. Article 16 covers discrimination only in public employment not by private employers and it applies to all the facets of employment, such as promotion, pay, transfer and retirement.

Article 21 Protection of life and personal liberty,²⁰ Gender equality becomes elusive in the absence of right to live with dignity. Article 21 contains provisions for protection of life and personal liberty of persons. The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women was held in *Shri Bodhisattwa Gautam v. Subhra Chakraborty*²¹, & *Chairman, Railway Board v. Mrs. Chandrima Das*²². In *Vishaka v. State of Rajasthan*²³, the Supreme Court, in the absence of legislation in the field of sexual harassment of working women at their place of work, formulated guidelines for their protection. The Court said: "Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose²⁴". A very important case concerning bar girls came before the high court and the decision was given in the *Indian Hotel Restaurants Assn (AHAR) v. state of Maharashtra*²⁵ in the instant case the

¹⁸ Ibid.

¹⁹ (2003) 6 SCC 277

²⁰ "No person shall be deprived of his life or personal liberty except according to procedure established by law."

²¹ (1996) 1 SCC 490

²² (2000) 2 SCC 465

²³ AIR 1997 SC 3011

²⁴ Ibid.

²⁵ 2006 (3) BomCR 705

petitioner establishments carried on 3 distinct activities, namely, i) service of food, ii) performance of music and dance iii) service of liquor in an independent and demarcated room approved by the collector/licensing authority. “The right to education flows directly from the right to life”. It is declare by the Apex Court²⁶. Articles 21-A and 51-A(K) of the Constitution is also relevant with this.

Article 21-A²⁷ of the Constitution- the fundamental right to a free and compulsory education for children.

Article 23 prohibits trafficking in human beings and forced labour. Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing of human beings²⁸. In *Gaurav Jain v. Union of India*²⁹, the condition of prostitutes in general and the plight of their children in particular was highlighted. The Court issued directions for a multi-pronged approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society³⁰.

Article 24³¹ of the Constitution prohibits employment of children in factories etc. The Supreme Court held that “hazardous employment” includes construction work, match box, and fireworks. Therefore, no child below the age of 14 years can be employed. Positive steps should be taken for the welfare of such children as well as for improving the quality of their life³².

DIRECTIVE PRINCIPLES OF STATE POLICY

²⁶ Unni Krishnan v. State of A.P.(1993) 1 SCC 645

²⁷ Article 21A, Constitution of India, amended by The Constitution (Eighty-Sixth Amendment) Act,2002 (brought into force on April 1, 2010), “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

²⁸ Prohibition of traffic in human beings and forced labour.— (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

²⁹ 1997 (8) SCC 114

³⁰ Ibid

³¹ No child below the age of 14years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

³² M. C. Mehta v. Union of India (1991)1 SCC283

The Constitution in part IV under Directive Principles of State Policy also directs the state to take certain remedial measures for the welfare of the women. This policy envisaged equal rights to work, equal pay for equal work, adequate means of decent and dignified livelihood both men and women, these are guaranteed under the directive principles of state policy.

Article 39³³ which directs the State to secure a social order for the promotion of welfare of the people has specific provisions for women also.

Article 39(a)³⁴ directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood. This Article provides equal right for all citizens, irrespective of sex, to adequate means of livelihood.

Article 39(c)³⁵ of the Constitution the children of tender age should not be subject to abuse and they should be given opportunities and facilities to develop in a healthy manner. Freedom and dignity of children should be protected.

Article 39(d)³⁶ directs the State to secure equal pay for equal work for both men and women. The State in furtherance of this directive passed the Equal Remuneration Act, 1976 to give effect to the provision.

Article 39(e)³⁷ specifically direct the State not to abuse the health and strength of workers, men and women.

Article 39(f)³⁸ says that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

³³ Article: 39 certain principles of policy to be followed by the state. The State shall, in particular, direct its policy towards securing -

(a) That the citizen, men and women equally, have the right to an adequate means of livelihood;

(d) That there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

³⁴ Article 39(a) says, "The citizens, men and women equally, have the right to an adequate means of livelihood".

³⁵ Article 39(c) provides, "that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength".

³⁶ Article 39(d) provides, "that there is equal pay for equal work for both men and women".

³⁷ The health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Article 32³⁹ of the Constitution, i.e. Right to Constitutional Remedies, the Supreme Court has the power to lay down guidelines for effective enforcement of fundamental rights of the children of prostitutes and the law declared by the Supreme Court under Article 141 of the Constitution, to be treated as the law relating too that particular field. In a historic Judgment in *Gaurav Jain v. Union of India*⁴⁰, it was held by the Apex Court that under Article 32 of the Constitution, the Court has power to adopt such procedure as is expedient in a given fact and situation and deal with the matter appropriately and to evolve procedure for enforcement of fundamental rights.

Article 42⁴¹ Provision for just and humane conditions of work and maternity relief. The Hon'ble Supreme Court in its landmark judgment has given direction to the Central Government t extend the benefits of the Maternity Benefits Act, 1961, also to the women employees working on daily wages and on their muster roll⁴².

Article 44⁴³, Uniform Civil Code for the citizens. Uniform civil code in India is the debate to replace the personal laws based on the scriptures and customs of each major religious community in the country with a common set governing every citizen. These laws are distinguished from public law and cover marriage, divorce, inheritance, adoption and maintenance. Article 44 of the Directive Principles in India sets its implementation as duty of the State. In *Sarala Mudgal case*⁴⁴, the Hon'ble Supreme Court has given a historical judgment, where it directed the government to take fresh look at Article 44 of the Constitution, which enjoins the state to secure a uniform civil code which accordingly to the

³⁸ This Article was amended by the Constitution (42nd)Amended Act,1976 with a view to ascertain the constructive role of the State in relation to children.

³⁹ Remedies for enforcement of rights conferred by this Part:

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

⁴⁰ AIR1997 SC3021

⁴¹ The State shall make provision for securing just and humane conditions of work and for maternity relief .

⁴² Municipal Corporation of Delhi,v. Female Workers (Muster Roll) (2000) 3 SCC 224

⁴³ The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

⁴⁴ Sarala v. Union of India, (1995)3 SCC 635.

court is imperative for both protection of the oppressed, and promotion of national unity and integrity. The Court directed the Central Government through the Secretary to Ministry of Law and Justice, to file an affidavit by Aug., 1995 indicating the steps taken and efforts made, by the government towards securing a uniform civil code for the citizens of India.

Article 45⁴⁵ Right to free and compulsory education for children. An important extract from the Supreme Court Judgment in the landmark case *Unni Krishnan, J. P. v. State of Andhra Pradesh*⁴⁶, "The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limit of economic capacity and development of the State".

Article 47⁴⁷ stipulates that it is the duty of the state to raise the level of nutrition and health of the children.

FUNDAMENTAL DUTIES

Parts IV-A which consists of only one Article 51-A⁴⁸. This Article for the first time specifies a code of eleven fundamental duties for citizens.

Article 51-A (e) is related to women. It states that; "It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women".

Women's Representation in Local Bodies

Women in Panchayats

⁴⁵ The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

⁴⁶ AIR 1993, S.C. 2179-2254

⁴⁷ The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

⁴⁸ Which was added to the constitution by the 42nd Amendment, 1976

Article: 243 D⁴⁹ Reservation of seats.(1) Seats shall be reserved for—(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

In every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide: Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the

Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

⁴⁹ 73rd Amendment 1992 - w.e.f. 1-6-1993

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

Women in Municipalities

Article: 243 T⁵⁰ Reservation of seats.(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

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

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

⁵⁰ 74th Amendment 1992 - w.e.f. 1-6-1993

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

NATIONAL COMMISSION'S FOR WOMEN AND CHILDREN

The Committee on the status of the Women in India recommended nearly two decades ago, the setting up of a National Commission for women to fulfill the surveillance functions to facilitate redresses of grievances and to accelerate the socio-economic development of women⁵¹. Keeping in view the desirability of a commission for women at the National Commission for Women Bill, 1990 was introduced in the Lok Sabha on 22nd May, 1990. Later on this Bill became an Act to be known as the National Commission for Women Act, 1990 w.e.f 30-8-1990⁵². Women as a class neither belong to a minority group nor are they regarded as a backward class. India has traditionally been a patriarchal society and therefore women have always suffered from social handicaps and disabilities. It thus became necessary to take certain ameliorative steps in order to improve the condition of women in the traditionally male dominated society. The Constitution does not contain any provision specifically made to favor women as such. Though Art. 15 (3), Art. 21 and Art. 14 are in favor of women; they are more general in nature and provide for making any special provisions for women, while they are not in themselves such provisions. The Supreme Court through interpretive processes has tried to extend some safeguards to women. Through judgments in cases such as *Bodhisattwa Gautam v. Subra Chakraborty*⁵³ and the *Chairman Rly Board v. Chandrima Das*⁵⁴ case, where rape was declared a heinous crime, as well as the landmark judgment in *Vishaka v. State of Rajasthan*⁵⁵, the courts have tried to improve the social conditions of Indian women. But these have hardly sufficed to improve the position of women in India. Thus, in light of these conditions, the Committee on the Status of Woman (India) as well as a number of NGOs, social workers and experts, who were consulted by the Government in 1990, recommended the establishment of a apex body for woman.

The lack of constitutional machinery, judicial ability and social interest formed the impetus and need for the formation of the National Commission for Women. It is apparent from the

⁵¹ Malik and Raval, *Law and Social Transformation in India*, Allahabad Law Agency, Haryana, 2011

⁵² S.C Tripathi and Vibha Arora, *Law Relating to Women and Children*, Central Law Agency, Allahabad, 2010.

⁵³ AIR 1996 SC 922

⁵⁴ AIR 2000 SC 988

⁵⁵ AIR 1997 SC 3011

prior mentioned conditions and problems that women in India, though in a better position than their ancestors, were handicapped to a great extent in the early 1990s and these handicaps and injustices against Indian women prompted the Indian Government to constitute the first National Commission for Women in 1992⁵⁶”.

In order to ensure protection of rights of children one of the recent initiatives that the Central Government have taken for children is the adoption of National Charter for Children, 2003 and then after that the Commission for the Protection of Child Rights Act, 2005 was passed by Parliament⁵⁷.

LEGISLATIONS WITH RESPECT TO WOMEN AND CHILDREN

Indian parliament has passed the Acts since independence. Hence, enactments relating to women are of two kinds, one equally applicable to men and women and other specially intended to women only.

A) Women's protection rights and remedies under criminal laws of India, these are:

- 1) Indian penal code, 1860 (sec's 509, 359, 362, 363, 366-373, 375, 376, 376A-D, 493, 494, 496, 497, 498).
- 2) The Indecent representation of women (prohibitions) Act 1986.
- 3) The commission of sati (prevention) Act, 1987.
- 4) The pre-natal Diagnostic Techniques (regulation and prevention of misuse) Act, 1994.
- 5) The medical termination of the pregnancy Act, 1971.

B) Women's protection rights and remedies under Industrial law of India.

- 1) Equal remuneration Act, 1976.
- 2) Maternity benefit Act, 1925.
- 3) Factories Act, 1948.

⁵⁶ <http://ncw.nic.in/> (Aug. 4, 2007).

⁵⁷ Ibid.

4) Mines Act, 1952.

5) Employee's state insurance Act, 1948.

C) *Women's matrimonial rights and remedies.*

1) Marital rights and remedies under the Hindu marriage Act, 1956.

2) Marital rights and the remedies under the special marriage Act, 1954.

3) Marital rights and the remedies under the Dowry prohibition Act, 1961.

4) Marital rights and the remedies under the Hindu widow's remarriage Act, 1956.

5) Protection of Muslim women's rights on divorce under the Muslim women (protection of rights on Divorce) Act, 1986.

6) Forum for matrimonial and family Remedies under the family courts Act, 1984.

While all children have equal rights, their situations are not uniform. At the same time, childhood and the range of Children's needs and rights are one whole, and must be addressed holistically. A life-cycle approach must be maintained. Keeping this in mind, there are several national laws and policies that address the different age-groups and categories of children.

2012: The Child Labour (Prohibition and Regulation) Amendment Bill, 2012

2012: Protection of Children from Sexual Offences Notified Rules - 2012

2012: Protection of Children from Sexual Offences Act-2012

2009: The Right of Children to Free and Compulsory Education Act, 2009

2006: Juvenile Justice (Care and Protection of Children) Act (Amendment, 2006)

2006: Prohibition of Child Marriage Act

2002: The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act

2000: The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act

2000: Juvenile Justice (Care and Protection of Children) Act (2000)

2000: Information Technology Act

1996: Persons with Disabilities (Equal Protection of Rights and Full participation) Act

1994: Transplantation of Human Organ Act

1992: Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act

1989: Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act

1987: Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act

1986: Child Labour (Prohibition and Regulation) Act

1976: Bonded Labour System (Abolition) Act

1974: National Policy for Children

1960: Orphanages and Other Charitable Homes (Supervision and Control) Act

1956: Probation of Offenders Act

1956: Immoral Traffic (Prevention) Act (amended in 1986)

1956: Hindu Adoption and Maintenance Act

1948: Factories Act (Amended in 1949, 1950 and 1954)

1890: Guardians and Wards Act

DEBATE-ABLE ISSUE

The Judiciary is to be an arm of the social revolution upholding the equality that Indians had longed for. It is established fact that Judiciary is the third organ of the Government in any democracy. The Judiciary is the guardian of the fundamental rights of the people. Truly, the

Supreme Court has been called upon to safeguard the rights of the people and play the role of guardian of social revolution⁵⁸.

In the last 65 years of independence, if there is one concern, which has been the subject of much debate and has constantly encompassed the judicial mind are the rights of women and children in India. Counted together, they form more than the majority population and yet their voices and choices continue to be in minority. Their social and economic disadvantages further disable them to seek legal remedies. It is in this background that judiciary has exhibited extra precaution in deciding civil and criminal cases involving women and children. Courts have given a purposive interpretation to the legislations to undo age old inequalities and extend the benefits favorably. In spite of timely interference by legislature and judiciary, the equal status of women and children has not translated into actual reality. The vulnerable status of women and child is the only element, which has not witnessed radical change in this globalized and liberalized world. However, the eternal truth remains that no country can see the full swing of development both economic and social until their women and children prosper. Recent statistics of rape, child abuse, sexual harassment, child marriages and female foeticide depict the grim reality, which prevails today. Violence and its various manifestations point to the fact that discrimination against women and children is not mere local issue. In this light, the judicial wing of the State has to play a vital role in elimination of such discrimination in particular and for the upholding of women and children rights in general. India is a diverse country with its multicultural, multi-ethnic and multi-religious population where the protection of human rights becomes sine qua non for peaceful existence. It is indeed impossible to give an inclusive definition of Human Rights owing to its vast nature, however, the legislators have defined Human Rights as *“the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”* under the Human Rights Act, 1993. The women and children are entitled to the same human rights as individuals. This was envisaged by our Constitution makers and the same has to be enforced by the judiciary.⁵⁹

CONCLUSION

⁵⁸ J. N. Pandey, *The Indian Constitution Cornerstone of Nation*, Central Law Publishing Agency 2002

⁵⁹ Hon'ble Mr. Justice P.Sathasivam, Judge, Supreme Court of India on 23.03.2013 at Tamil Nadu State Judicial Academy during the Special Programme for District Judges and Chief Judicial Magistrates on “Women and Children”.

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