M.A.H.R-602

Women and Human Rights

Master of Arts in Human Rights

Uttarakhand Open University

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UNIT 1

DEFINITION AND MEANING OF GENDER AND SEX

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1.1 INTRODUCTION

Gender and sex are two important concepts that help in understanding human identity, society, relationships, equality, and social justice. In everyday conversation, people often use the terms "gender" and "sex" as if they have the same meaning. However, in academic studies, sociology, law, psychology, and gender studies, these two terms are different and have separate meanings.

Sex generally refers to the biological and physical differences between males and females. These differences are related to reproductive organs, hormones, chromosomes, and physical structure. A person's sex is usually identified at birth as male or female based on biological characteristics.

Gender, on the other hand, is a social and cultural concept. It refers to the roles, behaviours, duties, expectations, and responsibilities that society assigns to men and women. Gender is not purely based on biology. Social customs, traditions, religion, education, family, media, and culture shape it. Different societies may have different ideas about how men and women should behave.

For centuries, societies around the world have treated men and women differently. Men were often given more power, freedom, and opportunities, while women were expected to perform domestic and caregiving duties. Such unequal treatment gave rise to gender discrimination and inequality. In modern times, awareness regarding gender equality, women's rights, and human rights has increased significantly. Many countries, including India, have introduced laws and policies to ensure equality and dignity for all genders.

Understanding the concepts of gender and sex is important because many social problems such as discrimination, violence, unequal wages, lack of education, and denial of opportunities are connected to gender inequality. Awareness of these concepts helps individuals develop respect for equality, diversity, and human dignity.

This unit explains the meaning and definition of gender and sex, the distinction between them, the concept of gender identity and gender roles, gender stereotypes, gender discrimination, and the importance of gender equality in society.

1.2 OBJECTIVES

After studying this unit, the learners will be able to:

1. Understand the meaning and definition of sex and gender.
2. Understand the concepts of gender identity and gender roles.
3. Analyse the importance of gender equality and gender justice.
4. Understand constitutional and human rights perspectives relating to gender.
5. Examine the role of society, family, education, and media in shaping gender relations.
6. Appreciate the importance of equality and dignity for all genders.

1.3.1 CONCEPT OF SEX

Sex refers to the biological and physiological differences between males and females. These differences are mainly determined by nature and are related to reproductive functions, chromosomes, hormones, and body structure.

At birth, a child is usually identified as male or female based on biological characteristics such as reproductive organs. Biological sex also includes genetic differences. Normally, males possess XY chromosomes and females possess XX chromosomes. Hormonal differences also contribute to physical development and reproductive functions.

Physical differences related to sex include:

- Body structure
- Reproductive organs
- Facial hair
- Voice
- Muscle development
- Menstruation and pregnancy in females

Sex is generally considered a biological concept because it is based on natural physical characteristics rather than social beliefs.

However, biological differences do not mean that one sex is superior to another. Men and women are equal in dignity and rights. Biological differences only relate to physical characteristics and reproductive functions. They should not be used to justify discrimination or inequality.

In modern discussions, scholars also recognize that biological characteristics may not always fit strictly into male or female categories. Some individuals may have intersex characteristics, meaning their biological features may not fit typical definitions of male or female bodies.

Thus, sex is a biological concept, but human rights and equality remain equally important for every individual regardless of biological differences.

1.3.2 CONCEPT OF GENDER

Gender refers to the social and cultural roles, expectations, responsibilities, and behaviours associated with men and women in society. Unlike sex, gender is not purely biological. It is created and shaped by society.

Every society develops certain ideas regarding how men and women should behave. These ideas influence clothing, language, occupations, behaviour, emotions, responsibilities, and social status.

For example:

- Boys may be encouraged to be brave, strong, and independent.
- Girls may be expected to be caring, polite, and emotional.

These expectations are not natural biological rules; they are socially created standards that differ from one society to another.

Gender also changes over time. In earlier times, women in many societies were discouraged from education and employment. Today, women participate successfully in professions such as law, medicine, engineering, politics, defence services, and business. This shows that gender roles are socially constructed and can change with social progress.

Gender therefore refers to social identity and social expectations rather than biological differences.

1.3.3 DIFFERENT DEFINITIONS OF GENDER AND SEX

Various scholars, international organizations, and disciplines have defined gender and sex from different perspectives. Understanding these definitions is important for promoting gender equality, human dignity, and protection against discrimination in modern society.

1.3.3.1 Definitions of Sex

Different disciplines such as biology, sociology, psychology, and law define sex from their respective perspectives. Let us understand the definition of Sex from different perspectives.

a. Biological Definition

Sex refers to the biological and physiological characteristics that distinguish males and females. These characteristics include chromosomes, reproductive organs, hormones, and physical attributes.

b. World Health Organization (WHO)

According to the World Health Organization, sex refers to the different biological and physiological characteristics of males and females, such as reproductive organs, chromosomes, hormones, and other physical features.

c. Oxford Dictionary Definition

The Oxford Dictionary defines sex as "either of the two main categories, male and female, into which humans and many other living things are divided based on reproductive functions."

d. Sociological Definition

From a sociological perspective, sex is regarded as the biological classification of individuals as male, female, or intersex based on anatomy and genetics.

e. Psychological Perspective

Psychologists define sex as the biological identity assigned at birth based on physical and genetic characteristics.

f. Legal Perspective

In legal terminology, sex traditionally refers to the biological distinction between male and female used for identification, rights, duties, and legal classification.

1.3.3.2 Definitions of Gender

Gender refers to the socially and culturally constructed roles, behaviours, expectations, and identities associated with men, women, and other gender identities.

a. World Health Organization (WHO)

The World Health Organization defines gender as the socially constructed characteristics of women and men, including norms, roles, behaviours, relationships, and expectations associated with being female or male.

b. United Nations Definition

According to the United Nations, gender refers to socially constructed identities, attributes, and roles for women and men, and the social and cultural meaning attached to biological differences.

c. Ann Oakley

Sociologist Ann Oakley distinguished sex from gender and stated that:

"Sex is a biological division into male and female, whereas gender is a parallel and socially unequal division into femininity and masculinity."

d. Simone de Beauvoir

Feminist philosopher Simone de Beauvoir famously observed:

"One is not born, but rather becomes, a woman."
This definition emphasizes that gender roles are socially created rather than biologically determined.

e. Judith Butler

Philosopher Judith Butler viewed gender as a social performance shaped through repeated actions and social expectations rather than a fixed biological reality.

f. Sociological Definition

Sociologists define gender as a social construct that determines roles, responsibilities, opportunities, and relationships based on societal expectations.

g. Psychological Definition

Psychologists define gender as an individual's internal sense of identity, which may be male, female, both, neither, or another identity.

h. Legal and Human Rights Perspective

From a legal and human rights perspective, gender includes socially recognized identities and expressions and emphasizes equality, dignity, and freedom from discrimination

1.3.4 DIFFERENCE BETWEEN GENDER AND SEX

Although gender and sex are connected concepts, they are different in meaning and application.

Sex refers to biological and physical characteristics, while gender refers to social and cultural expectations. Sex is natural and biological, whereas gender is socially learned and constructed.

For example, childbirth is connected to biological sex because only females can biologically give birth. However, the belief that only women should take care of children is related to gender because it is based on social expectations rather than biology.

Sex usually remains fixed because it relates to biological structure, while gender roles may change across societies and time periods.

The distinction between gender and sex is important because many inequalities are based not on biological differences but on social attitudes and traditions. Understanding this distinction helps society challenge discrimination and promote equality.

Difference between Sex and Gender

Basis	Sex	Gender
• Nature	Biological	Social and cultural
• Determination	By birth	Learned through socialization
• Characteristics	Physical and physiological	Roles, behaviours, expectations
• Scope	Male, female, intersex	Masculine, feminine, transgender, non-binary
• Changeability	Generally fixed biologically	Dynamic and changeable
• Basis of Identity	Anatomy and genetics	Personal and social identity

1.3.5 SOCIAL CONSTRUCTION OF GENDER

The idea of "social construction of gender" means that society creates and teaches gender roles and expectations. Gender behaviour is not completely natural; it is learned through socialization.

From childhood, boys and girls are treated differently in many families and communities. Children learn gender roles through:

- Family
- School
- Religion
- Culture
- Media
- Peer groups
- Traditions

For example, girls may be given dolls and kitchen toys, while boys may receive toy cars and sports equipment. Girls may be expected to help with household work, while boys may receive greater freedom outside the home.

Television shows, films, advertisements, and social media also influence gender perceptions. They often present men as powerful and women as emotional or dependent.

Over time, such repeated social practices create fixed ideas about masculinity and femininity. Society begins to treat these ideas as natural even though they are socially created.

The concept of social construction helps people understand that gender inequality is not permanent and can be changed through education, legal reforms, and social awareness.

1.3.6 GENDER ROLES

Gender roles refer to the duties, responsibilities, and patterns of behaviour that society expects from men and women. These roles vary across cultures and historical periods.

Traditionally, men were expected to earn money, take decisions, and control family property. Women were expected to perform household work, raise children, and obey male authority.

These traditional roles often limited women's freedom and opportunities. Women were denied education, employment, inheritance rights, and political participation in many societies.

However, modern society is gradually changing these attitudes. Today:

- Women work in professional fields.
- Men participate in childcare and domestic work.
- Both men and women share responsibilities in family and society.

Rigid gender roles may create emotional pressure and discrimination. Men may feel pressure to appear strong and unemotional, while women may face restrictions on freedom and career choices.

Therefore, society should encourage equal opportunities and shared responsibilities instead of rigid gender expectations.

1.3.7 GENDER IDENTITY

Gender identity refers to a person's personal understanding and internal sense of their gender. It is how individuals identify themselves emotionally and psychologically.

A person may identify as:

- Male
- Female
- Transgender
- Non-binary
- Gender-fluid
- Another gender identity

Gender identity may or may not match a person's biological sex assigned at birth.

Every person has the right to dignity, self-identity, equality, and freedom from discrimination. Respect for gender identity is an important aspect of human rights.

In India, the Supreme Court recognized the rights of transgender persons in the landmark case of NALSA v. Union of India (2014). The Court recognized transgender persons as the "third gender" and stated that gender identity is part of the right to dignity and personal liberty under Article 21 of the Constitution.

The Transgender Persons (Protection of Rights) Act, 2019 was enacted to protect transgender persons from discrimination and ensure equal rights.

Awareness regarding gender identity promotes inclusiveness, equality, and respect for diversity in society.

1.3.8 GENDER STEREOTYPES

Gender stereotypes are fixed and oversimplified beliefs about men and women. These stereotypes influence how society views and treats individuals.

Examples of common stereotypes include:

- Men are naturally strong leaders.
- Women are weak and emotional.
- Boys should not cry.
- Girls should avoid technical professions.
- Men should earn money while women should manage homes.

Such stereotypes limit personal freedom and opportunities. They create discrimination in education, employment, politics, and family life.

Gender stereotypes also affect children psychologically. Boys may feel pressure to suppress emotions, while girls may lack confidence due to social expectations.

Media, films, advertisements, and social customs often strengthen stereotypes by repeatedly presenting traditional gender images.

Breaking gender stereotypes is important for creating a society where individuals are judged according to their abilities and character rather than gender-based assumptions.

1.3.9 GENDER DISCRIMINATION

Gender discrimination means unequal treatment based on gender or sex. It occurs when people are denied rights, opportunities, resources, or respect because they belong to a particular gender.

Women and girls have historically faced discrimination in many areas such as:

- Education
- Employment
- Equal wages
- Political participation
- Property rights

- Healthcare
- Decision-making

Gender discrimination may also lead to serious social problems such as:

- Domestic violence
- Sexual harassment
- Dowry system
- Child marriage
- Female foeticide
- Human trafficking

In many societies, women receive lower wages than men for similar work. Girls may be denied education or nutrition due to gender bias.

The Constitution of India guarantees equality before law under Article 14 and prohibits discrimination on grounds of sex under Article 15. Article 16 provides equal opportunities in public employment.

Various laws have been enacted in India to protect women and promote gender justice, such as:

- Protection of Women from Domestic Violence Act, 2005
- Sexual Harassment of Women at Workplace Act, 2013
- Dowry Prohibition Act, 1961
- Equal Remuneration Act, 1976

Gender discrimination violates human rights and hinders social development.

1.3.10 GENDER EQUALITY

Gender equality means equal rights, opportunities, treatment, and respect for all genders. It does not mean that men and women are identical in every way, but it means that everyone should enjoy equal dignity and freedom.

Gender equality is essential for:

- Human rights
- Democracy
- Social justice
- Economic development
- Peace and progress

When women and marginalized genders receive equal opportunities in education, employment, and decision-making, society becomes more productive and balanced.

The United Nations promotes gender equality through international instruments such as:

- Universal Declaration of Human Rights (1948)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Sustainable Development Goals (SDGs)

India has also adopted constitutional and legal measures to promote gender equality.

Achieving gender equality requires:

- Education
- Legal protection
- Social awareness
- Women's empowerment
- Elimination of stereotypes
- Equal participation in societyGender equality benefits not only women but also society as a whole.

1.3.11 ROLE OF FAMILY, EDUCATION, AND MEDIA IN SHAPING GENDER

Family is the first institution where children learn gender roles. Parents often consciously or unconsciously teach boys and girls different behaviours and responsibilities.

Schools and educational institutions also influence gender understanding. Textbooks, classroom practices, and teacher attitudes may either reinforce stereotypes or promote equality.

Media plays a powerful role in shaping public opinion. Television, films, advertisements, and social media influence how society views men and women. Positive media representation can promote equality, while negative representation may strengthen stereotypes.

Educational awareness and responsible media representation are important for promoting gender sensitivity and equality.

1.3.12 IMPORTANCE OF UNDERSTANDING GENDER AND SEX

Understanding gender and sex is important because it helps people identify inequality, discrimination, and injustice in society.

Awareness regarding gender issues promotes:

- Human dignity
- Respect for diversity
- Equal opportunities
- Women's empowerment
- Social justice
- Inclusive development

Education about gender helps reduce violence, discrimination, and harmful stereotypes. It encourages mutual respect and understanding among individuals.

A society that values gender equality becomes more democratic, peaceful, and progressive. Therefore, knowledge about gender and sex is essential for students, policymakers, professionals, and citizens.

1.3.13 SUMMARY

Sex refers to biological and physical differences between males and females, while gender refers to socially and culturally created roles and expectations associated with men and women.

Sex is biological in nature, whereas gender is socially constructed and varies across societies and time periods. Gender roles and stereotypes often create inequality and discrimination in society.

Understanding concepts such as gender identity, gender roles, and gender equality is important for protecting human rights and ensuring social justice. Women and marginalized genders have historically faced discrimination in education, employment, political participation, and personal freedom.

The Constitution of India guarantees equality and prohibits discrimination on grounds of sex. Modern society aims to promote equal opportunities, dignity, and freedom for all genders through education, awareness, legal reforms, and social change.

Understanding gender and sex is therefore essential for creating a fair, inclusive, and democratic society. Modern human rights discourse emphasizes that understanding this distinction is essential for promoting equality, dignity, inclusion, and protection against discrimination.

1.4 GLOSSARY

Sex: Biological differences between males and females.

Gender: Socially and culturally created roles and expectations associated with men and women.

Gender Identity: A person's internal understanding of their gender.

Gender Roles: Social expectations regarding behavior and responsibilities of men and women.

Gender Equality: Equal rights, dignity, and opportunities for all genders.

Gender Discrimination: Unequal treatment based on gender or sex.

Gender Stereotypes: Fixed beliefs and assumptions regarding men and women.

Socialization: Process through which people learn social behavior and norms.

Patriarchy: Social system where men hold dominant authority and power.

Empowerment: Process of gaining confidence, rights, and decision-making power.

Transgender: Persons whose gender identity differs from the sex assigned at birth.

Human Rights: Basic rights and freedoms belonging to every human being.

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1.7 SHORT ANSWER QUESTIONS

1. Define sex.

2. What is meant by gender?

3. Explain the concept of gender identity.

4. What are gender stereotypes?

5. Define gender equality.

1.8 TERMINAL QUESTIONS

1. Differentiate between gender and sex in detail.

2. Discuss the concept of social construction of gender.

3. Explain the role of family and media in shaping gender roles.

4. Analyse the causes and effects of gender discrimination in society.

5. Discuss the importance of gender equality from a human rights perspective.

1.9 TRUE AND FALSE

1. Sex refers to biological differences between males and females. — True

2. Gender roles are completely natural and fixed. — False
3. Gender identity refers to a person’s internal sense of gender. — True
4. Gender stereotypes may create inequality and discrimination. — True
5. Article 15 of the Constitution prohibits discrimination on grounds of sex. — True

UNIT- 2

CONCEPT OF GENDER EQUALITY

2.1 INTRODUCTION

2.2 OBJECTIVES

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2.3.4 FORMS OF GENDER INEQUALITY

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2.3.13 SUMMARY

2.4 GLOSSARY

2.5 REFERENCE

2.6 SUGGESTED READINGS

2.7 SHORT ANSWER QUESTIONS

2.8 TERMINAL QUESTIONS

2.9 TRUE AND FALSE

2.1 INTRODUCTION

Gender equality is one of the most important principles of human rights, social justice, and democratic society. It means that all individuals, regardless of their gender, should enjoy equal rights, opportunities, responsibilities, and treatment in every sphere of life. Gender equality aims to remove discrimination and ensure that men, women, and people of all gender identities are treated with dignity and fairness.

Historically, many societies across the world were patriarchal in nature, where men held greater power and authority in social, economic, political, and family life. Women were often denied access to education, employment, property rights, political participation, and decision-making. Traditional gender roles restricted women mainly to domestic duties and caregiving responsibilities. As a result, gender inequality became deeply rooted in social structures and cultural practices.

In modern times, awareness regarding women's rights and gender justice has increased significantly. International organizations, governments, social reformers, and human rights movements have worked continuously to promote gender equality. Today, gender equality is recognized as an essential condition for social progress, economic development, peace, and democracy.

Gender equality does not mean that men and women are exactly the same in every aspect. It means that every person should receive equal respect, equal opportunities, equal protection of law, and equal freedom to develop their abilities and make life choices without discrimination.

The Constitution of India guarantees equality before law and prohibits discrimination on grounds of sex. Various laws and policies have also been introduced to empower women and protect gender rights. However, despite legal protections, gender inequality continues to exist in many forms such as unequal wages, violence against women, lack of educational opportunities, discrimination at workplaces, and unequal representation in decision-making.

This unit explains the concept and meaning of gender equality, its importance, constitutional and legal framework, causes of gender inequality, obstacles to equality, and measures for achieving gender justice in society.

2.2 OBJECTIVES

After studying this unit, the learners will be able to:

1. Understand the meaning and concept of gender equality.
2. Explain the importance of gender equality in society.
3. Understand constitutional and legal provisions relating to gender equality.
4. Analyse the role of education, media, and social institutions in promoting equality.
5. Evaluate measures and policies for promoting gender equality.

2.3.1 MEANING OF GENDER EQUALITY

Gender equality means equal rights, opportunities, responsibilities, and treatment for all genders. It means that no person should face discrimination or disadvantage because of their gender.

Gender equality ensures that men and women have equal access to:

- Education
- Employment
- Healthcare
- Political participation
- Property and inheritance
- Social opportunities
- Legal protection

It also means that individuals should have the freedom to make personal choices and participate fully in social, economic, cultural, and political life.

Gender equality is based on the principle that every human being has equal dignity and worth. Equality does not mean treating everyone identically in all situations. Instead, it means providing fair opportunities and removing barriers that create discrimination.

For example, if women are denied education due to social customs, society cannot achieve true equality. Similarly, unequal wages for equal work violate the principle of gender equality.

Therefore, gender equality aims to create a society where every individual can develop their abilities and live with dignity and freedom.

2.3.2 HISTORICAL BACKGROUND OF GENDER INEQUALITY

Throughout history, women in many societies faced unequal treatment and limited rights. Patriarchal social systems gave men greater authority over property, family decisions, political power, and economic resources.

Women were often confined to household work and denied participation in public life. In many cultures:

- Girls were denied education.
- Women had no property rights.
- Women were excluded from politics.
- Child marriage and dowry practices existed.
- Women lacked economic independence.

Social customs and religious interpretations often strengthened gender inequality.

In India, social reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Jyotirao Phule, Savitribai Phule, and Dr. B.R. Ambedkar worked for women's education, widow remarriage, abolition of harmful practices, and equal rights.

The women's rights movement and feminist movements across the world also played an important role in demanding equality, voting rights, equal pay, reproductive rights, and protection from violence.

Today, although progress has been made, many forms of inequality still continue in society.

2.3.3 IMPORTANCE OF GENDER EQUALITY

Gender equality is essential for the development of individuals and society. A society that treats all genders equally becomes more democratic, peaceful, and progressive.

a. Promotion of Human Rights

Gender equality protects the basic human rights of all individuals. Every person deserves equal dignity, respect, and freedom regardless of gender.

b. Social Justice

Equality helps in removing discrimination and exploitation. It creates fairness and equal opportunities in society.

c. Economic Development

When women receive education and employment opportunities, they contribute significantly to economic growth and national development.

d. Reduction of Poverty

Women's economic participation improves family income, education, nutrition, and healthcare, helping reduce poverty.

e. Better Decision-Making

Equal participation of women in politics and administration leads to more balanced and inclusive decision-making.

f. Peace and Social Harmony

Gender equality reduces violence, discrimination, and social conflicts. It promotes mutual respect and cooperation.

Thus, gender equality benefits not only women but society as a whole.

2.3.4 FORMS OF GENDER INEQUALITY

Gender inequality exists in different forms in society. Some of the major forms are discussed below.

a. Educational Inequality

In many societies, girls receive fewer educational opportunities than boys. Poverty, social customs, and early marriage often prevent girls from completing education.

b. Economic Inequality

Women often face unequal wages, lack of employment opportunities, and limited access to financial resources. Many women perform unpaid domestic work without recognition.

c. Political Inequality

Women are underrepresented in politics and decision-making positions. Their participation in governance is often limited.

d. Social and Cultural Inequality

Traditional customs and stereotypes may restrict women's mobility, freedom, and participation in society.

e. Violence Against Women

Gender inequality often leads to domestic violence, sexual harassment, trafficking, dowry-related violence, and other forms of abuse.

f. Health Inequality

Women and girls may face discrimination in healthcare, nutrition, and reproductive services.

These inequalities limit human development and violate basic human rights.

2.3.5 CAUSES OF GENDER INEQUALITY

Gender inequality arises due to various social, economic, cultural, and historical factors.

a. Patriarchal Society

Patriarchy is a system where men hold dominant power and authority. Patriarchal attitudes often place women in subordinate positions.

b. Traditional Gender Roles

Society often expects men and women to perform specific roles. These expectations limit opportunities and freedom.

c. Lack of Education

Lack of awareness and education strengthens discriminatory attitudes and harmful practices.

d. Economic Dependence

Women who lack financial independence may face exploitation and unequal treatment.

e. Cultural and Religious Practices

Certain customs and traditional beliefs may promote unequal treatment of women and girls.

f. Gender Stereotypes

Fixed beliefs regarding masculinity and femininity create discrimination and restrict individual potential.

Understanding these causes is important for developing effective solutions to promote equality.

2.3.6 CONSTITUTIONAL PROVISIONS FOR GENDER EQUALITY IN INDIA

The Constitution of India guarantees equality and protection against discrimination.

2.3.6.1 Fundamental Rights

Fundamental Rights are basic rights guaranteed by the Constitution to every citizen of India. These rights ensure equality, freedom, dignity, and protection against discrimination, including discrimination based on gender.

a. Article 14

Article 14 guarantees equality before law and equal protection of laws to all persons. This Article forms the basic foundation of gender equality in India.

b. Article 15

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It also permits special provisions for women and children. This enables the government to make laws and welfare schemes for the protection and advancement of women in society.

c. Article 16

Article 16 provides equality of opportunity in matters of public employment. It ensures that women have equal chances in government jobs and cannot be discriminated against during recruitment, promotion, or service conditions.

d. Article 21

Article 21 guarantees the right to life and personal liberty, including dignity and privacy. The courts have interpreted this Article broadly to protect women’s rights to live with safety, respect, and dignity free from violence and exploitation.

2.3.6.2 Directive Principles of State Policy

The Directive Principles encourage the State to promote social justice, equal pay for equal work, maternity relief, and welfare of women. The Directive Principles of State Policy are guidelines given in the Constitution to help the government create a fair and just society. Although these principles cannot be enforced directly in courts, they play an important role in making laws and policies for the welfare of people. They encourage the State to promote social and economic justice and to remove inequalities in society.

In relation to gender justice, the Directive Principles ask the government to ensure equal pay for equal work for both men and women. They also emphasize the protection of women workers and provide for maternity relief so that women can work with dignity and security during pregnancy and childbirth. These principles further encourage the State to take steps for the welfare, health, education, and overall development of women. Through these provisions, the Constitution aims to create equal opportunities for women in all areas of life.

2.3.6.3 Fundamental Duties

Fundamental Duties are moral responsibilities that every citizen of India is expected to follow. These duties remind citizens that along with enjoying rights, they must also respect the values and ideals of the Constitution. One important duty is to renounce practices that are derogatory to the dignity of women.

This means that every citizen should avoid and oppose practices, behaviour, or traditions that insult, discriminate against, or harm women. Acts such as dowry, domestic violence, harassment, trafficking, and gender discrimination go against the dignity and respect that women deserve. Citizens are expected to promote equality, mutual respect, and harmony in society.

These constitutional provisions together form a strong foundation for gender justice in India. They guide both the government and citizens in building a society where women are treated with equality, dignity, and respect.

Citizens are expected to renounce practices derogatory to the dignity of women. These constitutional provisions form the foundation for gender justice in India.

2.3.7 LAWS RELATING TO GENDER EQUALITY IN INDIA

Over the years, India has enacted several laws to protect the rights of women and to eliminate discrimination, violence, and inequality based on gender. These laws aim to promote equal status and participation of women in social, economic, political, and personal spheres of life.

Some important laws include:

- Equal Remuneration Act, 1976
- Protection of Women from Domestic Violence Act, 2005

- Sexual Harassment of Women at Workplace Act, 2013
- Dowry Prohibition Act, 1961
- Prohibition of Child Marriage Act, 2006
- Maternity Benefit Act, 1961
- Hindu Succession (Amendment) Act, 2005

These laws aim to ensure safety, dignity, equality, and empowerment of women.

2.3.8 ROLE OF EDUCATION IN PROMOTING GENDER EQUALITY

Education plays a very important role in achieving gender equality. It creates awareness, confidence, and opportunities.

Educated women are more likely to:

- Participate in employment
- Make independent decisions
- Access healthcare
- Challenge discrimination
- Support education of children

Education also helps society in overcoming stereotypes and harmful social practices.

Schools and educational institutions should promote gender-sensitive education and equal opportunities for all students.

2.3.9 ROLE OF MEDIA IN GENDER EQUALITY

Media strongly influences public opinion and social attitudes. Television, newspapers, films, advertisements, and social media shape perceptions regarding gender roles.

Positive media representation can:

- Promote women’s empowerment
- Spread awareness about rights
- Challenge stereotypes

- Encourage equality

However, negative portrayal of women and gender stereotypes in media may strengthen discrimination and objectification.

Responsible media should promote respect, dignity, and equality for all genders.

2.3.10 WOMEN'S EMPOWERMENT AND GENDER JUSTICE

Women's empowerment means enabling women to gain confidence, independence, opportunities, and decision-making power.

Empowerment includes:

- Access to education
- Economic independence
- Political participation
- Legal awareness
- Protection from violence

Gender justice means fairness and equality in treatment, opportunities, and rights.

Women's empowerment is essential for achieving true gender equality and social progress.

2.3.11 CHALLENGES IN ACHIEVING GENDER EQUALITY

Despite legal protections and social progress, many challenges continue to exist.

Some major challenges include:

- Patriarchal attitudes
- Violence against women
- Gender stereotypes
- Unequal wages
- Lack of political representation
- Poverty and illiteracy

- Child marriage and dowry
- Workplace discrimination

Social change takes time, and deeply rooted customs often resist reform.

Therefore, continuous efforts by government, society, educational institutions, media, and individuals are necessary.

2.3.12 MEASURES FOR PROMOTING GENDER EQUALITY

Gender equality can be promoted through various measures such as:

- Providing equal educational opportunities
- Ensuring equal pay for equal work
- Increasing women's political participation
- Strict implementation of laws
- Promoting gender-sensitive education
- Spreading awareness through media
- Encouraging shared family responsibilities
- Supporting women's economic independence
- Eliminating harmful social practices

Collective social effort is necessary for building an equal and inclusive society.

2.3.13 SUMMARY

Gender equality means equal rights, opportunities, dignity, and treatment for all genders. It is an essential principle of human rights, democracy, and social justice.

Historically, women faced discrimination in education, employment, politics, and family life due to patriarchal social systems and traditional gender roles. Although modern society has made progress, gender inequality still exists in various forms such as unequal wages, violence, stereotypes, and limited opportunities.

The Constitution of India guarantees equality and prohibits discrimination on grounds of sex. Several laws and policies have been introduced to protect women and promote empowerment.

Education, media, legal reforms, women's empowerment, and social awareness are important tools for achieving gender equality. A society based on equality and dignity creates better opportunities, peace, and development for all individuals.

2.4 GLOSSARY

Gender Equality: Equal rights, opportunities, and treatment for all genders.

Gender Inequality: Unequal treatment or opportunities based on gender.

Patriarchy: Social system where men hold dominant power and authority.

Women's Empowerment: Process of increasing women's confidence, independence, and decision-making power.

Gender Justice: Fairness and equality in rights and opportunities.

Discrimination: Unfair treatment based on characteristics such as gender.

Equal Pay: Equal wages for equal work.

Stereotype: Fixed and oversimplified belief about a group.

Human Rights: Basic rights and freedoms available to every human being.

Social Justice: Fair and equal treatment in society.

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2. Universal Declaration of Human Rights, 1948.
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2.7 SHORT ANSWER QUESTIONS

1. Define gender equality.

2. What is meant by patriarchy?

3. Explain gender discrimination.

4. What is women's empowerment?

5. Mention any two constitutional provisions relating to gender equality.

2.8 TERMINAL QUESTIONS

1. Explain the meaning and importance of gender equality.

2. Discuss the causes and forms of gender inequality.

3. Analyse constitutional provisions relating to gender equality in India.

4. Explain the role of education and media in promoting gender equality.

5. Discuss the challenges and measures for achieving gender equality in society.

2.9 TRUE AND FALSE

1. Gender equality means equal dignity and opportunities for all genders. — True

2. Patriarchy refers to a system where women hold dominant power. — False

3. Article 15 of the Constitution prohibits discrimination on grounds of sex. — True

4. Education plays an important role in promoting gender equality. — True

5. Gender stereotypes help in achieving equality in society. — False

UNIT-3

FOUNDATION OF HUMAN RIGHTS

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3.7 SHORT ANSWER QUESTIONS

3.8 TERMINAL QUESTIONS

3.9 TRUE AND FALSE

3.1 INTRODUCTION

Human rights are the basic rights and freedoms that belong to every human being simply because they are human. These rights are universal, meaning they apply equally to all people regardless of nationality, religion, caste, race, gender, language, or social status. Human rights protect the dignity, freedom, equality, and well-being of individuals and ensure that every person can live with respect and security.

The idea of human rights developed over a long period of history. Human beings have always struggled against injustice, oppression, discrimination, slavery, exploitation, and misuse of power. Over time, societies recognized that every individual possesses certain natural and inherent rights which cannot be taken away arbitrarily. These rights are considered essential for the development of human personality and maintenance of peace and justice in society.

The modern concept of human rights became more important after the Second World War, when millions of people suffered due to war crimes, violence, genocide, and discrimination. To prevent such atrocities in the future, the international community adopted the Universal Declaration of Human Rights (UDHR) in 1948 under the leadership of the United Nations. Since then, human rights have become an important part of international law, constitutional law, and democratic governance.

Human rights include civil, political, economic, social, and cultural rights. These rights cover areas such as life, liberty, equality, education, health, freedom of speech, employment, religion, and participation in public affairs.

The Constitution of India also guarantees several fundamental rights that reflect the principles of human rights. India, being a democratic country, recognizes the importance of protecting human dignity and equality.

This unit explains the meaning and concept of human rights, their historical development, philosophical foundations, characteristics, classifications, and importance in modern society. It also discusses international human rights instruments and constitutional protection of human rights in India.

3.2 OBJECTIVES

After studying this unit, the learners will be able to:

1. Understand the meaning and concept of human rights.
2. Explain the historical development of human rights.
3. Understand the philosophical foundations of human rights.
4. Identify the characteristics and features of human rights.
5. Classify different categories of human rights.
6. Understand the importance of the Universal Declaration of Human Rights.
7. Analyse constitutional provisions relating to human rights in India.
8. Appreciate the role of human rights in promoting justice, equality, and dignity.

3.3.1 MEANING OF HUMAN RIGHTS

Human rights are the basic rights and freedoms that every person possesses by virtue of being human. These rights are essential for the development of human personality, dignity, and freedom.

Human rights protect individuals against injustice, oppression, discrimination, and abuse of power. They ensure that all people can live with equality, security, and respect.

Human rights are available to every individual without discrimination based on:

- Race
- Religion
- Gender
- Nationality
- Language
- Caste
- Economic status

- Social background

Human rights include both freedoms and entitlements. They provide individuals with freedom from arbitrary interference and also ensure access to basic needs such as education, healthcare, employment, and social security.

The United Nations defines human rights as rights inherent to all human beings regardless of nationality, sex, ethnicity, religion, or any other status.

Thus, human rights are universal moral and legal claims necessary for human dignity and peaceful coexistence.

3.3.2 DEFINITIONS OF HUMAN RIGHTS

Different scholars and organizations have defined human rights in various ways.

According to the United Nations, human rights are rights inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion, or other status.

Harold Laski stated that rights are those conditions of social life without which no person can seek to be themselves at their best.

The Protection of Human Rights Act, 1993 of India defines human rights as rights relating to life, liberty, equality, and dignity guaranteed by the Constitution or embodied in international covenants and enforceable by courts in India.

These definitions show that human rights are closely connected with human dignity, freedom, equality, and justice.

3.3.3 HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

The idea of human rights developed gradually over centuries.

3.3.3.1 Ancient Period

In ancient civilizations, concepts of justice, morality, and human dignity existed in different forms. Ancient Indian philosophy emphasized values such as equality, compassion, non-violence, and respect for humanity.

Religious teachings in Hinduism, Buddhism, Christianity, Islam, and other faiths promoted moral duties and respect for human beings.

However, ancient societies also contained inequalities based on slavery, caste, class, and gender.

3.3.3.2 Magna Carta (1215)

The Magna Carta, signed in England in 1215, is considered one of the earliest documents limiting the powers of rulers. It recognized certain rights of individuals and established the principle that even the king is subject to law.

This document laid the foundation for constitutionalism and rule of law.

3.3.3.3 Petition of Right (1628)

The Petition of Right in England opposed arbitrary taxation and unlawful imprisonment by the king. It emphasized legal protection and individual liberty.

3.3.3.4 English Bill of Rights (1689)

The English Bill of Rights guaranteed certain civil and political rights and strengthened parliamentary democracy.

It recognized principles such as:

- Freedom from cruel punishment
- Free elections
- Freedom of speech in Parliament

3.3.3.5 American Declaration of Independence (1776)

The American Declaration stated that all men are created equal and possess rights such as life, liberty, and pursuit of happiness.

It emphasized natural rights and individual freedom.

3.3.3.6 French Declaration of the Rights of Man and Citizen (1789)

The French Revolution promoted liberty, equality, and fraternity. The Declaration recognized rights such as equality before law, freedom of speech, and protection against oppression.

3.3.3.7 Human Rights after the Second World War

The Second World War caused massive destruction, genocide, and human suffering. Millions of people lost their lives due to war crimes and discrimination.

After the war, the United Nations was established in 1945 to promote international peace and protect human rights.

In 1948, the United Nations adopted the Universal Declaration of Human Rights (UDHR), which became the foundation of modern human rights law.

3.3.4 PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS

Human rights are based on different philosophical theories and principles.

3.3.4.1 Natural Rights Theory

According to the Natural Rights Theory, human beings possess certain basic rights simply because they are human beings. These rights are natural, universal, and inherent in every individual. They do not depend upon the approval of the State or any government authority. Natural rights exist even before the formation of society and law.

Thinkers such as John Locke argued that every person naturally possesses rights to life, liberty, and property. These rights are essential for human freedom and dignity. The role of the State is not to create these rights but to protect them. If a government violates natural rights, people have the moral right to resist oppression.

Natural Rights Theory greatly influenced modern human rights ideas and democratic constitutions across the world.

3.3.4.2 Legal Theory

Legal Theory states that rights exist because they are recognized and protected by law. According to this theory, rights become meaningful only when they are legally guaranteed and enforced by the State. Governments create laws to maintain social order and protect individuals from injustice and exploitation.

Under this theory, constitutions, statutes, and legal institutions play an important role in safeguarding human rights. Courts and legal systems ensure that individuals can exercise their rights and seek remedies in cases of violation.

Legal theory emphasizes that without legal recognition and enforcement, rights may remain only moral claims without practical protection.

3.3.4.3 Moral Theory

Moral Theory emphasizes that human rights are based on ethical principles and moral values such as justice, fairness, equality, and human dignity. According to this theory, every human being deserves respect and humane treatment regardless of nationality, religion, caste, gender, or social status.

Moral rights are not necessarily dependent on legal recognition. Even if a law does not protect certain rights, they may still be morally valid because they are based on principles of humanity and conscience.

This theory highlights the importance of compassion, respect, and ethical responsibility in protecting the dignity and welfare of all individuals.

3.3.4.4 Social Welfare Theory

Social Welfare Theory views rights as essential for promoting social welfare and collective well-being. According to this theory, rights should contribute to the development of society and help individuals live with dignity, security, and equal opportunities.

The theory emphasizes that society and the State should work together to ensure education, healthcare, employment, and social security for all people. Rights are important not only for individual freedom but also for social harmony and public welfare.

This approach supports welfare policies and social justice measures that aim to reduce poverty, inequality, and discrimination within society.

3.3.4.5 Marxist Theory

Marxist Theory criticizes social and economic inequality and argues that true human rights cannot exist without economic justice and social equality. Marxist thinkers believed that capitalist societies often create inequality by concentrating wealth and power in the hands of a few people.

According to this theory, political rights alone are insufficient if people do not have access to food, shelter, education, healthcare, and employment. Economic exploitation and class divisions prevent individuals from fully enjoying their rights and freedoms.

Marxist theory therefore emphasizes collective welfare, economic equality, and social justice as necessary conditions for the realization of human rights.

3.3.5 CHARACTERISTICS OF HUMAN RIGHTS

Human rights possess certain important characteristics that make them essential for the protection of human dignity, freedom, equality, and justice. These characteristics explain the nature and importance of human rights in society.

3.3.5.1 Universal

Human rights are universal in nature. They belong to all human beings everywhere in the world without any discrimination based on nationality, religion, caste, race, gender, language, or

social status. Every individual is entitled to enjoy human rights simply because they are human beings.

The principle of universality ensures that human rights apply equally to people of all countries and cultures.

3.3.5.2 Inalienable

Human rights are inalienable, which means they cannot be taken away or surrendered arbitrarily. Individuals cannot be deprived of their basic rights except in accordance with law and under exceptional circumstances.

For example, personal liberty may be restricted according to legal procedures in cases of criminal offences, but human dignity and basic protections still remain important.

This characteristic protects individuals from arbitrary abuse of power by the State or other authorities.

3.3.5.3 Indivisible

Human rights are indivisible because all rights are equally important and interconnected. Civil, political, economic, social, and cultural rights cannot be separated from one another.

For example, a person cannot fully enjoy political freedom without education, healthcare, or economic security. Similarly, economic development alone is not sufficient without freedom and equality.

Therefore, all categories of rights must be protected equally for the complete development of human personality.

3.3.5.4 Interdependent

Human rights are interdependent because the enjoyment of one right often depends upon the enjoyment of other rights. Different rights support and strengthen each other.

For example, the right to education helps individuals obtain employment, improve living conditions, and participate effectively in society. Likewise, freedom of expression supports democratic participation and social awareness.

Violation of one right may negatively affect the enjoyment of several other rights.

3.3.5.5 Equality and Non-Discrimination

Human rights are based on the principles of equality and non-discrimination. All individuals are equal before the law and are entitled to equal protection and equal opportunities.

No person should face discrimination on grounds such as race, religion, caste, sex, language, disability, or social origin. Equality ensures respect for human dignity and promotes social justice.

This principle is recognized in various international human rights instruments and constitutional provisions around the world.

3.3.5.6 Inherent

Human rights are inherent because they belong to every person by birth. They are not granted by the government, society, or any institution. Human beings possess these rights naturally as part of their existence and dignity.

The State does not create human rights; rather, it has the responsibility to recognize, protect, and promote them.

This characteristic emphasizes that human rights are fundamental to human life and dignity.

3.3.6 CLASSIFICATION OF HUMAN RIGHTS

Human rights are generally classified into different categories based on the nature of protection they provide. These classifications help in understanding the various dimensions of human rights and their role in human development.

3.3.6.1 Civil Rights

Civil rights protect the personal freedom, liberty, and dignity of individuals. These rights safeguard people from arbitrary interference by the State and ensure individual autonomy.

Examples of civil rights include:

- Right to life
- Right to privacy
- Freedom of speech and expression
- Freedom of religion
- Freedom from torture and arbitrary arrest

Civil rights are essential for protecting personal liberty and democratic values in society.

3.3.6.2 Political Rights

Political rights enable individuals to participate in the political and democratic processes of the country. These rights ensure public participation in governance and decision-making.

Examples of political rights include:

- Right to vote
- Right to contest elections
- Freedom of association
- Freedom to form political parties
- Right to participate in public affairs

Political rights strengthen democracy and promote accountable government.

3.3.6.3 Economic Rights

Economic rights ensure economic security, fair working conditions, and protection against exploitation. These rights help individuals maintain a decent standard of living.

Examples of economic rights include:

- Right to work
- Right to equal wages
- Right to fair working conditions
- Right to property
- Right to social security

Economic rights are important for reducing poverty, unemployment, and economic inequality.

3.3.6.4 Social Rights

Social rights protect the welfare, well-being, and quality of life of individuals. These rights aim to ensure access to basic necessities and social services.

Examples of social rights include:

- Right to health
- Right to education

- Right to housing
- Right to food
- Right to clean environment

Social rights contribute to human development and social justice.

3.3.6.5 Cultural Rights

Cultural rights protect the cultural identity, language, traditions, and heritage of individuals and communities. These rights allow people to preserve and develop their culture freely.

Examples of cultural rights include:

- Right to participate in cultural life
- Protection of minority culture
- Freedom to use one's language
- Right to preserve cultural heritage

Cultural rights promote diversity, tolerance, and respect for different communities within society.

3.3.7 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), 1948

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on 10 December 1948.

It is considered the foundation of modern international human rights law.

The UDHR contains 30 Articles covering:

- Equality and dignity
- Right to life and liberty
- Freedom from slavery and torture
- Freedom of speech and religion
- Right to education and work
- Right to social security

The UDHR is not legally binding like a treaty, but it has great moral and legal importance. Many constitutions and international agreements are based on its principles.

Human Rights Day is celebrated every year on 10 December to mark the adoption of the UDHR.

3.3.8 HUMAN RIGHTS AND THE UNITED NATIONS

The United Nations plays an important role in promoting and protecting human rights worldwide.

The UN has established various treaties, conventions, and institutions related to human rights.

Some important international instruments include:

- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Convention on the Rights of the Child (CRC), 1989

The UN Human Rights Council monitors human rights situations globally and encourages states to fulfil their obligations.

3.3.9 HUMAN RIGHTS IN INDIA

India is committed to protecting human rights through constitutional provisions, laws, and institutions.

3.3.9.1 Fundamental Rights

Part III of the Constitution guarantees Fundamental Rights such as:

- Right to Equality
- Right to Freedom
- Right against Exploitation
- Freedom of Religion
- Cultural and Educational Rights

- Right to Constitutional Remedies

3.3.9.2 Directive Principles of State Policy

The Directive Principles of State Policy are contained in Part IV of the Constitution of India. These principles guide the government in making laws and policies for the welfare of the people. Although they are not enforceable in courts, they are fundamental in the governance of the country.

The Directive Principles aim to establish social and economic justice and create a welfare state. They encourage the State to reduce inequality, provide equal opportunities, protect workers, improve public health, promote education, and ensure a decent standard of living for all citizens.

These principles reflect the vision of a just and humane society where every individual can live with dignity, equality, and security.

3.3.9.3 Fundamental Duties

Fundamental Duties are mentioned in Article 51A of the Constitution of India. These duties remind citizens that along with enjoying rights, they also have responsibilities toward society and the nation.

Citizens are expected to respect the Constitution, the National Flag, and the National Anthem. They also have a duty to promote harmony and brotherhood among all people regardless of religion, language, caste, or region.

Fundamental Duties encourage citizens to protect public property, preserve the environment, develop scientific temper, and uphold the values of equality, unity, and national integrity. These duties help strengthen democracy and promote responsible citizenship in society.

3.3.9.4 National Human Rights Commission (NHRC)

The National Human Rights Commission was established under the Protection of Human Rights Act, 1993.

The NHRC investigates human rights violations and promotes awareness regarding human rights protection.

3.3.10 IMPORTANCE OF HUMAN RIGHTS

Human rights are essential for peaceful and civilized society.

They help in:

- Protecting human dignity
- Promoting equality and justice
- Preventing exploitation and discrimination
- Ensuring freedom and security
- Supporting democracy and rule of law
- Promoting social harmony and development

Without human rights, individuals may suffer oppression, violence, and injustice.

Human rights encourage respect, tolerance, and coexistence among people and nations.

3.3.11 CHALLENGES TO HUMAN RIGHTS

Despite legal protections, human rights violations continue worldwide.

Some major challenges include:

- Poverty
- Discrimination
- Terrorism
- Human trafficking
- Violence against women
- Child labour
- Religious intolerance
- Environmental destruction
- Political repression

Protection of human rights requires cooperation between governments, institutions, civil society, and citizens.

3.3.12 SUMMARY

Human rights are basic rights and freedoms available to every human being. They protect dignity, equality, liberty, and justice and are essential for peaceful and democratic society.

The idea of human rights developed gradually through historical struggles against oppression and injustice. Important milestones such as Magna Carta, the French Revolution, and the Universal Declaration of Human Rights contributed to modern human rights principles.

Human rights are universal, inherent, indivisible, and interdependent. They include civil, political, economic, social, and cultural rights.

The United Nations plays an important role in promoting human rights internationally. In India, the Constitution guarantees Fundamental Rights and establishes mechanisms for protecting human dignity and equality.

Human rights are essential for justice, democracy, development, and social harmony. However, challenges such as discrimination, poverty, violence, and exploitation continue to threaten human rights globally.

3.4 GLOSSARY

Human Rights: Basic rights and freedoms belonging to every human being.

Dignity: Respect and worth of every individual.

Equality: Equal treatment and opportunities for all people.

Liberty: Freedom of thought, action, and expression.

UDHR: Universal Declaration of Human Rights adopted in 1948.

Civil Rights: Rights protecting personal freedom and liberty.

Political Rights: Rights enabling participation in governance.

Social Rights: Rights relating to welfare, education, and healthcare.

NHRC: National Human Rights Commission.

Rule of Law: Principle that everyone is subject to law equally.

Discrimination: Unfair treatment based on characteristics such as race, gender, or religion.

Justice: Fair and lawful treatment of individuals.

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3.7 SHORT ANSWER QUESTIONS

1. Define human rights.
2. What is meant by universal human rights?
3. Explain the importance of the UDHR.
4. What are civil rights?
5. Mention any two characteristics of human rights.

3.8 TERMINAL QUESTIONS

1. Discuss the meaning and characteristics of human rights.
2. Explain the historical development of human rights.
3. Analyze the philosophical foundations of human rights.
4. Discuss the role of the United Nations in promoting human rights.
5. Explain constitutional provisions relating to human rights in India.

3.9 TRUE AND FALSE

1. Human rights belong only to citizens of democratic countries. — False
2. Human rights are universal and inherent. — True
3. The Universal Declaration of Human Rights was adopted in 1948. — True
4. Human rights include only political rights. — False
5. Article 14 of the Indian Constitution guarantees equality before law

UNIT- 4

The Constitution of India and the Status of Women

4.1 INTRODUCTION

4.2 OBJECTIVES

4.3 Historical Background: Women and the Making of the Constitution

4.4 Constitutional Provisions on the Status of Women

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4.6 Political and Local Governance: The Amendments

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4.8.1 Political Representation

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4.14 SHORT ANSWER QUESTIONS

4.15 TERMINAL QUESTIONS

4.16 TRUE AND FALSE

4.1 INTRODUCTION

The Constitution of India, adopted on 26 November 1949 and enforced from 26 January 1950, was one of the most progressive founding documents of its time on the question of gender. At a moment when many advanced democracies had only recently extended voting rights to women, India's Constitution guaranteed universal adult suffrage to women from its very inception without the decades-long suffragist struggles seen elsewhere. Yet the story of women and the Indian Constitution is not simply one of guarantee and closure; it is an ongoing, unfinished negotiation between formal equality written into the text and substantive equality experienced in daily life.

India's desire to create a democratic welfare state based on equality and human dignity is reflected in the constitution n's commitment to women. Unlike many past legal systems that merely forbade discrimination, the Indian Constitution takes a step further by enabling the State to enact affirmative measures for women. This illustrates the idea of substantive equality, which holds that in order to overcome past obstacles, equal treatment occasionally necessitates distinct treatment. Women now make up almost half of India's population and play a major role in the social, political, economic, scientific, and cultural advancement of the nation. In addition to leading global enterprises, women also serve as judges in constitutional courts, command the armed forces, oversee scientific institutes, and actively engage in municipal, state, and federal governance. However, gender-based discrimination still shows up as unequal access to opportunities, violence, and salary discrepancies.

Therefore, by protecting rights, encouraging affirmative action, and directing legislative and judicial actions, the constitutional framework continues to be the principal tool for attaining gender equity.

This unit examines that negotiation in three parts: the constitutional architecture built for women's equality, the judicial and legislative scaffolding raised upon it, and the contemporary data that reveals how far India has travelled and how far it still has to go.

4.2 LEARNING OBJECTIVES

By the end of this unit, learners should be able to:

1. Trace the historical journey of women's rights from the freedom movement to the framing of the Constitution.

2. Identify and explain the constitutional provisions Fundamental Rights, Directive Principles, Fundamental Duties, and constitutional amendments that address the status of women.

3. Analyse landmark judicial pronouncements that have shaped gender jurisprudence in India.

4. Evaluate the legislative framework built on the constitutional foundation.

5. Assess the contemporary status of women in India using current statistical data across political, economic, judicial, and social indicators.

4.3 Historical Background: Women and the Making of the Constitution

Women's engagement with constitutional questions did not begin in the Constituent Assembly. The nationalist movement itself was a training ground for women's political voice from Sarojini Naidu's presidency of the Indian National Congress to the mass participation of women in the Civil Disobedience Movement, the Quit India Movement, and revolutionary organisations. Organisations such as the All India Women's Conference (AIWC), founded in 1927, actively petitioned for women's legal and political rights well before independence, demanding uniform civil rights, an end to child marriage, and equal franchise.

Of the 389 original members of the Constituent Assembly, 15 were women — a small but formidable group that included Sarojini Naidu, Hansa Mehta, Rajkumari Amrit Kaur, Vijaya Lakshmi Pandit, Durgabai Deshmukh, Renuka Ray, Begum Aizaz Rasul, Ammu Swaminadhan, Dakshayani Velayudhan, Kamala Chaudhry, Purnima Banerji, Annie Mascarene, Sucheta Kripalani, Malati Choudhury, and Leela Roy. These women were instrumental in ensuring that the Constitution did not merely tolerate women's equality but actively mandated it. Hansa Mehta, notably, is credited with pushing the Universal Declaration of Human Rights (being drafted around the same time) to change its language from "All men

are born free and equal" to "All human beings are born free and equal" — a sensibility she carried into India's own constitutional debates.

The result was a Constitution that treated gender equality not as an afterthought but as a foundational commitment, embedded across the Preamble, Fundamental Rights, Directive Principles, and Fundamental Duties.

4.4 CONSTITUTIONAL PROVISIONS ON THE STATUS OF WOMEN

The Preamble

The Preamble resolves to secure to all citizens **"EQUALITY of status and of opportunity"** and dignity of the individual a genderless formulation that nonetheless encompasses women as equal bearers of constitutional promise. Courts have repeatedly drawn on this preamble commitment to justify expansive, purposive readings of the equality and dignity provisions that follow.

Fundamental Rights (Part III)

Article 14 - Equality before Law: Guarantees to every person equality before the law and equal protection of the laws. This is the bedrock non-discrimination guarantee, and Indian courts have used it to strike down arbitrary, unreasonable gender classifications while permitting "reasonable classification" that serves a legitimate purpose (such as protective legislation for women).

Article 15 - Prohibition of Discrimination:

- Article 15(1) prohibits the State from discriminating against any citizen on grounds "only" of religion, race, caste, sex, or place of birth.

- Article 15(3) is the crucial enabling clause: it permits the State to make **"any special provision for women and children."** This is the constitutional basis for affirmative action and protective legislation specifically for women — from reservation in local bodies to maternity benefits to women-only compartments and colleges.

Article 16 - Equality of Opportunity in Public Employment: Guarantees equal opportunity for all citizens in matters of public employment, prohibiting discrimination on grounds including sex, while Article 16(4) enables reservations for backward classes.

Article 17 - Abolition of Untouchability: While primarily a caste provision, it intersects significantly with the experience of Dalit women, who face compounded discrimination on the axes of both caste and gender.

Article 19 - Freedom of speech, movement, profession, etc.: Extends to women the same fundamental freedoms of expression, movement, association, and the right to practise any profession freedoms often constrained in practice by social custom, mobility restrictions, and safety concerns.

Article 21 - Right to Life and Personal Liberty: The single most expansively interpreted provision in Indian constitutional law. Courts have read into Article 21 the right to live with dignity, the right to privacy (*K.S. Puttaswamy*, 2017), reproductive autonomy, protection from sexual harassment at the workplace, and freedom from domestic violence transforming a bare procedural guarantee into a substantive charter of bodily and personal autonomy for women.

Article 23 - Prohibition of Traffic in Human Beings and Forced Labour: Directly addresses the trafficking of women and girls, forced labour, and bonded servitude, forming the constitutional basis for anti-trafficking legislation.

4 .5 DIRECTIVE PRINCIPLES OF STATE POLICY (PART IV) AND FUNDAMENTAL DUTIES (PART IV-A)

Though not judicially enforceable, the DPSPs articulate the socio-economic vision the state must strive toward, and courts frequently read them harmoniously with Fundamental Rights:

- **Article 39(a):** Citizens, men and women equally, have the right to an adequate means of livelihood.
- **Article 39(d):** Equal pay for equal work for both men and women.
- **Article 39(e):** Protects the health and strength of workers, and ensures citizens are not forced by economic necessity into unsuited vocations.
- **Article 42:** Directs the State to make provision for just and humane conditions of work and **maternity relief** — the constitutional root of the Maternity Benefit Act.
- **Article 44:** Directs the State to endeavour to secure a **Uniform Civil Code** for citizens a provision with direct bearing on women's rights within personal laws governing marriage, divorce, maintenance, and inheritance, and one of the most contested unimplemented directives in the Constitution.

- **Article 45 & 46:** Provisions for early childhood care/education and the promotion of educational interests of weaker sections, which bear indirectly on girls' access to education.

4.5.1 Fundamental Duties (Part IV-A)

Article 51A(e) casts a duty on every citizen "to renounce practices derogatory to the dignity of women" a rare instance of the Constitution directly naming women in the language of citizen obligation, reflecting a recognition that legal equality alone cannot dismantle discriminatory social practice.

4.6 POLITICAL AND LOCAL GOVERNANCE: THE AMENDMENTS

73rd and 74th Constitutional Amendments (1992): Perhaps the single most transformative constitutional intervention for women's political life, these amendments mandated **not less than one-third reservation** for women in Panchayati Raj Institutions (rural local bodies) and Urban Local Bodies (municipalities), including reservation of chairperson positions. Several states have since gone further, reserving 50% of seats for women. This has resulted in over 1.4 million elected women representatives at the grassroots level today the largest cohort of elected women officials anywhere in the world.

The Constitution (106th Amendment) Act, 2023 - "Nari Shakti Vandan Adhiniyam": After nearly three decades of a stalled Women's Reservation Bill (first introduced in 1996 and repeatedly lapsing), Parliament finally passed this landmark amendment reserving **one-third of seats** in the Lok Sabha, all State Legislative Assemblies, and the Delhi Legislative Assembly for women, including within SC/ST quotas. Its implementation, however, is tied to the delimitation exercise following the next Census, meaning the reservation will not take practical effect until after fresh delimitation a significant gap between legal enactment and lived representation that remains a live subject of debate.

4.7 JUDICIAL INTERPRETATION: BUILDING GENDER JURISPRUDENCE

Constitutional text alone does not produce social change; it is judicial interpretation and legislative follow-through that have translated broad guarantees into enforceable rights. Key landmarks include:

Air India v. Nergesh Meerza (1981): Struck down airline service rules that terminated air hostesses' employment on first pregnancy, holding such conditions arbitrary and violative of Article 14.

Mohd. Ahmed Khan v. Shah Bano Begum (1985): The Supreme Court held a divorced Muslim woman entitled to maintenance under the secular provision of the Criminal Procedure Code, triggering intense political controversy and the subsequent Muslim Women (Protection of Rights on Divorce) Act, 1986 a case that remains a touchstone in debates over personal law, secularism, and gender justice.

Vishaka v. State of Rajasthan (1997): In the absence of specific legislation, the Court invoked Articles 14, 19, and 21 alongside international conventions (CEDAW) to lay down the "Vishaka Guidelines" on prevention of sexual harassment at the workplace guidelines that held the field until Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Anuj Garg v. Hotel Association of India (2008): Struck down a law barring women from working in establishments serving liquor, reasoning that "protective discrimination" cannot be a pretext for restricting women's autonomy and choice.

Shayara Bano v. Union of India (2017): The Supreme Court declared the practice of instant "Triple Talaq" (talaq-e-biddat) unconstitutional, holding it violated Article 14, leading to the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalised the practice.

K.S. Puttaswamy v. Union of India (2017): Recognised privacy including decisional and bodily autonomy as intrinsic to Article 21, laying doctrinal groundwork later drawn upon in reproductive rights and personal liberty cases involving women.

Indian Young Lawyers Association V. State of Kerala (Sabarimala case, 2018): A majority of the Supreme Court held that the exclusion of women aged 10–50 from the Sabarimala temple violated their rights to equality and freedom of religion, though the judgment remains contested and under review by a larger bench illustrating the ongoing tension between gender equality and religious/cultural autonomy claims.

Joseph Shine v. Union of India (2018): Struck down Section 497 of the IPC (adultery), which treated women as the property of their husbands, as unconstitutional and manifestly patriarchal.

Independent Thought v. Union of India (2017): Read down an exception in the rape law to hold that sexual intercourse with a wife between 15–18 years amounts to rape, strengthening protections against child marriage-linked sexual violence.

Collectively, these cases show the judiciary moving from formal, text-bound equality toward a substantive equality doctrine one attentive to structural disadvantage, not merely facial neutrality of law.

4.7 THE LEGISLATIVE FRAMEWORK BUILT ON CONSTITUTIONAL FOUNDATIONS

Constitutional provisions have been operationalised through a substantial body of statute law, including:

- **The Hindu Succession Act, 1956 (amended 2005):** Amendment gave daughters equal coparcenary rights in ancestral property, on par with sons.
- **The Dowry Prohibition Act, 1961** and Sections addressing dowry death and cruelty in criminal law.
- **The Maternity Benefit Act, 1961 (amended 2017):** Extended paid maternity leaves to 26 weeks for women in the organised sector.
- **The Protection of Women from Domestic Violence Act, 2005:** A civil law remedy providing protection orders, residence rights, and monetary relief to women facing domestic abuse.
- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("PoSH Act"):** Mandates Internal Complaints Committees in workplaces.
- **Criminal Law (Amendment) Act, 2013:** Enacted after the 2012 Delhi gang-rape case, widened the definition of sexual offences, introduced stringent punishment, and created new offences such as acid attacks, stalking, and voyeurism, following recommendations of the Justice J.S. Verma Committee.
- **The Muslim Women (Protection of Rights on Marriage) Act, 2019:** Criminalised instant triple talaq.
- **The Constitution (106th Amendment) Act, 2023:** Discussed above.

4.8 CONTEMPORARY STATUS OF WOMEN IN INDIA

Constitutional and legal guarantees must be read against present-day social indicators. The following data draws on the most recent official releases, including the Ministry of Statistics and Programme Implementation's *Women and Men in India 2025* report, the Periodic Labour Force Survey (PLFS), NFHS-5, the India Justice Report 2025, and Election Commission/ADR data on the 2024 general election.

4.8.1 Political Representation

Despite the 73rd/74th Amendments' success at the grassroots where reservation has produced **over 1.4 million elected women representatives**, roughly **44-46% of all Panchayati Raj seats** representation thins dramatically at higher levels of government.

- In the **18th Lok Sabha (2024)**, only **74 of 543 MPs (about 13.6%) are women** a decline from 14.4% in the 17th Lok Sabha (2019), despite this being the first general election after the passage of the Women's Reservation Act.

- Of **8,360 candidates** who contested the 2024 Lok Sabha elections, only around **800 (9.6%) were women**; **152 of 543 constituencies (28%)** had no woman candidate at all.

- The **Rajya Sabha** currently has roughly **13–14% women members**.

- On average, women hold only about **9% of seats in State Legislative Assemblies**.

- Globally, women constitute about **27% of parliamentarians** on average; India ranks well below this around **143rd–144th among roughly 185–190 countries** ranked by the Inter-Parliamentary Union, behind neighbours and peers such as Bangladesh, Nepal, and South Africa (46%) and the UK (35%).

- The **Nari Shakti Vandan Adhiniyam (106th Amendment, 2023)** promises one-third reservation in the Lok Sabha and state assemblies, but implementation awaits the next delimitation exercise, meaning actual increased representation will not be seen for several more election cycles.

4.8.2 Workforce and Economic Participation

Women's Female Labour Force Participation Rate (FLFPR) has shown a notable statistical rise in recent years, though the nature of that rise is debated:

- As per **PLFS 2023–24**, the FLFPR climbed to **41.7%**, up sharply from a low of **23.3% in 2017–18**. More recent monthly PLFS bulletins (using a revised methodology from 2025) show the overall female LFPR at around **33–35%**, with rural female LFPR (around 37–40%) substantially higher than urban (around 23–25%).

- Much of this increase has been **rural and agriculture-led** rather than a diversification into industry or services: the share of rural working women in agriculture actually **rose from about 71% in 2018–19 to nearly 77% in 2023–24**, prompting economists to

describe the rise as partly "distress-driven"- a response to rural income pressure rather than expanding formal opportunity.

- **Over 90% of employed women** remain in the informal sector, with little access to social security, regulated wages, or maternity protections.

- The **gender gap in workforce participation remains vast**: male LFPR stands close to **79%**, more than double the female rate.

- On a positive note, women's representation in **managerial roles grew by over 102% between 2017 and 2025**, nearly 1.4 times the growth rate for men (about 74%), signalling improving outcomes at the upper end of the formal, educated workforce even as mass participation remains low.

- Women's **unpaid care and domestic work** is estimated to contribute roughly **3.1% of GDP** in imputed value labour that remains largely invisible in national income accounting.

- India's Female Gross Enrolment Ratio in higher education has crossed **28–30%**, and gender parity in school enrolment (primary through higher secondary) has effectively been achieved yet this educational progress has not fully translated into workforce participation, a pattern often called the "leaky pipeline" or "paradox of education-employment disconnect."

4.8.3 Representation in the Judiciary

The judiciary the very institution entrusted with interpreting and enforcing constitutional equality remains among the least gender-representative branches of the state:

- Since the Supreme Court's inception in 1950, only about **11 women judges out of roughly 270–290 total appointees** have ever served on the apex bench around **4%**.

- As of 2025, the Supreme Court, with a sanctioned strength of 34 judges, has had as few as **one sitting woman judge** at various points in the year Justice B.V. Nagarathna, who is in line to become India's **first woman Chief Justice of India in 2027**, for a tenure of only about 36 days.

- India has **never had a woman Chief Justice of India** in its 75-year history.

- Across all **High Courts**, only around **13–14% of judges are women** (roughly 105–106 out of 754–779 judges), and several High Courts (including Uttarakhand, Tripura, and Meghalaya at various points) have had **zero women judges**.

- Only about **12 of over 240 High Court Chief Justices** in India's history have been women under 5%.

- The picture improves markedly at the subordinate/district court level, where women constitute around **36–37% of judicial officers**, and in some states (Goa, Meghalaya, Telangana, Sikkim) **over 50–70%** suggesting the "leaky pipeline" problem is particularly acute at the point of elevation to higher judiciary, often attributed to the opacity of the collegium system of appointments.

4.9 DEMOGRAPHIC AND HEALTH INDICATORS

- India's overall **sex ratio**, per NFHS-5 (2019–21), stands at **1,020 females per 1,000 males** for the first time exceeding parity in a major national survey, and above the global average of about 984. However, this reflects improved female survival across all ages rather than the elimination of bias at birth.

- The **sex ratio at birth** remains skewed at roughly **913–933 girls per 1,000 boys** (SRS 2021–23), below the natural biological range of 950–970, indicating continued prenatal sex selection despite the **PCPNDT Act, 1994**.

- States such as **Haryana (roughly 830–877)** and **Punjab (roughly 846)** continue to report the most skewed sex ratios, while **Kerala** (over 1,080) and several north-eastern states report the most balanced.

- **Maternal Mortality Ratio (MMR)** has declined sharply, from **254 per 100,000 live births (2004–06) to 88 (2021–23)** a significant public health achievement, though still above targets set under the Sustainable Development Goals.

- The **mean age at marriage for women** has risen to about **24.3 years (2023)**, reflecting longer educational and professional trajectories, though child marriage has not been eliminated.

4.9.1 Literacy and Education

- India's overall female literacy rate stands at roughly **70.3%**, against a male literacy rate of **84.7%** a persistent **gender gap of about 14.4 percentage points** (Women and Men in India 2025 report), though this is a substantial improvement from the 2001 female literacy rate of about 54%.

- India has achieved **gender parity in school enrolment** at primary, secondary, and higher secondary levels a genuine structural success, driven partly by schemes such as *Beti Bachao Beti Padhao* and the *Right to Education Act*.

- Nonetheless, nearly **40% of girls aged 15–18** are estimated to be out of school in various assessments, with dropout linked to early marriage, safety concerns, menstrual hygiene infrastructure gaps, and household economic pressure.

4.9.2 Global Comparative Standing

- On the **World Economic Forum's Global Gender Gap Index**, India has shown gradual improvement in recent editions but continues to lag substantially on the *economic participation* and *political empowerment* sub-indices, even as it performs comparatively well on *educational attainment* and has improved on *health and survival*.

- India ranks among the lowest globally on **female-to-male population ratio** — around 214th of 236 countries a legacy of decades of skewed sex ratios at birth, even as recent cohorts show improvement.

4.9.3 Analysis: The Gap Between Text and Reality

Reading the constitutional text alongside the data above reveals a recurring pattern: India's constitutional and legal architecture for women's equality is among the most progressive in the world on paper, but implementation and social transformation lag considerably.

Several explanatory threads emerge:

1. **Formal versus substantive equality:** Articles 14 and 15 guarantee formal non-discrimination, but structural barriers unpaid care burdens, mobility restrictions, workplace informality, and social norms mean formal equality does not automatically produce equal outcomes. Article 15(3)'s enabling of "special provisions" recognises this gap, but implementation of affirmative measures (like the 106th Amendment) is often delayed or diluted.

2. **Uneven success across tiers of governance:** The dramatic success of the 73rd/74th Amendments at the grassroots (over 1.4 million women representatives) stands in stark contrast to persistently low representation in Parliament, state assemblies, and especially the higher judiciary. This suggests that *mandated* reservation produces representation, while *voluntary* party nomination and opaque appointment systems (like the judicial collegium) do not.

3. **The "distress-driven" nature of recent economic gains:** The rise in FLFPR, while statistically significant, is concentrated in low-productivity, unpaid, or self-employed agricultural work raising questions about whether it reflects genuine empowerment or economic compulsion amid rural distress.

4. **Personal laws and the unfulfilled Uniform Civil Code directive:** Article 44 remains one of the least implemented Directive Principles, and questions of marriage, divorce, maintenance, and inheritance across religious communities continue to generate contestation between gender equality claims and religious/cultural autonomy visible in cases from *Shah Bano* to *Shayara Bano* to the ongoing Sabarimala review.

5. **Judiciary as both guarantor and exception:** The very institution most responsible for expanding women's constitutional rights through interpretation remains one of the least representative of women in its own composition a paradox increasingly named in public debate as undermining the judiciary's claim to represent the society it serves.

4.10 SUMMARY

The Indian Constitution embedded gender equality into its foundational text well ahead of many older democracies, guaranteeing women universal suffrage from 1950 and weaving equality guarantees through the Preamble, Fundamental Rights (Articles 14, 15, 16, 21, 23), Directive Principles (Articles 39, 42, 44), and Fundamental Duties (Article 51A(e)). Fifteen women in the Constituent Assembly shaped this framework directly. Over the decades, the judiciary expanded these bare guarantees through landmark rulings — *Vishaka*, *Shah Bano*, *Shayara Bano*, *Joseph Shine*, *Puttaswamy* building a substantive equality jurisprudence far beyond the text's plain words, while Parliament layered statutory protections on top, from the Domestic Violence Act to the POSH Act to the 2023 Women's Reservation Amendment. The 73rd and 74th Amendments produced a genuine transformation at the grassroots, placing over 1.4 million women in elected local office. But contemporary data shows this success has not been replicated at higher tiers: women hold only about 13–14% of seats in the Lok Sabha and Rajya Sabha, roughly 9% in state assemblies, and remain starkly underrepresented in the higher judiciary (around 3–14% in the Supreme Court and High Courts, against 36%+ at the district level). Female labour force participation has risen sharply on paper (to around 41.7% per PLFS 2023–24) but remains concentrated in informal, agricultural, and self-employed work. Literacy, health, and sex-ratio indicators show real but uneven progress. The overall picture is one of a constitutionally exemplary framework whose promise remains only partially realised in practice a gap the unit identifies as the central, unresolved challenge of gender justice in India today.

4.11 GLOSSARY

Affirmative action	Positive measures (reservations, quotas, special provisions) taken by the State to compensate for historical or structural disadvantage faced by a group.
Collegium system	The mechanism by which senior judges of the Supreme Court and High Courts recommend appointments and transfers of judges, operating without a codified statute.
Coparcenary rights	Rights of a Hindu Undivided Family member (traditionally sons only) to inherit ancestral property by birth; extended to daughters by the 2005 amendment to the Hindu Succession Act.
Delimitation	The process of redrawing electoral constituency boundaries, typically following a Census, on which the practical rollout of the 106th Amendment's women's reservation depends.
Directive Principles of State Policy (DPSP)	Non-justiciable guidelines in Part IV of the Constitution directing the State toward social and economic policy goals.
Female Labour Force Participation Rate (FLFPR)	The proportion of working-age women who are either employed or actively seeking employment.
Formal equality	Equality achieved through identical, facially neutral treatment of all persons under the law, regardless of differing starting conditions.

4.12 REFERENCES

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3. International Institute for Population Sciences National *Family Health Survey-5 (NFHS-5), 2019–21*.

4. Office of the Registrar General of India Sample *Registration System (SRS) Statistical Report, 2023*.

5. Supreme Court of India, Centre for Research and Planning *State of the Judiciary Report, 2023*.

6. Tata Trusts / India Justice Report, *India Justice Report 2025*.

7. Election Commission of India and Association for Democratic Reforms (ADR) *Women's Political Participation and Representation in India, 2024 election analysis*.

8. Inter-Parliamentary Union (IPU) -*Women in National Parliaments* database.

4.13 SUGGESTED READINGS

1. Madhu Kishwar "*Off the Beaten Track: Rethinking Gender Justice for Indian Women*".

2. Government of India, Towards Equality: *Report of the Committee on the Status of Women in India* (1974) the foundational post-independence survey of women's status.

3. Reports of the National Commission for Women (NCW) and periodic reports of the Ministry of Women and Child Development.

4. Relevant chapters in the standard constitutional law texts by M.P. Jain and D.D. Basu on equality and gender jurisprudence.

4.14 SHORT ANSWER QUESTION

1. What does Article 15(3) of the Constitution permit the State to do?

2. State the maternity leave duration guaranteed under the Maternity Benefit (Amendment) Act, 2017.

3. What is the "Nari Shakti Vandan Adhiniyam," and which Constitutional Amendment does it correspond to?

4. Define "sex ratio at birth" and state India's approximate current figure.

5. Which case gave rise to the Vishaka Guidelines, and what did they address?

4.15 TERMINAL QUESTIONS

1. Discuss the significance of Article 15(3) in enabling affirmative action for women. How has it been used legislatively and judicially?

2. Critically examine the contribution of the 73rd and 74th Constitutional Amendments to women's political empowerment, and contrast this with representation at the national level.

3. "The Indian judiciary has been more progressive in interpreting women's rights than in reflecting gender diversity within itself." Discuss with reference to case law and contemporary data.

4. Using contemporary data, evaluate whether India's constitutional guarantees of equality have translated into substantive economic and political equality for women.

5. What explains the gap between India's near gender-parity in school enrolment and its low female labour force participation rate?

4.16 TRUE OR FALSE

1. The Constitution of India granted women the right to vote only after a separate suffragist movement, similar to the UK and USA. - **False**

2. Fifteen women were members of the original Constituent Assembly. - **True**

3. Article 15(3) prohibits the State from making any special provision for women. - **False**

4. The 73rd and 74th Constitutional Amendments provide for not less than one-third reservation for women in local self-government bodies. - **True**

5. The 106th Constitutional Amendment Act (2023) reserves one-third of seats for women in the Lok Sabha and State Legislative Assemblies, effective immediately from the next general election. - **False** *(implementation is linked to delimitation after the next Census, not immediate)*

UNIT-5

Political Representation of Women in India

5.1 INTRODUCTION

5.2 LEARNING OBJECTIVES

5.3 Historical Trajectory

5.4 Constitutional and Legal Framework

5.4.1 Foundational Guarantees

5.4.2 The 73rd and 74th Constitutional Amendments (1992–93)

5.5 The Women's Reservation Bill: A Three-Decade Journey

5.5.1 Key Features of the 106th Amendment

5.6 Contemporary Data: The Four Dimensions of Representation

5.7 The Women's Reservation Bill: A Three-Decade Journey

5.8 The Women's Reservation Bill: A Three-Decade Journey

5.9 The Women's Reservation Bill: A Three-Decade Journey

5.10 SUMMARY

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5.12 REFERENCES

5.13 SUGGESTED READINGS

5.14 SHORT ANSWER QUESTIONS

5. 15 TERMINAL QUESTIONS

5.16 TRUE AND FALSE

5.1 INTRODUCTION

Political representation is the mechanism through which citizens' voices, interests, and identities find expression in the institutions that govern them. For women who constitute close to half of India's population political representation operates on at least four distinct levels: as **voters** who exercise the franchise, as **candidates** who contest elections, as **elected legislators and local representatives** who make and shape law, and as **members of the political executive** who hold ministerial and leadership power. India's experience across these four levels is strikingly uneven. As voters, Indian women have all but closed the historic turnout gap with men. As candidates and elected legislators at the national and state level, they remain a small minority. As elected representatives in local government, following constitutionally mandated reservation, they form one of the largest blocs of women in elected office anywhere in the world. This unit examines each of these dimensions in turn, situates them within the constitutional and legal architecture that shapes them, and evaluates the data that describes India's present political reality for women.

5.2 LEARNING OBJECTIVES

By the end of this unit, learners should be able to:

1. Distinguish between different dimensions of women's political representation - as voters, candidates, elected legislators, and political executives.

2. Explain the constitutional and legal provisions that structure women's political participation in India, including the 73rd, 74th, and 106th Amendments.

3. Analyse contemporary data on women's representation in Panchayati Raj Institutions, State Legislative Assemblies, the Lok Sabha, the Rajya Sabha, and political executive positions.

4. Identify the structural, social, and party-political barriers that limit women's descriptive representation in Indian politics.

5. Evaluate the relationship between numerical (descriptive) representation and substantive representation of women's interests in policymaking.

5.3 HISTORICAL TRAJECTORY

India granted women the right to vote and to contest elections on equal terms with men from the very first general election in 1952 right many Western democracies extended to women only after prolonged suffragist struggle. Yet formal legal equality did not translate into proportionate representation. In the first Lok Sabha (1952), women constituted only about **4.4% of members**. This share fluctuated narrowly for decades dipping below 4% in 1971 (even as Indira Gandhi, India's first woman Prime Minister, led the government), crossing 10% only in 2009, and peaking at **14.4% in 2019** before slightly declining to **13.6% in 2024**. This "stuck" trajectory rising only a few percentage points per decade despite growing female literacy, workforce visibility, and political mobilisation is one of the defining puzzles of Indian political representation, and forms the empirical backdrop against which the constitutional reservation debate (culminating in the 106th Amendment of 2023) must be understood.

A parallel but more successful story unfolded at the local government level. The constitutional amendments of 1992–93 mandating reservation for women in Panchayati Raj Institutions and Urban Local Bodies produced, within a single generation, the largest cohort of women in elected office anywhere in the world.

5.4 CONSTITUTIONAL AND LEGAL FRAMEWORK

5.4.1 Foundational Guarantees

- **Article 325 and 326** guarantee universal adult suffrage without discrimination on grounds of sex, forming the basic constitutional foundation for women's participation as voters.

- **Article 14, 15, and 16** provide the general equality guarantees applicable to political participation and public office, with **Article 15(3)** enabling special provisions (including reservation) for women.

5.4.2 The 73rd and 74th Constitutional Amendments (1992–93)

These amendments inserted Parts IX and IX-A into the Constitution, mandating:

- **Not less than one-third reservation** of total seats in Panchayats (village, intermediate, and district level) and Urban Local Bodies (municipalities, municipal councils, and corporations) for women, through rotation across constituencies.

- Reservation of **not less than one-third of chairperson/Sarpanch positions** for women.

- Several states including Bihar, Madhya Pradesh, Uttarakhand, Himachal Pradesh, Chhattisgarh, Rajasthan, and Odisha have since enhanced this to **50% reservation** through state legislation.

This is widely regarded as the single most consequential legal intervention for women's political representation in independent India's history.

5.5 THE WOMEN'S RESERVATION BILL: A THREE-DECADE JOURNEY

- **1996:** The Women's Reservation Bill was first introduced in Parliament, proposing 33% reservation for women in the Lok Sabha and State Legislative Assemblies. It lapsed with the dissolution of successive Lok Sabha.

- **2008–2010:** A version of the Bill was introduced in the Rajya Sabha in 2008 and passed by that House in 2010, but it was never taken up in the Lok Sabha and lapsed with the dissolution of the 15th Lok Sabha in 2014.

- **September 2023:** The Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023 was introduced and passed by both Houses of Parliament in a special session, becoming the **Constitution (106th Amendmnt) Act, 2023**, popularly named the **Nari Shakti Vandan Adhiniyam**.

5.5.1 Key Features of the 106th Amendment

- Reserves **one-third of all seats** in the Lok Sabha, all State Legislative Assemblies, and the Delhi Legislative Assembly for women, including within the seats already reserved for Scheduled Castes and Scheduled Tribes.

- Does **not** apply to the Rajya Sabha or State Legislative Councils.

- Reservation will operate through **rotation** of reserved constituencies after each delimitation.

- Critically, implementation is **linked to the delimitation exercise to be carried out after the first Census conducted following the commencement of the Act** meaning the reservation will not take practical effect until after the next Census and delimitation, widely expected only after 2029, and reportedly could see the Lok Sabha's total strength expand (with reports suggesting an enlarged House of over 800 seats, of which roughly one-third around 270 or more would be reserved for women).

- This built-in delay has been the subject of significant political criticism, with commentators noting that the gap between legislative enactment and lived representation may extend the "stuck" trend documented above for at least one more decade.

5.6 CONTEMPORARY DATA: THE FOUR DIMENSIONS OF REPRESENTATION

1. Women as Voters

- Unlike the story of candidature and elected office, women's participation **as voters** has shown a genuine and historic transformation:
- In the **2014** general election, female turnout (65.63%) still trailed male turnout (67.09%) by over a percentage point.
- In the **2019** general election, India recorded a historic first: **female turnout (67.2%) exceeded male turnout (67%)** nationally, for the first time on record.
- In the **2024** general election, turnout nearly converged: **65.8% for men against roughly 65.7–65.8% for women** at the national level with women actually **outvoting men in 19 of 36 states and Union Territories** (up from 13 states in 2019), including Bihar, Jharkhand, Meghalaya, Telangana, Arunachal Pradesh, and Himachal Pradesh. Lakshadweep recorded the highest female turnout nationally, at over 85%. **Female electors constituted 48.62% of the total 2024 electorate**, up from 48.09% in 2019, out of nearly 98 crore registered voters.
- Analysts attribute this convergence to factors including targeted women-centric welfare and cash-transfer schemes (India spent an estimated 0.6% of GDP on such direct cash-transfer programmes reaching over 134 million women by late 2024), male out-migration for work in states like Bihar and Jharkhand (which mechanically raises the female share of those who remain to vote), and sustained Election Commission voter-mobilisation drives targeting women.

This makes women's voting behaviour and the "women's vote bank" an increasingly important independent factor in Indian electoral strategy, even as their presence as candidates and legislators remains far more limited.

2. Women as Candidates-

In the **2024 Lok Sabha election**, of **8,360 total candidates**, only **799–800 (around 9.5–9.6%)** were women the highest proportion on record, but still under one in ten, and up only marginally from 3% in 1957.

152 of 543 constituencies (28%) had no woman candidate at all. Among national parties, the **BJP fielded the highest share of women candidates (16%)**, followed by **Congress and CPI(M) at 13% each**, and the **BSP at 8%**; the **AAP fielded no women candidates** among its 22 nominees. Across the combined 2024 Lok Sabha and 2021–2025 state assembly elections analysed by the Association for Democratic Reforms, only **5,095 of 51,708 total candidates (about 10%)** were women. Among State Assembly elections, **Odisha and Delhi (14% each) and Chhattisgarh (13%)** had the highest share of women candidates, while **Nagaland (2%), Arunachal Pradesh (5%), and Jammu & Kashmir (5%)** had the lowest. A frequently noted structural critique is that parties often nominate women disproportionately in **"unwinnable" seats** a pattern researchers describe as tokenistic candidature that limits real opportunity even where nomination numbers appear to rise.

3. Women as Elected Legislators

Lok Sabha (national lower house):

- The **18th Lok Sabha (2024)** has **74 women MPs out of 543 (13.6%)** a decline from **78 women MPs (14.4%) in 2019**, despite the passage of the Women's Reservation Act the previous year (whose effect had not yet kicked in).

- Of those elected, **390 of 4,295 women candidates (about 9%) won**, compared to **3,733 of 39,033 male candidates (about 10%)** indicating a broadly comparable win rate once nominated, reinforcing that the core bottleneck lies in candidature, not voter bias against women.

- Party-wise in the 2024 Lok Sabha: the **BJP elected 31 women MPs (about 13% of its 240 seats)**, **Congress 14 (about 14% of its 99 seats)**, and the **Trinamool Congress (TMC) led all parties with 11 of 29 seats (38%)** going to women, reflecting a distinctive party strategy under Mamata Banerjee. Regional parties such as the Samajwadi Party (5 women MPs) and DMK (4) also contributed meaningfully.

- **West Bengal elected the most women MPs of any state (11)**.

Rajya Sabha (national upper house):

- Women hold roughly **13–17% of Rajya Sabha seats** (estimates place the figure around 42 of 245 seats as of 2025) the 106th Amendment's reservation does **not** extend to the Rajya Sabha.

State Legislative Assemblies:

- The **national average of women's representation in State Legislative Assemblies is around 9%**, essentially unchanged over the past decade.

- **No state legislature currently crosses 20% women representation.**

- Among the better-performing states: **Chhattisgarh (around 18%)** and **West Bengal (around 16%)**, the latter attributed to the Trinamool Congress's deliberate gender-focused candidate strategy.

- Among the weakest: **Uttar Pradesh (around 6%)**, **Bihar (around 7.8%)**, **Himachal Pradesh** (at times just a single woman MLA), and **Mizoram**, which at various points has had **no women MLAs at all**.

- In terms of absolute numbers, **Uttar Pradesh has the highest count of women MLAs (47)** simply owing to its large assembly size, followed by **West Bengal (40), Bihar (29), and Madhya Pradesh (27)**.

- Party-wise by MLA count, the **BJP has the largest absolute number of women MLAs (163)**, followed by **Congress (59)** and the **All India Trinamool Congress (34)**.

Panchayati Raj Institutions and Urban Local Bodies (local government):

- Reservation under the 73rd/74th Amendments has resulted in **over 1.4 million elected women representatives** at the grassroots level by far the largest cohort of elected women in the world.

- Several states report women's representation in Panchayats **exceeding 50%**, going beyond the constitutional minimum of one-third due to enhanced state-level reservation.

- This is consistently cited as the clearest success story of descriptive representation policy in Indian political history, even as debates continue over the depth of *substantive* power exercised by elected women particularly concerns around "proxy" representation, where husbands or male relatives of elected women (sometimes termed "Sarpanch Pati") continue to wield de facto decision-making authority.

5.7 THE WOMEN'S RESERVATION BILL: A THREE-DECADE JOURNEY

Women in the Political Executive

- India has had **one-woman Prime Minister** (Indira Gandhi, 1966–77 and 1980–84) and **one-woman President** (Pratibha Patil, 2007–2012, followed by Droupadi Murmu since 2022, India's second woman President and first from a Scheduled Tribe community).

- Representation of women in the **Union Council of Ministers** has historically remained low, typically in the range of **6–11%** of total ministerial berths across recent governments.

- At the state level, India has had a limited number of women Chief Ministers over its history including figures such as Sucheta Kripalani (the first, in Uttar Pradesh), Jayalalithaa, Mayawati, Sheila Dikshit, Vasundhara Raje, Mamata Banerjee, and Rekha Gupta but women Chief Ministers have, at any given point in time, governed only a small fraction of India's states.

Global Comparative Standing

- As of recent Inter-Parliamentary Union rankings, India stands at approximately **143rd–149th among roughly 185–190 countries** ranked by the share of women in the lower house of national parliament placing it well below the global average of roughly **25-27%**.

- Comparator figures: **Sweden (~46%), South Africa (~45–46%), Rwanda (world's highest, over 60%), the United Kingdom (~35–40%), and the United States House of Representatives (~29%)** all substantially outperform India's 13.6%.

- India's position is particularly notable given its relatively strong performance on gender parity in **voter turnout** and **educational attainment**, underscoring that the representation gap is concentrated specifically at the candidature and legislative-office level rather than in mass political engagement.

5.8 THE WOMEN'S RESERVATION BILL: A THREE-DECADE JOURNEY

Barriers to Women's Political Representation

Scholarly and policy literature identifies several recurring structural barriers:

1. **Male-dominated party hierarchies and ticket distribution:** Political parties, which control candidate nomination, remain overwhelmingly male at decision-making levels, and research points to a persistent pattern of nominating women disproportionately in seats considered less winnable.

2. **Campaign finance and resource barriers:** Women candidates often have comparatively limited access to campaign funds, party resources, and established political networks.

3. **Social and cultural norms:** Persistent patriarchal expectations around women's mobility, public visibility, and household responsibilities constrain sustained political careers, particularly at senior levels requiring frequent travel and prolonged public engagement.

4. **The "proxy representation" problem in local government:** Despite mandated reservation producing large numbers of elected women in Panchayats, concerns persist that actual decision-making power in some cases continues to be exercised by male relatives a phenomenon that complicates simple readings of numerical representation as automatically producing substantive empowerment.

5. **Delayed implementation of national-level reservation:** The 106th Amendment's linkage to a future delimitation exercise (expected only after 2029) means the most

significant recent legal intervention for national and state-level representation will not translate into seats for multiple election cycles.

6. **Absence of intra-party quotas:** Unlike some countries that mandate gender quotas within party candidate lists (e.g., through legislated party quotas), India relies primarily on reserved-seat systems in specific tiers of government, leaving candidate selection for the Lok Sabha and most state assemblies to unregulated party discretion.

5.9 THE WOMEN'S RESERVATION BILL: A THREE-DECADE JOURNEY

From Descriptive to Substantive Representation

A recurring theme in the academic literature (e.g., studies building on Beaman, Duflo, Pande, and Topalova's influential research on Indian village councils) is the distinction between:

- **Descriptive representation:** The presence of women, in proportion to their population share, among elected officials essentially a numerical or "mirror" measure.

- **Substantive representation:** Whether the presence of women representatives translates into policy outcomes, budgetary priorities, and governance practices that better reflect women's interests and lived experience.

Research on reserved Panchayat seats has found that women *pradhans* (village council heads) elected through reservation invest more in public goods directly relevant to women's daily lives, such as drinking water infrastructure, and that prolonged exposure to women leaders reduces gender bias among villagers over time and improves perceptions of women's leadership competence. This body of evidence is frequently cited in support of extending robust reservation to higher tiers of government, on the reasoning that numerical presence, sustained over time, can itself help erode the social barriers that produced underrepresentation in the first place.

5.10 SUMMARY

Women's political representation in India varies sharply across four dimensions. As **voters**, women have achieved historic parity outvoting men nationally in 2019 and in 19 of 36 states/UTs in 2024 driven by welfare politics, migration patterns, and voter mobilisation. As **candidates**, women remain under 10% of contestants in national elections, with BJP leading among major parties (16%) and AAP fielding none in 2024. As **elected legislators**, women hold only 13.6% of Lok Sabha seats (2024) and about 9% of State Assembly seats nationally, with TMC (38%) far outperforming other major parties and no state assembly crossing 20%. In sharp contrast, at the **local government (Panchayati Raj/ULB)** level, constitutionally mandated one-third (often 50%) reservation since 1992–93 has produced over 1.4 million

elected women representatives the world's largest such cohort. The 106th Constitutional Amendment (2023), reserving one-third of Lok Sabha and State Assembly seats for women, promises to close this gap but is not expected to take effect until after the next delimitation, likely post-2029. India ranks around 143rd–149th globally on women's parliamentary representation, well behind comparators like Rwanda, South Africa, Sweden, and the UK. Structural barriers party ticket distribution, campaign finance, social norms, and proxy representation in local bodies continue to constrain progress, even as research shows that sustained women's local leadership improves both policy outcomes and social attitudes over time.

5.11 GLOSSARY

Descriptive Representation- Representation measured by the numerical/demographic presence of a group among elected officials.

Nari Shakti Vandan Abhiyan- The popula name of the Constitution (106th Amendment) Act,2023.

Panchayati Raj Institutions (PRI)- The three-tier system of rural local self-government**.**

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5.14 SHORT ANSWER QUESTIONS

1. What proportion of seats does the 73rd Amendment reserve for women in Panchayati Raj Institutions?

2. Name the popular title given to the Constitution (106th Amendment) Act, 2023.

3. On what future event is the implementation of the 106th Amendment's reservation contingent?

4. What percentage of Lok Sabha seats were held by women after the 2024 general election?

5. Which party recorded the highest proportion of women MPs in the 18th Lok Sabha, and what was that proportion?

5.15 TERMINAL QUESTIONS

1. "Women's political representation in India presents a study in contrasts across different levels of government." Critically examine this statement using data on voters, candidates, legislators, and local government representatives.

2. Trace the legislative history of the Women's Reservation Bill from 1996 to the passage of the 106th Constitutional Amendment Act in 2023. Why has its implementation been delayed, and what are the implications of this delay?

3. Evaluate the impact of the 73rd and 74th Constitutional Amendments on women's political representation at the grassroots level. To what extent has numerical representation translated into substantive decision-making power?

4. "The core bottleneck in women's national political representation lies in candidature, not in voter bias." Discuss this proposition with reference to contemporary electoral data.

5. Compare India's standing on women's political representation with global benchmarks (IPU rankings, comparator countries). What structural and party-political factors explain India's relative underperformance?

5.16 TRUE OR FALSE

1. India granted women the right to vote and contest elections from the very first general election in 1952, without a separate suffragist movement. -**True**

2. Women's representation in the Lok Sabha rose steadily and consistently from 1952 to 2024 without any decline. -**False**

3. The 106th Constitutional Amendment Act, 2023 extends one-third reservation for women to the Rajya Sabha as well as the Lok Sabha. - **False**

4. Implementation of the 106th Amendment's reservation is linked to a future delimitation exercise, expected only after the next Census. - **True**

5. In the 2024 Lok Sabha election, women constituted more than 20% of total candidates. - **False**

UNIT- 6

WOMEN EMPOWERMENT POLICIES IN INDIA

6.1 INTRODUCTION

6.2 LEARNING OBJECTIVES

6.3 CONSTITUTIONAL PROVISIONS FOR WOMEN

6.4 HISTORICAL BACKGROUND: EVOLUTION OF POLICY

6.5 INSTITUTIONAL MECHANISMS

6.6 MAJOR FLAGSHIP SCHEMES AND POLICIES

6.7 LEGAL FRAMEWORK PROTECTING WOMEN

6.8 ECONOMIC EMPOWERMENT INITIATIVES

6.9 POLITICAL EMPOWERMENT

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6.12 LEGAL FRAMEWORK PROTECTING WOMEN

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6.18 SHORT ANSWER QUESTIONS

6.19 TERMINAL QUESTIONS

6.20 TRUE AND FALSE

6.1 INTRODUCTION

UNDERSTANDING WOMEN'S EMPOWERMENT

Women's empowerment refers to the process by which women gain greater control over their own lives, bodies, resources, and decision-making at the individual, household, community, and national levels. It is not a single event but a continuous process involving the removal of structural, social, economic, and legal barriers that have historically restricted women's agency.

The concept rests on five interrelated pillars:

1. **Social empowerment** – challenging patriarchal norms, ensuring dignity, safety, and freedom of choice

2. **Economic empowerment** – access to employment, credit, land, and financial independence

3. **Political empowerment** – participation in governance and decision-making bodies

4. **Educational empowerment** – equal access to quality education and skill development

5. **Legal empowerment** – protection under law and access to justice

In India, women's empowerment is not merely a welfare issue but a constitutional mandate and a developmental necessity. With women constituting roughly 48% of India's population, their participation in the workforce, politics, and society directly determines the pace of national development. Despite this, India continues to grapple with challenges such as low female labour force participation, gender-based violence, skewed sex ratios, and unequal access to resources making the study of empowerment policies both urgent and important.

6.2 LEARNING OBJECTIVES

By the end of this unit, learners will be able to:

- Define women's empowerment and explain its multiple dimensions (social, economic, political, legal, and educational)

- Trace the constitutional and historical foundations of women's rights in India.

- Identify and analyze major government schemes and policies aimed at women’s empowerment.

- Understand the legal framework protecting women from discrimination and violence.
- Critically evaluate the effectiveness and limitations of these policies.
- Discuss the road ahead for gender equality in India.

6.3 CONSTITUTIONAL PROVISIONS FOR WOMEN

The Indian Constitution, adopted in 1950, provides the bedrock for gender equality and women's empowerment through several key provisions:

Fundamental Rights

- **Article 14**: Guarantees equality before law and equal protection of laws to all citizens, including women.
- **Article 15(1)**: Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
- **Article 15(3)**: Empowers the State to make special provisions for women and children the constitutional basis for affirmative action and reservation policies favouring women.
- **Article 16**: Ensures equality of opportunity in matters of public employment.
- **Article 21**: Right to life and personal liberty, interpreted by courts to include the right to live with dignity, free from violence and exploitation.
- **Article 23**: Prohibits trafficking in human beings and forced labour, directly relevant to protecting women and girls from trafficking and bonded labour.

Directive Principles of State Policy

- **Article 39(a)**: Directs the State to secure that citizens, men and women equally, have the right to an adequate means of livelihood.
- **Article 39(d)**: Mandates equal pay for equal work for both men and women — later operationalised through the Equal Remuneration Act, 1976.
- **Article 39(e)**: Directs that the health and strength of workers, men and women, are not abused, and that citizens are not forced by economic necessity into unsuitable vocations.

- **Article 42**: Directs the State to make provisions for just and humane conditions of work and for maternity relief — the basis for maternity benefit legislation.

- **Article 44**: Envisages a Uniform Civil Code, often discussed in the context of ensuring equal rights for women across personal laws of different religions.

Fundamental Duties

- **Article 51A(e)**: Makes it a duty of every citizen to renounce practices derogatory to the dignity of women.

Constitutional Amendments

- The **73rd and 74th Constitutional Amendments (1992)** mandated one-third reservation for women in Panchayati Raj Institutions (rural local bodies) and Urban Local Bodies (municipalities), which was later enhan ced to 50% reservation in many states a landmark step toward grassroots political empowerment.

- The **106th Constitutional Amendment Act, 2023 (Nari Shakti Vandan Adhiniyam)** provides for 33% reservation for women in the Lok Sabha and State Legislative Assemblies, marking a historic move toward greater representation in national and state politics, though its implementation is linked to the delimitation exercise following the next census.

6.4 HISTORICAL BACKGROUND: EVOLUTION OF POLICY

Pre-Independence Reform Movements

Long before formal government policy, social reformers laid the groundwork for women's rights:

- Raja Ram Mohan Roy's campaign against Sati led to its abolition in 1829.

- Ishwar Chandra Vidyasagar championed widow remarriage, resulting in the Hindu Widows' Remarriage Act, 1856.

- The Age of Consent Act, 1891, and the Sarda Act, 1929 (Child Marriage Restraint Act), sought to curb child marriage.

- Freedom fighters such as Sarojini Naidu, Kasturba Gandhi, and Annie Besant demonstrated women's capacity for public and political leadership.

Post-Independence: Welfare to Empowerment

Policy approaches toward women in India have evolved through distinct phases:

Phase I – Welfare Approach (1950s–1970s): Women were treated as passive beneficiaries of welfare schemes focused on health, nutrition, and family planning, rather than as active agents of change.

Phase II – Development Approach (1980s): Recognition grew that women needed to be integrated into the development process itself, not merely be recipients of aid. The Sixth Five-Year Plan (1980–85) had a separate chapter on women's development for the first time.

Phase III – Empowerment Approach (1990s onward): The National Perspective Plan for Women (1988–2000) and the National Commission for Women Act, 1990 marked a decisive shift toward empowering women as equal stakeholders. The landmark **National Policy for the Empowerment of Women, 2001** formally adopted empowerment rather than welfare as the guiding philosophy of the state, covering economic, social, and political dimensions along with a specific focus on violence against women.

Phase IV – Rights-Based and Mission-Mode Approach (2010s–present): Recent years have seen convergence of empowerment goals with flagship missions like Beti Bachao Beti Padhao, Mission Shakti, and gender budgeting across ministries.

6.5 INSTITUTIONAL MECHANISMS

National Commission for Women (NCW)

Established under the National Commission for Women Act, 1990, the NCW is a statutory body mandated to:

- Review constitutional and legal safeguards for women
- Recommend remedial legislative measures
- Investigate complaints related to deprivation of women's rights
- Undertake studies on issues affecting women's status

State Commissions for Women

Most states have parallel bodies functioning at the state level to address region-specific issues and complaints.

Ministry of Women and Child Development (MWCD)

Created in 2006 (upgraded from a department), this nodal ministry formulates policies, plans, and programmes; enacts legislation; guides state governments; and coordinates the efforts of governmental and non-governmental organisations working in the field of women and child development.

Gender Budgeting

Introduced in the Union Budget from 2005–06 onwards, gender budgeting is a tool to ensure that budgetary allocations reflect gender-sensitive priorities across ministries, tracking public expenditure that specifically benefits women.

6.6 MAJOR FLAGSHIP SCHEMES AND POLICIES

Beti Bachao Beti Padhao (BBBP) - 2015

Launched to address the declining Child Sex Ratio (CSR) and promote survival, protection, and education of the girl child. It works through a tri-pronged strategy: mass communication and advocacy, multi-sectoral action in gender-critical districts, and enabling girls' education. The scheme has contributed to improved awareness, though on-ground improvement in sex ratio has been uneven across states.

Sukanya Samriddhi Yojana (SSY) - 2015

A small savings scheme under the BBBP umbrella allowing parents/guardians to open savings accounts for girl children below 10 years, offering an attractive interest rate and tax benefits, aimed at securing funds for a girl's education and marriage expenses.

Mission Shakti - 2021

An umbrella scheme integrating earlier women-centric schemes into two sub-schemes:

- **Sambal** (safety and security), covering One Stop Centres, Women Helpline (181), Ujjawala scheme for anti-trafficking, and Nari Adalats.
- **Samarthya** (empowerment), covering Ujjawala Homes, Working Women Hostels, Pradhan Mantri Matru Vandana Yojana, and the National Creche Scheme.

One Stop Centres (OSCs) / Sakhi Scheme

Established to provide integrated support to women affected by violence, offering medical aid, police assistance, legal aid, psychological counselling, and temporary shelter under one roof.

Pradhan Mantri Matru Vandana Yojana (PMMVY) - 2017

A maternity benefit programme providing cash incentives to pregnant and lactating women for their first living child, aimed at improving health-seeking behaviour and partially compensating for wage loss during pregnancy, in line with the National Food Security Act's provision for maternity entitlements.

Ujjawala Scheme

A comprehensive scheme for prevention of trafficking, and rescue, rehabilitation, and reintegration of victims of trafficking for commercial sexual exploitation.

Working Women Hostels

Provides safe and affordable accommodation to working women, including those with children, particularly in urban and semi-urban areas away from their home towns.

Support to Training and Employment Programme for Women (STEP)

Aims at making women economically independent by providing skill training in traditional and emerging sectors, enhancing employability.

Mahila Shakti Kendras (MSK)

Aimed at empowering rural women through community participation, creating an environment for women to access health, education, employment, and skill development opportunities at the village level.

Pradhan Mantri Ujjwala Yojana (PMUY) - 2016

While primarily an energy access scheme, it has significant empowerment value by providing free LPG connections to women from below-poverty-line households, reducing drudgery, health hazards from indoor pollution, and time spent collecting fuel.

Stand-Up India Scheme -2016

Facilitates bank loans between ₹10 lakhs and ₹1 crore to at least one-woman borrower per bank branch for setting up greenfield enterprises, promoting entrepreneurship among women.

Mahila E-Haat

An online marketing platform launched to help women entrepreneurs, SHGs (Self-Help Groups), and NGOs showcase and sell their products directly to consumers.

Deendayal Antyodaya Yojana- National Rural Livelihood Mission (DAY-NRLM)

Promotes self-employment and organisation of rural poor into Self-Help Groups (SHGs), a majority of which are women-led. SHGs have become one of India's most successful grassroots economic empowerment tools, enabling access to credit, savings habits, and collective bargaining power.

Rashtriya Mahila Kosh (National Credit Fund for Women)

Provides micro-credit to poor women for various livelihood support and income-generating activities on soft terms.

6.7 LEGAL FRAMEWORK PROTECTING WOMEN

India has enacted a robust body of legislation to protect women's rights and safety:

Legislation	Purpose
Dowry Prohibition Act, 1961	Prohibits the giving and taking of dowry
Protection of Women from Domestic Violence Act, 2005	Provides civil remedies against domestic abuse
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)	Mandates Internal Complaints Committees in workplaces
Criminal Law (Amendment) Act, 2013	Enacted post-Nirbhaya case; widened the definition of rape and increased punishment for sexual crimes
The Maternity Benefit (Amendment) Act, 2017	Increased paid maternity leave from 12 to 26 weeks
Prohibition of Child Marriage Act, 2006	Restrains child marriage and provides for annulment
Medical Termination of Pregnancy (Amendment) Act, 2021	Expanded access to safe abortion services
Muslim Women (Protection of Rights on Marriage) Act, 2019	Criminalised the practice of instant triple talaq
Equal Remuneration Act, 1976 (now subsumed under the Code on Wages, 2019)	Mandates equal pay for equal work irrespective of gender

Immoral Traffic (Prevention) Act, 1956	Addresses trafficking and commercial sexual exploitation

These laws, combined with judicial interventions such as the Supreme Court's *Vishaka Guidelines* (1997) on workplace sexual harassment, which predated and shaped the POSH Act form a comprehensive protective architecture, though implementation gaps remain a persistent challenge.

6.8 ECONOMIC EMPOWERMENT INITIATIVES

Economic independence is widely regarded as the most transformative dimension of empowerment, as it enhances women's bargaining power within households and society. Key initiatives include:

- **Self-Help Group (SHG) movement**: Through NRLM and NABARD-supported SHG-Bank Linkage Programme, over 8-9 crore women have been mobilised into SHGs, enabling access to credit without collateral.
- **MUDRA Yojana**: A significant proportion of loans under Pradhan Mantri MUDRA Yojana have gone to women entrepreneurs for micro and small enterprises.
- **Reservation in employment**: Various states provide horizontal reservation for women in government jobs.
- **Skill India Mission**: Includes targeted components for women's participation in vocational training.
- **Women in agriculture**: Recognition of women as "farmers" under schemes like Kisan Credit Card, given that a large share of agricultural labour is performed by women despite limited land ownership.

Despite these measures, India's female labour force participation rate remains relatively low compared to global averages, reflecting persistent challenges around unpaid care work, safety concerns, and social norms restricting women's mobility.

6.9 POLITICAL EMPOWERMENT

Political representation is a critical, though still evolving, dimension of empowerment in India:

- The **73rd and 74th Amendments** brought over 1.4 million women into elected positions in Panchayati Raj Institutions and urban local bodies, making India home to one of the largest cohorts of women in grassroots politics globally.

- The **Nari Shakti Vandan Adhiniyam (2023)** promises to reserve one-third of seats in the Lok Sabha and State Assemblies for women, though its rollout awaits delimitation.

- Women's representation in Parliament, while improving over decades, still remains below the global average, underscoring the gap between grassroots and national-level political empowerment.

- Women's wings within political parties and increasing women voter turnout (which has now matched or exceeded male turnout in several elections) reflect growing political agency, even where formal representation lags.

6.10 EDUCATIONAL EMPOWERMENT

Education is considered the single most powerful lever for empowerment, influencing health, economic participation, and decision-making capacity. Key initiatives include:

- **Sarva Shiksha Abhiyan (SSA)** and its successor **Samagra Shiksha**: Universalised elementary education with special provisions for girls, including Kasturba Gandhi Balika Vidyalayas for girls from disadvantaged communities in educationally backward blocks.

- **National Scheme of Incentives to Girls for Secondary Education**: Provides financial incentives to encourage girls to continue education beyond elementary level.

- **CBSE Udaan Scheme**: Aims to increase enrolment of girl students in prestigious technical and engineering institutions.

- **National Education Policy (NEP) 2020**: Emphasises a "Gender-Inclusion Fund" to assist female and transgender students in accessing education, along with provisions for foundational literacy and vocational training targeted at reducing gender gaps.

- **Free and compulsory education under the Right to Education Act, 2009**, which has substantially narrowed the gender gap in primary school enrolment.

These initiatives have contributed to significant improvements in female literacy rates and reduced gender gaps in school enrolment, although disparities persist in higher education, STEM fields, and rural areas.

6.11 HEALTH-RELATED EMPOWERMENT MEASURES

- **Janani Suraksha Yojana (JSY)**: Promotes institutional delivery among pregnant women to reduce maternal and infant mortality.

- **Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA)**: Provides free, comprehensive antenatal care.

- **Ayushman Bharat – PM-JAY**: While not exclusively for women, it significantly benefits women's access to healthcare, particularly for reproductive health needs.

- **Menstrual Hygiene Scheme**: Provides subsidised sanitary napkins to adolescent girls in rural areas.

Health empowerment remains closely linked with nutrition and sanitation schemes, such as the Swachh Bharat Mission, which has had a documented impact on women's safety and dignity by reducing dependence on open defecation.

6.12 LEGAL FRAMEWORK PROTECTING WOMEN

CHALLENGES IN IMPLEMENTATION

Despite an extensive policy architecture, several challenges limit the effectiveness of women's empowerment initiatives in India:

1. **Implementation gaps**: Many schemes suffer from poor last-mile delivery, inadequate funding, and lack of awareness at the grassroots level.

2. **Patriarchal social norms**: Deep-rooted cultural attitudes continue to restrict women's mobility, decision-making, and access to resources, often undermining the intent of progressive laws.

3. **Low female labour force participation**: Despite economic schemes, participation rates remain a concern, partly due to unpaid domestic responsibilities and safety concerns.

4. **Gender-based violence**: Domestic violence, sexual harassment, and trafficking persist despite strong legal provisions, pointing to gaps in enforcement and access to justice.

5. **Skewed sex ratio**: Son preference and female foeticide, despite the PC-PNDT Act and BBBP, continue to affect several states.

6. **Digital divide**: Women, especially in rural areas, have significantly lower access to digital technology and financial services, limiting the reach of digitally-delivered schemes.

7. **Intersectionality**: Dalit, Adivasi, minority, and disabled women often face compounded discrimination that mainstream policies do not adequately address.

8. **Political representation gap**: While grassroots representation has grown, translation into higher political offices and decision-making remains limited, and the 33% reservation law awaits full implementation.

6.13 WAY FORWARD

To strengthen women's empowerment in India, several measures merit attention:

- **Convergence of schemes**: Better coordination between health, education, and economic ministries to avoid fragmented delivery.
- **Strengthening implementation and monitoring**: Robust grievance redressal, real-time tracking, and accountability mechanisms for schemes like OSCs and PMMVY.
- **Investing in care infrastructure**: Expansion of affordable childcare and eldercare facilities to free up women's time for paid work and public participation.
- **Skilling aligned with market demand**: Ensuring vocational training under Skill India and STEP leads to actual placement and sustainable livelihoods.
- **Behavioural change campaigns**: Sustained efforts to shift patriarchal mindsets, involving men and boys as allies in gender equality efforts.
- **Full implementation of the Nari Shakti Vandan Adhiniyam**: Expediting delimitation to enable early rollout of the 33% legislative reservation.
- **Data-driven policymaking**: Regular, disaggregated gender data collection to identify gaps and design targeted interventions.

6.14 SUMMARY

Women's empowerment policy in India has traveled a long arc from social reform movements in the 19th century, through a welfare-oriented approach in the early decades after independence, to a rights-based, mission-mode strategy that today seeks to make women equal partners in national development. The Constitution provides the foundational guarantees of equality (Articles 14, 15, 16) alongside specific protective provisions (Article 15(3), 39, 42) and duties (Article 51A(e)) that together legitimise both non-discrimination and affirmative action for women.

Institutionally, bodies such as the National Commission for Women and the Ministry of Women and Child Development, supported by tools like gender budgeting, have created a dedicated architecture for policy formulation and grievance redressal. A wide array of flagship

schemes Beti Bachao Beti Padhao, Sukanya Samriddhi Yojana, Mission Shakti (with its Sambal and Samarthya components), Pradhan Mantri Matru Vandana Yojana, Stand-Up India, and the SHG movement under DAY-NRLM address empowerment across the economic, social, health, and safety dimensions. This is reinforced by a strong legislative framework covering dowry, domestic violence, workplace sexual harassment (POSH Act), maternity benefits, property rights, and criminal law reforms following the 2012 Nirbhaya case, several of which were shaped directly by landmark Supreme Court judgments such as *Vishaka* and *Shayara Bano*. At the same time, political empowerment has advanced significantly at the grassroots level through the 73rd and 74th Constitutional Amendments, with the 2023 Nari Shakti Vandan Adhiniyam promising a similar transformation at the national and state legislative level once implemented. Educational and health-related schemes from KGBVs and the RTE Act to JSY and PMSMA have improved outcomes but have not fully closed persistent gaps.

Despite this extensive architecture, implementation gaps, patriarchal social norms, low female labour force participation, continuing violence, a digital divide, and intersectional disadvantages mean that translating policy into lived empowerment for the majority of Indian women especially in rural, informal, and marginalised communities remains an unfinished task. The way forward lies in better convergence, stronger accountability, investment in care infrastructure, demand-aligned skilling, sustained behavioural change efforts, and timely implementation of pending reforms such as legislative reservation for women.

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6.16 SHORT ANSWER QUESTIONS

1. Define women's empowerment and name its five key dimensions.

2. What is the significance of Article 15(3) of the Constitution in the context of women's 6empowerment?

3. Mention any four Directive Principles of State Policy relevant to women.

4. What was the main recommendation/impact of the "Towards Equality" Report, 1974?

5. What is the difference between "welfare approach" and "empowerment approach" in policy-making?

6.17 TERMINAL QUESTIONS

1. Discuss in detail the constitutional provisions — Fundamental Rights, Directive Principles, and Fundamental Duties — that form the basis of women's empowerment policies in India.

2. Trace the historical evolution of India's policy approach toward women, from the pre-independence reform movements to the present rights-based, mission-mode approach. Illustrate with examples from each phase.

3. Critically examine any five flagship government schemes for women's empowerment, discussing their objectives, key features, and limitations.

4. Discuss the significance of the 73rd and 74th Constitutional Amendments and the Nari Shakti Vandan Adhiniyam, 2023, for women's political empowerment in India. What challenges remain in achieving substantive (as opposed to merely formal) political representation for women?

5. Discuss the major legal safeguards available to women in India against violence, discrimination, and workplace harassment. Refer to relevant landmark judicial pronouncements in your answer.

6.18 TRUE OR FALSE QUESTIONS

1. Article 15(3) of the Constitution allows the State to make special provisions for women and children. *(True/False)*

2. The National Commission for Women was established under the National Commission for Women Act, 1990. *(True/False)*

3. The 73rd and 74th Constitutional Amendments provide for reservation of women in Parliament. *(True/False)*

4. The POSH Act, 2013, mandates Internal Complaints Committees in workplaces with ten or more employees. *(True/False)*

5. Beti Bachao Beti Padhao was launched in 2010. *(True/False)*

UNIT- 7

DOWRY PROHIBITION ACT, 1961

7.1 INTRODUCTION

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7.3.16 Scope of state amendment

7.4 SUMMARY

7.5 GLOSSARY

7.6 REFERENCES

7.7 SUGGESTED READINGS

7.8 SHORT ANSWERS QUESTIONS

7.9 TERMINAL QUESTIONS

7.10 TRUE AND FALSE

7.1 INTRODUCTION

Dowry is a deep-rooted social evil that has plagued Indian society for centuries. Dowry originally meant as voluntary gifts to help a newly married couple, but has gradually turned into a commercial transaction, placing immense pressure on the bride's family. Dowry leads to economic exploitation, especially of poor families, who often incur heavy debts to meet unlawful demands. In many cases, failure to satisfy these demands results in harassment, cruelty, domestic violence, and even dowry deaths, making it a serious human rights issue. Women are the worst sufferers of the dowry system. It reinforces gender inequality, treating women as financial burdens rather than equal partners. Practices such as female foeticide, delayed marriages, and mental trauma are indirectly linked to dowry expectations.

To curb this evil, the Indian government enacted the Dowry Prohibition Act, 1961, and strengthened related provisions under the Indian Penal Code. The Act was later strengthened through several amendments, particularly in 1984 and 1986. The Act aims not only to punish offenders but also to discourage the social practice of dowry itself. However, mere laws are not enough. Effective enforcement, social awareness, women's education, and a change in societal mindset are essential to eradicate dowry. In fact, dowry is not just a legal offence but a moral and social crime. Eliminating it requires collective efforts from individuals, families, and society to uphold the values of equality, dignity, and justice.

This unit provides an in-depth examination of the historical background, legal framework, amendments, judicial interpretation, implementation challenges, socio-legal impact, criticisms, and the way forward concerning the Dowry Prohibition Act, 1961.

7.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- ➢ Dowry - a social evil
- ➢ Historical Background of dowry and Need for the legal enactment
- ➢ Objectives of the Dowry Prohibition Act, 1961
- ➢ Meaning of dowry according to act
- ➢ Distinction Between Dowry and Gifts
- ➢ Provisions for giving or taking dowry
- ➢ Penalty for demanding Dowry
- ➢ Ban on advertise offers related to dowry in connection with marriage.
- ➢ Provisions regarding Dowry to be for the benefit of the wife or heirs
- ➢ Cognizance of offences related dowry
- ➢ Nature of Offence related dowry
- ➢ Power to make rules to the central and state government regarding the act
- ➢ The Dowry Prohibition (Maintenance of Lists of Presents to The Bride and Bridegroom) Rules, 19851
- ➢ Relevant Sections from the other laws that works alongside to the Dowry Prohibition Act
- ➢ Scope of state amendments to the dowry prohibition Act

7.3 MAIN BODY

7.3.1 Historical Background and Need for the Act

In ancient times dowry was not originally conceived as a coercive demand. In many communities, gifts were voluntarily given to the bride at the time of marriage as *stridhan*—property intended for her financial security. These gifts often included jewelry, clothing, or movable assets. They were meant to empower the woman rather than enrich the groom's family. Later over time the custom deteriorated into a coercive demand made by the groom's family. This led to severe social consequences, including domestic violence, mental harassment, economic burden on the bride's family, and in extreme cases, dowry deaths.

Changing socio-economic conditions, especially during the medieval and colonial periods, leads to the practice increasingly commercialized. Marriage began to be viewed as a financial transaction, with the groom's educational qualifications, employment status, and social standing influencing the dowry demanded. The pressure on families to provide substantial dowry led to financial ruin, domestic violence, bride burning cases, suicides and dowry deaths. The alarming rise in dowry-related violence during the 1950s and 1960s led to social movements demanding legislative action. Consequently, Parliament enacted the Dowry Prohibition Act in 1961.

7.3.2 Objectives of the Dowry Prohibition Act, 1961

The primary objectives of the Act are:

- ➢ To prohibit the giving and taking of dowry.
- ➢ To penalize those who demand dowry.
- ➢ To protect women from exploitation and violence.
- ➢ To promote equality in marital relationships.
- ➢ To deter dowry-related deaths and harassment.

The Act represents an attempt to use criminal law as a tool of social reform. The observations made by late Jawaharlal Nehru[1], as quoted by the Committee while examining the issue of dowry, highlight the significant yet limited role that legislation can play in addressing deep-rooted social evils. His views reflect a balanced understanding of the relationship between law and society. He believed that legislation serves as an important instrument of social reform. By enacting laws such as the Dowry Prohibition Act, 1961, the State sends a clear message that certain practices are unacceptable and contrary to the principles of justice and equality. Law has the power to set standards of conduct, deter wrongful behavior through punishment, and provide remedies to victims. In this sense, legislation plays an educative and reformative role—it shapes public opinion and gradually influences social attitudes.

The legislation alone cannot eradicate a social evil like dowry. Social customs are deeply embedded in tradition, culture, and economic structures. A law may prohibit a practice, but if society continues to accept or silently support it, enforcement becomes difficult. Thus, while the law can create a framework for change, real transformation requires shifts in public mindset, education, and social awareness.

7.3.3 Definition of dowry

[1] The first Prime Minister of India

The definition of “dowry” contained in *section 2* of the 1961 Act.

Section 2 of the Act says,

"Dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(*a*) by one party to a marriage to the other party to the marriage; or

(*b*) by the parents of either party to a marriage or by other person. to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Laws (Shariat) applies.

[2]*Explanation II*- The expression "valuable security" has the same meaning as in *section 30* of the Indian Penal Code (45of1860).

The definition of dowry is amended twice, once by Amendment Act 63 of 1984 and other time by Amendment Act 43 of 1986. Property or valuable security should be a consideration for the marriage. Even then demands made after the marriage could also be a part of the consideration because an implied agreement has to be read to give property or valuable securities, even if asked after the marriage, as a part of consideration for marriage.

The amended definition does not leave anything to doubt that demands made after the solemnization of marriage would be dowry. It is made clear that property or valuable securities need not be as a consideration for marriage as was required to be under the unamended definition.[3]

Additional demand of dowry is also covered by definition of dowry. (*Ram Singh vis State of Haryana. (1998) 8 SCC 70 - AIR I998 SC 2628*.)

In *Pawan Kumar v/s State of Haryana*[4], the court held that, the word “agreement" referred in *Section 2* of the Act has to be inferred on the facts and circumstances of each case.

Expression "Or any time after marriage" and "in connection with the marriage of the said parties” are of wide meaning & scope. (*Ashok Kumar v/s State of Haryana AIR 2010 SC 2839)*

[2] Explanation I omitted by Act 63 of 1984, S.2 (w.e.f. 2-10-1985).

[3] State of H.P. vis Nikku Ram. (1 995) 6 SCC 219.

[4] Pawan Kumar v/s State of Haryana (1998) 3 SCC 309. AIR 1998 SC 958.

7.3.4 Distinction Between Dowry and Gifts

Articles received as presents and gifts at the time of marriage cannot be termed as dowry. Under *Section 3(2)* of the Act voluntary presents given at the time of marriage are not dowry. They must:

- ➢ Be given without demand.
- ➢ Be entered in a list as prescribed by rules.
- ➢ Be customary in nature.

Thus, demand is the core element distinguishing dowry from gifts. The Dowry Prohibition Act does not, in any way, bar the traditional giving of present at or about the time of the wedding which may be willing and affection are gifts by parents and close relations of the bride to her. Such presents or dowry given by the parents is, therefore, not at all within the definition of the aforesaid statute. Indeed, this traditional giving of presents at or about the time of wedding is an accepted practice which finds mention in the oldest of Hindu scriptures and is continued today with a greater zeal. Consequently, dowry as commonly understood is something different and alien to the peculiar definition thereof in the Dowry Prohibition Act. A voluntary and affectionate giving of dowry and traditional presents would thus be plainly out of the ambit of the particular definition under the Act and once that is so the rest of the provisions thereof would be equally inapplicable. Consequently, the argument that the applicability of the special provisions of the Dowry Prohibition Act would exclude the general provisions of the Indian Penal Code would not even arise and in any case has no validity.

Dowry as a *quid pro quo*[5] for marriage, is prohibited and not the giving of traditional presents to the bride or the bridegroom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression "dowry" made punishable under the Dowry Prohibition Act.[6]

In *Kunju Moideen v. Sayed Mohammed*, the court clarified that religious personal law concepts must not be confused with dowry. In this case the issue was, whether the property given in connection with a Muslim marriage amounts to dowry under the Dowry Prohibition Act, 1961, or whether it should be treated as mahr (dower) under Muslim personal law. The Kerala High Court held that mahr (dower) is not dowry. Dower is an essential incident of Muslim marriage.

[5] "*Quid pro quo*" is a Latin phrase that literally means "something for something." for detail see glossary

[6] Reema Aggarwal v. Anupam, (2004) 3 SCC 199: 2004 SCC (Cri) 699.

It is an obligation imposed by law on the husband as a mark of respect to the wife. It cannot be equated with dowry, which generally involves demand from the bride's side.

7.3.5 Provisions for giving or taking dowry and agreement for the same

Section 3 of the dowry prohibition Act 1961 imposes penalty not only for taking of dowry but giving of dowry too an offence under this act. According to *section 3* of this act,

"If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for a term which shall not be less than [five years], and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more."

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

The Court's approach in dealing with the case under the Act should be realistic so as to further the object of the Act. At the same time, it cannot be lost sight that the Act though a piece of social legislation, is a penal statute. The court must not critically analyze the evidence and decide the case in a realistic manner.[7]

Section 5. Agreement for giving or taking dowry to be void. - Any agreement for the giving or taking of dowry shall be void.

A void agreement has no legal effect, it cannot be enforced in court and is treated as if it never existed. Even if both parties agree willingly, it is still illegal. This provision prevents exploitation of families and financial pressure in marriages. Also it curbs the social evils like harassment and dowry deaths.

7.3.6 Penalty for demanding Dowry

Section 4 of the Dowry Prohibition Act, 1961 says,

"If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

The object of *Section 4* of the Act is to discourage the very demand for property or valuable security as consideration for a marriage between parties thereto. Having regard to the object of

[7] *S.Gopal Reddy v/ s state of A.P* (1996) 4 SCC 596.

the Act, liberal construction has to be given to the word 'dowry' used in Section 4 to mean any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of *Section 2*.[8]

A conjoint reading of the two sections would show that any person who demands dowry either directly or indirectly, from the parents of any other person who was the guardian of the bride before her marriage, within 3 years after the solemnisation of marriage, is punishable. "Demand of dowry" within 3 years of the date of solemnisation of marriage, has been equated with taking of dowry Under *Section 3* of the Act.[9]

Demand for dowry and harassment- Appellant, who was the sister-in-law of the deceased was convicted under *sections 304-B*[10], *498-A*[11] *IPC*[12] and under *sections 3* and *4* of the Dowry Prohibition Act. On appeal, the High Court gave her benefit of doubt and acquitted her of the charges under *sections 304-B* IPC. Her convictions under *section 3* and *4* of the Dowry Prohibition Act was maintained. Held, demand for dowry and harassment for that reason are the essential ingredients of the offence under *section 304-B*, IPC. *Section 3* and *4* of the Dowry Prohibition Act make out independent offences, but in the instant case or was demand for dowry coupled with harassment which constitutes the basis of the prosecution case. Once the charge under *section 304-B* was not found established, it was not possible to record conviction under *section 3* and *4* of the Dowry Prohibition Act.[13]

Section 498-A, I.P.C. does not create any situation for double jeopardy. That provision is distinguishable from *Section 4* of Dowry Prohibition Act, because in the letter mere demand of dowry is punishable and the existence of an element of cruelty is not necessary. *Section 498-A*, I.P.C. deals with aggravated form of the offence. It inter alia, punishes such demands of property of valuable security from the wife or her relative as are coupled with cruelty, to her. Hence, a person can be prosecuted in respect of both the offences punishable under *Section 4* of the Dowry Prohibition Act, and *Section 498-A*, I.P.C (now BNS).

[8] . *V. Jadhavv. Shankarrao Abasaheb Pawar,* (1983) 4 SCC 231: 1983 SCC (Cri) 813.

[9] *G.S. Baroca v. Kanwaljit Singh*, 1989 Cri LJ 1272 (J&K).

[10] See glossary

[11] See glossary

[12] The Indian government has replaced the IPC with the Bharatiya Nyaya Sanhita (BNS), 2023.

[13] *Sakhi Mandalani v. State of Bihar*. (1999) 5 SCC 705.

Due to the rampant misuse of these provisions, it would be prudent and wise for a police officer, that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegations.[14]

7.3.7 Ban on advertisement

The *section 4A*[15] of The Dowry Prohibition Act 1961 makes it illegal to advertise offers related to dowry in connection with marriage.

Section 4-A. Ban on advertisement. -If any person-

(*a*) offers, through any advertisement in any newspaper, periodical, journal or through any other media, any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative,

(*b*) prints or publishes or circulates any advertisement referred to in clause (a), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.

7.3.8 Dowry to be for the benefit of the wife or heirs

Section 6 of the Dowry Prohibition Act 1961 states as,

(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman-

(a) if the dowry was received before marriage, within [three months] after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage within [three months] after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within [three months] after she has attained the age of eighteen years.

and pending such transfer, shall hold it in trust for the benefit of the woman.

[14] *Arnesh Kumar v. State of Bihar,* (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449.

[15] Ins. by Act 43 of 1986 (w.e.f. 19-11-1986).

(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor [or as required by sub-section (3) he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend two years or with fine [which shall not be less than five -thousand rupees, but which may extend to ten thousand rupees] or with both.

(*3*) Where the woman entitled to any property under *sub-section (1)* dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being: [*Provided* that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall-

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

(3-A) Where a person convicted under *sub-section (2)* for failure to transfer any property as required by *sub-section(1)* [or *sub-section (3)*] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, [her heirs, parents or children], the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, (her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman, as the case may be, [her heirs, parents or children].

(*4*) Nothing contained in this section shall affect provisions of *Section 3 or Section 4*.

Criminal breach of trust. -When a female makes an allegation in the complaint that either her husband or her parents-in-law had converted to their own use the ornaments forming the part of her stridhan which she had entrusted to them, the court has to give legal effect to such allegation and to assume that such ornaments had been made subject-matter of criminal breach of trust. Such complaint cannot be quashed without giving the aggrieved wife an opportunity of proving that the ornaments had been given to her at the time of her marriage for her use only.[16]

In the case of *Surinder Singh v. Rajinder Kaur, (1972) 74 PLR 18*, failure to return articles of dowry after one year or misutilising them within one year amounts to criminal breach of trust. The provisions of CrPC would apply to the trial of the case under *Section 6*. The relevant

[16] *Bhai Sher Jung Singh v. Virender Kaur*, 1979 Cri L 493: (1978) 80 PLR 737.

provision is *Section 181* of the CrPC[17] which provides that the offence of criminal breach of trust or criminal misappropriation may be inquired into or tried by a court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed. This section gives concurrent jurisdiction to the court where the property was received or where it was retained or where the offence was committed.

Giving and taking dowry is prohibited an agreement for giving or taking dowry is void and hence under forceable the law provides that if any dowry has really been given, the same would ensure to the benefit of the woman in connection with whose marriage it is given and the person who receives the dowry (even in contravention of the law) must transfer it to the woman and pending such transfer, shall hold it in trust for the benefit of the woman.[18]

Limitation. —Limitation for return of articles of dowry provided in clause (*b*) of *Section 6(1*) is for the purpose of an offence envisaged under *Section 6(2*) of the Act.

Prosecution before expiry of one year prescribed would amount to misuse of the process of law. A complaint filed before expiry of the period prescribed under the section is premature.

If the articles of dowry are not transferred to the woman within one year from the date of marriage or date of the receipt of dowry articles whichever is applicable, then the offence is complete. Offence under Section 6 of the Act is not a continuing offence and thus the complaint made beyond the period of limitation as prescribed in Section 6 of the Act, is barred, *Gurusharan Singh v. Smt Gurusharan Kaur, 1990 Cri L 2469 (Del).*

A complaint for the return of the articles given as dowry, cannot be barred as the complainant has a right to file a suit for the recovery of the same, *Rajeevv. Ram KumarJaiswal, (1993) 1 Crimes 504 (All).*

In another case the court says that criminal proceedings under *Section 6* are independent of criminal prosecution under *Sections 3* and *4.*[19]

7.3.9 Cognizance of offences

Section 7 of the Dowry Prohibition Act, 1969 says,

(*1*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

[17] *Section 181* of the Code of Criminal Procedure, 1973 (CrPC) deals with place of trial for certain offences, mainly those involving theft, extortion, robbery, criminal misappropriation, and criminal breach of trust.

[18] *Gulaichi (Smt.) v. Umashanker Prasad*, (1996) 2 AWC 1083: 1997 ALJ 14.

[19] *BobbiliRamakrishna Raja Yadadv. State of A.P.*, (2016) 3 SCC 309: (2016) 1 SCC (Cri) 850.

(*a*) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(*b*) no court shall take cognizance of an offence under this Act except upon-

(*i*) its own knowledge or a police report of the facts which constitute such offence; or

(*ii*) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organisation;

(*c*) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation- For the purposes of this sub-section "recognized welfare institution or organization" means a social welfare institution or organisation recognized in this behalf by the Central or State Government.

(*2*) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.

(*3*) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.

Provisions of CrPC are applicable to the criminal trials under special law also. Therefore offences under Dowry Act are to be investigated, tried, etc. under the provisions of the Code.[20]

In absence of indication of intention of the legislature to give retrospective operation to the amended *Section 7* of the Act, cognizance of offence under the Act which took place in 1982 could not be taken on 6-2-1985 according to *Section 7(b)* as it stood prior to the amendment. *Section 7* which came into operation on 2-10-1985, was not retrospective, but prospective in its effect. So, in view of the provisions contained in repealed *Section 7(b)* cognizance of the offences thereunder was barred after expiry of one year. Therefore, even to a case under *Section 7* of the Act before its amendment, provisions of *Section 473* of the new code[21] are applicable

[20] *Inder Sain v. State*, 1981 Cri L 1116: (1981) 2 Del LT 309;

[21] *Section 473* of the Code of Criminal Procedure, 1973 (CrPC) deals with extension of the period of limitation in certain cases.

and in a suitable case on being satisfied, the court may condone limitation for the purpose of taking cognizance.[22]

In case of *Lajpat Rai Sehgal v. State, 1983 Cri LJ 888 (Del)*, the court states that a Police report is a complaint within the meaning of *Section 7(b).*

In another case the court decided that, sanction of the District Magistrate is not necessary to enable the trial court to take cognizance for offence under *Section 4* of the Act after the 1984 Amendment.[23]

The Act as amended in Punjab provides a limitation of one year, from the date of the offence for filing complaint under *Sections 3* and *4* of the Act. The offences under these sections can be deemed to have been committed whenever any demand of dowry is made as consideration.[24]

Where a complaint under *Section 4* was filed beyond the period of limitation, it was held that subsequent amendment to *Section 7* deleting the period of limitation altogether from the section cannot revive the limitation.[25]

In an important case the court held that, every demand of dowry whenever repeated constitutes another offence and thus, the dates of commission of the offence under Section 4 would be when the demand was made initially and also when the said demand was repeated afresh. The wording of *Section 4* does not make the demand as an offence which has been made only prior to the marriage. It is also very clear that if some dowry items which were demanded as consideration for the marriage are not given at the time of the marriage but are given after the performance of the marriage even then such person taking such dowry would be deemed to have committed offence punishable under *Section 3* of the Act. Similarly, even though the dowry items demanded prior to the marriage as consideration for the marriage are not given to all, even then the offence stands committed, when the demand was made, would come within the forecorners of *Section 4* and similarly, if a demand is repeated after the marriage the person repeating such a demand would be deemed to have committed an offence again under *Section 4* and the date of offence would be also when the demand is repeated in respect of the dowry items demanded at the time of the marriage as consideration for the marriage.[26]

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[22] *Baikunthanath Jena v. State of Orissa*, 1990 Cri LJ 2626.

[23] *Harinder Kaurv. State of Punjab*, 1989 Cri LJ 1032 (P&H).

[24] *Ram Rakhi v. Subhash Chander Kohli*, 1981 Cr LT 233 (Punj).

[25] *T.K. Narayanaswamy v. State of Karnataka*, 1991 Cri LJ 2115 (Kant).

[26] *Harbans Singh v. Gurucharan Kaur,* 1990 Cri L| 1591 (Del).

7.3.10 Nature of Offence: *Section 8*

Section 8 of Dowry Prohibition Act 1961 makes offence under this act shall be non-bailable and non-compoundable. According to this section-

Offences to be cognizable for certain purposes and to be bailable and non-compoundable -

(*l*) The Code of Criminal Procedure, 1973(2 of 1974) shall apply to offences under this Act as if they were cognizable offences-

(*a*) for the purposes of investigation of such offences; and

(*b*) for the purposes of matters other than-

(*i*) matters referred to in *section 42* of that Code; and (ii) the arrest of a person without a warrant or without an order of a Magistrate.

(*2*) Every offence under this Act shall be non-bailable and non-compoundable.

Section 8A. **Burden of proof in certain cases-** Where any person ·is prosecuted for taking or abetting the taking of any dowry under *section 3*, or the demanding of dowry under *section 4*, the burden of proving that he had not committed an offence under those sections shall be on him.

Section 8B. **Dowry Prohibition Officers-**

(*1*) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(*2*) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:

(*a*) to see that the provisions of this Act are complied with;

(*b*) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of, dowry;

(*c*) to collect such evidence as may be necessary for the prosecution of persons committing offence under the Act, and

(*d*) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(*3*) The State Government may, by notification in the Official Gazette, confer such powers of a police officer as may be specified in the notification on the Dowry Prohibition Officer who shall exercise such powers subject to a such limitations and conditions as may be specified by rules made under this Act.

(*4*) The State Government may, for the purpose of advising and assisting the Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an advisory board consisting of not more than five social welfare workers out of whom at least two shall be women from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under *sub-section (l)*.

In the case of *Ashok Kumar Shukla v. State of U.P., (2003) 5 AIC 662 (AII)* the issue was, whether the Chief Dowry Prohibition Officer had the authority to entertain an appeal and cancel the order passed by the Dowry Prohibition Officer. The court held that, chief Dowry Prohibition Officer has neither power of appeal nor of review over the orders passed by the Dowry Prohibition Officers. He has no power under the Act or the Rules to appoint a Committee to investigate a complaint regarding dowry made by an aggrieved party.

It is clear from this case that, If a statute does not provide an appellate or revisional power, an administrative authority cannot assume such power on its own. Any order passed without statutory authority is void. An order passed without jurisdiction is liable to be quashed by the High Court under *Article 226*[27].

In another case the court held that, Dowry Prohibition Officer is competent to conduct enquiry and if prima facie case is made out he is empowered to file a report to Magistrate.[28]

7.3.11 Power to make rules

Section 9 and *10* of The Dowry Prohibition Act 1961 of the Dowry Prohibition Act gives power to make rules to the central and state government respectively.

Section 9 says,

(*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) ln particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

[27] *Article 226* gives every High Court in India the power to issue writs to protect people's rights.

[28] *Suresh v. Inspector of Police, All-Women Police Station*, (2006) 5 CTC 844 (Madurai Bench).

(*a*) the form and manner in which, and the persons by whom, any list of presents referred to in *sub-section (2)* of *section 3* shall be maintained and all other matters connected therewith; and (b) the better co-ordination of policy and action with respect to the administration of this Act. Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one section of [in two or more successive session, and if, before the expiry of the session immediately following the session or the successive session aforesaid] both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 10 - Power of the State Government to make rules-

(*1*) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) ln particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(*a*) the additional functions to be performed by the Dowry Prohibition Officers under *sub-section (2)* of *section 8B*;

(*b*) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under *sub-section (3)* of *section 8B*.

(*3*) Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.

In a case the court made a comment on the duty of government. The court said that the Central Government should frame rules under *Section 9(2) (b)* if they have not been framed already and to take steps to ensure that submitting of the list as contemplated by the Act and the Rules is strictly implemented, Enforcement and Implementation of Dowry Prohibition Act, 1961.[29]

7.3.12 The Dowry Prohibition (Maintenance of Lists of Presents to The Bride and Bridegroom) Rules, 19851

In exercise of the powers conferred by *section 9* of the Dowry Prohibition Act, 1961 (2 of l 61), the Central Government framed rules under the Dowry Prohibition Act, 1961 to regulate and record the gifts given at the time of marriage so that they are not treated as dowry.

[29] In re, (2005) 4 SCC 565: 2005 SCC (Cri) 1163.

Rules in accordance with which lists of presents are to be maintained-

(*l*) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(*2*) The list of presents which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

(*3*) Every list of presents referred to in sub-rule (l) or sub-rule (2)

(*a*) shall be prepared at the time of the marriage or as soon as possible after the marriage:

(*b*) shall be in writing;

(*c*) shall contain-

(*i*) a brief description of each present;

(*ii*) the approximate value of the present;

(*iii*) the name of the person who has given the present; and

(*iv*) where the person giving the present is related to the bride or bridegroom, a description of such relationship;

(*d*) shall be signed by both the bride and the bridegroom.

Explanation I- Where the bride is unable to sign, she may affix her thumb impression in lieu of her signature after having the list read out to her and obtaining the signature, on the list, of the person who has so read out the particulars contained in the list.

Explanation II- Where the bridegroom is unable to sign he may affix his thumb impression in lieu of his signature after having the list read out to him and obtaining the signature on the list to the person who has so read out the particulars contained in the list.

(*4*) The bride or the bridegroom may, if she or he so desires, obtain in either or both of the lists referred to in sub-rule (I) or sub-rule (2) the signature or signatures of any relations of the bride or the bridegroom or of any other person or persons present at the time of the marriage.

The main objective of above rules is to distinguish legitimate presents from dowry by requiring a written list of gifts given to the bride and bridegroom during marriage. Also these rules help courts determine whether a gift was voluntary or demanded as dowry in cases under the Dowry Prohibition Act.

7.3.13 Relevant Sections From The Indian Penal Code (45 Of 1860)[30]

Certain provisions of the Indian Penal Code (IPC) deal directly with dowry-related crimes and cruelty against married women.

Section 304-B. **Dowry death**.[31]--(*1*) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation. -For the purposes of sub-section, "dowry" shall have the same meaning as in *Section 2* of the Dowry Prohibition Act, 1961. (28 of 1961).

(*2*) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Section 498-A. **Husband or relative of husband of a woman subjecting her to cruelty.**[32] - Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. -For the purposes of this section, "cruelty" means-

(*a*) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or death (whether mental or physical) of the woman; or

(*b*) harassment of the woman where such harassment is with a view to coercing her or any person related to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 406[33] **– Criminal Breach of Trust (Stridhan cases)- If the husband or in-laws dishonestly retain the woman's property (stridhan), it may amount to criminal breach of trust.**

[30] The Indian Penal Code, 1860 (IPC) has now been replaced and renamed as the Bharatiya Nyaya Sanhita, 2023 (BNS).

[31] Under the Bharatiya Nyaya Sanhita, 2023, the offence of dowry death is now covered under Section 80.

[32] Under the new criminal law, Section 498A of the IPC has been replaced by Section 85 of the Bharatiya Nyaya Sanhita, 2023 (BNS).

[33] Under the new criminal law, Section 406 of the IPC (Criminal Breach of Trust) is replaced by Section 316 of the Bharatiya Nyaya Sanhita, 2023 (BNS).

Punishment:

- Imprisonment up to 3 years, or
- Fine, or
- Both.

Section 306[34] **– Abetment of Suicide**

If a woman commits suicide due to cruelty or harassment by husband or in-laws, they may be charged with abetment of suicide.

Punishment:

- Imprisonment up to 10 years and fine.

Section 30.[35] "**Valuable Security**" - The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

ILLUSTRATION- A writes his name on the back of a bill of exchange. As the effect of this endorsement is transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

Section 30 is cross-referenced in *Section 85* (cruelty by husband or relatives). If the harassment or cruelty involves demand for valuable security, it strengthens the case for prosecution.

7.3.14 Relevant sections from The Indian Evidence Act, 1872 (Act 1 Of 1872)

Section 113-A. **Presumption as to abetment of suicide by a married woman**- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty. the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative

[34] Under the new criminal law, Section 306 of the IPC (Abetment of Suicide) has been replaced by Section 108 of the Bharatiya Nyaya Sanhita, 2023 (BNS).

[35] Under the Bharatiya Nyaya Sanhita, 2023 (BNS), Section 30 defines the term “Valuable Security.”

of her husband. Explanation- For the purpose of this section, "cruelty" shall have the same meaning as in *section 498-A* of the Indian Penal Code (45 of 1860).

Section 113-B. **Presumption as to Dowry Death** - When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had 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).

7.3.15 Relevant Sections From The Code Of Criminal Procedure, 1973 (2 Of 1974)[36]

Relevant Extracts (commonly cited in dowry and matrimonial cases) focus on jurisdiction, limitation, and investigation powers relevant to dowry-related and other criminal offences.

Section 174. **Police to enquire and report on suicide, etc**.- The object of the section is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of his death.

Section 176. **Inquiry by Magistrate into cause of death-** This section requires a Judicial or Executive Magistrate to conduct an independent inquiry into certain types of deaths, i.e.

- Custodial deaths (death in police custody or jail)
- Death of a woman within 7 years of marriage (possible dowry-related cases)
- Suicide or suspicious/unnatural deaths
- Death during police action (like firing)

Purpose of the Inquiry-

- To ensure transparency and fairness
- To act as a check on police investigations
- To determine the true cause of death

[36] The Code of Criminal Procedure, 1973 (CrPC, 2 of 1974) has now been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

It is independent of police investigation. Purpose of magisterial inquiry is to Protects human rights, prevents abuse of power by authorities and helps in cases like dowry deaths and custodial violence.

Section 177 - Place of Inquiry or Trial

Every offence must be inquired into and tried by a court within whose local jurisdiction it was committed.

Exception: Certain offences may be tried elsewhere if law allows.

Section 181 - Place of Trial for Certain Offences

Theft, extortion, robbery, criminal misappropriation, or criminal breach of trust can be tried either where the offence was committed or where the property was later received or retained.

This provides flexibility in jurisdiction, especially relevant if stolen property or stridhan is moved.

Section 468–472 – ***Limitation of Taking Cognizance***

These sections contains provisions about period or time within which a complaint, FIR, or charge must be filed.
Different offences have different limitation periods (e.g., cognizable offences, non-cognizable offences, and offences punishable with death/life imprisonment have no limitation).

Section 473 – **Extension of Limitation in Certain Cases**

Courts may take cognizance of an offence after the expiry of the limitation period if:

1. Delay is properly explained, or
2. It is necessary in the interest of justice.

The reasons for condoning delay must be recorded. It is relevant in cases where complaints under *Section 498A, 304B* IPC are delayed.

Sections 154–176 – FIR and Investigation

Section 154: Registration of FIR when an offence is reported.

Sections 156–157: Police empowered to investigate cognizable offences.

Dowry harassment, cruelty, and abetment of suicide cases are cognizable offences, allowing police investigation without magistrate order.

Sections 200–202 – Complaint Procedure

Provides magistrate powers to examine complaints before issuing summons.

It is important when complaints under Dowry Prohibition Act or IPC *Sections 498A/304B* are filed directly before magistrates.

Section 482 – Inherent Powers of High Court

High Court can exercise inherent powers to prevent abuse of process or miscarriage of justice, e.g., quashing false or malicious FIRs.

Sections 439, 167 – Bail and Remand

Section 439 - **Bail provisions**, particularly for offences like 498A/304B.

Section 167: **Police custody and judicial custody** during investigation.

Dowry and matrimonial offences under IPC[37] *Sections 304B*, *498A*, *306* now use BNSS[38] procedural provisions for investigation, cognizance, and trial.

7.3.16 Scope of state amendment

There are several state amendments made by different states of India, in the Dowry Prohibition Act, 1961. Dowry law falls under the Concurrent List (List III) of the Constitution of India. So both Parliament and State Legislature can legislate. If a State law conflicts with the Central Act, it must receive Presidential assent under *Article 254(2)*. After assent, the State amendment prevails within that State only. Although the Parliament retains power to override it later.

A State Can Increase Punishment. It can enhance imprisonment term and also can increase the fine amount.

If needed, a state legislature can change nature of offence, i.e.-

- Make it cognizable

[37] Now Bharatiya Nyaya Sanhita, 2023 (BNS).

[38] CrPC, 1973 → BNSS, 2023, effective 1 July 2024, replacing colonial-era procedural law with a modern procedural criminal code for investigation, trials, and protection of citizens' rights.

- Make it non-bailable
- Change compoundability

Through amendments a state can add procedural provisions-

- Appointment and powers of Dowry Prohibition Officers
- Burden of proof provisions
- Rules for investigation

A state also has power to insert new sections in the central act to cope up with state-specific enforcement mechanisms and reporting requirements.

It is also noted here that a State cannot make amendments matters outside the concurrent List. it cannot make any provision which violate fundamental rights and
override parliamentary law without presidential assent. A state cannot make provisions inconsistent with central amendments.

In an important case, *Rameshwar Yadav v. State of Bihar*[39] the issue before the Court mainly concerned validity and effect of state amendments to the Dowry Prohibition Act. Whether a state amendment to the Dowry Prohibition Act, 1961, which had received presidential assent, would prevail over the Central Act in that State. The supreme court held that, when a state amends a central law falling under the concurrent list, and the amendment receives presidential assent under *Article 254(2)* of the Constitution. Then the state amendment prevails within that state, even if it is inconsistent with the central law.

7.4 SUMMARY

The Dowry Prohibition Act, 1961 is a central legislation enacted by the Parliament of India to prohibit the giving and taking of dowry. The practice of dowry had become a serious social evil in Indian society, leading to harassment, cruelty, domestic violence, and even deaths of married women. The objective of Dowry Prohibition Act, 1961 is to prohibit giving, taking, or demanding dowry and it prevent abuse, violence, and financial pressure linked to marriage.

Section 2 of the act define dowry, which include Any property, money, or valuable security given or agreed to be given by one party to a marriage to the other, or by parents/relatives of either side in connection with marriage.

[39] (2018) 4 SCC 608

Section 3 of the act made giving or taking dowry is illegal and punishable with imprisonment (minimum 5 years) and fine (minimum ₹15,000 or value of dowry).

Demand for Dowry make a crime under *section 4*. Even asking for dowry is a crime. It also applies to direct or indirect demands. Any agreement for dowry is legally invalid (*section 5*).

Section 6 makes provisions about dowry to be for wife's benefit and says, dowry received must be given to the woman otherwise, it amounts to criminal breach of trust.

A State can make the dowry law stricter or modify procedures for better enforcement in its territory but must follow constitutional requirements.

In an important case[40] the supreme court made it clear that, if Bihar (or any State) amends the Dowry Prohibition Act and gets presidential approval, that amended version will apply in that state even if it differs from the Central version.

The 1985 Rules require the maintenance of signed lists of gifts given to the bride and bridegroom at the time of marriage, including details such as description, value, and the giver's relationship, to ensure transparency and prevent dowry demands.

The Act works alongside other laws like IPC, CrPc and Evidence Act.

The key IPC provisions related to dowry offences are *section 304B* (dowry death), *section 498A* (cruelty by husband or relatives), *section 406* (criminal breach of trust regarding stridhan), and *section 306* (abetment of suicide).

Key CrPC provisions relevant to dowry, cruelty, and matrimonial offences include:

CrPC Section	**Relevance**
177	Place of inquiry/trial
181	Place of trial for property-related offences
154–176	FIR and police investigation powers
200–202	Magistrate complaint procedure

[40] Rameshwar Yadav v. State of Bihar (2018) 4 SCC 608

468–472	Limitation period for taking cognizance
473	Condonation of delay in limitation
482	High Court inherent powers
439, 167	Bail and remand

Presumption under Evidence Law- Under the Indian Evidence Act, 1872:

Section 113A: Presumption of abetment of suicide of a married woman.

Section 113B: Presumption as to dowry death.

The Dowry Prohibition Act 1961 applies to all religions in India. It covers before, during, and after marriage. It makes offences cognizable and non-bailable (in many cases)

Voluntary gifts (without demand and properly recorded) are allowed according to the provisions of the act.

7.5 GLOSSARY

1. ***Section 304-B*** **of Indian Penal Code**- *Section 304B* of the Indian Penal Code (IPC) defines "dowry death" as the unnatural death of a woman within seven years of marriage, caused by burns, bodily injury, or abnormal circumstances, following cruelty or harassment by her husband or in-laws related to dowry demands. It carries a minimum 7-year prison sentence, extending to life. *Section 304B corresponds to Section 80 of the BNS.*

2. ***Section 498A*** **of Indian Penal Code-** *Section 498A* of the Indian Penal Code (IPC) criminalizes cruelty by a husband or his relatives against a married woman, punishable by up to three years in prison and a fine. Introduced in 1983 to combat dowry-related harassment, it covers physical/mental torture and harassment for unlawful property demands. It is cognizable, non-bailable, and non-compoundable. *Section 498A corresponds to Section 85 of the BNS.*

3. **IPC v BNS** - The Bharatiya Nyaya Sanhita, 2023 is India's new criminal law that replaces the Indian Penal Code (IPC). It came into force on 1 July 2024.

4. **Criminal Misappropriation / Breach of Trust — *Section 181(4)* - Under the Bharatiya Nyaya Sanhita (BNS), this provision deals with situations where someone dishonestly uses or takes property that was entrusted to them, or converts**

it for their own use instead of using it for the intended purpose. This offence is closely related to the older provision under the Indian Penal Code (*Section 405/406* – Criminal Breach of Trust), now restructured under BNS.

5. ***Quid pro quo***- "*Quid pro quo*" is a latin phrase that literally means "something for something." It refers to an exchange where one thing is given in return for something else a mutual agreement or trade. In legal settings, *quid pro quo* often refers to corruption or bribery.

6. ***Section 473* of CrPC**- A court may take cognizance of an offence even after the expiry of the period of limitation if:

(i) The delay has been properly explained, or

(ii) It is necessary to do so in the interests of justice.
In such cases, the court must record reasons for condoning the delay.

This section acts as an exception to the limitation rules provided in *Sections 467–472* CrPC. Even if the statutory time limit for taking cognizance has expired, the court can still proceed if justice requires it.

7.6 REFERENCES

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4. The Dowry Prohibition Act, 1961 Bare Act

5. https://testbook.com/bare-acts/dowry-prohibition-act-1961

7.7 SUGGESTED READINGS

1. Bare Act: Dowry Prohibition Act, 1961
2. Legislation Commentary on the Dowry Prohibition Act, 1961 (ILE Constitutional Review)
3. Critical Analysis of the Dowry Prohibition Act (IJLLR)
4. Articles on Dowry System and Law (e.g., Britannica overview)
5. *Social Problems in India – Ram Ahuja*
6. *Sociology of Law – Indra Deva*
7. *Law and Social Transformation – Ishwara P. Bhat*
8. *Contemporary Social Problems in India – Biswanath Ghosh*

7.8 SHORT ANSWERS QUESTIONS

1. What is meant by “dowry” under Section 2 of the Act?

2. What is the punishment for demanding dowry under Section 4?

3. What is the legal status of a dowry agreement under Section 5?

4. Who can file a complaint under the Dowry Prohibition Act?

5. What is the role of Dowry Prohibition Officers?

7.9 TERMINAL QUESTIONS

1. Explain the historical background and need for the Dowry Prohibition Act, 1961.

2. Discuss the objectives and key provisions of the Dowry Prohibition Act, 1961.

3. Define “dowry” under Section 2 and explain its scope with judicial interpretations.

4. Distinguish between dowry and voluntary gifts with reference to legal provisions and case laws.

5. Examine the offences and punishments under Sections 3, 4, 5, and 6 of the Act.

7.10 TRUE AND FALSE

1. Dowry originally started as a coercive demand by the groom’s family.
2. Any agreement for giving or taking dowry is legally valid if both parties consent.
3. Demand for dowry is punishable even if no dowry is actually given.
4. Voluntary gifts given without demand are considered dowry under the Act.
5. Offences under the Dowry Prohibition Act are generally non-bailable.

ANSWERS

SHORT ANSWERS QUESTIONS

1. Refer 7.3.3; 2. Refer 7.3.6; 3. Refer 7.3.5; 4. The law allows not just the victim but also family members, authorities, and even certain third parties to initiate action to help prevent dowry-related offenses. 5. Refer 7.3.10

TRUE AND FALSE

1. False; 2. False; 3. True; 4. False; 5 True;

UNIT- 8

EQUAL REMUNERATION ACT, 1976

8.1 INTRODUCTION

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8.4 SUMMARY

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8.9 TERMINAL QUESTIONS

8.10 TRUE AND FALSE

8.1 INTRODUCTION

The Equal Remuneration Act, 1976[41] is a social welfare legislation enacted by the Government of India to ensure equality in wages and employment opportunities for men and women. It aims to eliminate gender-based discrimination in the workplace by providing for equal pay for equal work and preventing unfair treatment in recruitment, promotions, and working conditions. Before 1976, there was widespread wage inequality and gender bias in employment, and the Act was introduced to legally enforce fairness and equality. The Act also reflects the principles of equality enshrined in the Indian Constitution, particularly Articles 14 and 39, and aligns with international standards promoted by the International Labour Organization.

This unit provides a comprehensive analysis of the Equal Remuneration Act, 1976, examining its historical context, objectives, legal provisions, judicial interpretations, implementation challenges, and continuing relevance. It also evaluates the Act's effectiveness in addressing gender wage disparity and discusses its evolution in the context of modern labour reforms.

8.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- ➢ Necessity for a Legal Framework for condition of Unequal Wages between men and women
- ➢ Constitutional provisions about equality
- ➢ The Equal Remuneration Act, 1976
- ➢ Objective of The Equal Remuneration Act, 1976
- ➢ Meaning of Remuneration
- ➢ Understanding of "Work of A Similar Nature"
- ➢ Legal boundation for payment of remuneration at equal rates to men and women workers
- ➢ Provisions for non-discrimination in employment
- ➢ Statutory obligation on employers to maintain proper records and registers
- ➢ Appointment, powers, and duties of Inspectors who enforce the Act
- ➢ Punishments for violating the provisions of the Act
- ➢ Equal Remuneration Rules, 1976
- ➢ Central Advisory Committee On Equal Remuneration Rules, 1991
- ➢ Critical Analysis of the Equal Remuneration Act, 1976

8.3 MAIN BODY

[41] now subsumed under the **Code on Wages, 2019**

8.3.1 Necessity for a Legal Framework for condition of Unequal Wages that prevails in Indian society

A legal framework like the Equal Remuneration Act, 1976 became necessary to address deep-rooted inequalities in the workplace. Women were mostly restricted to low-paid, unskilled, or informal jobs. Certain jobs were considered "unsuitable" for women, limiting their participation. Society often viewed women as secondary earners, justifying lower wages. This mindset reinforced unequal treatment in workplaces. In absence of any legal regulation, women were often paid less than men for the same work. A law was needed to ensure fair and equal wages. However, the Indian Constitution guarantees equality (Articles 14 and 15) but a specific law was necessary to enforce these rights in employment practices. Without any legal safeguards, employers could exploit workers especially women by paying lower wages and denying opportunities.

Equal pay is essential for social and economic justice. A legal framework helps reduce gender inequality and promotes fairness in society. A law provides clear rules and accountability, ensuring employers to not discriminate in hiring and maintain fairness in promotions and wages. Workers need a system to raise grievances and seek justice. Legal provisions ensure enforcement and penalties for violations. Also India, as a member of the International Labour Organization, is expected to follow global standards like equal pay for equal work.

8.3.2 Objective of The Equal Remuneration Act, 1976

As stated in the act,

"An act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental there to."

It is clear from above state that the main objectives of the act are:

1. Equal Pay for Equal Work

To ensure that **men and women receive equal remuneration** for performing the same or similar work. The Indian Constitution enlightened this in Article 39[42] under the heading of Directive Principles of State Policy i.e. certain principles of policy to be followed by the State.

2. Prevention of Gender Discrimination

[42] *Article 39* stated certain principles of policy to be followed by the State. For detail See glossary.

To prohibit discrimination against women in recruitment, promotions, training and other employment conditions.

3. Promotion of Women's Employment

To encourage employers to **increase employment opportunities for women** through fair practices.

4. Implementation of Constitutional Principles

To give effect to equality provisions under the **Indian Constitution**, especially Articles 14, 15, 16[43] and 39.

5. Ensuring Social and Economic Justice

To reduce gender inequality and promote **social justice and economic empowerment** of women.

6. Establishment of Enforcement Mechanism

To provide authorities and procedures for:

- Addressing complaints
- Ensuring compliance
- Penalizing violations

Hence, the Act aims to create a **fair, non-discriminatory workplace** by ensuring equal pay and equal opportunities for both men and wome*n. There is clearly specified in the act with following words-*

"Article 39 of Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. To give effect to this constitutional provision, the President promulgated on the 26th September 1975, the Equal Remuneration Ordinance, 1975 so that the provisions of Article 39 of the Constitution may be implemented in the year which is being celebrated as the International Women's Year. The Ordinance provides for payment of equal remuneration to men and women workers for the same work or work of similar nature and for the prevention of discrimination on grounds of sex."[44]

[43] *Article 14*, *15* and *16* of the Indian Constitution stated about equality before law. For detail See glossary.

[44] Prefatory Note – Statement of Objects and Reasons; The Equal Remuneration Act, 1976.

8.3.3 The Equal Remuneration Act, 1976

The Act draws from Article 39(d) of the Indian Constitution, which directs the state to ensure equal pay for equal work for both genders. Also the act was inspired by the International Labour Organization's (ILO) Equal Remuneration Convention, 1951 (Convention No. 100), which India ratified, committing to global standards for equal pay. Before the Act, there was no specific legislation mandating equal pay for men and women. Women frequently earned 20–50% less than men for comparable work, especially in informal sectors.

On September 26,1975, during the Emergency period, the government introduced the Equal Remuneration Ordinance to address wage discrimination urgently. Later on February 11, 1976 the Equal Remuneration Act, 1976, was enacted, replacing the ordinance.

Equal Remuneration (Amendment) Act, 1987: This amendment was introduced to remove lacunae in the 1976 Act. It strengthened enforcement by increasing penalties for employers who discriminate against women in matters of recruitment, promotions, or training, and it empowered authorized officers to file complaints regarding violations.

Code on Wages, 2019 replaced the Equal Remuneration Act (ERA). It has made huge progress by extending the application of the principle of equal pay for equal work beyond the binary of men and women. Thus, the people of the LGBTQI+ community are also extended the benefit of equal remuneration for work of equal value. The Code has also done away with Section 16 of the Equal Remuneration Act which empowered the government to differ in the remuneration of men and women solely based on gender. Though the code has tried to make a huge progress but again has failed to describe the phrase "work of equal value" and left with the courts to interpret it. However, the Courts have given a narrower interpretation to this phrase.[45]

The judiciary has applied and interpreted the doctrine of "equal pay for equal work" in a series of decisions from the year 1980s. The court has initially given a wider interpretation to the phrase "same work or work of similar nature". In the landmark judgment of Mackinnon Mackenzie[46] the Supreme Court held that the principle of equal remuneration presupposed that the same level of pay is guaranteed not only to persons performing identical jobs but also to persons performing work that was different but was considered to be of equal value.

The case of V. Markendeya v. State of Andhra Pradesh (1989) is an important judgment dealing with the principle of "equal pay for equal work" under Articles 14 and 16 of the Constitution. In this case, the petitioners were employees working in different capacities under the State of Andhra Pradesh. They claimed that although they were performing duties similar to those of other employees, they were being paid less. They argued that this disparity in pay violated their

[45]https://manupatracademy.com/legalpost/equal-pay-for-equal-work-statutory-provisions-judicial-pronouncements

[46] *Mackinnon Mackenzie v. Audrey D'Costa and another*, MANU/SC/0446/1987.

constitutional right to equality. The Court held that the principle of "equal pay for equal work" is not an abstract doctrine that can be applied universally without proper evaluation. Pay parity depends on multiple factors such as nature of duties, responsibilities, qualifications, experience and method of recruitment. Thus, even if two posts appear similar, differences in these factors may justify different pay scales. This case balances the ideal of equality with practical considerations of employment. It reinforces that while equal pay for equal work is an important constitutional principle, its application must be realistic, evidence-based, and not mechanical.

In recent years the Indian Courts have pulled themselves out from interfering in executive actions. The Supreme Court has also held that unless there is complete and wholesale identity between the two groups, there is no claim for equal pay.[47] In the case of Union of India v. Indian Navy Civilian Design Officers Association and Anr.[48] It was held by the Supreme Court that the equation of posts and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Indian Courts have certainly fallen short in interpreting the legal principle of equal pay for equal work. Thus, now the legislature should initiate in describing the phrase "same work/work of similar nature/work of equal value" to ensure gender justice in the workplace.

8.3.4 Key Definitions of the Equal Remuneration Act, 1976

8.3.4.1 Meaning of Remuneration

Remuneration defined under section 2 (g) of the Equal Remuneration Act, 1976:

"remuneration" means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;"

Wages are the payments workers receive in return for the work they do during production. Employers pay employees for the effort and services they provide. These payments, which include both wages and salaries, are usually decided through an agreement between the employer and the employee. For workers, this income is important because it helps them meet their daily needs and supports their livelihood.

It is clear from above definition that wages are the money paid to workers in return for the work or services they provide and should be based on the kind and quality of work done and not according to the age, race, sex, religion, political association, ethnic origin or any other individual or group characteristic unrelated to ability, performance and qualification.

[47] *S.C. Chandra & Ors vs State of Jharkhand & Ors*., MANU/SC/3501/2007.

[48] MANU/SC/0156/2023.

8.3.4.2 Work of A Similar Nature

The phrase **"same work or work of a similar nature"** is commonly used in legal, employment, and policy contexts. It is defined under section 2 (h) of the Equal Remuneration Act, 1976 as follows:

"same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required of a woman are not of practical importance in relation to the terms and conditions of employment;

In Indian labour law, the phrase "same work or work of a similar nature" is very important, especially in cases about equal pay and fair treatment. This concept mainly comes from the Equal Remuneration Act, 1976. Article 14 and 16 of the Indian Constitution (equality principles) and Judicial interpretations by the Supreme Court of India.[49]

Under the law, "same work or work of a similar nature" means Work requiring similar skill, effort, experience, and responsibility, performed under similar working conditions, where differences (if any) are not of practical importance. So even if job titles differ, the law looks at the actual work done, not just designation. Courts examine whether the jobs are comparable based on:

- Skill (education, training, expertise)
- Effort (physical/mental work)
- Responsibility (decision-making, accountability)
- Working conditions (environment, risks, hours)

Minor differences won't matter if the overall nature is similar.

In Randhir Singh v. Union of India (1982) the court established "equal pay for equal work" as a constitutional goal. Even if not a fundamental right, it must guide state policy. In another case of State of Punjab v. Jagjit Singh (2016) it was held by the court that temporary employees doing similar work as permanent employees must receive equal pay. The court reinforced that artificial classifications are not allowed. In the case of Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa (1987), women stenographers were paid less than men for similar work. The Court ruled this was illegal under equal remuneration principles.

But real differences in qualifications, level of responsibility and complexity of work can justify different pay.

[49] See glossary

8.3.5 Payment of Remuneration at Equal Rates to Men and Women Workers

It is the duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature. The Equal Remuneration Act, 1976 under Section 4 make provision for equal remuneration are follows:

(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

(3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are only two rates), of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers:

Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

There is no requirement for employers to follow the existing occupational classifications, whether the three-digit system or any other framework provided by the ILO[50] or the government. They have the freedom to create their own job classifications, which can make it harder to compare roles that are essentially similar. As a result, even when a man and a woman perform work of a similar nature, employers may artificially differentiate between their jobs. For instance, an electric engineer might receive higher pay than an electrician despite both roles involving comparable tasks. The higher pay is justified on the basis of their qualifications and is therefore placed in a more “skilled” category.

The Equal Remuneration Act, 1976 covers all industries, public or private, organized and unorganized, and all employees doing permanent, temporary and casual work. The law covers central, state and local authorities, hospitals and dispensaries, banks and financial services, educational institutions, mines, provident funds and other state insurance corporations, the Food Corporation of India and other warehouses, all industries under National Industrial Classifications (NIC) groups 1, 2 and 3; power, water and gas generation, trade, transport (water, land and air), construction, real estate and sanitation, religious community and medical

[50] International Labour Organization

and personal services. The Act does not cover self-employed workers like unpaid women workers in farming, households and in the unorganized Industries in large numbers.[51]

8.3.6 Non-Discrimination in Employment

Section 5 of The Equal Remuneration Act, 1976 says, "**No discrimination to be made while recruiting men and women workers.**" –

"On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:

Provided that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees of any other class or category of persons in the matter of recruitment to the posts in an establishment or employment. "

C. B. Muthamma v. Union of India (1979) was a landmark decision of the Supreme Court of India addressing gender discrimination within the Indian Foreign Service (IFS). The case marked a significant step toward equality in Indian public employment, striking down service rules that unfairly disadvantaged women officers. C. B. Muthamma joined the Indian Foreign Service in 1949 as its first woman member. Despite an exemplary record, she faced career stagnation and procedural bias. When denied promotion to Grade I (Ambassador rank), she challenged the service rules that required women to obtain government permission before marriage and allowed termination upon marriage. These conditions were not imposed on male officers. The bench led by Justice V. R. Krishna Iyer criticized the "misconceived notions of male chauvinism" in the rules, declaring them violative of Articles 14, 15, and 16 of the Indian Constitution, which guarantee equality and prohibit discrimination on grounds of sex. The Court ordered the government to remove gender-based barriers and reconsider Muthamma's promotion in light of her merits.

8.3.7 Advisory Committee

The Act establishes a Central Advisory Committee under section 6:

"Advisory Committee. -- (1) For the purpose of providing increasing employment opportunities for women, the appropriate Government shall constitute one or more Advisory Committees to advise it with regard to the extend to which women may be employed in such

[51] Implementation of The Equal Remuneration Act, 1976: Dr. Shashi Bala

establishments or employments as the Central Government may, by notification, specify in this behalf.

(2) Every Advisory Committee shall consist of not less than ten persons, to be nominated by the appropriate Government, of which one-half shall be women.

(3) In tendering its advice, the Advisory Committee shall have regard to the number of women employed in the concerned establishment or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part-time employment, and such other relevant factors as the Committee may think fit.

(4) The Advisory Committee shall regulate its own procedure.

(5) The appropriate Government may, after considering the advice tendered to it by the Advisory Committee and after giving to the persons concerned in the establishment or employment an opportunity to make representations, issue such directions in respect of employment of women workers, as the appropriate Government may think fit."

The Advisory Committee is set up to promote employment opportunities for women and reduce discrimination in recruitment. This committee is formed by the appropriate government (Central or State) which must include employers' representatives, employees' representatives and other persons with relevant expertise. Among them at least 50% of members must be women.

The main function of The Advisory Committee is to gives advises the government on:

- Increasing women's participation in various sectors
- Identifying areas where women are underrepresented
- Suggesting measures to ensure equal opportunity in recruitment
- Removing barriers that prevent women from entering certain jobs

While giving advice, the Committee may consider the nature of work, working conditions, suitability of women for specific roles and need for promoting gender equality in employment. The importance of this committee is to helps implement the principle of not just equal pay but equal opportunity also. It encourages policy-level changes for women's employment and acts as a bridge between government, employers, and workers.

8.3.8 Appointment of Authorities

Section 7. Power of appropriate Government to appoint authorities for hearing and deciding claims and complaints. --

"(1) The appropriate Government may, by notification, appoint such officers, not below the rank of a Labour Officer[52], as it thinks fit to be the authorities for the purpose of hearing and deciding—

(a) complaints with regard to the contravention of any provision of this Act;

(b) claims arising out of non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, and may, by the same or subsequent notification, define the local limits within which each, such authority shall exercise its jurisdiction.

(2) Every complaint or claim referred to in sub-section (1) shall be made in such manner as may be prescribed.

(3) If any question arises as to whether two or more works are of the same nature or of a similar nature, it shall be decided by the authority appointed under sub-section (1).

(4) Where a complaint or claim is made to the authority appointed under sub-section (1) it may, after giving the applicant and the employer an opportunity of being heard, and after such inquiry as it may consider necessary, direct, —

(i) in the case of a claim arising out of a non-payment of wages at equal rates to men and women workers for the same work or work of a similar nature, that payment be made to the worker of the amount by which the wages payable to him exceed the amount actually paid;

(ii) in the case of complaint, that adequate steps be taken by the employer so as to ensure that there is no contravention of any provision of this Act.

(5) Every authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Any employer or worker aggrieved by any order made by an authority appointed under sub-section (1), on a complaint or claim may, within thirty days from the date of the order, prefer an appeal to such authority as the appropriate Government may, by notification, specify in this behalf, and that authority may, after hearing the appeal, confirm, modify or reverse the order appealed against and no further appeal shall lie against the order made by such authority.

(7) The authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-

[52] See glossary

section (6), allow the appeal to be preferred within a further period of thirty days but not thereafter.

(8) The provisions of sub-section (1) of Section 33-C of the Industrial Disputes Act, 1947 (14 of 1947), shall apply for the recovery of monies due from an employer arising out of decision of an authority appointed under this section."

Section 7 of the Equal Remuneration Act, 1976 provides the machinery for enforcement of the principle of equal pay for equal work. It deals with the appointment of authorities to hear and decide complaints regarding discrimination in wages and employment. It provides a quasi-judicial mechanism for enforcing the principle of equal pay. Although it is less technical than courts. It also empowers labour authorities. An employee (or their representative) can file a complaint regarding violation of equal remuneration provisions, discriminatory practices in hiring, promotions, or conditions of service etc. The authority has powers to summon witnesses, require production of documents and take evidence to ensure effective fact-finding. After inquiry, the authority can direct the employer to pay the difference in wages or order corrective action to remove discrimination as the case may be. The main focus is restorative, not just punitive. Decisions under Section 7 are typically appealable to a higher authority, ensuring procedural fairness. It provides a low-cost, accessible remedy compared to regular courts. It encourages workers, especially women to assert rights.

In short Section 7 is the enforcement engine of the Equal Remuneration Act. It transforms the principle of equal pay from a moral or constitutional idea into a legally actionable right, giving workers a concrete forum to challenge discrimination.

8.3.9 Duty of Employers to Maintain Registers

Section 8 of the Equal Remuneration Act, 1976 imposes a statutory obligation on employers to maintain proper records and registers. Every employer is required to:

1. **Maintain registers and documents relating to:**

- ➢ Employees employed (men and women)
- ➢ Nature of work performed
- ➢ Wages paid

2. **Preserve such records in the prescribed format as per rules;**
3. **Produce these records when demanded by inspectors or authorities.**

The main object of this section is to ensure accountability and transparency in wage practices, to facilitate inspection and enforcement of equal remuneration and to prevent manipulation or concealment of wage data. It also acts as evidence in disputes under Section 7. It helps authorities verify whether:

- ➢ Equal pay is being given
- ➢ Discrimination exists in employment conditions

In the case of non-compliance of the provisions of section 8 the employer may face penalties under the Act and adverse inference may be drawn in disputes (i.e., assumption of discrimination).

8.3.10 Inspectors

Section 9 of the Equal Remuneration Act, 1976 deals with the appointment, powers, and duties of Inspectors who enforce the Act. it says,

"(1) The appropriate Government may, by notification, appoint such persons as it think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

(2) Every Inspector shall be deemed to be a public servant within the meaning of Section 21[53] of the Indian Penal Code (45 of 1860).

(3) An Inspector may, at any place within the local limits of his jurisdiction, --

> (a) enter, at any reasonable time with such assistance as he thinks fit, any building, factory, premises or vessel:
>
> (b) require any employer to produce any register, mister-roll or other documents relating to the employment of workers, and examine such documents;
>
> (c) take on the spot or otherwise, the evidence of any person for the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with:
>
> (d) examine the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the

[53] Section 21 of the Indian Penal Code defines the term "public servant." it lists who is considered a public servant for the purposes of the law.

Inspector has reasonable cause to believe to be, or to have been a worker in the establishment;

(e) make copies, or take extracts from, any register or other document maintained in relation to the establishment under this Act.

(4) Any person required by an Inspector to produce any register or other document or to give any information shall comply with such requisition."

According to this section the appropriate government (Central or State) may appoint Inspectors to ensure that the provisions of the act, especially equal pay for men and women are being followed. Inspectors are treated as public servants under the Indian Penal Code, which means interfering with them can lead to legal consequences.

Powers of Inspectors: Inspectors are given authority to check compliance. Their main powers include:

- **Entering workplaces**: They can enter any premises where employees are working
- **Examining records**: They can inspect registers, wage records, and other documents
- **Taking evidence**: They may question employers or employees
- **Seizing or copying documents**: If needed for investigation
- **Ensuring compliance**: Verifying that no discrimination in wages or recruitment exists

Duties of Employers: Employers must:

- Provide access to records and documents
- Cooperate with the Inspector
- Not obstruct the Inspector in carrying out duties

8.3.11 Penalties

Section 10 of the Equal Remuneration Act, 1976 prescribes punishments for violating the provisions of the Act, especially regarding equal pay and non-discrimination. According to this section-

"(1) If after the commencement of this Act, any employer, being required by or under this act, so to do—

(a) omits or fails to maintain any register or other document in relation to workers employed by him, or

(b) omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or

(c) omits or refuses to gives any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or

(d) omits or refuses to give any information, he shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.

(2) If, after the commencement of this Act, any employer—

(a) makes any recruitment in contravention of the provisions of his Act, or

(b) makes any payment or remuneration at unequal rates to men and women worker, for the same work or work of a similar nature, or

(c) makes any discrimination between men and women workers in contravention of the provisions of this Act, or

(d) omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of Section 6.

he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

(3) If any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine, which may extend to five thousand rupees."

Hence section 10 provides the **legal consequences** if an employer breaks the equal pay or anti-discrimination rules—ranging from fines to short-term imprisonment.

1. Offences covered- An employer can be penalized for:

- ➢ Paying unequal remuneration to men and women for the same or similar work
- ➢ Discriminating in recruitment, promotions, training, or transfers based on gender
- ➢ Failing to maintain required registers or records

- ➢ Obstructing Inspectors in their duties
- ➢ Violating any rule or direction issued under the Act

2. Punishment- The penalties may include:

- ➢ Imprisonment: Up to 1 month
- ➢ Fine: Up to ₹10,000
- ➢ Or both

For continuing offences, additional fines may be imposed for each day the violation continues.

3. Nature of enforcement- The penalties are meant to ensure strict compliance with equal pay laws, deter employers from discriminatory practices and support enforcement through Inspectors and authorities.

8.3.12 Offences by companies

Section 11 under the Equal Remuneration Act, 1976 explains who is held responsible when a company commits an offence under the Act. If a company violates the act the company itself, and every person in charge of and responsible for the conduct of its business can be held guilty. This typically includes directors, managers and officers in charge of operations

A person will not be punished if they can prove that, the offence was committed without their knowledge, or they exercised due diligence to prevent the violation

If it is proven that the offence occurred with consent, connivance, or due to neglect of any director, manager, secretary, or other officer, then that person is specifically held liable and punished.

In this section-

- ➢ "Company" includes anybody corporate, firm, or association of individuals
- ➢ "Director" (in case of a firm) refers to a partner

8.3.13 Cognizance and Trial of Offences

Section 12 of the Equal Remuneration Act, 1976 lays down how offences under the Act are taken up and tried by courts.

1. Cognizance of offences- A court can take cognizance (i.e., officially recognize and begin proceedings) only if a complaint is made by:

- **The appropriate government, or**
- **An authorized officer (such as an Inspector), or**
- **An aggrieved person (the affected employee)**

2. Competent court- Only a metropolitan magistrate or a judicial magistrate of the first class can try offences under this Act. Lower courts do not have jurisdiction.

3. Purpose of the provision - This ensures:

- **Proper and authorized initiation of cases**
- **That cases are handled by competent courts**
- **Protection against frivolous or unauthorized complaints**

In short section 12 explains who can file a complaint and which court can hear the case, ensuring that violations of equal pay laws are dealt with through a proper legal process.

8.3.14 Other Miscellaneous Provisions

8.3.14.1 Power to make rule

Section 13 of the Equal Remuneration Act, 1976 gives authority to the appropriate government (Central or State) to frame rules for implementing the act effectively. The Central Government or State Government (depending on jurisdiction) can make rules. These rules help in carrying out the provisions of the Act

Scope of rules- The government may make rules on matters such as:

- Maintenance of registers and records by employers
- Manner of filing complaints
- Duties and powers of Inspectors
- Procedure for hearing claims and disputes
- Any other matter necessary for proper enforcement of the Act

Rules made by the Central Government are usually laid before Parliament. This ensures accountability and oversight.

In this way section 13 allows the government to create detailed procedures and guidelines so that the Act can be properly enforced in practice.

8.3.14.2 Power of Central Government to Give Directions

Section 14 of the Equal Remuneration Act, 1976 allows the Central Government to guide and control how the law is implemented, ensuring consistent application throughout India. The provision of this section empowers the Central Government to issue directions for proper implementation of the Act.

1. Power to issue directions

The Central Government can give orders or instructions to:

- State Governments
- Authorities or officers

These directions are for ensuring effective enforcement of the Act's provisions.

2. Binding nature

- Such directions are binding, meaning the concerned authorities must follow them.

3. Purpose

This power helps to:

- Maintain uniformity in implementation across the country
- Ensure that the objective of equal pay for equal work is achieved
- Address any difficulties or gaps in enforcement

8.3.14.3 Act Not to Apply in Certain Special Cases

Section 15 of the Equal Remuneration Act, 1976 provides exceptions where the provisions of the Act may not apply.

1. Power of the appropriate government

- The appropriate government (Central or State) can declare that the Act will not apply to certain employments or establishments
- This is done through a notification in the Official Gazette

2. Basis for exemption - Such exemptions may be granted considering:

- The nature of work

- ➢ Special circumstances of the employment
- ➢ Public interest or other relevant factors

3. Conditional application

- ➢ The government may also impose conditions or restrictions while granting exemption
- ➢ The exemption can be partial or complete

Hence **section 15** allows the government to exclude certain cases from the act's application where strict enforcement may not be practical or appropriate.

8.3.14.4 Power to Make Declaration

Section 16 of the Equal Remuneration Act, 1976 gives authority to the appropriate government to clarify whether different kinds of work are of the same or similar nature. When there is a dispute or doubt about whether two jobs should be treated equally for pay purposes The government can declare that certain types of work are same work, or work of a similar nature. This is important because the Act guarantees equal remuneration for same or similar work

Effect of declaration

- ➢ Once declared, the decision becomes binding
- ➢ Employers must then ensure equal wages for such categories of work

Purpose - This provision helps:

- ➢ Prevent employers from artificially differentiating jobs to justify unequal pay
- ➢ Ensure fair and consistent application of the principle of equal pay

In short section 16 allows the government to officially decide when two jobs are essentially the same, ensuring that men and women are paid equally for such work.

8.3.14.5 Power to Remove Difficulties

In case of any practical problem that arises while implementing the Act, the Central Government can issue necessary orders to resolve that problem and ensure smooth enforcement of the law. Section 17 of the Equal Remuneration Act, 1976 gives power to the central government in following words:

"If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by notification, make any order, not inconsistent with the provisions of this Act, which appears to it to be necessary for the purpose of removing the difficulty:

Provided that every such order shall, as soon as may be after it is made, be laid before each House of Parliament."

Hence, section 17 of the Equal Remuneration Act, 1976 empowers the Central Government to make orders for removing any difficulty that may arise in giving effect to the provisions of the Act. Such orders must be published in the Official Gazette. It is necessary to smooth and effective implementation of all provisions of the equal remuneration act.

8.3.15 Equal Remuneration Rules, 1976

Equal Remuneration Rules, 1976 are the rules framed by the Central Government under the Equal Remuneration Act, 1976 to carry out the provisions of the Act effectively. These rules provide the procedure, forms, registers, and administrative details required for implementation of equal pay for men and women workers.

Main Purpose of the Rules:

1. To ensure proper enforcement of equal remuneration provisions.
2. To prescribe maintenance of registers and records by employers.
3. To lay down procedures for complaints and claims.
4. To regulate the functioning of advisory committees.
5. To support prevention of discrimination in recruitment and service conditions.

8.3.16 Central Advisory Committee On Equal Remuneration Rules, 1991

Central Advisory Committee on Equal Remuneration Rules, 1991 are the rules framed by the Central Government regarding the constitution and functioning of the Central Advisory Committee under the Equal Remuneration Act, 1976.

These rules were made to regulate matters relating to the Central Advisory Committee, which advises the government on increasing employment opportunities for women and ensuring implementation of equal remuneration provisions.

Main Functions:

1. Constitution of the Central Advisory Committee.

2. Appointment of members and Chairperson.

3. Meetings and procedure of the Committee.

4. Terms and conditions of members.

5. Advisory role on equal pay and prevention of discrimination.

8.3.17 Critical Analysis of the Equal Remuneration Act, 1976

Although many respondents stated that they receive equal wages for work of a similar nature, the data indicates that a large number of women still earn less than men for doing the same work, even when they possess equal skills and qualifications. This shows that the gender pay gap continues to exist in India, particularly in the unorganised sector, where around 80% of women workers are employed.

The field study also shows that most organisations employ more men than women, suggesting that women face unequal opportunities right from the recruitment stage. Compared with global standards, India has a poor record of women's participation in the labour force. Women contribute only about 17% to the country's GDP, which is among the lowest rates in the world.

If India aims to become a strong multi-trillion-dollar economy and achieve sustainable growth, it is necessary to increase women's participation in the workforce. For this, all stakeholders including the government, employers, trade unions, and women themselves must work together in a coordinated manner. Their combined efforts are essential for the effective implementation of the Equal Remuneration Act, 1976. Through collective responsibility and commitment, these challenges can be overcome and women's role in the labour market can be strengthened.[54]

Government-Level Initiatives:

- Many women-friendly laws already exist, but a large number of beneficiaries are unaware of them. The government can prepare simple booklets on women's rights and distribute them in rural and urban areas through district authorities.

- Digital platforms can be created to provide information and support regarding women's rights.

- Awareness and training programmes should be organised to spread legal knowledge at the grassroots level.

[54] Implementation of The Equal Remuneration Act 1976 by dr. Shashi Bala; https://vvgnli.gov.in/sites/default/files/2024-01/NLI%20Research%20Studies%20Series%20No%20142_0.pdf

- Legal aid camps may be established in every district so that women can seek guidance, resolve disputes, and understand legal remedies.

- Lok Adalat sessions can be organised regularly in organisations to settle disputes quickly and fairly.

- The Bar Council of India may encourage compulsory internships for law students through Lok Adalats in both rural and urban areas.

Employer-Level Initiatives:

- Along with financial audits, organisations should also conduct legal audits through qualified professionals to ensure compliance with labour and equality laws.

- Employers should recognise their responsibility in nation-building by respecting employee rights and fulfilling their duties fairly.

- Organisations should actively promote awareness of labour laws and social justice measures among employees.

Trade Union-Level Initiatives:

- The right to collective bargaining is closely linked with freedom of association for workers and employers.

- More women should be given a supportive environment to participate in trade unions.

- Providing women with leadership roles in national trade unions can improve their ability to negotiate effectively with employers.

Family-Level Initiatives:

- Families should encourage women to raise their voice and seek justice against discrimination.

- Gender equality begins at home. When both partners treat each other equally and share household responsibilities, children naturally learn the value of dignity of labour and fairness.

- Parents should treat sons and daughters equally. Workshops on effective parenting and gender-sensitive upbringing may also be helpful.

8.4 SUMMARY

India continues to function within a largely patriarchal framework, where gender bias is deeply ingrained in social and economic structures. As a result, women, transgender individuals, and other marginalized groups disproportionately face inequality. This issue is further intensified by weak enforcement of laws, along with a lack of clarity and fairness in job evaluation and salary systems, which contributes to the persistent gender pay gap.

Moreover, for generations, women's unpaid domestic and caregiving work has gone unrecognized, reinforcing the belief that their primary role lies within the household. This cultural mindset has led to the undervaluation of their contributions. Limited access to education for many women and their concentration in lower-paying occupations also play a significant role in maintaining wage disparities.

Although laws have been introduced with the aim of promoting workplace equality, they have not effectively tackled the underlying causes of the pay gap. Likewise, the judiciary has generally avoided strong intervention in executive matters, resulting in the constitutional principle of "equal pay for equal work" remaining largely unfulfilled in practice.

The Equal Remuneration Act, 1976 was enacted to ensure equal pay for men and women for the same work and to prevent gender discrimination in employment. It promotes fairness and equality in the workplace. Equal pay is essential for social and economic justice. A legal framework helps reduce gender inequality and promotes fairness in society. the Act Became Necessary to implement constitutional principles of equality, to comply with international commitments like the International Labour Organization conventions on equal pay and To protect women workers from systemic exploitation.

Section 2 of the act provides important definitions used in the Act, such as appropriate government, remuneration, same work or work of a similar nature, and other key terms for proper interpretation.

Section 3 ensures superiority over conflicting laws. **Section 4** requires every employer to pay equal remuneration to men and women workers for the same work or work of a similar nature, without discrimination.

Section 5 prohibits discrimination against women at the time of recruitment, promotions, training, or transfer, except where employment of women is restricted by law.

Section 6 ensures that a dedicated body (with strong women representation) advises the government on how to improve job opportunities and reduce discrimination against women in employment.

Section 7 is the backbone of enforcement under the Act. It ensures that the right to equal remuneration is not merely theoretical but practically enforceable through a dedicated adjudicatory mechanism.

The duty to maintain registers (section 8) is a preventive and evidentiary mechanism. It plays a crucial role in ensuring that the principle of equal pay is verifiable, enforceable, and not merely theoretical.

Section 9 empowers Inspectors to visit workplaces, check records, and enforce equal pay laws, ensuring that employers do not discriminate between men and women.

Section 10 provides punishment for employers who contravene the provisions of the Act, such as paying unequal remuneration or discriminating against women. When an offence is committed by a company, persons responsible for its business may also be held liable, unless they prove lack of knowledge or due diligence (section 11).

Section 12 lays down the procedure for courts to take cognizance of offences under the Act. It ensures that prosecutions are carried out according to law. Section 13 empowers the Central Government to frame rules for effective implementation of the Act.

Section 14 empowers the Central Government to issue directions to the state government for proper implementation of the Act. Section 15 provides exceptions where the Act may not apply in specified special circumstances, subject to legal conditions. Section 16 allows the appropriate government to issue declarations in matters connected with women's employment opportunities under specified circumstances. Section 17 allows the Central Government to issue orders to remove practical difficulties in implementing the Act.

The Equal Remuneration Rules, 1976 were made to implement the provisions of the Equal Remuneration Act, 1976 and to prescribe procedures, records, and enforcement mechanisms for equal pay and non-discrimination.

The Central Advisory Committee on Equal Remuneration Rules, 1991 provide for the formation, composition, and working procedure of the Central Advisory Committee to advise the government on matters of equal remuneration and employment opportunities for women.

8.5 GLOSSARY

1. **Article 14:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
2. **Article 15**: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
3. **Article 16:** (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

   (2) 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

4. **Article 39:** The State shall, in particular, direct its policy towards securing—

(a) that the citizens, 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;

5. Supreme Court of India: The Supreme Court of India is the country's highest judicial authority and final court of appeal. It serves as the guardian of the Constitution, ensuring the rule of law and protection of fundamental rights within India's democratic framework. Over time, the Court has shaped Indian constitutional law through landmark rulings such as Kesavananda Bharati v. State of Kerala, which established the "basic structure" doctrine, and Maneka Gandhi v. Union of India, expanding the interpretation of personal liberty. Its decisions continue to influence governance, civil rights, and social reform in India.

6. Labour Officer: A Labour Officer is typically a gazetted officer (in many countries like India) responsible for enforcing labour laws, handling disputes, and ensuring workers' rights. A Labour Officer is generally considered a Group B (Gazetted) officer.

7. Appropriate Government: Appropriate Government means the government authority that has jurisdiction to administer and enforce the Act in a particular establishment or employment. Under labour laws, it may refer to either the Central Government or the relevant State Government, depending on the nature of the organisation or industry.

In the context of the Equal Remuneration Act, 1976:

- **Central Government** is the appropriate government for establishments under its control, such as railways, mines, major ports, banking companies, corporations owned or controlled by the Union, and central public sector undertakings.

- **State Government** is the appropriate government for other establishments operating within the state, such as private companies, shops, factories, and local businesses not under central control.

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9. The Indian constitution

10. The Equal Remuneration Act, 1976: Bare Act

8.7 SUGGESTED READINGS

1. The constitution of India

2. The Equal Remuneration Act, 1976

3. Equal Remuneration Rules, 1976

4. Code on Wages, 2019

5. Industrial and Labour Laws by S. N. Mishra

6. Implementation of The Equal Remuneration Act 1976 by Dr. Shashi Bala;

7. Reports by Ministry of Labour and Employment

8. Reports by International Labour Organization on gender wage gaps and workplace equality.

9. Important judgments of the Supreme Court of India and various High Courts on:

- Equal pay for equal work
- Gender discrimination in wages
- Women's employment rights

8.8 SHORT ANSWERS QUESTIONS

1. Why was the Equal Remuneration Act, 1976 considered necessary in India?
2. What is meant by "remuneration" under the Equal Remuneration Act, 1976?
3. State the main objective of Section 4 of the Equal Remuneration Act, 1976.
4. What is the role of the Advisory Committee under Section 6 of the Act?
5. What powers are given to Inspectors under Section 9 of the Act?

8.9 TERMINAL QUESTIONS

1. Discuss the necessity for a legal framework to address unequal wages in Indian society. Explain the background of the Equal Remuneration Act, 1976.

2. Explain the objectives and salient features of the Equal Remuneration Act, 1976.

3. Discuss the concept of "same work or work of a similar nature" under the Equal Remuneration Act, 1976 with the help of judicial decisions.

4. Examine the enforcement machinery under the Equal Remuneration Act, 1976 with reference to authorities, inspectors, penalties, and offences by companies.

5. Critically analyse the Equal Remuneration Act, 1976 and suggest measures for effective implementation in India.

8.10 TRUE AND FALSE

1. The Equal Remuneration Act, 1976 ensures equal pay for men and women doing the same or similar work.
2. Section 5 of the Act permits discrimination against women in recruitment.
3. Inspectors under the Act may examine records and investigate compliance.
4. The Advisory Committee under the Act must consist entirely of men.
5. The Central Government has power to remove difficulties under Section 17 of the Act.

TRUE AND FALSE

1. True
2. False
3. True
4. False
5. True

UNIT -9

DOMESTIC VIOLENCE ACT, 2005

9.1 INTRODUCTION

9.2 OBJECTIVES

9.3 MAIN BODY

9.3.1 "Domestic Violence" Is A Human Rights Issue

9.3.2 Women's Constitutional Rights

9.3.3 Objectives of The Protection of Women from Domestic Violence Act, 2005

9.3.4 Protection of Women from Domestic Violence Act 2005

9.3.5 Definition of Domestic Violence

9.3.6 Who Can Be a Complainant Under the Act?

9.3.7 Who Is Respondent Under the Act

9.3.8 Shared Household

9.3.9 Remedies Under the Act

9.3.9.1 Protection orders

9.3.9.2 Residence orders

9.3.9.3 Monetary relief

9.3.9.4 Custody orders

9.3.9.5 Compensation order

9.3.9.6 Power to grant interim and ex parte orders

9.3.10 Execution of Orders

9.3.10.1 Breach of Protection order

9.3.10.2 Implementation the Residence Orders

9.3.10.3 Monetary relief / Maintenance Order

9.3.11 Jurisdiction of Court

9.3.12 Court Role Making the Domestic Violence Act More Effective and Meaningful.

9.4 SUMMARY

9.5 GLOSSARY

9.6 REFERENCES

9.7 SUGGESTED READINGS

9.8 SHORT ANSWERS QUESTIONS

9.9 TERMINAL QUESTIONS

9.10 TRUE AND FALSE

9.1 INTRODUCTION

The Protection of Women from Domestic Violence Act, 2005 is an important social welfare legislation enacted by India to provide effective protection to women who face violence within the family or domestic relationship. The Act was introduced to safeguard the constitutional rights of women and to ensure their right to live with dignity, equality, and security.

Before this law, remedies for domestic abuse were limited mainly to criminal provisions such as cruelty under Indian Penal Code. This Act created a broader civil remedy system by recognising different forms of abuse such as physical, emotional, verbal, sexual, and economic violence.

The Act applies to women who are in a domestic relationship, including wives, mothers, sisters, widows, daughters, and women in relationships similar to marriage. It provides immediate and practical relief such as protection orders, residence orders, monetary relief, custody orders, and compensation.

The law also appoints Protection Officers, Service Providers, and gives powers to Magistrates for speedy justice. It came into force in 2006 and remains a major step toward protecting women from abuse within households.

In the present unit we read, how Domestic Violence Act, 2005 protect women from domestic abuse and provide speedy, effective remedies ensuring safety, dignity, residence, and justice.

9.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- ➢ "Domestic Violence" Is A Human Rights Issue
- ➢ Women's Rights under Indian Constitutional
- ➢ Protection of Women from Domestic Violence Act 2005
- ➢ Objectives of The Protection of Women from Domestic Violence Act, 2005
- ➢ Definition of Domestic Violence under the Domestic Violence Act, 2005
- ➢ Who Can Be a Complainant Under the Act
- ➢ Who Is Respondent Under the Act?
- ➢ What is Shared Household
- ➢ Meaning of domestic relationship
- ➢ Rights of Women in Live-in-relationships against domestic violence
- ➢ Remedies to the aggrieved women under The Act
- ➢ Power to grant interim and ex parte orders

- ➢ Execution Of Orders
- ➢ Breach of Protection order
- ➢ Implementation the Residence Orders
- ➢ Monetary relief / Maintenance Order
- ➢ Jurisdiction of Court
- ➢ Court Role Making the Domestic Violence Act More Effective and Meaningful.

9.3 MAIN BODY

9.3.1 "Domestic Violence" Is A Human Rights Issue

Domestic violence is not merely a private family matter; it is a serious human rights issue because it violates the basic rights, dignity, and freedom of women. Every person has the right to live with safety, equality, respect, and freedom from violence. When violence takes place within the home, these fundamental rights are denied.

Domestic violence, being a human rights concern, but for a long time it was not adequately addressed in this country. International organisations such as the United Nations recognise violence against women as a violation of human rights. International declarations such as the Vienna Declaration (1994) and Programme of Action and the Beijing Declaration and Platform for Action (1995) recognised that violence within the home is a serious violation of human rights. The United Nations Committee on the Elimination of Discrimination against Women also urged member nations to take effective steps to protect women from all forms of violence, especially domestic violence, which has been common in India.

Earlier, when a woman faced cruelty from her husband or his relatives, relief was mainly available under Section 498-A of the Indian Penal Code[55]. However, it was observed that civil law remedies were not sufficient to deal with the full extent of domestic abuse. Therefore, to provide stronger and more effective protection of women's constitutional rights the Parliament enacted the Protection of Women from Domestic Violence Act, 2005.

9.3.2 Women's Constitutional Rights

There are many provisions in the Indian Constitution that guarantees equality, dignity, and protection to women -

[55] Now Bhartiya Nyaya Sanhita 2023 (replaced the Indian Penal Code (IPC), 1860)

1. **Fundamental right**

***Article 14* – Equality Before Law**

Article 14 says,

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

***Article 15*(*1*) – Prohibition of Discrimination**

This article provides prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. *Article 15 (1)* says,

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Article 15(3) – Special Provisions for Women

This article allows the state to make special laws and welfare measures for women. It says,

"Nothing in this article shall prevent the State from making any special provision for women and children."

Article 16 – Equality in Public Employment

This article provides equal opportunity in government jobs without discrimination based on sex. It says,

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) 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.

Article 19 – Protection of certain rights regarding freedom of speech, etc.

Protects freedom of speech, movement, and expression, important for women's autonomy and safety.

***Article 21* – Right to Life and Personal Liberty**

Includes the right to live with dignity, safety, privacy, and freedom from violence. Article 21 is very important and includes a wide meaning. it says,

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

Over time, the Supreme Court of India expanded it to include dignity, privacy, livelihood, health, and fair procedure. Important cases related to *Article 21* include *Maneka Gandhi*[56], *Olga Tellis*, *Vishaka, Puttaswamy, Francis Coralie Mullin*, and *Sunil Batra*, which expanded life and liberty into dignity, livelihood, privacy, and safety.

The right to be free of violence: In *Francis Coralie Mullin v. Union Territory* Delhi, Administrator, AIR 1981 SC 746, the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of *Article 21*.

***Article 23* – Prohibition of Trafficking and Forced Labour**

Protects women from trafficking, exploitation, and forced labour. It says,

"(*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. **Directive Principles of State Policy**

***Article 39(a*) – Equal right to livelihood for men and women.**

Article 39. "The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;"

***Article 39(d)* – Equal pay for equal work for both men and women.**

***Article 39(e)* – Protects health and strength of women workers.**

***Article 42* – Just and humane conditions of work and maternity relief**.

3. **Fundamental Duty**

***Article 51A(e)*- It is the duty of every citizen to renounce practices derogatory to the dignity of women.**

[56] Maneka Gandhi v Union of India (1978) 1 SCC 248; AIR 1978 SC 597

Article 51A. "It shall be the duty of every citizen of India—

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;"

9.3.3 Objectives of The Protection of Women from Domestic Violence Act, 2005

Women who suffer domestic violence often face fear, trauma, depression, social isolation, and economic dependence. Many victims are unable to report abuse due to family pressure, stigma, or lack of support. Therefore, domestic violence becomes both a legal and social justice concern. Domestic violence destroys equality, dignity, security, and freedom within the very place where a person should feel safest.

The main objective of the Protection of Women from Domestic Violence Act, 2005 is to provide effective legal protection to women who suffer violence within the family or domestic relationship. The Act seeks to secure the rights of women guaranteed under the Constitution and ensure a life of dignity and safety.

1. Constitutional Perspective

This enactment was passed by the Parliament with recourse to *Article 253* of the Constitution. This provision confers on the Parliament the power to make laws in pursuance of international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW[57]. The Act encompasses all the provisions of the specific recommendations which form a part of General Recommendation No.19, 1992.[58]

2. Protection from Domestic Violence

This law protects women from physical, emotional, verbal, sexual, and economic abuse. The meaning and scope of this law have been explained in many judgments given by the High Courts and the Supreme Court of India. In a recent judgment the High Court of Gujarat (*Bhartiben Bipinbhai Tamboli vs. State of Gujrat and ors,* 2018 (1) Crimes 11 (Guj),) while extensively discussing the provisions under the Domestic Violence Act remarked that:

"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

[57] See glossary

[58] it is an important interpretation issued in 1992 by the CEDAW Committee. That explains how violence against women is a form of discrimination under CEDAW

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.

3. Immediate Civil Remedies

This act provides quick relief through protection orders, residence orders, monetary relief, custody orders, and compensation. Until the year 2005, the legal remedies available to women facing domestic violence were very limited. A woman usually had only two options: either to approach a civil court for divorce or to file a criminal case under *Section 498A* of the Indian Penal Code for cruelty. In both situations, immediate relief or urgent protection was generally not available. Also, relationships outside marriage, such as live-in relationships were not legally recognised.

Because of these limitations, many women continued to suffer in silence, not by choice, but because they had no effective support.

Considering these realities, the Parliament of India enacted the **Protection of Women from Domestic Violence Act, 2005**. The main purpose of this law is to protect women from violence caused by men or women within domestic relationships. It is a progressive law that aims to protect women regardless of the type of relationship involved. The definition of an aggrieved person under the Act is broad enough to include women living in live-in relationships as well.

4. Right to Reside in Shared Household

The provisions of the Domestic Violence Act, 2005. ensure that a woman is not unlawfully removed from the shared household. It was a major step toward protecting women within the family and household. This law helped remove the old idea that violence inside the home is only a private matter and should not be addressed by law.

Earlier, women could seek help under the Indian Penal Code in cases of violence, but the remedies were limited. The IPC did not specifically use the term "domestic violence." It mainly dealt with cruelty against married women under Section 498A, while other forms of abuse had to be dealt with under separate criminal offences. This created difficulties, especially for women and children who depended on the abuser. Even when a wife filed a complaint under Section 498A, she often had to leave her matrimonial home for safety or risk further violence. There was no proper legal provision allowing her to remain in the shared home while seeking protection. Because of these problems and many other hardships faced by women in households, the Domestic Violence Act was enacted. It provides broader protection and effective remedies for women facing abuse in domestic relationships.

5. **Prevention of Abuse**

This act prevents further violence by restraining the respondent through court orders. The protection order is issued under section 18 of the Act to protect the women from any further incidents of violence by prohibiting the respondent from contacting, meeting, committing violence directly or indirectly to the victim, alienating assets, bank lockers and bank accounts owned jointly or separately by the respondent and any other act that is prohibited by the protection order.

6. **Implementation of Constitutional Rights**

This act upholds Articles 14, 15, and 21 of the India Constitution relating to equality, non-discrimination, and right to life with dignity.

The right guarantees under article 21 is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (punishable under *section 5* the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws. It means that every person must be treated fairly and equally by the State. *Article 14* does not allow unfair discrimination, but it permits reasonable classification for making laws. A law is not invalid merely because it applies to one group of people and not to another group. Such a law will be valid if it meets two conditions:

1. The classification must be based on a clear and reasonable difference between the groups.

2. That difference must have a logical connection with the purpose of the law.

In *E.P. Royappa v. State of Tamil Nadu*, the Supreme Court of India held that any arbitrary law or action violates *Article 14*.

Therefore, *Article 14* is important because it prevents misuse of state power, protects citizens from discrimination, and still allows the state to make special laws for particular groups when justified.

Article 15 disallows discrimination on the grounds of religion, caste, sex, race, etc., but permits the state to make special provisions for certain classes of persons, including women and children.

The Domestic Violence Act helps protect the rights of women guaranteed under *Articles 14* and *15* of the Indian Constitution. Domestic violence is one of the major problems that prevents women from living safely and progressing in society, and this law aims to protect them from such abuse.

The act mainly protects women and not men, but this distinction is reasonable because women are generally the main victims of domestic violence. Therefore, the classification is based on a clear difference, that is gender, and it is directly connected to the purpose of the law. The Act is also not arbitrary. It is a carefully designed and necessary law made to reduce and eliminate domestic violence.

Further, *Article 15(3)* allows the state to make special laws for the benefit of women and children thus creating an exception in their favour against the operation of *Article 15(1)*. Hence, the Domestic Violence Act is constitutionally valid as a protective law in favour of women.

7. Institutional Support

There are provisions in the Act to appoint Protection Officers, Service Providers, and empower Magistrates for effective assistance. Any order made under this Act shall be enforceable throughout India While disposing application the magistrate shall take in to consideration any domestic incident report received from the protection officer or service provider.

8. Social Justice and Empowerment

The act promotes gender justice and empower women to seek legal remedies without fear. Domestic violence may not always be visible, but it is a widespread problem across the country. It exists in every section of society, regardless of income, education, age, or social background. According to the National Family Health Survey-5, nearly 30% of women between the ages of 18 and 49 have faced domestic abuse, which means almost one out of every three women in India has experienced such violence.

Many cases of domestic violence are never reported because of reasons such as shame, financial dependence, fear, and victim-blaming. It is therefore common for many women to continue living in abusive marriages. Some women are also discouraged from leaving such relationships because they worry about the effect on their children.

At the social level, families and friends should provide support without judgment or insensitivity. For legal and practical help, women can approach the women's commission, NGOs, the police, and courts. An important remedy is the Protection of Women from Domestic Violence Act, 2005, which provides protection and relief to victims.[59]

[59] https://www.maitreyi.ac.in/uploads/research/Samvedna/issues/vol5/issue2/engsection/E3.pdf

9.3.4 Protection of Women from Domestic Violence Act 2005

The Protection of Women from Domestic Violence Act, 2005 (or the Domestic Violence Act) was enacted by the India government and came into force in October 2006. It was passed by the Parliament of India in August 2005 and received the assent of the President of India in September 2005. Later, in November 2007, four of the twenty-eight State Governments ratified the Act.

This law was significant because, for the first time in India's legal history, it clearly defined the concept of domestic violence. Since then, the definition has been widely relied upon in numerous civil and criminal court cases to take action against persons who commit violence against their wives, partners, or family members. The Act is made to protect women who face violence in a domestic relationship. In its Preamble, it refers to the constitutional rights of women and emphasizes that these rights must also be respected inside the home and family. The law aims to give proper legal procedures and suitable relief so that an aggrieved woman can easily get justice.

The Act clearly explains who can seek protection and what remedies are available. It recognizes domestic violence as a serious problem that requires civil remedies supported by criminal penalties when necessary. The law gives detailed procedures for protection and relief.

It is important to note that the Act does not create a new criminal offence of domestic violence. Its main purpose is to help victims, provide immediate relief, and prevent future violence. Punishment for violent acts already committed is generally dealt with under ordinary criminal laws. Under this Act, punishment mainly arises when a person disobeys an order passed by the court. Therefore, the focus of the Act is protection rather than punishment.

The Act also introduces a procedure that is simple, effective, and supportive to victims. It involves many participants such as Protection Officers, Magistrates, and members of civil society.

POWD[60] Act, 2005 is retrospective : POWD Act, 2005 is retrospective. It cannot be said to be post facto criminal law.[61]

The wider purpose of the Act is to empower women to leave abusive situations, make homes and society more sensitive to women's rights, and promote women's freedom, dignity, and equality in the country.

9.3.5 Definition of Domestic Violence

[60] Protection of Women from Domestic Violence Act 2005

[61] See: 2010 CrLJ 3759 (AP).

One of the major strengths of the Domestic Violence Act is that it gives clear and progressive definitions. The act broadly defines domestic violence[62] to include physical, mental, sexual, verbal, emotional, and economic abuse. This means violence is not limited to physical injury, but also includes threats, humiliation, emotional cruelty, and financial control. In some cases, courts may also interpret it to include marital rape.

The definition is flexible and depends on the facts and circumstances of each case, which helps courts provide justice according to the situation.[63]

Another important feature of the Act is its wide meaning of domestic relationship[64]. It covers not only relationships based on blood, marriage, or adoption, but also live-in relationships, relationships similar to marriage, and joint family arrangements.

Because of this wider scope, women in legally invalid marriages, live-in relationships, or joint families can also seek protection and relief from the court. The act therefore recognizes social realities and gives support to more victims of domestic violence.

The Gujarat High Court in a recent case of *Bhartiben Bipinbhai Tamboli vs. State of Gujarat and ors.* 2018(1) Crimes 11 (Guj) elaborated on the types of abuse or domestic violence under the Act.

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[62] Selection 3 of the domestic violence Act says, "For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

[63] Explanation II. —For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration. Selection 3 of the domestic violence Act, 2005

[64] "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family; *section 2(f)* of the Domestic Violence Act, 2005

Physical Abuse[65]: 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 weapon to threaten or to hurt her, forcing her to leave the matrimonial home, hurting her children, using physical force in sexual situations.

Sexual Abuse[66]: 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[67]: 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.

Economic Abuse[68]: Economic abuse is not a very recognized form of abuse among the women but it is very detrimental. It mainly includes a woman not been provided with enough money

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[65] "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force; *Explanation I (i)* of *section 3* of the Domestic Violence Act, 2005

[66] "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman; *Explanation I (ii)* of *section 3* of the Domestic Violence Act,

[67] "verbal and emotional abuse" includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested; *Explanation I (iii)* of *section 3* of the Domestic Violence Act,

[68] "economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

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 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 like other property in which she may have an interest. However, seeking maintenance to unjustly enrich one and that too without providing the alleged act of domestic violence is a gross abuse of the process of law.

Although the Domestic Violence Act has progressive definitions, it still has some limitations.

First, it does not clearly include domestic violence faced by maids or other domestic workers living in the household. International models on domestic violence suggest that such laws should also protect female household workers.

Second, according to the Act "aggrieved person" means 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[69]. It means the Act mainly focuses on violence against women and does not cover male family members who may also suffer abuse. For example, an elderly male relative facing violence within the family may not get protection under this law.

Therefore, while the Act was a major improvement over earlier outdated laws, further reforms are needed to make it more inclusive and in line with international standards.

9.3.6 Who Can Be a Complainant Under the Act?

The Domestic Violence Act tries to make the complaint process simple and also expands who can file a complaint, so that victims can more easily access justice. The Act allows anyone, including a friend or an N.G.O., who has information of the occurrence of domestic violence, to file a complaint and also provide exclusion of liability to the informant. According to the *section 4* -

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

[69] *Section 2(a)* of the Domestic Violence Act, 2005

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 protects not only women who are or were in a relationship with the abuser, but also women who have lived together in the same household and are related by blood, marriage, adoption, or a relationship similar to marriage.

1. Any woman who is or has been in a domestic relationship and faces violence can file a complaint under this Act.

2. A complaint can also be filed by a police officer, Protection Officer, or service provider on behalf of the woman.

3. Any person who believes that domestic violence has happened or may happen can inform the Protection Officer.

4. The Act also protects women like sisters, mothers, and widows living together in a joint family.

5. Women in live-in relationships are also protected under the Act if certain conditions are met.

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 vs. D. Patchaiammal*, AIR 2011 SC 479, wherein the Court enumerated five ingredients of a live-in-relationship as follows:

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

2. They must be of a valid legal age of marriage.

3. They should qualify to enter into marriage e.g. none of the partners should have a spouse living at the time of entering into a relationship.

4. They must have voluntarily cohabited for a significant period of time.

5. They must have lived together in a shared household.

The Supreme Court of India has clarified that not every live-in relationship will be treated as a "relationship in the nature of marriage" under the Domestic Violence Act. To get protection under the Act, certain conditions must be fulfilled, and these must be proved with proper

evidence. The case of *Indra Sarma Vs V.K. Sarma,* AIR 2014 SC 309 is an important case in this regard.[70]

The Court also explained that if a man keeps a woman only for financial support or mainly for sexual purposes (often referred to as a "keep"), such a relationship will not be considered similar to marriage.

In this context, the Court referred to the concept of palimony, which comes from the case of *Marvin v. Marvin* in U.S. Palimony means financial support given to a woman who has lived with a man for a long time without marriage and is later abandoned by him.

Gay & Lesbians not recognized to constitute a relationship in the nature of marriage:

Domestic relationship between same sex partners (Gay and Lesbians) is not recognized by Act. Such a relationship cannot be termed as a relationship in the nature of marriage. *Section 2(f)* of the DV Act though uses the expression "any two persons". The expression "aggrieved person" under *Section 2(a)* takes in only a woman hence, the act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act. (*Indra Sarma Vs V.K. Sarma,* AIR 2014 SC 309 (para 38).)[71]

No limitation period for filing complaint under PWDV Act, 2005:

[70] The court held -

a. The Appellant, having been fully aware of the fact that the Respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships in the nature of marriage. Appellant's and the Respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage. The Appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" Under Section 2(f) of the Act.

b. Since appellant was aware that the respondent was a married person having two children even before the commencement of relationship hence the status of appellant is that of a concubine or mistress and cannot fall under Section 2(f) of Act of 2005 and cannot be come within "domestic relationship" and therefore not entitled for any relief on the grounds of domestic violence. We are conscious of the fact that if any direction is given to the Respondent to pay maintenance or monetary consideration to the Appellant, that would be at the cost of the legally wedded wife and children of the Respondent, especially when they had opposed that relationship and have a cause of action against the Appellant for alienating the companionship and affection of the husband/parent which is an intentional tort. Appeal dismissed.

Also see *Amruth Kumar Vs. Smt. Chithra Shetty,* AIR 2010 (NOC) 687 (Karnataka)

[71] https://lawhelpline.in/wp-content/uploads/2024/01/DOMESTIC_VIOLENCE_ACT.pdf

There is no limitation period for filing complaint under PWDV Act, 2005.[72]

9.3.7 Who Is Respondent Under the Act

As per *section 2(q)* of the Domestic Violence Act, 2005 the "respondent" means 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 case of *Hiralal P. Harsora Vs. Kusum Narottamdas Harsora*, AIR 2016 SC 4774, it was held that words 'adult male person' contrary to object of affording protection to women who suffered from domestic violence of any kind and word expression 'adult male' is substituted by 'any person'.

There may be confusion because the term "respondent" in the Domestic Violence Act referred mainly to an adult male. Many people argued that a complaint could be filed only against a male person and not against female relatives like the mother-in-law or sister-in-law.

However, the Supreme Court of India clarified in *Sandhya Wankhede v. Manoj Bhimrao Wankhede* (2011) that complaints under the act can also be filed against female relatives of the husband or male partner. So, not only men but also female family members can be made respondents if they are involved in domestic violence.

At the same time, the Court has also warned against misuse of the law. In *Ashish Dixit v. State of UP* (2013), the Supreme Court held that a wife cannot include every relative of the husband in a complaint without proper evidence. Only those who are actually involved in the alleged violence should be made parties to the case.

Similarly, in the case of *Geeta Mehrotra Vs. State of UP*, (2012) 10 SCC 741. large no. of family members like unmarried sister, elder brother and the parents of the husband were named by the wife under section 3 and 4 of the Dowry Prohibition Act, 1961. It has been held by the Supreme Court that the allegations against such family members must be specific and there should be disclosure of their active involvement in the matter otherwise cognizance of the offence under section 3 & 4 of the said act would not be justified and the same would be abuse of judicial process.

It is necessary to have a clear understanding of domestic relationship as defined in 2(f) of the act. Hence a person who is not in a domestic relationship, cannot be a respondent under this

[72] See- *Inderjit Singh Grewal Vs. State of Punjab & another,* 2011 (75) ACC 225.

act. A person cannot be automatically included as a respondent under the Domestic Violence Act, 2005. The aggrieved woman must prove that the person has a domestic relationship with her or is a member of the family. Without such proof, someone cannot be added to the case mechanically.[73]

'Relative' under *section 2(q)*, *proviso* & its meaning - The terms 'respondent' and 'relative' in proviso to Section 2(q) of the PWDO[74] Act, 2005 is not restricted to 'male' relative only but includes 'female' relatives as well.[75]

9.3.8 Shared Household

Shared household is defined under *section 2(s)* of the Domestic Violence Act as

"shared household" means 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*, AIR 2007 SC 1118, 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.

In another case the Supreme Court held that a woman's right to reside in a "shared household" cannot be nullified merely because the property is owned by a relative of the husband. It

[73] See -2010 (NOC) CrLJ 448 (Madras)

[74] Her and after refer for The Protection of Women from Domestic Violence Act, 2005

[75] See - *R. Nivendran Vs. Nivashini Mohan*, AIR 2010(NOC) 688 (Madras...DB)

emphasized that protection orders under the PWDVA are civil in nature, though they can be enforced through criminal procedure, ensuring prompt relief and safety for victims.[76]

Where the house was owned by husband and his mother in proportion of one and half each and the wife was living in that matrimonial house before differences erupted, it has been held that such house is shared household/matrimonial accommodation and the wife is entitled to her right of residence in such house under section 23 of the Protection of Women from Domestic Violence Act, 2005. (*Jyotsana Sharda Vs. Gaurav Sharda*, AIR 2010 (NOC) 634 (Delhi))

Where the complaint under the PWDO Act, 2005 was made against the brother-in-law but the complainant and the brother-in-law never stayed together in the same household, it has been held that merely because she was abused by the brother-in-law & certain allegations were made against her, it will not amount to domestic violence in the absence of ingredients of shared household. (*K. Narasimhan Vs. Smt. Rohini Devanathan*, 2010 Cr L J 2173 (Karnataka))

Where husband was not allowing wife to resided in shared household matrimonial house even after passing of order by the sub-ordinate judge, it has been held by the Supreme Court that there is a continuance of domestic violence committed by the husband against his wife. Question whether such acts committed prior to coming into force of the act and whether it falls within the definition of domestic violence under section 3, need not be gone into in view of such continued domestic violence. (Saraswathy *Vs. Babu*, AIR 2014 SC 857.)

9.3.9 Remedies Under the Act

Section 12 of the DV provides a simple and quick legal process so that victims of domestic violence can easily approach the court and get timely protection and relief. Section 12 of the DV Act[77] reads as follow,

Application to Magistrate. – (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute

[76] 2011 Cri LJ 96 (SC)

[77] Here and after refer for the Domestic Violence Act, 2005

a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall Endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

The Domestic Violence Act makes an important improvement by combining civil remedies with criminal action. Civil remedies focus on protecting the victim and can be adjusted according to the situation, giving flexible and immediate relief. Unlike criminal law, which mainly focuses on punishing the offender with fixed penalties, civil measures aim to prevent further harm to the victim.

At the same time, criminal provisions are also important because punishments like arrest and imprisonment act as a strong deterrent. Therefore, the Act provides different types of relief to deal with domestic violence in various situations effectively.

In V.D. Bhanot v. Savita Bhanot,(2012)[78] the Supreme Court of India agreed with the view of the Delhi High Court that a woman who had lived in a shared household even before the Domestic Violence Act came into force can still seek protection under the act.

This means that a woman can file a case under the Act even for acts of domestic violence that happened before the law was enacted.

Dropping of proceedings against the respondent by Magistrate (Section 12)-

If a person is made a respondent in a complaint under Section 12(1) of the Domestic Violence Act and receives a summons, they can show the Magistrate that they were wrongly included or that there are no allegations against them. In such cases, the Magistrate has the power to remove that person from the case and stop proceedings against them. However, this power should be

[78] SLP (Crl.) No. 3916 of 2010

used carefully. The Magistrate should remove a person only when it is clearly proved, based on facts or law, that no case exists against them. This approach helps ensure fairness, as innocent people are not forced to face unnecessary legal proceedings or go to higher courts for relief, and it also reduces the burden on higher courts.[79]

9.3.9.1 Protection orders

As per *section 18* of the act,

"The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(*a*) committing any act of domestic violence;

(*b*) aiding or abetting in the commission of acts of domestic violence;

(*c*) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(*d*) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(*e*) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(*f*) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(*g*) committing any other act as specified in the protection order.

A protection order under *Section 18* of the Domestic Violence Act is issued to keep the woman safe from further violence. It stops the respondent from contacting or meeting her, committing any form of abuse (directly or indirectly), and interfering with her property or jointly held assets like bank accounts or lockers. It also restrains the respondent from doing any other acts that the court specifically prohibits.

9.3.9.2 Residence orders

[79] *Jaydipsinh Prabhatsinh Jhala Vs. State of Gujrat,* AIR 2010 (NOC) 616 (Gujarat)

Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order under *section 19*. The order can include—

(*a*) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(*b*) directing the respondent to remove himself from the shared household;

(*c*) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(*d*) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(*e*) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(*f*) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(*2*) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(*3*) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(*4*) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure,[80] 1973 (2 of 1974) and shall be dealt with accordingly.

(*5*) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

[80] Chapter VIII deals with **"Security for keeping peace and maintaining good behaviour."** It is a **preventive law,** meaning it acts **before a crime happens,** not after**.**

(*6*) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(*7*) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(*8*) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

A Residence Order under the Domestic Violence Act is meant to change the living arrangements of the victim and the offender so that further violence can be prevented. The Act ensures that a woman in a domestic relationship has the right to stay in the shared household, even if she does not own the property. The court can pass orders to restrict the respondent from entering certain parts of the house or even from the entire house. It can also stop the respondent's relatives from disturbing the victim in her living space. Additionally, the respondent may be prevented from selling or transferring the house. If needed, the court can also direct the respondent to provide suitable alternative accommodation for the victim. The main aim of these provisions is to make sure that a woman is not forced to leave her home or discouraged from seeking justice due to fear of eviction.

Under section 19(1) of the PWDO Act, 2005, claim of right to alternative accommodation by wife can be made to husband only.[81]

9.3.9.3 Monetary relief - Under the Domestic Violence Act, when a Magistrate decides an application under *Section 12*, they can order the respondent to provide monetary relief[82] to the aggrieved woman and her children for the losses caused due to domestic violence.

This financial relief may include:

- Loss of income or earnings
- Medical expenses
- Loss or damage to property
- Maintenance for the woman and her children (in addition to maintenance under other laws like Section 125 CrPC)

[81]See- *S.R. Batra Vs. Smt.Taruna Batra*, AIR 2007 SC 1118.

[82] See section 19 of the Domestic Violence Act, 2005

The amount given must be fair, reasonable, and suitable to the standard of living the woman was used to. The Magistrate can order either a lump sum payment or monthly maintenance, depending on the situation.

A copy of the order is sent to both parties and also to the local police station. The respondent must pay the amount within the time fixed by the court.

Bigamous child entitled to maintenance: Even though bigamous marriage is illegal under section 11 of the Hindu Marriage Act, 1955 but when after such marriage Hindu male and female are living together for a number of years as husband and wife, the child born as a result of such union acquires legitimate status under section 16(1) of the above act and such child is entitled to maintenance under section 125 Cr PC[83]. If the respondent fails to pay, the Magistrate can direct the respondent's employer or any person who owes money to the respondent to directly pay the amount to the aggrieved woman or deposit it in court.

In the case of Bhirari Singh (1990)[84] the court held that conjugal relationship (living together) is enough for maintenance under Section 125 CrPC. It proves a "Domestic Relationship" exists even without a marriage certificate.

In another case Amit Agarwal (2007) [85]the husband challenged maintenance proceedings, arguing his marriage was void because he was only 20 years old at the time of marriage (below the legal marriageable age of 21 for males under the Hindu Marriage Act, (1955)). The court held that void/irregular marriage does not escape maintenance liability. Thus prevents the husband from using technicalities to avoid paying maintenance.

9.3.9.4 Custody orders

The Magistrate has the power (under *section 21*[86] of the Domestic Violence Act, 2005) to give temporary (interim) custody of children to the aggrieved woman or to someone applying on her behalf. This helps ensure that a mother is not unfairly separated from her children, which can itself be a form of emotional harm.

[83] *Bakulabai Vs. Gangaram*, (1988) SCC 537.

[84] 1990 Cri LJ 844 (All)

[85] Amit Agarwal vs. State of U.P. and Another; 2007 (1) ALJ 277 (All)

[86] "Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent: 10 Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit."

At any stage of the case, the Magistrate can decide custody matters and also set conditions for the respondent to meet or visit the children. However, if the Magistrate feels that such visits may harm the child's safety or well-being, the court can refuse permission for contact.

9.3.9.5 Compensation order

According to the *section 22* of the of the Domestic Violence Act, 2005 -

"In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent."

Under *Section 22* of the Domestic Violence Act, the Magistrate can order the respondent to pay compensation or damages to the aggrieved woman for the harm caused, including mental torture and emotional suffering.

The orders passed by the Magistrate must be given free of cost to the parties involved, as well as to the police officer and service provider.[87]

Also, a woman can seek relief under this Act even while pursuing other cases in a civil court, family court, or criminal court. These remedies can be taken along with other legal proceedings and are not limited to this Act alone.

9.3.9.6 Power to grant interim and ex parte orders

The provision under *section 23* of the Domestic Violence Act gives wide powers to the Magistrate to provide immediate protection to the aggrieved woman.

- The Magistrate can pass interim (temporary) orders at any stage of the case if it is considered fair and necessary. These orders are meant to give quick relief before the final decision.

- If the Magistrate finds that the application shows prima facie (initial) evidence that domestic violence has occurred, is happening, or may happen in the future, the court can pass an ex parte order.

- An ex parte order means the order can be passed without hearing the respondent, based only on the woman's affidavit (statement on oath).

- Such orders can include relief under:

[87] Section 24 of the Domestic Violence Act, 2005;

- Section 18 (Protection orders)
- Section 19 (Residence orders)
- Section 20 (Monetary relief)
- Section 21 (Custody orders)
- Section 22 (Compensation)

This provision ensures urgent and immediate protection to the victim so that she is not left vulnerable while the case is pending.

9.3.10 Execution of Orders

The orders of the Magistrate are executed by the Magistrate himself and in the manner in which all such orders of the Magistrate are executed. If the orders are prohibitory orders, the respondent is directed not to interfere with the freedom of the aggrieved woman.

Generally, all proceedings under *Sections 12*, *18, 19, 20, 21, 22, 23* and offences under *Section 31* will follow the rules given in the Code of Criminal Procedure, 1973 (CrPC). However, the court is not strictly bound by these rules in every situation. It can decide its own procedure while dealing with applications under *Section 12* or *Section 23*(*2*), if needed.[88]

9.3.10.1 Breach of Protection order

Section 31 of the DV Act states that breaking a court order under this act is a serious offence and can lead to punishment, along with other criminal charges if applicable. As per this section-

(*1*) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(*2*) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(*3*) While framing charges under sub-section (1), the Magistrate may also frame charges under *section 498A* of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.Also *section 32* makes it clear that an offence

[88] Section 28 of the Domestic Violence Act, 2005

under Section 31 (breach of protection order) is cognizable[89] and non-bailable. The court can rely on the statement (testimony) of the aggrieved woman alone to decide that the offence has been committed, if it finds her statement reliable.

Kanaka Raj v. State of Kerala (2010 Crl.L. J (NOC) 447 Ker.) is a landmark Kerala High Court ruling clarifying that Section 31 of the Protection of Women from Domestic Violence Act, 2005 (DV Act), which allows criminal prosecution for breach of orders, strictly applies only to violations of protection orders or interim protection orders passed under Section 18. The court held that breach of other orders, such as those for monetary relief, cannot trigger criminal proceedings under Section 31.

9.3.10.2 Implementation the Residence Orders

It is a serious offence to disobeys a residence order, can lead to arrest, punishment, and further legal action to protect the victim. The court is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person.

The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

Retention of Stridhan by husband or his family amounts to Continuing Offence under The Protection of Women from Domestic Violence Act, 2005.[90]

9.3.10.3 Monetary relief / Maintenance Order

According to provision of rule 6 Protection of Women from Domestic Violence Rules, 2006, the applications under *Section 12* shall be dealt with and the orders enforced in the same manner laid down under *Section 125*[91] of the Code of Criminal Procedure.

Upon the failure of the respondent to make payment of the maintenance order the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.[92]

In *Suneesh vs. State of Kerala & Anr,* the Kerala High Court held that breach of monetary relief order cannot be prosecuted under section 31, penalty attracted only for violation of protection

[89] See glossary

[90] *Krishna Bhattarjee Vs. Sarathi Choudhury,* (2016) 2 SCC 705.

[91] Section 125 is a social justice provision that ensures maintenance (financial support) to dependents who are unable to maintain themselves.

[92] Section 20(6) of the Domestic Violence Act, 2005

orders. A maintenance order including interim maintenance order passed under section 23, cannot be enforced through section 31 and it can be enforced in the same manner as laid down under section 125 Cr.P.C. Section 20(4) provides the mechanism for compliance with the maintenance order.

A maintenance order is not covered under section 18 of the POWD Act, 2005. Section 31 of the Act can only be invoked in case of breach of protection order as defined under section 18. Hence, an order passed by Magistrate to punish husband under section 31 or his failure to pay interim maintenance to wife has been held as not proper. (Manoj Anand Vs. State of UP & Another, AIR 2012 (NOC) 287 (Allahabad)).

9.3.11 Jurisdiction of Court

The first-class magistrate court or metropolitan court shall be the competent court within the local limits of which[93]

- ➢ The aggrieved woman lives (permanently or temporarily), or
- ➢ She works or is employed, or
- ➢ The respondent (accused) lives or works, or
- ➢ The incident of domestic violence took place

Any order passed under this Act is valid and enforceable throughout India.[94] While deciding an application, the Magistrate must consider the Domestic Incident Report given by the Protection Officer or service provider. The relief granted may include payment, compensation, or damages, and this does not stop the aggrieved person from filing a separate case for compensation in another court.

If the Magistrate is satisfied at the initial stage that domestic violence has occurred, is happening, or is likely to happen, he can pass ex parte interim orders (without hearing the respondent) based on the affidavit of the aggrieved woman. Depending on the situation, the Magistrate may issue different types of orders such as protection orders, residence orders, monetary relief, custody orders, or compensation orders.

[93] *Section 27* of the Domestic Violence Act, 2005

[94] *Section 27 (2)* of the Domestic Violence Act, 2005

If any compensation has already been awarded by another court, that amount will be adjusted against the amount granted under this Act.[95] The application should be made in the prescribed format as far as possible.

After receiving the application, the Magistrate must fix the first hearing within 3 days and try to dispose of the case within 60 days from the first hearing.[96] The notice of the hearing is sent through the Protection Officer to the respondent.[97]

At any stage, the Magistrate may order counselling[98] for the parties, either separately or together, with the help of a service provider. The court may also take assistance from a suitable person, preferably a woman or someone working for women's welfare.[99] If needed, the Magistrate can conduct the proceedings in camera[100] (privately, not open to the public).

Jurisdiction of Sessions Judge - Sessions Judge of local area where complaint is lodged has jurisdiction to proceed against the accused husband. Cognizance of offence under *section 3*/*14* of the PWDO Act, 2005 can be taken by the court in the case of repeated overt act of cruelty, torture and other physical assault including verbal harassment against spouse as such acts constitute domestic violence and are of continuing nature. Continuing cause of action of filling complaint subsists notwithstanding acts committed prior to coming into force of the PWDO Act, 2005 i.e. w.e.f. 26.10.2006. (*Smt. Bulu Das Vs. Ratan Das,* AIR 2010(NOC) 615 (Gauhati).)

In the case of *Nasir Khan son of Shri Hazi Hasan Raja vs. Smt.Rizwana Sheikh wife of Shri Nasir Khan*, 2018 3 RLW (Raj) 1842, It was held by the Hon'ble Rajasthan High Court that a victim of domestic violence cannot be compelled to invoke the jurisdiction of Family Court for seeking the reliefs provided by the Act of 2005.

9.3.12 Court Role Making the Domestic Violence Act More Effective And Meaningful

The Supreme Court emphasized that proceedings under the Domestic Violence Act, 2005 are meant to provide speedy and effective relief to the aggrieved woman. The Act is beneficial and protective in nature. Courts should interpret its provisions liberally to ensure justice to victims.

[95] *Section 22* of the Domestic Violence Act, 2005

[96] *Section 12* of the Domestic Violence Act, 2005

[97] *Section 13* of the Domestic Violence Act, 2005

[98] *Section 14* of the Domestic Violence Act, 2005

[99] *Section 15* of the Domestic Violence Act, 2005

[100] *Section 16* of the Domestic Violence Act, 2005

Technical objections should not prevent genuine claims of domestic violence. The court said that the law should be used in a way that helps women get quick and real protection from domestic violence.[101]

In *Shalu Ojha vs. Prashant Ojha,* 2014(4) RCR (Civil) 815 (SC), Supreme Court held that, proceedings under the Domestic Violence Act are mainly civil in nature, even though they are governed by criminal procedure. The Act provides civil reliefs like protection orders, residence orders, and monetary relief. Just because the procedure follows criminal law (CrPC), it does not make the proceedings purely criminal. The case explains that the Domestic Violence Act is mainly about giving protection and relief to women, not just punishing the offender.

In the case of *Krishna Bhatacharjee vs. Sarathi Choudhury and Another*, (2016) 2 SCC 705, 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 scrutinize 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 realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence."

This case is a landmark decision that clearly establishes that economic abuse is a serious form of domestic violence. It ensures that women can reclaim their property and seek justice even after separation, making the Domestic Violence Act more effective and meaningful.

Term 'domestic violence' as defined under *section 3* of the Protection of Women from Domestic Violence Act, 2005 is not limited to physical cruelty only but is also includes mental cruelty and economical abuse. Omission on the part of husbands to look after his wife depriving her of her economic basis also tantamount to domestic violence.[102]

In a case of *Vimlaben Ajitbhai Patel vs. Vatslaben Ashok Bhai Patel and Ors,* (2008) 4 SCC 649, it was held by the Supreme Court that when it comes to maintenance of wife under the

[101] 2011 Cri LJ 96 (Supreme Court case)

[102] *Ramesh Kumar v. State of Rajasthan,* AIR 2011 (NOC) 134 (Rajasthan)

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.

9.4 SUMMARY

Domestic violence on women means any act of abuse, harm, or cruel treatment committed against a woman within a domestic or family relationship. It usually occurs inside the home by a husband, partner, or other family members. It is a serious violation of human rights and affects the dignity, safety, health, and freedom of women.

Important constitutional protections against discrimination and violence toward women are Articles 14, 15, 16, 21, 23, 39, 42, and 51A(e). To provide stronger and more effective protection of women's constitutional rights the Parliament enacted the Protection of Women from Domestic Violence Act, 2005. The Protection of Women from Domestic Violence Act, 2005 is an important and commendable law made to address domestic violence. The objective of the Domestic Violence Act, 2005 is to protect women from domestic abuse and provide speedy, effective remedies ensuring safety, dignity, residence, and justice.

The **Protection of Women from Domestic Violence Act, 2005** is a progressive law that provides wide protection to women against different forms of abuse—physical, sexual, emotional, verbal, and economic. It recognizes that domestic violence is not limited to physical harm but also includes mental cruelty, financial control, and humiliation.

The Act has a **broad scope**, covering not only married women but also women in live-in relationships, joint families, and even those in invalid marriages. It allows complaints to be filed not only by the victim but also by others like police officers or NGOs. Courts have clarified that both male and female relatives can be made respondents, but false or vague allegations against all family members are not allowed.

A key feature of the Act is the concept of a **shared household**, ensuring that a woman has the right to live in her home even if she does not own it. The law provides **various remedies**, such as protection orders, residence orders, monetary relief, custody of children, and compensation.

The Act combines **civil reliefs (for protection and support)** with **criminal enforcement (for punishment in case of violation)**. Breach of protection orders is a punishable offence, but failure to pay maintenance is enforced through other legal procedures.

Courts play an important role in making the Act effective by interpreting it **liberally and in favour of women,** ensuring quick and meaningful relief. Landmark judgments have emphasized that economic abuse and denial of maintenance also amount to domestic violence.

Overall, the Act is a **victim-focused law** aimed at providing speedy protection, recognizing social realities, and empowering women to seek justice without fear.

9.5 GLOSSARY

1. **Maneka Gandhi v Union of India** -This case introduced substantive due process into Indian constitutional law, transforming Article 21 into a dynamic source of individual rights. It laid the groundwork for later rulings recognizing rights such as privacy, legal aid, clean environment, and dignity under Article 21. The judgment strengthened judicial review over executive and legislative actions, anchoring fairness as a constitutional mandate.

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

3. CEDAW - CEDAW is an international agreement that promotes **gender equality** and protects women from discrimination in all areas of life. CEDAW is an **international treaty** adopted by the United Nations in **1979.** It is often called the **"Women's Bill of Rights".** India ratified CEDAW in 1993. This means India agreed to follow its principles and improve women's rights

4. Section 125 of the Code of Criminal Procedure, 1973 - Section 125 provides a **quick and simple remedy for maintenance** (financial support) to certain dependents who are unable to maintain themselves. It ensures that a person **does not neglect their family members** and must provide financial support to those who depend on them.

5. Cognizable - Cognizable means the police can register a case and arrest the accused without prior court permission.

9.6 REFERENCES

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5. The Protection of Women from Domestic Violence Act, 2005

6. The Protection of Women from Domestic Violence Rules, 2006

7. Constitution of India

8. Bharatiya Nyaya Sanhita (BNS), 2023 (Indian penal Code)

9. Code of Criminal Procedure, 1973

9.7 SUGGESTED READINGS

1. The Protection of Women from Domestic Violence Act, 2005

2. The Protection of Women from Domestic Violence Rules, 2006

3. Constitution of India

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9. Important Case Laws

(i) V.D. Bhanot v. Savita Bhanot

(ii) S.R. Batra v. Taruna Batra

(iii) Krishna Bhattacharjee v. Sarathi Choudhury

9.8 SHORT ANSWERS QUESTIONS

1. What is meant by domestic violence under the Protection of Women from Domestic Violence Act, 2005?

2. Who can file a complaint under the Domestic Violence Act, 2005?

3. What is meant by share household under the Act?

4. What is meant by a residence order under the Act?

5. State any two reliefs available to an aggrieved woman under the Act.

9.9 TERMINAL QUESTIONS

1. Discuss the objectives and important features of the Protection of Women from Domestic Violence Act, 2005.

2. Explain the meaning and different forms of domestic violence under the Act.

3. Discuss the powers and duties of Magistrates, Protection Officers, and Service Providers under the Act.

4. Explain the remedies available under the Domestic Violence Act, 2005 such as protection orders, residence orders, monetary relief, custody orders, and compensation.

5. Critically analyse the effectiveness of the Protection of Women from Domestic Violence Act, 2005 in protecting women in India.

9.10 TRUE AND FALSE

1. The Domestic Violence Act, 2005 protects women from physical, emotional, sexual, verbal, and economic abuse. True

2. Only legally married wives can seek relief under the Act. False

3. A Magistrate can grant residence orders under the Act. True

4. Economic abuse is not recognised as domestic violence under the Act. False

5. Breach of a protection order can result in punishment under the Act. True

ANSWERS

SHORT ANSWERS QUESTIONS

1. Refer 9.3.5

2. Refer 9.3.6

3. Refer 9.3.8

4. Refer 9.3.9.2

5. Refer 9.3.9

TRUE AND FALSE

6. True
7. False
8. True
9. False
10. True

UNIT-10
SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

10.1 INTRODUCTION
10.2 OBJECTIVES
10.3 SEXUAL HARASSMENT AND THE POSH ACT
10.4 SUMMARY
10.5 GLOSSARY
10.6 REFERENCES
10.7 SUGGESTED READINGS
10.8 SHORT ANSWERS QUESTIONS
10.9 TERMINAL QUESTIONS
10.10 TRUE AND FALSE

10.1 INTRODUCTION

The participation of women in the workforce has increased significantly in India over the past few decades. Women today contribute substantially to the economic, social, political, educational, industrial, and professional development of the nation. However, despite these achievements, many women continue to face discrimination, gender inequality, and sexual harassment in their workplaces. Sexual harassment not only violates the dignity and fundamental rights of women but also creates an intimidating, hostile, and offensive work environment that adversely affects their physical and mental well-being, career advancement, and productivity.

The right to work in a safe and secure environment is recognized as a basic human right. Every individual has the right to equality, dignity, freedom, and protection from discrimination. Sexual harassment at the workplace infringes upon these constitutional guarantees and constitutes a serious violation of women's rights.

Recognizing the growing need for legal protection against workplace harassment, the Supreme Court of India, in the landmark **Vishaka v. State of Rajasthan (1997)** case, laid down the Vishaka Guidelines to prevent sexual harassment at workplaces. These guidelines remained the governing law until Parliament enacted the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** (commonly known as the POSH Act).

The Act provides a comprehensive legal framework for the prevention, prohibition, and redressal of sexual harassment of women at workplaces. It imposes legal obligations on employers to provide a safe working environment, establish Internal Committees (ICs),

conduct awareness programmes, and ensure prompt redressal of complaints. The Act also prescribes procedures for inquiry, compensation, penalties, confidentiality, and employer liability.

The enactment of the POSH Act reflects India's commitment to constitutional values, international human rights obligations, gender justice, and workplace equality. It aligns with international conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which calls upon member states to eliminate discrimination against women in employment.

This chapter discusses the historical development, constitutional basis, objectives, important provisions, complaint mechanism, judicial interpretations, challenges, and significance of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

10.2 OBJECTIVES

- Understand the concept and meaning of sexual harassment at the workplace.
- Examine the historical development of laws relating to workplace harassment in India.
- Analyze the constitutional provisions protecting women's dignity and equality.
- Explain the provisions of the Sexual Harassment of Women at Workplace Act, 2013.
- Understand the constitution and functions of the Internal Committee and Local Committee.
- Describe the complaint and inquiry procedures under the Act.
- Examine employer responsibilities and liabilities.
- Discuss important judicial decisions related to workplace sexual harassment.
- Evaluate challenges in implementing the Act.
- Appreciate the importance of creating gender-sensitive and safe workplaces.

10.3 SEXUAL HARASSMENT AND THE POSH ACT

The issue of workplace sexual harassment remained largely unrecognized in India for many decades. Women who experienced harassment often remained silent due to fear of losing employment, social stigma, lack of awareness, and absence of legal remedies. Prior to 1997, India had no specific legislation dealing exclusively with workplace sexual harassment. Victims could only seek limited relief under provisions of the Indian Penal Code dealing with outraging modesty, assault, or criminal intimidation. These provisions failed to address workplace-specific concerns. The need for a specialized legal framework became evident following several incidents involving sexual violence and harassment against working women.

The turning point came with the case of **Bhanwari Devi**, a social worker employed under the Rajasthan Government's Women's Development Programme. She attempted to prevent a child marriage in her village and was subsequently gang-raped in retaliation. The inadequacy of legal protection for working women led several women's organizations to file a Public Interest

Litigation before the Supreme Court.This litigation resulted in the historic judgment in Vishaka v. State of Rajasthan (1997).

Vishaka Guidelines (1997)

The Supreme Court recognized sexual harassment as a violation of women's fundamental rights under Articles 14, 15, 19(1)(g), and 21 of the Constitution. Since no legislation existed, the Court framed legally binding guidelines known as the **Vishaka Guidelines**.

The guidelines required employers to:

- Prevent sexual harassment.
- Establish complaint committees.
- Conduct awareness programmes.
- Ensure confidentiality.
- Provide prompt inquiry.
- Take disciplinary action.
- Protect complainants against retaliation.

These guidelines remained the law of the land for nearly sixteen years until Parliament enacted the POSH Act in 2013.The Vishaka judgment transformed workplace rights by recognizing dignity as an integral component of the right to life.

Constitutional Framework

The POSH Act derives its authority from various constitutional provisions.

Article 14:- Article 14 guarantees equality before law and equal protection of laws. Sexual harassment denies women equal opportunity in employment.

Article 15:- Article 15 prohibits discrimination on the ground of sex.

Article 15(3) empowers the State to make special provisions for women and children.

The POSH Act is one such protective legislation.

Article 19(1)(g):- Every citizen has the freedom to practice any profession or occupation.

Sexual harassment interferes with women's ability to work freely.

Article 21:-Article 21 guarantees the right to life with dignity.

The Supreme Court has repeatedly held that a safe workplace forms part of the right to life.

Directive Principles

Articles 39(a), 39(d), 42, and 51A (e) encourage equal opportunity, humane working conditions, and respect for women's dignity.

International Perspective

India is a signatory to several international conventions protecting women's rights.

These include:

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)

The Supreme Court relied heavily upon CEDAW while framing the Vishaka Guidelines.

The POSH Act also reflects international labour standards promoting safe workplaces.

Need for the POSH Act

Several factors necessitated the enactment of the Act:

- Increasing participation of women in the workforce.
- Rising cases of workplace harassment.
- Lack of comprehensive legislation.
- Inadequate criminal law remedies.
- International obligations under CEDAW.
- Recommendations of the Supreme Court.
- Need for employer accountability.

The Act aims to provide both preventive and remedial mechanisms rather than relying solely on criminal prosecution.

Objectives of the Act

The Act seeks to:

- Prevent sexual harassment.
- Prohibit workplace misconduct.
- Provide effective complaint mechanisms.
- Protect women's dignity.
- Promote gender equality.
- Create safe workplaces.
- Ensure employer accountability.
- Provide compensation to victims.
- Promote awareness.

Scope of the Act

The Act extends throughout India.

It applies to:

- Government offices
- Private organizations
- Educational institutions
- Hospitals
- NGOs
- Sports institutions
- Dwelling places employing domestic workers
- Public sector undertakings
- Private companies
- Virtual workplaces connected with employment

The Act covers women working:

- Regularly
- Temporarily
- Contractually
- Daily wage basis
- Apprentices
- Trainees
- Interns
- Volunteers

Even job applicants and visitors may receive protection depending upon circumstances.

Significance of the Act

The POSH Act is considered one of India's most important gender justice legislations because it:

- Recognizes workplace dignity as a legal right.
- Makes employers legally accountable.
- Provides institutional complaint mechanisms.
- Encourages gender-sensitive workplaces.
- Promotes women's participation in employment.
- Strengthens constitutional guarantees.
- Improves organizational governance.

- Enhances employee confidence.
- Promotes gender equality.

The Act has also encouraged organizations to formulate internal policies, conduct awareness programmes, and establish transparent grievance redressal mechanisms.

10.3.1 IMPORTANT DEFINITIONS UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

Aggrieved Woman

Section 2(a) defines an **"aggrieved woman"** as:

- A woman of any age, irrespective of her employment status, who alleges that she has been subjected to sexual harassment at the workplace.
- A woman employed in a dwelling place or house is also covered under the Act.

One of the significant features of this definition is that protection is not limited to regular employees. It extends to women working on a contractual basis, temporary workers, daily wage workers, interns, apprentices, volunteers, trainees, consultants, domestic workers, and even women visiting a workplace in connection with their employment.

This broad definition ensures that no woman is deprived of legal protection merely because of the nature of her employment.

Employee

Section 2(f) defines an employee broadly to include any person employed at a workplace for any work on a regular, temporary, ad hoc, or daily wage basis.

It includes persons employed:

- Directly or indirectly
- Through contractors
- With or without remuneration
- On probation
- As trainees
- As apprentices

The Act recognizes the changing nature of employment and ensures that all categories of women workers receive protection.

Employer

The employer refers to:

- The head of a government department.
- The authority responsible for management.
- The person responsible for supervision and control.

- Any individual discharging contractual obligations on behalf of the organization.

Employers have statutory responsibilities under the Act and can be penalized for failure to comply with its provisions.

Workplace

The Act adopts a very wide interpretation of the term "workplace."

It includes:

- Government offices
- Private companies
- Factories
- Educational institutions
- Hospitals
- Sports institutes
- Research organizations
- NGOs
- Commercial establishments
- Courts and tribunals
- Transportation provided by employers
- Dwelling places employing domestic workers
- Virtual workspaces connected with employment

The inclusion of transportation and employer-sponsored travel recognizes that workplace interactions often extend beyond the physical office.

Internal Committee (IC)

Every employer having ten or more employees must constitute an Internal Committee to receive and inquire into complaints of sexual harassment.

The committee acts as an independent grievance redressal mechanism within the organization.

Local Committee (LC)

Where an organization has fewer than ten employees or where the complaint is against the employer himself, the complaint may be filed before the Local Committee constituted by the District Officer.

The Local Committee ensures access to justice for women employed in the unorganized sector.

10.3.2 MEANING OF SEXUAL HARASSMENT

The Act provides a comprehensive definition of sexual harassment.

According to Section 2(n), sexual harassment includes any one or more of the following unwelcome acts or behaviour:

- Physical contact and advances.
- Demand or request for sexual favours.
- Making sexually coloured remarks.
- Showing pornography.
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The emphasis is on the **absence of consent** and the **unwelcome nature** of the conduct.

An act that appears harmless to one person may amount to harassment if it is unwanted by the recipient.

10.3.3 Forms of Sexual Harassment

Sexual harassment may occur in different forms.

A. Physical Harassment

Examples include:

- Unwanted touching.
- Hugging without consent.
- Attempting to kiss.
- Blocking movement.
- Physical assault.
- Standing unnecessarily close.

Physical harassment represents one of the most obvious forms of misconduct.

B. Verbal Harassment

Examples include:

- Sexually coloured jokes.
- Comments about appearance.
- Repeated requests for dates.
- Offensive remarks.
- Lewd comments.
- Telephone harassment.

Verbal harassment may appear subtle but can seriously affect the dignity and confidence of women.

C. Non-Verbal Harassment

Examples include:

- Staring.
- Winking.
- Obscene gestures.
- Display of sexually explicit material.
- Sending inappropriate emojis.
- Facial expressions conveying sexual intent.

D. Written or Electronic Harassment

Modern workplaces increasingly involve electronic communication.

Examples include:

- Offensive emails.
- Inappropriate WhatsApp messages.
- Social media harassment.
- Sending obscene photographs.
- Video call misconduct.
- Cyberstalking.

The Act is broad enough to include digital and online harassment arising out of employment relationships.

10.3.4 CIRCUMSTANCES AMOUNTING TO SEXUAL HARASSMENT

Section 3(2) of the Act recognizes several circumstances that may constitute sexual harassment if they occur in relation to any unwelcome act.

These include:

1. Implied or Explicit Promise of Preferential Treatment

For example:

A supervisor promises promotion in return for sexual favours.

2. Threat of Adverse Employment Consequences

Examples:

- Transfer
- Demotion
- Salary reduction
- Termination
- Poor performance evaluation

3. Threat Regarding Employment Status

The victim may be threatened with loss of employment if she refuses sexual advances.

4. Interference with Work

Sexual harassment may interfere with professional performance by creating fear, anxiety, embarrassment, or humiliation.

5. Hostile Work Environment

Persistent inappropriate behaviour may create an intimidating or offensive workplace even without physical contact.

6. Humiliating Treatment

Humiliation affecting health or safety also constitutes sexual harassment.

Types of Workplace Sexual Harassment

Workplace sexual harassment generally falls into two categories.

A. Quid Pro Quo Harassment

The Latin phrase "quid pro quo" means "something for something."

Here, employment benefits are linked to sexual favours.

Examples:

- Promotion in exchange for sexual relations.
- Salary increment upon accepting advances.
- Better assignments for compliance.

This form usually involves abuse of authority.

B. Hostile Work Environment

A hostile work environment exists when unwelcome conduct is severe or pervasive enough to create an intimidating, offensive, or humiliating atmosphere.

Examples include:

- Persistent sexual jokes.
- Display of obscene material.
- Repeated inappropriate comments.

- Continuous stalking.
- Online harassment.

Unlike quid pro quo harassment, hostile work environment cases do not necessarily involve employment benefits.

10.3.5 RIGHTS OF WOMEN UNDER THE POSH ACT

The Act recognizes several important rights.

Right to Dignity: -Every woman has the right to be treated with respect and dignity.

Right to Equality: -Women should enjoy equal opportunities without discrimination.

Right to Safe Working Environment: -Employers must provide a workplace free from intimidation and harassment.

Right to File a Complaint:-Every woman may file a complaint before the Internal Committee or Local Committee.

Right to Fair Inquiry: -The inquiry must be impartial, transparent, and based on principles of natural justice.

Right to Confidentiality: -The identity of the complainant, respondent, witnesses, and inquiry proceedings must remain confidential.

Disclosure attracts penalties under the Act.

Right to Interim Relief: - During inquiry, the complainant may seek:

- Transfer
- Leave up to three months
- Change of reporting officer
- Other appropriate relief

Right to Compensation: -Where harassment is established, compensation may be awarded after considering:

- Mental trauma
- Medical expenses

- Loss of career opportunity
- Emotional distress
- Financial status of the respondent

10.3.6 DUTIES AND RESPONSIBILITIES OF EMPLOYERS

One of the major strengths of the POSH Act is that it places legal obligations upon employers.

A. Provide Safe Workplace

The employer must maintain an environment free from harassment.

B. Display Notices

Organizations must prominently display notices regarding:

- Consequences of sexual harassment.
- Composition of Internal Committee.
- Complaint procedures.

C. Constitute Internal Committee

Every establishment employing ten or more persons must establish an Internal Committee.

Failure to do so attracts statutory penalties.

D. Organize Awareness Programmes

Employers should conduct:

- Gender sensitization workshops.
- Employee orientation.
- Capacity-building programmes.
- Annual awareness sessions.

Regular training helps prevent incidents and encourages reporting.

E. Assist in Filing Criminal Complaints

Where the conduct amounts to an offence under criminal law, employers must assist the victim in approaching the police.

F. Treat Sexual Harassment as Misconduct

The employer should incorporate sexual harassment as misconduct under service rules and initiate disciplinary proceedings where appropriate.

G. Provide Necessary Facilities

Employers must facilitate the inquiry by:

- Providing meeting space.
- Making records available.
- Ensuring witness participation.
- Extending administrative support to the Internal Committee.

H. Submit Annual Reports

Organizations are required to include details relating to sexual harassment complaints in their annual reports, including:

- Number of complaints received.
- Number disposed of.
- Pending complaints.
- Awareness programmes conducted.

10.3.6 RESPONSIBILITIES OF EMPLOYEES, WORKPLACE AWARENESS AND REDRESSAL MECHANISM

Although the Act primarily imposes duties upon employers, employees also have responsibilities, including:

- Maintaining professional behaviour.
- Respecting colleagues' dignity.
- Cooperating with inquiries.
- Avoiding retaliation against complainants or witnesses.
- Participating in awareness programmes.
- Reporting incidents promptly.
- Promoting gender-sensitive work culture.

Importance of Workplace Awareness

Merely enacting legislation cannot eliminate workplace harassment.

Organizations should cultivate a culture based on:

- Respect
- Equality
- Inclusiveness
- Professional ethics
- Zero tolerance for harassment

Awareness programmes should educate employees about:

- What constitutes sexual harassment.
- Rights and responsibilities under the Act.
- Complaint procedures.
- Consequences of violations.
- Importance of bystander intervention.

Such initiatives help prevent misconduct before it occurs.

Redressal Mechanism under the POSH Act

One of the most significant features of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) is that it establishes a structured and time-bound grievance redressal mechanism. The Act emphasizes that prevention alone is insufficient unless victims have access to a fair, confidential, and effective process for seeking justice.

The redressal mechanism under the Act is designed to:

- Provide speedy resolution of complaints.
- Ensure confidentiality and protect the dignity of the complainant.
- Uphold the principles of natural justice.
- Protect women from victimization or retaliation.
- Hold perpetrators accountable while ensuring fairness.

The mechanism primarily operates through the **Internal Committee (IC)** and the **Local Committee (LC)**.

Internal Committee (IC)

Meaning

Section 4 of the POSH Act mandates that every employer employing **ten or more employees** must constitute an **Internal Committee (IC)** at each office or administrative unit.

The Internal Committee serves as the primary body responsible for receiving complaints, conducting inquiries, and recommending appropriate action.

Failure to constitute an Internal Committee is a violation of the Act and may attract penalties.

Objectives of the Internal Committee

The Internal Committee aims to:

- Provide an accessible grievance redressal mechanism.
- Conduct impartial inquiries.
- Ensure confidentiality.
- Recommend appropriate disciplinary action.
- Promote awareness regarding workplace dignity.
- Encourage women to report incidents without fear.

Composition of the Internal Committee

The Internal Committee must consist of the following members:

(i) Presiding Officer

The Presiding Officer shall be:

- A senior-level woman employee.
- Employed at the workplace.

The appointment of a woman Presiding Officer reflects the gender-sensitive approach of the Act.

Where no senior woman employee is available, the employer may appoint one from another office or administrative unit.

(ii) Employee Members

At least **two members** shall be nominated from among employees who possess:

- Commitment to women's causes;
- Experience in social work; or
- Knowledge of legal issues relating to sexual harassment.

These members contribute to a balanced and informed inquiry.

(iii) External Member

One member must be nominated from:

- A non-governmental organization (NGO); or

- An association committed to women's rights; or
- A person familiar with issues relating to sexual harassment.

The external member ensures impartiality and transparency in the inquiry process.

Representation of Women

The Act requires that **not less than one-half of the members** of the Internal Committee shall be women.

This requirement promotes confidence among complainants and strengthens gender-sensitive decision-making.

Tenure of Members

Members of the Internal Committee ordinarily hold office for a period **not exceeding three years** from the date of nomination.

Powers of the Internal Committee

During the inquiry, the Internal Committee enjoys powers similar to those of a civil court in respect of:

- Summoning witnesses.
- Examining witnesses under oath.
- Requiring production of documents.
- Recording evidence.
- Calling for relevant records.

These powers enable the Committee to conduct an effective inquiry.

Local Committee (LC)

Need for Local Committee

Many women work in establishments having fewer than ten employees or are employed as domestic workers. Such workplaces may not have an Internal Committee.

To ensure access to justice, the Act provides for the constitution of a **Local Committee (LC)** by the District Officer.

Situations Where Complaint Lies Before the Local Committee

A complaint may be filed before the Local Committee where:

- The workplace has fewer than ten employees.
- No Internal Committee exists.
- The complaint is against the employer.
- The complainant is a domestic worker.

Composition of the Local Committee

The Local Committee generally consists of:

- A Chairperson committed to women's welfare.
- One woman working in the block, municipality, or district.
- NGO representatives.
- Members representing Scheduled Castes, Scheduled Tribes, minorities, or marginalized communities.
- Ex-officio members.

The composition aims to ensure representation, inclusivity, and impartiality.

Filing of Complaint

Who May File a Complaint?

The following persons may submit a complaint:

- The aggrieved woman.
- Her legal heir (in case of death).
- Relative or friend (where the woman is unable to complain).
- Co-worker.
- Psychologist.
- Social worker.
- Any person having knowledge of the incident with written consent of the complainant.

Time Limit

A complaint should ordinarily be made **within three months** from:

- The date of the incident; or
- The last incident in case of a series of incidents.

The Committee may extend this period by another **three months** if sufficient cause for delay is shown.

Form of Complaint

The complaint should preferably be:

- In writing.
- Signed by the complainant.
- Containing details of:
    - Date.
    - Time.
    - Place.
    - Persons involved.
    - Witnesses, if any.
    - Supporting documents.

Where the complainant cannot prepare the complaint, the Committee shall provide reasonable assistance.

Conciliation

Before initiating a formal inquiry, the complainant may request conciliation.

Important Features

- Conciliation is voluntary.
- No monetary settlement shall form the basis of conciliation.
- Settlement must be recorded in writing.
- Copies are provided to both parties.
- Once settlement is implemented, no further inquiry is conducted.

Conciliation aims at restoring workplace harmony where appropriate, but it cannot be used to pressure the complainant into withdrawing legitimate grievances.

Inquiry Procedure

Where conciliation is not requested or fails, the Internal Committee or Local Committee conducts a formal inquiry.

Principles of Natural Justice

The inquiry must adhere to:

- Fair hearing.

- Equality of opportunity.
- Absence of bias.
- Right to present evidence.
- Right to cross-examine where appropriate.
- Reasoned findings.

Steps in Inquiry

Step 1: Notice to Respondent

The respondent receives:

- Copy of complaint.
- Supporting documents.
- Notice requiring written response.

Step 2: Submission of Reply

The respondent submits:

- Written defence.
- Supporting documents.
- Witness list.

Step 3: Recording Evidence

The Committee records:

- Statement of complainant.
- Statement of respondent.
- Witness testimony.
- Documentary evidence.
- Electronic evidence.

Step 4: Examination of Witnesses

Witnesses are examined independently.

The Committee evaluates:

- Consistency.
- Credibility.

- Corroboration.

Step 5: Appreciation of Evidence

Unlike criminal trials, the inquiry follows the standard of **preponderance of probabilities** rather than proof beyond reasonable doubt.

Step 6: Inquiry Report

The Committee prepares a detailed report containing:

- Facts established.
- Evidence considered.
- Findings.
- Recommendations.

The report is submitted to the employer or District Officer within **10 days** of completion.

Interim Relief

During the pendency of the inquiry, the Committee may recommend interim measures to protect the complainant.

These include:

- Transfer of either party.
- Grant of leave up to three months.
- Restraining contact between parties.
- Temporary change of reporting authority.
- Other appropriate relief.

Such measures aim to prevent further harassment or victimization.

Recommendations of the Committee

If the allegations are **not proved**, the Committee recommends that no action be taken.

If the allegations are **proved**, the Committee may recommend:

- Written apology.
- Warning.
- Reprimand.
- Withholding promotion.

- Suspension.
- Termination of service.
- Deduction from salary.
- Counselling.
- Community service.
- Mandatory training.

The employer is required to act upon the recommendations within **60 days**.

Compensation to the Aggrieved Woman

The Committee may recommend payment of compensation.

While determining compensation, it considers:

(i) Mental Trauma

Psychological suffering, humiliation, emotional distress.

(ii) Loss of Career Opportunity

Missed promotions, resignations, transfers.

(iii) Medical Expenses

Costs incurred for treatment.

(iv)Income and Financial Capacity

Financial position of the respondent.

(v) Feasibility of Lump Sum or Installments

Compensation may be paid either in one instalment or periodically.

False or Malicious Complaints

Section 14 deals with false complaints.

If the Committee concludes that:

- Complaint was malicious; or
- False evidence was knowingly produced,

Disciplinary action may be recommended. However, the Act clearly states that: **Mere inability to prove a complaint does not make it false or malicious.** This provision protects genuine complainants from being penalized merely because evidence is insufficient.

Confidentiality

Confidentiality is one of the strongest safeguards under the Act.

The following information must not be published:

- Identity of complainant.
- Identity of respondent.
- Witness details.
- Inquiry proceedings.
- Recommendations.
- Action taken.

Disclosure attracts statutory penalties.

Confidentiality encourages victims to report incidents without fear of public exposure or social stigma.

Appeal

Any person aggrieved by the recommendations of the Committee or the action taken by the employer may prefer an appeal.

The appeal must generally be filed within **90 days**, in accordance with the applicable service rules or before the appropriate appellate authority.

The appellate authority may:

- Confirm the decision.
- Modify the decision.
- Set aside the findings.
- Remand the matter for fresh inquiry.

Duties of the District Officer

The District Officer plays an important role in implementing the Act.

Key responsibilities include:

- Constituting Local Committees.
- Monitoring implementation.
- Receiving annual reports.
- Conducting awareness programmes.
- Coordinating with government agencies.
- Facilitating training.

Employer's Responsibility after Inquiry

Once the Committee submits its report, the employer must:

- Implement recommendations within **60 days**.
- Inform the Committee of action taken.
- Maintain records.
- Ensure that no retaliation occurs.
- Preserve confidentiality.
- Take disciplinary action where necessary.

Failure to comply may result in statutory penalties.

Penalties for Non-Compliance

Section 26 prescribes penalties for employers who fail to comply with the Act.

Non-compliance includes:

- Failure to constitute an Internal Committee.
- Failure to conduct awareness programmes.
- Failure to implement Committee recommendations.
- Violation of confidentiality provisions.
- Non-submission of annual reports.

Penalty

- Fine up to **₹50,000** for the first violation.

For repeated violations:

- Higher fines.
- Cancellation of licence.
- Withdrawal or non-renewal of registration.
- Cancellation of business permits under applicable laws.

These penalties underscore that compliance with the POSH Act is a statutory obligation and not merely a matter of organizational policy.

Importance of an Effective Complaint Mechanism

An effective complaint mechanism under the POSH Act contributes to:

- Early resolution of disputes.
- Increased employee confidence.

- Improved workplace morale.
- Reduction in litigation.
- Protection of organizational reputation.
- Promotion of gender equality.
- Compliance with legal and ethical standards.

Organizations that implement robust POSH policies are better positioned to foster a respectful, inclusive, and productive work environment.

10.3.7 LANDMARK JUDICIAL DECISIONS

Judicial pronouncements have played a vital role in shaping the law relating to sexual harassment at the workplace in India. Even before the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act), the Supreme Court and various High Courts recognized that sexual harassment violates the constitutional guarantees of equality, dignity, and the right to life. The following decisions are particularly significant.

Vishaka & Others v. State of Rajasthan (1997) 6 SCC 241

Facts

The case arose after the gang rape of **Bhanwari Devi**, a social worker employed under the Rajasthan Government's Women Development Programme. She had attempted to prevent a child marriage in her village and was assaulted in retaliation. At that time, India had no specific legislation addressing sexual harassment at the workplace.

Issues

The principal issue before the Supreme Court was whether sexual harassment at the workplace violated the fundamental rights guaranteed under the Constitution and whether the Court could frame guidelines in the absence of legislation.

Judgment

The Supreme Court held that sexual harassment at the workplace is a violation of Articles **14**, **15**, **19(1)(g)**, and **21** of the Constitution. Drawing upon the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Court framed the **Vishaka Guidelines**, which remained binding law until the enactment of the POSH Act in 2013.

Significance

- Recognized sexual harassment as a violation of fundamental rights.
- Directed all employers to establish complaint committees.
- Introduced preventive measures and grievance mechanisms.

- Laid the foundation for the POSH Act.

Apparel Export Promotion Council v. A.K. Chopra (1999) 1 SCC 759

Facts

A senior officer attempted to sexually harass a female employee. Although there was no physical assault, the employer dismissed the officer following disciplinary proceedings.

Judgment

The Supreme Court upheld the dismissal, observing that **physical contact is not an essential element of sexual harassment**. Even an attempt or unwelcome conduct affecting a woman's dignity may amount to sexual harassment.

Importance

The judgment expanded the understanding of workplace harassment and emphasized that the dignity of women deserves the highest level of legal protection.

Medha Kotwal Lele & Others v. Union of India (2013) 1 SCC 297

Facts

Several organizations reported widespread non-compliance with the Vishaka Guidelines despite their binding nature.

Judgment

The Supreme Court directed all governments, educational institutions, and employers to strictly implement the Vishaka Guidelines until appropriate legislation came into force. It also emphasized monitoring and accountability.

Importance

This decision highlighted the need for effective enforcement and reinforced the urgency of enacting a comprehensive law, which culminated in the POSH Act, 2013.

Additional Judicial Developments

Subsequent decisions of the Supreme Court and various High Courts have reiterated that:

- Employers must strictly comply with the POSH Act.
- Internal Committees must follow the principles of natural justice.
- Confidentiality is essential throughout the inquiry process.
- Courts ordinarily do not interfere with inquiry findings unless there is procedural irregularity, bias, or violation of law.
- Victims must not be subjected to retaliation or victimization.

10.3.8 CHALLENGES IN THE IMPLEMENTATION OF THE POSH ACT

Although the Act provides a comprehensive legal framework, its implementation continues to face several practical challenges.

Lack of Awareness

Many employees, particularly in the unorganized sector, remain unaware of:

- Their legal rights.
- The complaint procedure.
- The role of the Internal Committee.
- Available remedies.

Small enterprises often lack structured awareness programmes.

Social Stigma

Women frequently hesitate to report incidents because of:

- Fear of social criticism.
- Damage to professional reputation.
- Family pressure.
- Fear of being blamed.
- Concerns about confidentiality.

Such factors contribute to significant under-reporting.

Fear of Retaliation

Victims may fear:

- Transfer to undesirable locations.
- Poor performance evaluations.
- Denial of promotion.
- Termination of employment.
- Workplace isolation.

Protection against retaliation remains a critical concern.

Non-Constitution of Internal Committees

Despite the statutory requirement, some organizations fail to constitute Internal Committees or constitute them improperly, for example:

- Absence of an external member.
- Inadequate representation of women.

- Members lacking appropriate training.

Such deficiencies undermine the effectiveness of the grievance mechanism.

Inadequate Training

Committee members may lack expertise in:

- Conducting inquiries.
- Appreciating evidence.
- Applying principles of natural justice.
- Maintaining confidentiality.
- Preparing reasoned reports.

Regular capacity-building is therefore essential.

Delays in Inquiry

Although the Act prescribes timelines, delays may occur due to:

- Non-cooperation of parties.
- Transfer of employees.
- Difficulty in securing witness attendance.
- Administrative inefficiencies.

Delayed proceedings can adversely affect both complainants and respondents.

Challenges in the Unorganized Sector

Women employed as:

- Domestic workers,
- Agricultural labourers,
- Construction workers,
- Home-based workers,

often face difficulties in accessing Local Committees or obtaining legal assistance.

Misconceptions about the Law

Some employers mistakenly believe that the Act is relevant only to large corporations. In reality, the Act applies to virtually every workplace, and Local Committees ensure protection even where an Internal Committee is not required.

Best Practices for Effective Implementation

Compliance with the POSH Act should extend beyond mere legal formalities. Organizations should adopt preventive and corrective measures to foster a culture of respect and inclusion.

Comprehensive POSH Policy

Every organization should adopt a written policy that clearly states:

- The definition of sexual harassment.
- Rights and responsibilities of employees.
- Complaint procedures.
- Inquiry process.
- Confidentiality obligations.
- Consequences of misconduct.

The policy should be readily accessible to all employees.

Regular Awareness Programmes

Employers should conduct periodic:

- Orientation programmes for new employees.
- Refresher workshops.
- Gender-sensitization sessions.
- Leadership training.
- Awareness campaigns.

Training should also cover appropriate workplace behaviour and bystander intervention.

Capacity Building of Internal Committee Members

Members should receive training on:

- Legal provisions.
- Inquiry techniques.
- Documentation.
- Report writing.
- Evidence assessment.
- Principles of natural justice.

Well-trained Committees inspire confidence in the complaint process.

Leadership Commitment

Senior management should:

- Demonstrate zero tolerance for harassment.
- Encourage reporting.
- Allocate adequate resources for compliance.
- Support awareness initiatives.
- Ensure impartial implementation of Committee recommendations.

Leadership commitment is essential for building an ethical organizational culture.

Confidentiality and Data Protection

Organizations should establish secure systems for:

- Receiving complaints.
- Storing records.
- Limiting access to inquiry documents.
- Protecting personal information.

Maintaining confidentiality encourages victims to come forward without fear of public disclosure.

Periodic Compliance Audits

Internal audits should assess:

- Constitution of the Internal Committee.
- Frequency of awareness programmes.
- Timely disposal of complaints.
- Maintenance of records.
- Submission of annual reports.

Such reviews promote continuous improvement and legal compliance.

Sexual Harassment in the Digital Workplace

The modern workplace increasingly relies on digital communication and remote work. Consequently, sexual harassment may occur through electronic means.

Examples include:

- Unwelcome video calls.
- Inappropriate messages on email or messaging applications.
- Sharing sexually explicit images or content.
- Offensive comments during virtual meetings.
- Cyberstalking.
- Persistent online monitoring.
- Misuse of social media connected with work.

Organizations should ensure that their POSH policies explicitly address virtual interactions and provide mechanisms for reporting digital misconduct.

Role of Educational Institutions

Universities, colleges, and schools have a special responsibility to prevent sexual harassment involving:

- Faculty members.

- Administrative staff.
- Researchers.
- Students.
- Interns.
- Visiting scholars.

Educational institutions should:

- Constitute Internal Committees.
- Conduct orientation programmes.
- Integrate gender sensitization into curricula.
- Encourage reporting without fear.
- Provide counselling and psychological support where necessary.

Critical Analysis of the POSH Act

The POSH Act is a landmark social welfare legislation that significantly strengthens workplace protections for women. Nevertheless, like any legal framework, it has both strengths and limitations.

Strengths

- Provides a dedicated legal framework for workplace sexual harassment.
- Recognizes a broad range of workplaces and employment relationships.
- Emphasizes prevention in addition to redressal.
- Imposes statutory duties on employers.
- Ensures confidentiality.
- Prescribes time-bound inquiry procedures.
- Establishes Internal and Local Committees.
- Recognizes psychological harm and hostile work environments.

Limitations

- The Act primarily protects women complainants and does not extend equivalent statutory protection to persons of other genders.
- Compliance remains uneven, particularly in the unorganized sector.
- Many organizations treat compliance as a procedural formality rather than a substantive commitment.
- Internal Committees may lack independence or adequate training.
- Fear of retaliation continues to discourage reporting.

- Monitoring and enforcement mechanisms require strengthening.

Effective implementation requires:

- Greater public awareness.
- Continuous training.
- Strong institutional support.
- Independent and competent Internal Committees.
- Periodic compliance audits.
- Integration of gender sensitivity into organizational culture.
- Prompt enforcement of statutory obligations by employers.

10.4 SUMMARY

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** represents a significant milestone in India's commitment to gender equality and workplace justice. Building upon the principles established in the **Vishaka** judgment, the Act provides a comprehensive legal framework for preventing, prohibiting, and redressing sexual harassment at the workplace. It recognizes that every woman has the right to work in an environment that is safe, respectful, and free from intimidation.

The Act imposes clear obligations on employers, including the constitution of Internal Committees, organization of awareness programmes, maintenance of confidentiality, and implementation of inquiry recommendations. It also establishes Local Committees to ensure access to justice for women employed in smaller establishments and the unorganized sector.

While the legislation has significantly strengthened legal protection, effective implementation remains dependent upon awareness, institutional capacity, leadership commitment, and organizational culture. Challenges such as under-reporting, fear of retaliation, lack of training, and inconsistent compliance continue to impede its full realization.

Ultimately, the success of the POSH Act lies not only in legal enforcement but also in fostering workplaces founded upon dignity, equality, mutual respect, and zero tolerance for sexual harassment. Employers, employees, educational institutions, civil society, and government authorities all share responsibility for creating inclusive and secure workplaces where women can participate fully and confidently.

10.5 GLOSSARY

1. Aggrieved Woman an Aggrieved Woman is a woman who claims that she has faced sexual harassment at a workplace and is entitled to seek protection and redressal under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. Sexual Harassment Sexual Harassment means any unwelcome behaviour of a sexual nature, whether directly or indirectly, that affects the dignity, safety, or working environment of a woman.

3. Workplace A Workplace includes any place where an employee works or where work-related activities take place. It covers offices, institutions, organizations, and places visited during employment.

4. Employer an Employer is a person or authority responsible for the management, supervision, and administration of a workplace and for ensuring compliance with the provisions of the Act.

5. Internal Committee (IC) The Internal Committee is a committee established by an employer at the workplace to receive, investigate, and resolve complaints of sexual harassment.

6. Local Committee (LC) The Local Committee is a committee constituted at the district level to receive and address complaints of sexual harassment, especially where an Internal Committee has not been formed or the complaint is against the employer.

7. Complaint A Complaint is a written submission made by an aggrieved woman regarding an incident of sexual harassment at the workplace.

8. Redressal refers to the process of addressing, investigating, and resolving complaints of sexual harassment to provide justice and protection to the aggrieved woman.

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10.8 SHORT ANSWERS QUESTIONS

1. What is the main objective of the Sexual Harassment of Women at Workplace Act, 2013?
2. Who is considered an "aggrieved woman" under the Act?
3. What is the role of the Internal Committee (IC) under the Act?
4. Mention any two acts that are considered sexual harassment under the Act.
5. What is the purpose of the Local Committee (LC) established under the Act?

10.9 TERMINAL QUESTIONS

1. Explain the objectives, scope, and important provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
2. Discuss the meaning of sexual harassment under the Act and explain the various forms of conduct that may constitute sexual harassment at the workplace.
3. Describe the composition, functions, and responsibilities of the Internal Committee and Local Committee under the Sexual Harassment of Women at Workplace Act, 2013.
4. Explain the procedure for filing, inquiry, and redressal of complaints under the Act. Discuss the duties of employers in preventing sexual harassment at workplaces.
5. Critically examine the significance of the POSH Act, 2013 in promoting gender equality and ensuring a safe working environment for women in India.

10.10 TRUE AND FALSE

1. The Sexual Harassment of Women at Workplace Act was enacted in 2013 to prevent and address sexual harassment of women at workplaces.
2. The Internal Committee is not required to be formed by organizations under the POSH Act, 2013.
3. An aggrieved woman can file a complaint of sexual harassment under the Act.
4. The POSH Act, 2013 applies only to government offices and not to private organizations.
5. Employers have a responsibility to create a safe workplace and prevent sexual harassment under the Act.

Answer: 1.True 2.False 3. True 4. False 5. True

UNIT – 11

MATERNITY BENEFIT ACT 1961

11.1 INTRODUCTION
11.2 OBJECTIVES
11.3 MATERNITY BENEFIT ACT 1961
11.4 SUMMARY
11.5 GLOSSARY
11.6 REFERENCES
11.7 SUGGESTED READINGS
11.8 SHORT ANSWERS QUESTIONS
11.9 TERMINAL QUESTIONS
11.10 TRUE AND FALSE

11.1 INTRODUCTION

The **Maternity Benefit Act, 1961** is a significant piece of social welfare legislation enacted by the Government of India to safeguard the employment rights and health of women during pregnancy and after childbirth. The Act recognizes maternity as a natural and socially important function and aims to ensure that women are not disadvantaged in the workplace due to pregnancy. Before the enactment of this legislation, many women faced discrimination, loss of wages, and even termination of employment during maternity. The Act was therefore introduced to provide financial security, protect the dignity of motherhood, and promote the well-being of both the mother and the child.

The primary objective of the Maternity Benefit Act, 1961 is to regulate the employment of women before and after childbirth and to provide maternity benefits in the form of paid leave and other related facilities. It applies to factories, mines, plantations, shops, and establishments employing a specified number of workers, ensuring that eligible women receive maternity leave with full wages based on their average daily earnings. The Act also prohibits employers from dismissing or discriminating against women during the period of maternity leave, thereby strengthening job security and encouraging women's participation in the workforce.

A major milestone in the development of this legislation was the **Maternity Benefit (Amendment) Act, 2017**, which substantially enhanced maternity protections. The amendment increased paid maternity leave from 12 weeks to 26 weeks for women having their first two children, introduced provisions for adoptive and commissioning mothers, and mandated crèche facilities in establishments employing 50 or more employees. It also encouraged work-from-home arrangements where the nature of work permits, reflecting the changing dynamics of modern workplaces and the growing emphasis on work-life balance.

The Act is based on the constitutional principles of social justice, equality, and the protection of motherhood. It derives support from the Directive Principles of State Policy, particularly Articles 39, 42, and 43 of the Constitution of India, which direct the State to ensure humane working conditions and maternity relief for women. By guaranteeing paid leave, medical support, and employment protection, the legislation contributes to improving maternal and child health while promoting gender equality in employment.

In today's socio-economic environment, the Maternity Benefit Act, 1961 continues to play a vital role in protecting the rights of working women and fostering inclusive workplaces. It reflects India's commitment to ensuring that motherhood does not become a barrier to women's professional growth. As the participation of women in the labour force continues to increase, the effective implementation of this Act remains essential for achieving gender justice, social security, and sustainable economic development.

11.2 OBJECTIVES

After reading the unit the learners will be able-

- To examine the historical background and evolution of the Maternity Benefit Act, 1961, and the need for maternity protection legislation in India.
- To analyze the objectives, scope, and salient provisions of the Maternity Benefit Act, 1961, with special reference to the rights and benefits available to women employees.
- To study the key amendments introduced through the Maternity Benefit (Amendment) Act, 2017, including enhanced maternity leave, provisions for adoptive and commissioning mothers, crèche facilities, and work-from-home arrangements.
- To evaluate the impact of the Maternity Benefit (Amendment) Act, 2017 on women employees, employers, and workplace practices in India.
- To examine the constitutional and legal framework supporting maternity protection, particularly the provisions relating to equality, social justice, and maternity relief under the Constitution of India.
- To identify the challenges and practical issues faced in the implementation and enforcement of the Maternity Benefit Act and its amendments across different sectors.
- To analyze important judicial decisions and legal interpretations that have shaped the application and enforcement of the Maternity Benefit Act, 1961.
- To suggest suitable measures and policy recommendations for strengthening maternity protection laws and ensuring effective implementation for the welfare of working women.

11.3 MATERNITY BENEFIT ACT 1961

11.3.1 EVOLUTION OF MATERNITY PROTECTION LAWS IN INDIA

The concept of maternity protection is based on the principle that motherhood is a social responsibility and that women should not suffer economic hardship or discrimination because of pregnancy and childbirth. In the early years of industrialization in India, women employed in factories, plantations, mines, and other establishments had little or no legal protection during

pregnancy. Many were forced to continue working under difficult conditions or lose their employment and wages during maternity, which adversely affected the health of both mothers and infants.

Before the enactment of a central law, several provinces and states had introduced their own maternity benefit legislation. These laws differed in terms of eligibility, duration of leave, and the amount of benefits provided, leading to inconsistencies in the protection available to women workers across the country. The absence of a uniform legal framework created uncertainty for both employers and employees.

Recognizing the need for a comprehensive and uniform law, the Government of India enacted the **Maternity Benefit Act, 1961**, which came into force on **1 November 1963**. The Act was designed to regulate the employment of women before and after childbirth and to provide paid maternity leave and other related benefits. It sought to safeguard the health and dignity of working women while ensuring that they were not deprived of their wages during maternity.

The Act has been amended from time to time to meet changing social and workplace requirements. The most significant reform came through the **Maternity Benefit (Amendment) Act, 2017**, which increased paid maternity leave from 12 weeks to 26 weeks for eligible women, introduced maternity benefits for adoptive and commissioning mothers, mandated crèche facilities in certain establishments, and provided for work-from-home arrangements where feasible.

The historical development of the Maternity Benefit Act reflects India's commitment to promoting women's welfare, gender equality, and the protection of maternal and child health in the workplace. It continues to serve as a cornerstone of labour and social welfare legislation in India.

11.3.2 KEY DEFINITIONS

Appropriate Government – Section 3(a)

The term **"appropriate government"** means the Central Government or the State Government, depending upon the nature of the establishment. The appropriate government is responsible for administering, implementing, and enforcing the provisions of the Act.

Employer – Section 3(d)

An **"employer"** means the person or authority having ultimate control over the affairs of an establishment. It includes the owner, manager, managing director, occupier, legal representative of a deceased employer, or any person entrusted with the supervision and control of employees.

Establishment – Section 3(e)

An **"establishment"** includes:

- A factory;
- A mine;
- A plantation;

- A shop or establishment to which the Act applies under any law relating to shops and establishments; and
- Any other establishment notified by the appropriate government.

Wages – Section 3(n)

"Wages" means all remuneration paid or payable in cash to a woman if the terms of her employment are fulfilled. It includes basic wages, dearness allowance, house rent allowance, incentive bonus, and cash value of concessional supplies where applicable. However, it excludes overtime wages, bonus (other than incentive bonus), employer's contribution to provident fund, and gratuity.

Woman – Section 3(o)

A **"woman"** means a woman employed, directly or through any agency, for wages in any establishment. The Act applies irrespective of whether she is employed on a permanent, temporary, contractual, or daily-wage basis, provided she satisfies the eligibility conditions prescribed under the Act.

Miscarriage – Section 3(j)

"Miscarriage" means the expulsion of the contents of a pregnant uterus at any period before or during the twenty-sixth week of pregnancy. It does not include a miscarriage that is punishable under any law in force.

Maternity Benefit – Section 5

Although **"maternity benefit"** is not specifically defined in Section 3, **Section 5** provides that every eligible woman is entitled to receive maternity benefit at the rate of her average daily wage for the period of her maternity leave. The benefit ensures financial security during pregnancy and after childbirth.

Commissioning Mother – Section 3(ba)

Inserted by the **Maternity Benefit (Amendment) Act, 2017**, a **"commissioning mother"** means a biological mother who uses her egg to create an embryo implanted in another woman (surrogate mother). She is entitled to maternity leave and benefits under the Act.

Adoptive Mother – Section 5(4)

An **adoptive mother** is a woman who legally adopts a child below the age of three months. Under **Section 5(4)**, she is entitled to **12 weeks of maternity benefit** from the date the child is handed over to her.

Delivery – Section 3(b)

"Delivery" means the birth of a child and includes both live birth and stillbirth. This definition determines a woman's eligibility for maternity benefits under the Act.

11.3.3 MAJOR PROVISIONS OF THE ACT

The **Maternity Benefit Act, 1961** is a significant piece of social welfare legislation enacted to protect the employment and health of women during pregnancy and after childbirth. The Act ensures that women employees receive paid maternity leave and other benefits without fear of losing their jobs. Over the years, the Act has been amended, particularly through the **Maternity Benefit (Amendment) Act, 2017**, to address the changing needs of working women. The major provisions of the Act are discussed below.

1. Prohibition of Employment During Certain Periods (Section 4)

Section 4 prohibits an employer from employing a woman during the **six weeks immediately following the day of her delivery, miscarriage, or medical termination of pregnancy**. Likewise, a woman is prohibited from working during this period. The objective of this provision is to ensure adequate rest and recovery after childbirth or miscarriage.

The section also prohibits employers from assigning work that is physically strenuous, involves long hours of standing, or is likely to interfere with pregnancy or adversely affect the health of the mother or the unborn child. This provision protects pregnant women from hazardous working conditions and promotes maternal and child health.

2. Right to Maternity Benefit (Section 5)

Section 5 is the most important provision of the Act. It grants every eligible woman employee the right to receive maternity benefit at the rate of her **average daily wage** for the period of her maternity leave.

A woman becomes eligible for maternity benefit if she has worked for at least **80 days** in the **twelve months immediately preceding the expected date of delivery**.

After the **Maternity Benefit (Amendment) Act, 2017**, the duration of maternity leave has been revised as follows:

- **26 weeks of paid maternity leave** for women with fewer than two surviving children.
- Out of the 26 weeks, up to **8 weeks may be taken before the expected date of delivery**.
- Women having **two or more surviving children** are entitled to **12 weeks of paid maternity leave**.
- **Adoptive mothers** adopting a child below the age of three months and **commissioning mothers** are entitled to **12 weeks of maternity leave** from the date the child is handed over to them.

This provision ensures financial security for women during maternity while allowing them sufficient time to recover and care for their newborns.

3. Notice of Claim for Maternity Benefit (Section 6)

Section 6 requires a woman to give notice to her employer stating that she intends to avail herself of maternity benefits under the Act. The notice should specify the date from which she wishes to begin her maternity leave and may also nominate a person who will receive the maternity benefit if she dies before receiving it.

If a woman is unable to give notice before delivery, she may submit it as soon as possible after childbirth. An employer cannot deny maternity benefits merely because the notice was not given in advance if the woman is otherwise eligible.

4. Payment of Maternity Benefit in Certain Cases (Section 7)

Section 7 deals with the payment of maternity benefits when the woman dies during the maternity benefit period.

If the woman dies before receiving the maternity benefit, the employer must pay the amount due up to the date of her death to her nominated person or legal representative. If the child survives, the employer is required to pay the maternity benefit for the entire period to which the woman was entitled. This provision ensures financial protection for the woman's family in unfortunate circumstances.

5. Medical Bonus (Section 8)

Section 8 provides that where an employer does not provide free pre-natal and post-natal medical care, the woman employee is entitled to receive a **medical bonus** in addition to maternity benefits.

The amount of the medical bonus is prescribed by the Central Government and may be revised periodically through official notifications. The purpose of this provision is to help women meet expenses related to medical treatment during pregnancy and childbirth.

6. Leave for Miscarriage or Medical Termination of Pregnancy (Section 9)

Under Section 9, a woman who suffers a miscarriage or undergoes a legally permitted medical termination of pregnancy is entitled to **six weeks' leave with wages** immediately following the miscarriage.

The leave is granted upon production of the prescribed medical proof. This provision recognizes the physical and emotional impact of miscarriage and provides women with adequate time for recovery.

7. Leave for Tubectomy Operation (Section 9A)

Section 9A grants a woman employee **two weeks' leave with wages** following a tubectomy operation.

Tubectomy is a surgical procedure for female sterilization. The leave allows the employee sufficient time to recover from surgery without any loss of wages or employment.

8. Leave for Illness Arising Out of Pregnancy (Section 10)

Section 10 provides that a woman suffering from illness arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy, or tubectomy operation is entitled to an **additional leave of one month with wages**.

The leave is available on submission of the prescribed medical certificate. This provision recognizes that pregnancy-related complications may require extended medical care beyond the normal maternity leave period.

9. Nursing Breaks (Section 11)

Section 11 grants every woman returning to work after delivery the right to **two nursing breaks** in addition to the regular rest interval during each working day.

These breaks continue until the child reaches the age prescribed under the rules. The provision enables mothers to breastfeed their infants and contributes to the health and well-being of both the mother and the child.

10. Crèche Facility (Section 11A)

The **Maternity Benefit (Amendment) Act, 2017** inserted Section 11A to improve childcare support for working mothers.

Every establishment employing **50 or more employees** must provide a crèche facility either independently or through a common facility. The woman employee is allowed **four visits to the crèche every day**, including her regular rest interval.

The objective of this provision is to help women balance their professional responsibilities with childcare and encourage their continued participation in the workforce.

11. Work from Home (Proviso to Section 5)

The 2017 Amendment also introduced the **work-from-home** provision.

Where the nature of work permits, the employer may allow the woman employee to work from home after the expiry of maternity leave. The duration and conditions of such work are determined by mutual agreement between the employer and the employee.

This provision provides flexibility and enables women to continue their employment while caring for their newborn children.

12. Protection Against Dismissal During Maternity (Section 12)

Section 12 provides important protection against discrimination during maternity.

An employer cannot dismiss, discharge, or otherwise terminate the employment of a woman because she is absent from work due to pregnancy or maternity leave. Nor can the employer reduce her wages or deprive her of maternity benefits during this period.

However, dismissal for proven gross misconduct may be permitted in accordance with the law, subject to the safeguards provided under the Act.

This provision ensures job security and protects women from unfair employment practices.

13. No Deduction of Wages (Section 13)

Section 13 prohibits employers from deducting wages because a woman is entitled to nursing breaks or any other benefit under the Act.

The purpose of this provision is to ensure that maternity-related rights do not result in any financial disadvantage to the employee.

14. Appointment of Inspectors (Section 14)

The appropriate government may appoint **Inspectors** for the effective implementation of the Act.

Inspectors have the authority to:

- Enter and inspect establishments.
- Examine records and registers.
- Investigate complaints.
- Require employers to furnish relevant information.
- Ensure compliance with the provisions of the Act.

These powers help ensure effective enforcement of maternity rights.

15. Powers of Inspectors and Appeals (Sections 15–17)

The Act empowers Inspectors to direct employers to make payment of maternity benefits where due. If any person is dissatisfied with the decision of the Inspector, an appeal may be filed before the prescribed authority within the time specified under the Act.

These provisions provide an effective mechanism for resolving disputes relating to maternity benefits.

16. Penalties for Non-Compliance (Sections 21–23)

The Act prescribes penalties for employers who fail to comply with its provisions.

An employer who dismisses a woman unlawfully, refuses to pay maternity benefits, or otherwise violates the provisions of the Act may be punished with **imprisonment, fine, or both**, depending on the nature of the offence. These penalties act as a deterrent against non-compliance and promote adherence to the law.

The **Maternity Benefit Act, 1961** is one of India's most important labour welfare legislations aimed at protecting the health, dignity, and employment rights of women during pregnancy and motherhood. Its provisions relating to paid maternity leave, medical bonus, nursing breaks, leave for miscarriage and illness, crèche facilities, work-from-home arrangements, and protection against dismissal provide comprehensive support to women employees. The **Maternity Benefit (Amendment) Act, 2017** further strengthened these protections by extending maternity leave to 26 weeks, recognizing adoptive and commissioning mothers, and introducing childcare support measures. Collectively, these provisions promote gender equality, improve maternal and child health, and encourage greater participation of women in the workforce while ensuring a fair balance between employment and family responsibilities.

11.3.4 MATERNITY BENEFIT (AMENDMENT) ACT, 2017

The **Maternity Benefit (Amendment) Act, 2017 (Act No. 6 of 2017)** was enacted to amend the **Maternity Benefit Act, 1961** with the objective of strengthening maternity protection for women employees in India. The Amendment received the assent of the President on **27 March 2017** and most of its provisions came into force from **1 April 2017**, while the provisions relating to crèche facilities became effective from **1 July 2017**. The amendment was introduced to promote maternal health, improve child care, and encourage greater participation of women

in the workforce. It significantly expanded maternity benefits by increasing paid maternity leave, recognizing adoptive and commissioning mothers, introducing work-from-home provisions, and making crèche facilities mandatory in larger establishments.

1. Insertion of Definition of "Commissioning Mother" – Section 3(ba)

One of the important amendments was the insertion of **Section 3(ba)**, which introduced the definition of a **"commissioning mother."**

According to the amended Act, a commissioning mother is **a biological mother who uses her egg to create an embryo that is implanted in another woman (surrogate mother).**

Before this amendment, the Act did not recognize women who became mothers through surrogacy. By including this definition, the law extended maternity benefits to commissioning mothers, thereby acknowledging modern reproductive technologies and ensuring equal protection for such women.

2. Increase in Paid Maternity Leave – Amendment to Section 5(3)

The most significant amendment was made to **Section 5(3)** relating to the duration of maternity leave.

Prior to the amendment, eligible women were entitled to **12 weeks** of paid maternity leave, of which not more than six weeks could be taken before the expected date of delivery.

The 2017 Amendment increased this entitlement to **26 weeks** for women having **less than two surviving children**. Out of these 26 weeks, a maximum of **8 weeks** may be taken before the expected date of delivery, while the remaining leave can be availed after childbirth.

However, women having **two or more surviving children** continue to be entitled to **12 weeks** of maternity leave, with not more than six weeks preceding the expected date of delivery.

This amendment was introduced to provide mothers with sufficient time for physical recovery, breastfeeding, and early child care, in line with international recommendations on maternal and infant health.

3. Maternity Benefits for Adoptive and Commissioning Mothers – Section 5(4)

The Amendment inserted **Section 5(4)** to extend maternity benefits to **adoptive mothers** and **commissioning mothers**.

A woman who legally adopts a child below the age of **three months** is entitled to **12 weeks of maternity leave** from the date the child is handed over to her.

Similarly, a commissioning mother is entitled to **12 weeks of paid maternity leave** from the date the child is handed over to her.

This provision recognizes that adoptive and commissioning mothers also require adequate time to establish emotional bonding, provide proper care, and adjust to their parental responsibilities.

4. Work from Home Provision – Section 5(5)

The Amendment inserted **Section 5(5)** introducing the concept of **work from home**.

Where the nature of the work permits, an employer may allow a woman employee to work from home after the completion of her maternity leave. The duration and conditions of such work are to be determined through mutual agreement between the employer and the employee.

This provision offers flexibility to working mothers by enabling them to continue employment while caring for their newborn children. It also helps employers retain experienced employees and promotes a more family-friendly workplace.

5. Mandatory Crèche Facility – Section 11A

The Amendment inserted **Section 11A**, making it compulsory for every establishment employing **50 or more employees** to provide a **crèche facility**.

The law also provides that every woman employee shall be allowed **four visits to the crèche each day**, including her rest interval.

The objective of this provision is to ensure that working mothers can attend to their infants during working hours without compromising their employment. It supports breastfeeding, promotes child welfare, and enables women to return to work with greater confidence after maternity leave.

6. Employer's Duty to Inform Women Employees – Section 11A

Another important amendment requires every employer to **inform women employees in writing and electronically** about the maternity benefits available under the Act at the time of their appointment.

This provision was introduced because many women were unaware of their legal rights regarding maternity leave, nursing breaks, and other benefits. By making awareness a statutory obligation, the Amendment seeks to improve compliance and ensure that eligible women can effectively exercise their rights.

7. Continued Eligibility Conditions

Although the Amendment substantially enhanced maternity benefits, it did **not** alter the eligibility requirements prescribed under the original Act.

A woman employee continues to be eligible for maternity benefits only if she has worked for at least **80 days during the twelve months immediately preceding the expected date of delivery**.

Similarly, the provisions relating to maternity benefit at the rate of average daily wages, nursing breaks, leave for miscarriage, medical bonus, protection against dismissal, and penalties for non-compliance continue to apply without substantial changes.

8. Objectives of the Amendment

The principal objectives of the Maternity Benefit (Amendment) Act, 2017 are:

- To improve maternal and infant health.
- To provide adequate paid leave for women after childbirth.
- To promote breastfeeding and early childcare.

- To recognize adoptive and commissioning mothers.
- To encourage women's participation in the workforce.
- To create family-friendly workplaces through crèche facilities and flexible work arrangements.
- To strengthen gender equality and workplace protection for women employees.

The amendment reflects India's commitment to international labour standards concerning maternity protection and women's welfare.

Significance of the Amendment

The **Maternity Benefit (Amendment) Act, 2017** represents one of the most important reforms in Indian labour law relating to women's employment. By increasing paid maternity leave from **12 weeks to 26 weeks**, it places India among the countries providing relatively generous maternity benefits.

The recognition of adoptive and commissioning mothers broadens the scope of maternity protection and reflects changing family structures and reproductive technologies. The introduction of work-from-home provisions and mandatory crèche facilities helps women balance professional responsibilities with childcare, thereby reducing the likelihood of women leaving employment after childbirth.

Despite these progressive measures, some challenges remain. The Act primarily applies to the organized sector, leaving many women in the unorganized sector outside its protection. In addition, the financial burden of providing maternity benefits rests largely on employers, particularly private establishments, which has led to concerns regarding hiring practices and implementation

The **Maternity Benefit (Amendment) Act, 2017** substantially modernized the **Maternity Benefit Act, 1961** by expanding maternity leave, recognizing adoptive and commissioning mothers, introducing flexible work arrangements, mandating crèche facilities, and requiring employers to inform women of their rights. These reforms promote maternal health, child welfare, gender equality, and women's continued participation in the workforce. Although certain implementation challenges remain, the Amendment represents a significant step toward creating a more inclusive and supportive working environment for women in India.

11.3.5 RIGHTS OF WOMEN EMPLOYEES

The **Maternity Benefit Act, 1961** is a landmark social welfare legislation enacted to safeguard the rights of women employees during pregnancy and after childbirth. The Act aims to ensure that motherhood does not become a disadvantage in employment by providing paid maternity leave, job security, and other welfare benefits. The **Maternity Benefit (Amendment) Act, 2017** further strengthened these protections by extending the duration of paid maternity leave, recognizing the rights of adoptive and commissioning mothers, introducing work-from-home provisions, and making crèche facilities mandatory in certain establishments. Together, these laws guarantee several important rights to women employees, ensuring their health, dignity, and financial security.

1. Right to Paid Maternity Leave (Section 5)

The most significant right conferred by the Act is the **right to paid maternity leave**.

Under **Section 5**, every eligible woman employee who has worked for at least **80 days during the twelve months immediately preceding the expected date of delivery** is entitled to maternity benefits at the rate of her average daily wage.

Following the **2017 Amendment**, eligible women are entitled to:

- **26 weeks of paid maternity leave** for the birth of the first two children.
- Up to **8 weeks of leave before the expected date of delivery** and the remaining leave after childbirth.
- **12 weeks of paid maternity leave** for women having two or more surviving children.

This provision enables women to recover from childbirth while ensuring continuity of income.

2. Right of Adoptive and Commissioning Mothers (Section 5(4))

The **Maternity Benefit (Amendment) Act, 2017** extended maternity benefits to adoptive and commissioning mothers.

Under **Section 5(4)**:

- An **adoptive mother** adopting a child below the age of three months is entitled to **12 weeks of maternity leave** from the date the child is handed over to her.
- A **commissioning mother**, whose biological child is born through surrogacy, is also entitled to **12 weeks of maternity leave**.

This provision recognizes different forms of motherhood and promotes equal treatment of women irrespective of the mode of becoming a parent.

3. Right to Protection from Hazardous Work (Section 4)

Section 4 protects pregnant women from being assigned work that may adversely affect their health or pregnancy.

During pregnancy, employers cannot require women to:

- Perform arduous or physically demanding work.
- Lift heavy weights.
- Work for prolonged hours of standing.
- Perform duties that may interfere with normal fetal development or cause miscarriage.

This provision safeguards the physical well-being of both the mother and the unborn child.

4. Right Not to Work During Certain Periods (Section 4)

The Act grants every woman the right **not to work during the six weeks immediately following delivery, miscarriage, or medical termination of pregnancy**.

Similarly, employers are prohibited from employing women during this mandatory post-delivery period.

This right ensures adequate recovery after childbirth and reduces the risk of health complications.

5. Right to Medical Bonus (Section 8)

Where an employer does not provide free prenatal and postnatal medical care, **Section 8** entitles the woman employee to receive a **medical bonus** in addition to maternity benefits.

The amount of the bonus is prescribed by the Central Government and may be revised from time to time.

This provision helps women meet expenses related to pregnancy and childbirth.

6. Right to Leave in Case of Miscarriage (Section 9)

A woman who suffers a miscarriage or undergoes a legally permitted medical termination of pregnancy is entitled under **Section 9** to **six weeks of paid leave** immediately following the miscarriage.

The leave is granted upon production of the prescribed medical certificate.

This provision recognizes the physical and emotional impact of miscarriage and supports the woman's recovery.

7. Right to Leave Following Tubectomy Operation (Section 9A)

Under **Section 9A**, a woman undergoing a tubectomy operation is entitled to **two weeks of paid leave** immediately following the operation.

The provision ensures that women receive sufficient time to recover from the surgical procedure without suffering any loss of wages.

8. Right to Leave for Pregnancy-Related Illness (Section 10)

Section 10 provides that a woman suffering from illness arising out of pregnancy, delivery, premature birth, miscarriage, medical termination of pregnancy, or tubectomy operation is entitled to **an additional one month's leave with wages**.

This right recognizes that pregnancy-related complications may require extended medical care beyond the normal maternity leave period.

9. Right to Nursing Breaks (Section 11)

After resuming work, every woman employee has the right to **two nursing breaks** during each working day in addition to the regular rest interval.

These nursing breaks continue until the child attains the age prescribed under the Act and applicable rules.

The provision supports breastfeeding, promotes child health, and enables mothers to balance work with childcare responsibilities.

10. Right to Crèche Facility (Section 11A)

The **2017 Amendment** inserted **Section 11A**, making it mandatory for establishments employing **50 or more employees** to provide a crèche facility.

Every woman employee has the right to:

- Access the crèche facility provided by the employer.
- Visit the crèche **four times during the day**, including her rest interval.

This provision enables mothers to remain close to their infants while continuing employment.

11. Right to Work from Home (Section 5(5))

The Amendment inserted **Section 5(5)** introducing the **work-from-home** option.

Where the nature of employment permits, a woman employee may work from home after completing her maternity leave, subject to mutual agreement with the employer regarding the duration and conditions.

This provision promotes flexibility and supports work-life balance for new mothers.

12. Right to Protection against Dismissal (Section 12)

Section 12 protects women from discrimination during maternity.

An employer cannot:

- Dismiss or discharge a woman because of pregnancy.
- Reduce her wages during maternity leave.
- Deprive her of maternity benefits due under the Act.

Termination of employment merely because a woman has availed maternity leave is prohibited, except in cases of proven gross misconduct in accordance with the law.

This provision ensures job security during one of the most important phases of a woman's life.

13. Right against Deduction of Wages (Section 13)

Section 13 prohibits employers from deducting wages because a woman is entitled to nursing breaks or other benefits under the Act.

Women employees therefore continue to receive their full wages while exercising their statutory rights.

14. Right to Be Informed of Maternity Benefits (Section 11A)

The **2017 Amendment** introduced an important obligation on employers to **inform every woman employee, in writing and electronically, about the maternity benefits available under the Act at the time of her appointment**.

This provision ensures awareness of legal rights and helps women claim the benefits to which they are entitled.

15. Right to Seek Redressal

Women employees whose maternity benefits are denied have the right to approach the **Inspector appointed under Section 14** for redressal of grievances.

The Inspector has the authority to investigate complaints, direct payment of maternity benefits, and ensure compliance with the Act. Women also have the right to pursue remedies before the appropriate authority or court where applicable.

The **Maternity Benefit Act, 1961**, together with the **Maternity Benefit (Amendment) Act, 2017**, provides a comprehensive framework for protecting the rights of women employees during pregnancy and motherhood. The Acts guarantee paid maternity leave, job security, medical benefits, leave in cases of miscarriage or illness, nursing breaks, and protection against discrimination. The 2017 Amendment further strengthened these rights by extending paid maternity leave to 26 weeks, recognizing adoptive and commissioning mothers, introducing work-from-home arrangements, mandating crèche facilities, and requiring employers to inform women of their statutory rights. These provisions reflect the constitutional principles of equality, dignity, and social justice, while promoting maternal health, child welfare, and the continued participation of women in the workforce.

11.3.6 DUTIES AND RESPONSIBILITIES OF EMPLOYERS

The **Maternity Benefit Act, 1961** imposes several statutory duties and responsibilities on employers to ensure the protection of women employees during pregnancy, childbirth, and the postnatal period. The Act seeks to create a safe and supportive working environment by guaranteeing maternity benefits, protecting employment, and promoting the health and welfare of both mother and child. The **Maternity Benefit (Amendment) Act, 2017** further expanded these obligations by introducing provisions relating to crèche facilities, work-from-home arrangements, and mandatory communication of maternity rights. Compliance with these responsibilities is mandatory, and failure to comply attracts penalties under the Act.

1. Duty to Pay Maternity Benefit (Section 5)

One of the primary responsibilities of an employer is to pay maternity benefit to every eligible woman employee.

Under **Section 5**, an employer must pay maternity benefit at the rate of the woman's **average daily wage** for the period of maternity leave. The employer must ensure that the payment is made promptly and in accordance with the provisions of the Act.

A woman becomes eligible for maternity benefits if she has worked for at least **80 days during the twelve months immediately preceding the expected date of delivery**.

The employer cannot deny maternity benefits to an eligible employee on arbitrary or discriminatory grounds.

2. Duty Not to Employ Women During the Prohibited Period (Section 4)

Section 4 prohibits employers from employing a woman during the **six weeks immediately following her delivery, miscarriage, or medical termination of pregnancy**.

Employers must also ensure that pregnant women are not assigned work that:

- Is physically strenuous.
- Requires prolonged standing.
- Involves lifting heavy objects.
- Is likely to interfere with pregnancy or adversely affect the health of the mother or unborn child.

This duty is intended to safeguard maternal and child health.

3. Duty to Grant Maternity Leave (Section 5)

Employers are legally required to grant maternity leave to eligible women employees.

Following the **2017 Amendment**, employers must provide:

- **26 weeks of paid maternity leave** to women having fewer than two surviving children.
- **12 weeks of paid leave** to women having two or more surviving children.
- **12 weeks of leave** to adoptive mothers adopting a child below three months of age.
- **12 weeks of leave** to commissioning mothers.

Refusal to grant maternity leave amounts to a violation of the Act.

4. Duty to Pay Medical Bonus (Section 8)

Where an employer does not provide free pre-natal and post-natal medical care, **Section 8** requires the employer to pay a **medical bonus** to the woman employee.

The amount of the bonus is prescribed by the Central Government and may be revised periodically.

This obligation ensures that women receive financial assistance for medical expenses connected with pregnancy and childbirth.

5. Duty to Grant Leave in Special Circumstances (Sections 9, 9A and 10)

The employer is responsible for granting paid leave in special medical situations.

These include:

- **Six weeks' leave** following miscarriage or medical termination of pregnancy (**Section 9**).
- **Two weeks' leave** following a tubectomy operation (**Section 9A**).
- **One month's additional leave** for illness arising out of pregnancy, delivery, miscarriage, premature birth, or tubectomy, upon submission of the prescribed medical certificate (**Section 10**).

Employers must ensure that these statutory leave benefits are granted without discrimination.

6. Duty to Provide Nursing Breaks (Section 11)

Under **Section 11**, employers must provide every woman employee with **two nursing breaks** in addition to the regular rest interval after she resumes work following childbirth.

These breaks continue until the child reaches the prescribed age.

Employers cannot deduct wages or deny nursing breaks to eligible women employees.

7. Duty to Provide Crèche Facility (Section 11A)

One of the major responsibilities introduced by the **Maternity Benefit (Amendment) Act, 2017** is contained in **Section 11A**.

Every establishment employing **50 or more employees** must provide a **crèche facility**, either independently or through a common arrangement.

The employer must also permit the woman employee to visit the crèche **four times during the day**, including the prescribed rest interval.

This provision supports childcare and enables women to continue their employment after childbirth.

8. Duty to Inform Women Employees of Their Rights (Section 11A)

Section 11A further requires every employer to inform women employees about the maternity benefits available under the Act.

The employer must communicate these benefits:

- At the time of appointment.
- In writing.
- Through electronic means wherever possible.

This obligation promotes awareness and enables women employees to exercise their statutory rights effectively.

9. Duty to Consider Work from Home (Section 5(5))

The **2017 Amendment** inserted **Section 5(5)**, which allows employers to provide the option of **work from home**, where the nature of the work permits.

Although work from home is not mandatory in every case, employers are expected to consider such requests and mutually agree upon suitable terms with the employee after the expiry of maternity leave.

This provision promotes flexibility and helps women balance childcare responsibilities with professional commitments.

10. Duty Not to Dismiss or Discriminate Against Women (Section 12)

Employers are prohibited from dismissing or discharging a woman employee because of her pregnancy or maternity leave.

Under **Section 12**, an employer cannot:

- Terminate the services of a woman during maternity leave.
- Reduce her wages.
- Deprive her of maternity benefits.
- Discriminate against her for exercising her legal rights under the Act.

Only cases involving proven gross misconduct may justify disciplinary action, and even then, the procedure prescribed by law must be followed.

11. Duty Not to Deduct Wages (Section 13)

Section 13 prohibits employers from making any deduction from the wages of a woman employee because she has availed herself of nursing breaks or any other statutory maternity benefit.

Employers must ensure that women receive full wages while exercising the rights guaranteed under the Act.

12. Duty to Maintain Registers and Records (Section 20)

Employers are required to maintain prescribed registers, records, and documents relating to:

- Women employees.
- Maternity leave granted.
- Payment of maternity benefits.
- Medical bonus.
- Other benefits provided under the Act.

These records must be produced before Inspectors whenever required during inspections.

Proper record-keeping facilitates effective implementation and monitoring of compliance.

13. Duty to Cooperate with Inspectors (Sections 14–18)

The appropriate government appoints **Inspectors** to enforce the provisions of the Act.

Employers are required to:

- Allow Inspectors to enter and inspect the establishment.
- Produce registers and records for examination.
- Provide relevant information.
- Comply with lawful directions issued by Inspectors.

Failure to cooperate may result in legal action.

14. Duty to Comply with the Provisions of the Act

Employers are expected to ensure complete compliance with all provisions of the Act, including:

- Timely payment of maternity benefits.
- Grant of statutory leave.
- Provision of nursing breaks.
- Maintenance of workplace safety for pregnant women.
- Implementation of crèche facilities where applicable.
- Protection of employment during maternity.

Compliance not only fulfils legal obligations but also promotes employee welfare and organizational productivity.

15. Liability for Non-Compliance (Sections 21–23)

Failure to comply with the provisions of the Act attracts penalties.

Employers who refuse maternity benefits, unlawfully dismiss women employees, fail to provide statutory facilities, or otherwise violate the Act may be punished with **imprisonment, fine, or both**, depending on the nature of the offence.

These penalties encourage employers to comply with their statutory obligations and uphold the rights of women employees.

The **Maternity Benefit Act, 1961**, together with the **Maternity Benefit (Amendment) Act, 2017**, places significant responsibilities on employers to protect the rights and welfare of women employees. Employers are required to provide paid maternity leave, medical benefits, nursing breaks, safe working conditions, crèche facilities, and protection against dismissal or discrimination. They must also maintain statutory records, cooperate with Inspectors, and inform women employees about their legal rights. By fulfilling these responsibilities, employers contribute to a fair, inclusive, and gender-sensitive workplace while ensuring compliance with labour laws and promoting the health and well-being of mothers and children.

RECENT JUDICIAL DEVELOPMENTS

The judiciary has played a significant role in strengthening maternity rights in India by interpreting the **Maternity Benefit Act, 1961** in light of constitutional principles such as equality, dignity, and the right to life under **Articles 14, 15, 21, 39, and 42 of the Constitution of India**. Courts have consistently held that maternity benefits are not merely statutory entitlements but are closely connected with the reproductive rights and human dignity of women. Recent judgments of the Supreme Court and various High Courts have expanded the scope of maternity protection by extending benefits to contractual employees, protecting women's employment, and emphasizing the welfare of both mother and child.

1. *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (2000)

Although decided before the 2017 Amendment, this remains one of the most significant judgments on maternity rights.

Facts

The Municipal Corporation of Delhi denied maternity benefits to women employed on a muster-roll (daily wage) basis, contending that such benefits were available only to permanent employees.

Judgment

The **Supreme Court** held that maternity benefits cannot be denied merely because a woman is employed on a temporary or daily-wage basis. The Court observed that maternity protection

is a social welfare measure intended to preserve the dignity of motherhood and protect maternal and child health.

Significance

- Extended maternity benefits to temporary and daily-wage workers.
- Recognized maternity relief as a part of social justice.
- Reinforced the constitutional obligation under **Article 42**, which directs the State to make provisions for just and humane conditions of work and maternity relief.

2. *K. Umadevi v. Government of Tamil Nadu* (Supreme Court, 2025)

Facts

A government school teacher was denied maternity leave for the birth of her child because a State policy based on the "two-child norm" treated it as her third child.

Judgment

The **Supreme Court** set aside the denial of maternity leave and held that maternity leave is an integral component of a woman's **reproductive rights**, which include the rights to health, dignity, privacy, equality, and non-discrimination. The Court further held that the provisions of the **Maternity Benefit Act, 1961** prevail over inconsistent State service rules.

Significance

- Declared maternity leave to be a legal and constitutional entitlement.
- Held that restrictive State policies cannot override statutory maternity benefits.
- Strengthened the constitutional protection of women's reproductive autonomy and workplace equality.

3. Supreme Court on Rights of Adoptive Mothers (2025–2026)

Background

Section 5(4) of the Maternity Benefit Act, inserted by the 2017 Amendment, grants maternity leave to adoptive mothers only when the adopted child is below three months of age. This limitation was challenged before the Supreme Court.

Judicial Development

The Supreme Court held that restricting maternity benefits solely to women adopting children below three months of age defeated the very purpose of the legislation. The Court observed that the age restriction was arbitrary because adoptive mothers require time to establish emotional bonding and provide care regardless of the child's exact age.

Significance

- Expanded the understanding of maternity rights for adoptive mothers.
- Reinforced the principle of equality and non-discrimination.
- Recognized adoption as an equally important form of parenthood deserving statutory protection.

4. Bombay High Court: Maternity Benefits for Contractual Employees (2025)

Facts

A contractual doctor employed in a public hospital was denied maternity leave on the ground that she was not a permanent employee.

Judgment

The **Bombay High Court** ruled that the Maternity Benefit Act does not distinguish between permanent and contractual employees. Since the employee fulfilled the statutory eligibility requirements, she was entitled to maternity benefits.

Significance

- Affirmed that contractual employees enjoy the same maternity rights as permanent employees.
- Prevented discrimination based on the nature of employment.
- Reinforced the objective of protecting motherhood irrespective of employment status.

5. Madras High Court: Contractual Conditions Cannot Override the Act (2024)

Facts

A woman employed on a contractual basis was denied maternity benefits because her employment contract did not provide for such leave.

Judgment

The **Madras High Court** held that contractual conditions cannot override the provisions of the Maternity Benefit Act. Any contractual clause inconsistent with the Act is unenforceable.

Significance

- Established the supremacy of statutory maternity rights over private contractual terms.
- Protected women employees from unfair employment practices.
- Strengthened the mandatory nature of the Act.

6. Delhi High Court: Protection of Women's Statutory Rights (2024)

Facts

A young woman was denied maternity benefits by the authorities, compelling her to approach the High Court.

Judgment

The **Delhi High Court** criticized the authorities for denying benefits and emphasized that maternity protection is a statutory right. The Court imposed costs on the authorities for unnecessarily compelling the employee to litigate.

Significance

- Reaffirmed that maternity benefits cannot be denied on technical or administrative grounds.

- Encouraged public authorities to adopt a welfare-oriented approach in implementing labour legislation.

7. Orissa High Court: Maternity Benefits for Contractual Employees (2025)

Judgment

The **Orissa High Court** held that denying maternity benefits to a contractual employee was inconsistent with both the Maternity Benefit Act and constitutional guarantees of equality and dignity. The Court described such denial as contrary to the objectives of social welfare legislation.

Significance

- Reinforced equal treatment for contractual employees.
- Emphasized that motherhood cannot become a ground for discrimination in employment.

8. Emerging Judicial Trends

Recent judicial decisions reveal several important trends in the interpretation of the Maternity Benefit Act:

- **Liberal Interpretation:** Courts interpret the Act liberally to advance its welfare objectives rather than adopting a narrow or technical approach.
- **Constitutional Protection:** Maternity benefits are increasingly viewed as part of the fundamental rights to dignity, equality, health, privacy, and reproductive autonomy under the Constitution.
- **Protection of Non-Permanent Employees:** Courts consistently extend maternity benefits to contractual, temporary, and daily-wage employees who satisfy the statutory requirements.
- **Primacy of Statutory Rights:** Administrative rules, service regulations, or employment contracts cannot curtail rights guaranteed by the Maternity Benefit Act.
- **Recognition of Diverse Forms of Motherhood:** Judicial decisions have progressively acknowledged the rights of adoptive and commissioning mothers, reflecting changing family structures and modern reproductive technologies.

Recent judicial developments have significantly strengthened the protection available to women employees under the **Maternity Benefit Act, 1961** and the **Maternity Benefit (Amendment) Act, 2017**. The Supreme Court and various High Courts have consistently interpreted the legislation in a manner that promotes gender equality, social justice, and constitutional values. Decisions relating to contractual employees, adoptive mothers, reproductive rights, and the supremacy of statutory protections demonstrate the judiciary's commitment to ensuring that motherhood does not become a source of discrimination or economic disadvantage. These judgments have transformed maternity benefits from a statutory welfare measure into an essential component of women's constitutional rights, thereby contributing to a more inclusive and equitable workplace.

11.4 SUMMARY

The **Maternity Benefit Act, 1961** is an important labour law in India that protects the employment and health rights of women during pregnancy and after childbirth. Its primary objective is to ensure that women receive paid maternity leave and are not disadvantaged at work due to pregnancy. The Act applies to factories, mines, plantations, shops, and establishments employing the prescribed minimum number of employees. Following the **Maternity Benefit (Amendment) Act, 2017**, eligible women are entitled to **26 weeks of paid maternity leave** for the first two children, while women with two or more children are entitled to **12 weeks**. Adoptive and commissioning mothers are also eligible for **12 weeks of leave** under specified conditions. The Act prohibits employers from dismissing or discriminating against women during maternity leave and ensures payment of maternity benefits at the average daily wage. It also provides nursing breaks after returning to work and requires establishments with **50 or more employees** to provide crèche facilities, allowing mothers to visit the crèche during working hours. Additionally, the Act permits work-from-home arrangements where feasible, based on mutual agreement. Overall, the Maternity Benefit Act promotes the health and well-being of both mother and child while encouraging gender equality and supporting women's continued participation in the workforce.

11.5 GLOSSARY

- **Maternity Benefit** – Paid leave and financial support provided to a woman employee during pregnancy and after childbirth.
- **Maternity Leave** – The period of authorized absence from work granted to a woman before and after the birth of her child.
- **ligible Employee** – A woman who has worked for the required minimum number of days to qualify for maternity benefits under the Act.
- **Commissioning Mother** – A biological mother who has a child through a surrogate and is entitled to maternity benefits as specified by the Act.
- **Adoptive Mother –** A woman who legally adopts a child and is eligible for maternity leave under the prescribed conditions.
- **Crèche Facility** – A childcare center that establishments with 50 or more employees must provide to support working mothers.
- **Nursing Breaks** – Paid breaks provided to a mother after returning to work to breastfeed or care for her infant.
- **Work from Home** – A flexible working arrangement that may be allowed after maternity leave if the nature of the job permits and both employer and employee agree.

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11.7 SUGGESTED READINGS

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Eastern Book Company, Lucknow.
A comprehensive textbook covering Indian labour legislation, including the Maternity Benefit Act, industrial welfare measures, and important judicial decisions.

S. N. Mishra – Labour and Industrial Laws
Central Law Publications, Allahabad.
Provides detailed explanations of labour laws, statutory provisions, and case laws relating to employment and social security.

S. C. Srivastava – Industrial Relations and Labour Laws
Vikas Publishing House.
Useful for understanding the relationship between labour welfare legislation, industrial relations, and employee rights.

H. L. Kumar – Labour Laws in India
Universal Law Publishing.
Discusses various labour laws with practical interpretations and compliance requirements for employers.

R. C. Saxena – Labour Laws and Industrial Relations
K. Nath & Co.
Covers the development of labour legislation and the role of social security laws in protecting workers.

Dr. S. R. Myneni – Labour Laws
Asia Law House.

Provides a student-friendly explanation of important labour statutes and their judicial interpretation.

11.8 SHORT ANSWERS QUESTIONS

1. What is the main objective of the Maternity Benefit Act?

2. How many weeks of maternity leave are provided for the first two children?

3. Who is eligible for maternity benefits under the Act?

4. What is a crèche facility under the Maternity Benefit Act?

5. What are nursing breaks, and why are they provided?

11.9 TERMINAL QUESTIONS

1. Explain the objectives and key provisions of the Maternity Benefit Act. How does it protect the rights of women employees?

2. Discuss the major changes introduced by the Maternity Benefit (Amendment) Act, 2017.

How have these amendments benefited working women?

3. Describe the eligibility criteria for maternity benefits under the Maternity Benefit Act.

Explain the types of leave and benefits available to eligible women.

4. What are the responsibilities of employers under the Maternity Benefit Act? Discuss the provisions relating to paid leave, crèche facilities, nursing breaks, and work-from-home arrangements.

5. Evaluate the significance of the Maternity Benefit Act in promoting maternal health, child welfare, and gender equality in the workplace. Mention its advantages and challenges.

11.10 TRUE AND FALSE

1. The Maternity Benefit Act provides paid maternity leave to eligible women employees.

2. Every woman employee is entitled to 26 weeks of maternity leave regardless of the number of children she has.

3. Establishments with 50 or more employees are required to provide a crèche facility under the Act.

4. The Maternity Benefit Act allows employers to dismiss a woman because she is on maternity leave.

5. The Act provides nursing breaks for mothers after they return to work.

Answers: - 1. True 2. False 3. True 4. False 5. True

UNIT - 12

INTERNATIONAL LEGAL PROVISIONS FOR PROTECTION OF HUMAN RIGHTS

12.1 INTRODUCTION TO INTERNATIONAL HUMAN RIGHTS LAW

12.1.1 Concept and Meaning of Human Rights

12.1.2 Emergence of International Human Rights Protection

12.1.3 Human Rights in the UN Charter

12.2 HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

12.2.1 Adoption of the Universal Declaration of Human Rights

12.2.2 Development of the International Bill of Human Rights

12.3 CORE INTERNATIONAL HUMAN RIGHTS TREATIES

12.3.1 Civil and Political Rights

12.3.2 Economic, Social, and Cultural Rights

12.3.3 Anti-Discrimination Treaties

12.3.4 Protection from Torture

12.3.5 Protection of Children

12.3.6 Rights of Persons with Disabilities

12.3.7 Other Important Treaties

12.4 UNITED NATIONS HUMAN RIGHTS INSTITUTIONS

12.4.1 UN General Assembly

12.4.2 Human Rights Council

12.4.3 Office of the High Commissioner for Human Rights

12.4.4 Treaty Bodies

12.5 ENFORCEMENT AND MONITORING MECHANISMS

12.5.1 State Reporting System

12.5.2 Individual Complaint Mechanisms

12.5.3 Universal Periodic Review

12.5.4 Special Procedures

12.5.5 International Criminal Justice

12.6 REGIONAL HUMAN RIGHTS SYSTEMS

12.6.1 European Human Rights System

12.6.2 Inter-American Human Rights System

12.6.3 African Human Rights System

12.7 ROLE OF NON-STATE ACTORS AND CIVIL SOCIETY

12.7.1 Non-Governmental Organizations (NGOs)

12.7.2 National Human Rights Institutions

12.7.3 International Advocacy and Monitoring

12.8 NOTABLE INTERNATIONAL HUMAN RIGHTS CASES

12.8.1 European Court of Human Rights

12.8.2 Inter-American Court

12.8.3 International Criminal Court

12.9 CONTEMPORARY CHALLENGES IN INTERNATIONAL HUMAN RIGHTS PROTECTION

12.10 SUMMARY

12.11 GLOSSARY

12.12 REFERENCES/BIBLIOGRAPHY

12.13 SUGGESTED READINGS

12.14 SELF ASSESSMENT QUESTIONS (SAQs)

A. Short Answer Questions

B. Long Answer Questions

C. True / False

12.1 INTRODUCTION

International Human Rights Law is a branch of international law that aims to protect the fundamental rights and freedoms of all individuals at the global level. It establishes legal standards and obligations that states must follow to ensure that every person is treated with dignity, equality, and respect. These rights apply to all individuals regardless of nationality, race, gender, religion, or social status.

The modern system of international human rights protection developed mainly after the Second World War, when the international community recognized the need for global mechanisms to prevent widespread human rights violations. Today, international human rights law is supported by numerous treaties, conventions, and international institutions working together to safeguard human dignity.

12.1.1 Concept and Meaning of Human Rights

Human rights are basic rights and freedoms that belong to every human being simply because they are human. They are inherent, universal, and inalienable. This means that these rights cannot be taken away arbitrarily and must be protected by law.

Human rights are designed to ensure that individuals can live with dignity, equality, freedom, and justice. They protect people from oppression, discrimination, and abuse by governments or other authorities.

Human rights are generally classified into several categories:

1. **Civil Rights** – such as the right to life, liberty, equality before the law, and protection from torture.
2. **Political Rights** – such as freedom of speech, freedom of assembly, and the right to participate in government.
3. **Economic Rights** – including the right to work and fair wages.
4. **Social Rights** – including the right to health, education, and social security.
5. **Cultural Rights** – including the right to participate in cultural life and preserve cultural identity.

These rights are interconnected and equally important for ensuring the full development of individuals and societies.

12.1.2 Emergence of International Human Rights Protection

The idea of protecting human rights did not appear suddenly. It developed slowly over many centuries. However, the idea that human rights should be protected at an international level became important mainly in the twentieth century, especially after major global events.

I. Human rights before the United Nations

Before the United Nations (UN) was created, human rights were mostly handled within individual countries. Each country had its own laws and constitutions to protect people.

International law at that time focused more on how countries dealt with each other, not on how they treated their own citizens.

Some important historical documents helped shape early ideas about human rights. For example, the Magna Carta (1215) in England limited the king's power and introduced the idea that rulers must follow the law. Later, the English Bill of Rights (1689) strengthened the rights of citizens.

In the eighteenth century, new ideas about freedom and equality became stronger. These ideas were reflected in the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and Citizen (1789). These documents said that people have basic rights such as liberty and equality.

However, these early developments had many limitations. They did not create a global system to protect human rights. Also, many groups such as women, racial minorities, and people living under colonial rule were not included in these rights. So, while the idea of human rights existed, it was not universal or equally applied.

II. Impact of World War II

World War II (1939–1945) was a turning point in the history of human rights. During this war, terrible crimes were committed. Millions of people suffered from genocide, forced labour, torture, and mass killings.

The most shocking example was the Holocaust, where millions of Jews and other groups were systematically killed. These events showed how dangerous it could be when governments have too much power and there are no international systems to protect individuals.

Because of these atrocities, countries around the world agreed that protecting human dignity should become a global priority. There was a strong feeling that such crimes should never happen again. This led to the idea that the international community must work together to protect human rights.

III. Creation of the United Nations and Human Rights System

In 1945, after World War II ended, countries came together to form the United Nations (UN). One of its main goals was to promote respect for human rights and basic freedoms for all people.

Soon after, in 1948, the UN adopted the Universal Declaration of Human Rights (UDHR). This was a very important document because it listed basic rights and freedoms that every person should have, regardless of their country, race, or religion.

Although the UDHR is not legally binding, it has had a huge influence. It became the foundation for many international treaties and national laws related to human rights. Over time, it helped create a global system for protecting human rights.

In summary, modern international human rights protection developed gradually. Early ideas came from national documents, but real global action began after World War II. The creation of the United Nations and the adoption of the UDHR marked the beginning of a worldwide effort to protect the dignity and rights of all people.

12.1.3 Human Rights in the UN Charter

The United Nations (UN) Charter is an important document because it gives a legal and moral foundation for protecting human rights at the international level. It clearly shows that human rights are one of the main goals of the United Nations. Different parts of the Charter explain how important these rights are and how countries should work together to protect them Preamble

The Preamble is the introduction to the UN Charter. It expresses the basic ideas and values of the United Nations.

In simple terms, the Preamble says that all people have basic human rights, and every person has dignity and value. It also says that men and women have equal rights. The countries that created the UN promised to work together to improve people's lives, promote justice, and create a world where people can live freely.

The Preamble is important because it sets the moral foundation for human rights. It shows that countries agree to respect human dignity and to maintain peace and justice in the world. Even though it is not a law itself, it guides the actions of the United Nations and its member countries.

Article 1

Article 1 explains the main purposes of the United Nations.

One of the important purposes is to promote respect for human rights and fundamental freedoms for everyone. This means all people should be treated equally, no matter their race, gender, language, or religion.

In simple words, Article 1 says that the UN should:

a) Support human rights for all people
b) Promote equality and non-discrimination
c) Encourage friendly relations between countries

This article makes it clear that protecting human rights is not just a national issue but a global responsibility. It also highlights that peace between nations depends on respect for human dignity.

Articles 55 and 56

Articles 55 and 56 focus on cooperation between countries to promote human rights.

Article 55 says that the United Nations should help create:

1) Better living conditions
2) Economic and social progress
3) Respect for human rights worldwide

This means that human rights are connected to development and well-being, not just legal rules. Article 56 goes further by saying that all member countries must work together (and also individually) with the UN to achieve these goals.

In simple terms:

i. Countries have a **shared responsibility** to protect human rights

ii. They must cooperate with each other and with the UN

iii. They should work to remove discrimination and promote equality

Together, these articles show that human rights protection is a **collective effort**. No country can do it alone; all nations must participate.

12.2 HISTORICAL DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

The historical development of international human rights law is deeply connected with humanity's response to injustice, war, and inequality. A major turning point came after the horrors of World War II, when the world realized that protecting human dignity could no longer remain a purely domestic matter. This led to the creation of the United Nations in 1945, with human rights as one of its core objectives.

Soon after, the landmark Universal Declaration of Human Rights was adopted, laying down fundamental rights and freedoms applicable to all individuals. Although not legally binding, it became the moral and philosophical foundation for future laws. Over time, binding treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were developed, forming the core of the international human rights framework.

Gradually, specialized conventions addressing issues like racial discrimination, women's rights, and child protection further strengthened this system. Today, international human rights law continues to evolve, guided by global cooperation, accountability, and the shared goal of ensuring justice, equality, and dignity for all.

12.2.1 Adoption of the Universal Declaration of Human Rights

One of the most significant milestones in the history of human rights was the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly on 10 December 1948.

The Universal Declaration of Human Rights was the first international document to clearly articulate a comprehensive set of fundamental rights and freedoms that apply to all human beings. It was drafted by a committee chaired by Eleanor Roosevelt.

The UDHR consists of 30 articles that cover a wide range of rights, including:

1) Civil and political rights such as the right to life, liberty, equality before the law, and freedom of expression.
2) Economic, social, and cultural rights such as the right to work, education, social security, and an adequate standard of living.

Although the Declaration itself is not legally binding, it has had a profound influence on international law and has inspired numerous national constitutions, international treaties, and regional human rights instruments. It is widely regarded as the foundation of modern international human rights law.

12.2.2 Development of the International Bill of Human Rights

The principles contained in the Universal Declaration of Human Rights later formed the basis for a set of legally binding treaties collectively known as the International Bill of Human Rights.

The International Bill of Human Rights consists of three major instruments:

a) Universal Declaration of Human Rights (1948)
b) International Covenant on Civil and Political Rights (ICCPR)
c) International Covenant on Economic, Social and Cultural Rights (ICESCR)

The two Covenants were adopted by the United Nations General Assembly in 1966 and entered into force in 1976. Together, they transformed the principles of the Universal Declaration into legally binding obligations for states.

The ICCPR focuses on the protection of civil and political rights such as freedom of speech, freedom of religion, the right to a fair trial, and political participation. The ICESCR, on the other hand, protects economic, social, and cultural rights including the right to work, education, health, and an adequate standard of living.

The development of the International Bill of Human Rights marked a crucial step in the evolution of international human rights law, as it established a comprehensive global framework for the protection and promotion of fundamental human rights.

12.3 CORE INTERNATIONAL HUMAN RIGHTS TREATIES

International human rights law is largely developed through a number of international treaties and conventions adopted under the framework of the United Nations. These treaties, developed under the United Nations framework, are not just ideals they create legally binding duties for countries to respect, protect, and fulfill human rights in real life. In simple terms, they act like a global rulebook that nations agree to follow.

Some of the most important treaties include the International Covenant on Civil and Political Rights, which protects rights like freedom of speech and fair trial, and the International Covenant on Economic, Social and Cultural Rights, which focuses on rights such as education, health, and work. Together, these form the core of international human rights protection.

Over time, more specialized treaties were adopted to protect vulnerable groups for example, conventions against racial discrimination, and those focusing on women and children. These treaties ensure that human rights are not just general promises but targeted protections. Overall, they help create a fairer, equal, and accountable global system.

12.3.1 Civil and Political Rights

Civil and political rights are mainly protected under the International Covenant on Civil and Political Rights, one of the most important global human rights treaties. You can think of it as a safeguard for individual freedom and democratic participation it ensures that every person can live with dignity, speak freely, and take part in public life without fear.

The ICCPR guarantees essential rights such as the right to life, protection from torture, equality before the law, and freedoms of speech, religion, and expression. It also secures the right to a fair trial, which is crucial for justice, and political rights like voting and participating in government.

Countries that accept (ratify) this treaty are legally bound to follow these standards. Their performance is reviewed by the Human Rights Committee, which examines reports and ensures accountability. In simple terms, the ICCPR acts like a global promise making sure governments respect basic human freedoms and uphold democratic values.

12.3.2 Economic, Social, and Cultural Rights

Economic, social, and cultural rights are protected under the International Covenant on Economic, Social and Cultural Rights, which focuses on the basic conditions needed for a life of dignity. If civil and political rights ensure freedom, the ICESCR ensures that people can actually live well with access to opportunities and essential services.

This treaty covers important rights such as the right to work, fair wages, education, health, and an adequate standard of living, including food, housing, and social security. These are the rights that shape everyday life and human well-being.

Unlike some other rights that must be implemented immediately, the ICESCR follows the idea of progressive realization. This means countries are expected to take continuous steps through laws, policies, and resource allocation to improve these conditions over time. Their progress is monitored by the Committee on Economic, Social and Cultural Rights. In simple terms, the ICESCR pushes governments to steadily build a society where everyone can live with dignity and equality.

12.3.3 Anti-Discrimination Treaties

Discrimination is one of the major threats to human dignity and equality. Discrimination, whether based on race, gender, religion, or other grounds, directly attacks human dignity. To tackle this, the United Nations has developed specific treaties that target different forms of inequality.

For instance, the International Convention on the Elimination of All Forms of Racial Discrimination works to eliminate racial discrimination worldwide. Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women focuses on achieving gender equality and empowering women in all spheres of life.

These treaties require countries to take active steps like making laws, creating policies, and ensuring equal opportunities to remove discrimination. They are also monitored by expert committees that review progress and suggest improvements. In simple terms, anti-

discrimination treaties aim to create a fair world where no one is treated unfairly just because of who they are.

12.3.3.1 International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted in 1965 to eliminate discrimination based on race, colour, descent, or national or ethnic origin. The Convention obligates states to adopt laws and policies that prevent racial discrimination and promote equality among all individuals. It also requires governments to prohibit racist propaganda and organizations that promote racial hatred.

12.3.3.2 Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women is often called the "international bill of rights for women" because it sets clear global standards to ensure equality. It requires countries to actively eliminate discrimination against women in every sphere political, social, economic, and cultural so that women can participate fully and freely in society.

In other words, CEDAW is not just about giving rights on paper; it pushes governments to create real change. It promotes equal access to education, fair opportunities in employment, proper healthcare, and equal participation in public and political life. It also challenges deep-rooted stereotypes and practices that limit women's potential.

Countries that adopt CEDAW must take concrete steps like making laws, policies, and awareness programs to achieve gender equality. Their progress is monitored by the Committee on the Elimination of Discrimination against Women, ensuring accountability and continuous improvement toward a more equal world.

12.3.4 Protection from Torture

Protection from torture is one of the strongest and most non-negotiable principles in international human rights law. Torture refers to the deliberate infliction of severe physical or mental pain often used to extract information, punish, or intimidate a person. Recognizing its brutality, the United Nations and the global community have made it absolutely clear that torture is never acceptable.

This prohibition is considered absolute, meaning it cannot be justified under any circumstances whether during war, public emergencies, or threats to national security. A key legal instrument in this area is the Convention against Torture, which obligates countries to prevent torture, punish those responsible, and protect victims.

In essence, no situation gives a government the right to cross this line. International law not only condemns torture but also creates systems for accountability, investigation, and victim rehabilitation. The goal is clear: to ensure that human dignity is respected at all times, without exception.

12.3.4.1 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the United Nations General Assembly in 1984 and came into force in 1987. Its primary objective is to prevent torture and other forms of cruel, inhuman, or degrading treatment or punishment across the world.

The Convention defines torture as the intentional infliction of severe physical or mental pain or suffering by public officials or with their consent. It strictly prohibits torture under all circumstances, including during war, political instability, or national emergencies. The Convention also requires states to investigate allegations of torture, prosecute offenders, and establish effective measures to prevent such acts within their jurisdictions.

12.3.4.2 Obligation of states to criminalize torture

Under the Convention against Torture, countries have a clear duty to treat torture as a serious criminal offence within their own legal systems. This means they must pass laws that define torture, prescribe strict punishments, and ensure that offenders are held accountable. The idea is simple torture should never go unpunished or ignored.

States are also required to actively prevent torture, especially in places like police stations and prisons. This includes proper training of law enforcement officials and regular monitoring of detention facilities.

For example, if a police officer uses violence to force a confession, the state must investigate and prosecute the officer under criminal law. Similarly, if a person accused of torture escapes to another country, that country must either prosecute them or extradite them this reflects the principle of universal jurisdiction.

Importantly, victims are not forgotten. They have the right to seek justice, receive compensation, and access rehabilitation. These measures ensure both accountability and restoration of human dignity.

12.3.5 Protection of Children

Children are considered a particularly vulnerable group because they depend on adults for care, protection, and development. Due to their age and limited ability to protect themselves, they are often exposed to serious risks such as abuse, exploitation, trafficking, child labour, and lack of access to education and healthcare. Recognizing this, the United Nations has emphasized special legal protection for children under international law.

Recent global data highlights the seriousness of the issue. According to a joint report by UNICEF and the ILO, nearly 138 million children worldwide are still engaged in child labour, and about 54 million of them are involved in hazardous work that threatens their health and safety. Additionally, reports indicate a 31% rise in child trafficking cases in recent years, showing increasing vulnerability.

These realities underline why international law provides special safeguards to ensure children's physical, mental, emotional, and social development. Various treaties and national laws aim to

create a safe environment where every child can grow with dignity, protection, and equal opportunities.

12.3.5.1 Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty in the world. It was adopted by the United Nations General Assembly in 1989 and entered into force in 1990.

The Convention recognizes children as independent individuals with their own legal rights, rather than merely dependents of their parents or guardians. It is based on four core principles:

I. Non-discrimination
II. Best interests of the child
III. Right to life, survival, and development
IV. Respect for the views of the child

The CRC focuses on four broad areas of children's rights:

1) Protection rights – protection from abuse, exploitation, trafficking, and child labour
2) Survival rights – access to food, healthcare, and basic living conditions
3) Development rights – access to education, play, and cultural activities
4) Participation rights – the right of children to express their views and be heard in matters affecting them

For example, the Convention obligates states to prevent child labour and child trafficking. Many countries have adopted laws restricting the employment of children below a certain age and have introduced programs promoting universal primary education to ensure children's development.

12.3.6 Rights of Persons with Disabilities

Persons with disabilities have historically faced discrimination, exclusion, and multiple barriers physical, social, and institutional that limit their full participation in society. From inaccessible buildings to unequal access to education and employment, these challenges have long affected their dignity and independence. Recognizing this, the global community took a rights-based approach to ensure equality and inclusion.

A major step in this direction was the adoption of the Convention on the Rights of Persons with Disabilities. This treaty shifts the perspective from seeing disability as a "medical issue" to recognizing it as a matter of human rights. It emphasizes that persons with disabilities are entitled to the same rights and freedoms as everyone else.

Recent data reflects the scale of the issue according to the World Health Organization, over 1.3 billion people (around 16% of the world's population) live with some form of disability, and many still face barriers to education, employment, and healthcare.

The CRPD requires states to ensure accessibility, promote inclusion, and eliminate discrimination, helping create a more equal and inclusive society for all.

12.3.6.1 Convention on the Rights of Persons with Disabilities

The CRPD was adopted in 2006 by the United Nations to ensure that persons with disabilities enjoy the same human rights and fundamental freedoms as others. It represents a shift from viewing disability as a medical issue to recognizing it as a human rights issue.

The Convention promotes accessibility, inclusion, equality, and full participation in society. It requires governments to adopt policies and laws that enable persons with disabilities to live independently and participate in all aspects of life.

For example, governments are required to make public buildings, transportation systems, educational institutions, and workplaces accessible to persons with disabilities. This may include ramps for wheelchair access, sign language interpretation, and assistive technologies for education.

12.3.6.2 Emphasizes equality and non-discrimination.

The Convention strongly emphasizes the principles of equality, dignity, and non-discrimination. It requires states to eliminate barriers that prevent persons with disabilities from participating fully in social, economic, cultural, and political life.

States must also ensure equal access to:

a) education
b) employment opportunities
c) healthcare services
d) public facilities and transportation
e) participation in political and public life

For instance, the CRPD encourages inclusive education systems where children with disabilities study alongside other children rather than being segregated in separate institutions.

12.3.7 Other Important Treaties

In addition to the above conventions, several other international treaties address specific human rights concerns, particularly relating to vulnerable groups and serious human rights violations. These treaties address real-world problems that cannot be fully covered by general human rights laws. For instance, refugees escaping war need legal protection in other countries, and victims of enforced disappearance need mechanisms for truth and justice. Together, these instruments strengthen the human rights system by ensuring that even the most vulnerable groups are not left behind.

I. Convention on Migrant Workers

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families aims to safeguard the rights of migrant workers and their families.

Migrant workers often face exploitation, unsafe working conditions, discrimination, and lack of legal protection in foreign countries. This Convention ensures that migrant workers are treated with dignity and are granted fundamental rights such as fair wages, safe working conditions, and protection from forced labour.

For example, the Convention requires states to ensure that migrant workers receive equal treatment with national workers regarding working conditions, wages, and access to justice.

II. Convention against Enforced Disappearance

The International Convention for the Protection of All Persons from Enforced Disappearance was adopted to prevent enforced disappearances.

Enforced disappearance occurs when individuals are secretly detained, abducted, or imprisoned by state authorities or groups acting with state support, and the authorities refuse to acknowledge the detention or reveal the fate of the person.

The Convention recognizes enforced disappearance as a serious violation of human rights and obligates states to criminalize such acts, investigate cases, and prosecute those responsible.

In several countries experiencing internal conflict, individuals have been forcibly disappeared by security forces. Under this Convention, governments must maintain official registers of detainees and allow families access to information about detained persons, thereby preventing secret detention.

12.4. UNITED NATIONS HUMAN RIGHTS INSTITUTIONS

The United Nations plays a central role in promoting and protecting human rights through a network of specialized bodies. The United Nations Human Rights Council monitors violations and conducts the Universal Periodic Review of member states. The Office of the High Commissioner for Human Rights supports implementation and provides technical assistance. Treaty-based bodies like the Human Rights Committee oversee compliance with key conventions. Together, these institutions develop norms, investigate abuses, and strengthen accountability mechanisms, ensuring states uphold international human rights obligations effectively.

12.4.1 UN General Assembly

The United Nations General Assembly is like a global forum where every member country gets a voice. With representatives from across the world, it plays an important role in shaping how nations think about and protect human rights. It has been responsible for adopting landmark documents such as the Universal Declaration of Human Rights, which laid the foundation for modern human rights law.

Beyond creating such frameworks, the General Assembly actively discusses pressing human rights issues, passes resolutions, and encourages countries to improve their practices. While its resolutions are not legally binding, they carry strong moral and political weight. Over time, these decisions influence international law and guide national policies, making the General Assembly a powerful force in promoting dignity, equality, and justice worldwide.

12.4.2 Human Rights Council

The United Nations Human Rights Council can be understood as a global “watchdog classroom” for human rights. Think of it as a place where countries come together, not just to talk, but to review and improve each other’s performance. It was set up in 2006 to replace the

older Commission on Human Rights, with the aim of making the system more effective and accountable.

One of its most interesting features is the Universal Periodic Review (UPR). Imagine a report card system every country, big or small, gets reviewed on its human rights record. This makes the process fair and transparent. The Council also appoints Special Rapporteurs (independent experts), who act like investigators, studying serious issues like freedom of speech or violence.

It can even hold special meetings during emergencies. While its decisions aren't legally binding, they create global pressure. In simple terms, the Council encourages countries to "learn, improve, and do better" in protecting human rights.

12.4.3 Office of the High Commissioner for Human Rights

The Office of the United Nations High Commissioner for Human Rights (OHCHR) is the principal UN entity responsible for promoting and protecting human rights.

The Office supports the work of human rights treaty bodies, monitors human rights violations, and provides technical assistance to states to help them comply with international human rights obligations. It also conducts research, prepares reports, and raises global awareness about human rights issues.

The High Commissioner for Human Rights acts as the leading UN official responsible for advocating the protection of human rights at the international level.

12.4.4 Treaty Bodies

Treaty bodies are committees of independent experts set up under specific international human rights treaties to ensure that countries actually follow the promises they make. For example, the Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights. These bodies act like evaluators who carefully study how well states are protecting human rights in practice.

Countries are required to submit regular reports explaining the steps they have taken to comply with treaty obligations. The committees examine these reports, ask questions, and then give detailed recommendations to improve performance. This process encourages transparency and accountability.

An important role of treaty bodies is interpretation they clarify the meaning of treaty provisions through "General Comments," making rights more understandable. Some bodies also hear individual complaints, giving victims an international platform for justice. In this way, treaty bodies not only monitor compliance but also strengthen the overall human rights system by guiding states toward better protection standards.

I. Human Rights Committee

The Human Rights Committee oversees the implementation of the International Covenant on Civil and Political Rights (ICCPR).

The Committee examines periodic reports submitted by states and issues General Comments that clarify the interpretation of the Covenant. It can also consider individual complaints against states that have accepted its jurisdiction under the Optional Protocol to the ICCPR.

II. Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Committee reviews state reports on how governments are implementing economic, social, and cultural rights such as the rights to education, health, work, and adequate living standards. It also issues recommendations and general comments that guide states in fulfilling their obligations under the Covenant.

III. Committee Against Torture

The Committee Against Torture supervises the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Committee reviews periodic reports submitted by states and examines allegations of torture or ill-treatment. It may also investigate serious and systematic violations of the Convention. Additionally, it provides recommendations to states to strengthen laws and practices aimed at preventing torture.

12.5 ENFORCEMENT AND MONITORING MECHANISMS

The protection of human rights at the international level requires effective enforcement and monitoring mechanisms to ensure that states comply with their obligations under international human rights treaties. The United Nations has developed several mechanisms to supervise the implementation of these treaties and to address violations of human rights.

These mechanisms help promote accountability, encourage transparency, and ensure that governments respect and protect fundamental rights.

12.5.1 State Reporting System

One of the primary mechanisms for monitoring human rights treaties is the state reporting system. Under this system, states that have ratified international human rights treaties are required to submit periodic reports to relevant UN treaty bodies explaining how they are implementing the rights contained in the treaty.

These reports are examined by committees of independent experts who evaluate the progress made by the state and identify areas where improvement is needed. After reviewing the report, the committee issues recommendations known as “concluding observations.”

This system promotes transparency and encourages governments to review their laws, policies, and practices in order to comply with international human rights standards.

12.5.2 Individual Complaint Mechanisms

In certain circumstances, individuals can file complaints before international human rights bodies if they believe their rights have been violated. These complaints are usually submitted to treaty monitoring bodies established under specific conventions.

For example, the Human Rights Committee may consider individual complaints under the Optional Protocol to the International Covenant on Civil and Political Rights.

Through this mechanism, individuals who have exhausted all available domestic remedies may seek justice at the international level. Although the decisions of these bodies may not always be legally binding, they carry significant moral and legal authority.

12.5.3 Universal Periodic Review

The Universal Periodic Review (UPR) is a unique monitoring mechanism established by the United Nations Human Rights Council. Under this process, the human rights record of every UN member state is reviewed periodically. During the review, states present reports on their human rights practices and receive recommendations from other member states. The UPR encourages constructive dialogue and cooperation among countries and helps ensure that all states are held accountable for their human rights commitments.

12.5.4 Special Procedures

Special procedures are mechanisms established by the Human Rights Council to investigate and report on specific human rights issues or country situations. These procedures involve independent experts known as Special Rapporteurs, Independent Experts, or Working Groups. These experts monitor human rights conditions, conduct country visits, investigate complaints, and report their findings to the Human Rights Council and the UN General Assembly.

For example, there are Special Rapporteurs focusing on issues such as freedom of expression, torture, violence against women, and the rights of indigenous peoples. Their work helps draw international attention to human rights violations and encourages governments to take corrective action.

12.5.5 International Criminal Justice

In cases involving serious international crimes such as genocide, crimes against humanity, and war crimes, international criminal justice mechanisms play an important role in enforcing human rights. The International Criminal Court (ICC) was established to prosecute individuals responsible for such crimes when national courts are unable or unwilling to do so.

The Court aims to end impunity for the perpetrators of grave human rights violations and ensure justice for victims. By holding individuals accountable for international crimes, international criminal justice contributes significantly to the protection and enforcement of human rights at the global level.

12.6 REGIONAL HUMAN RIGHTS SYSTEMS

In addition to global mechanisms established under the United Nations, several regional human rights systems have been developed to strengthen the protection of human rights. These

regional frameworks allow countries within a particular geographic region to cooperate in promoting and enforcing human rights standards.

Regional systems are important because they consider the historical, cultural, and political contexts of specific regions while ensuring the protection of fundamental rights. The three major regional human rights systems are found in Europe, the Americas, and Africa.

12.6.1 European Human Rights System

The European human rights system is one of the most developed and effective regional mechanisms for the protection of human rights. It operates under the framework of the Council of Europe, which was established in 1949.This system ensures that individuals within member states can seek justice if their human rights are violated.

I. European Convention on Human Rights

The European Convention on Human Rights (ECHR) was adopted in 1950 and entered into force in 1953. It guarantees a range of fundamental rights and freedoms such as the right to life, prohibition of torture, right to liberty and security, freedom of expression, and the right to a fair trial. The Convention is legally binding on all member states of the Council of Europe. It requires governments to respect and protect these rights within their jurisdictions.

II. European Court of Human Rights

The European Court of Human Rights was established to ensure the enforcement of the European Convention on Human Rights.

Individuals, groups, or even states can bring complaints before the Court if they believe that their rights under the Convention have been violated. The decisions of the Court are binding on member states, and governments are required to implement the judgments. The Court has played a crucial role in strengthening the protection of human rights across Europe.

12.6.2 Inter-American Human Rights System

The Inter-American human rights system operates under the framework of the Organization of American States (OAS). It was developed to promote and protect human rights among the countries of North, Central, and South America.

This regional system aims to ensure that member states respect fundamental human rights and freedoms through legal standards and institutional mechanisms. It provides individuals with an opportunity to seek justice at the regional level when their rights have been violated and domestic remedies have been exhausted.

The Inter-American human rights system mainly functions through two principal institutions: The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. These bodies monitor human rights conditions, investigate complaints, and issue recommendations or judgments to ensure accountability.

Over time, the Inter-American system has played an important role in addressing serious human rights violations in the region, including cases related to enforced disappearances, political repression, and violations of freedom of expression.

I. American Convention on Human Rights

The American Convention on Human Rights, also known as the Pact of San José, was adopted in 1969. The Convention guarantees various civil and political rights, including the right to life, 6freedom of expression, freedom of religion, and protection against arbitrary detention. It also obligates states to respect and ensure these rights within their territories.

II. Inter-American Court of Human Rights

The Inter-American Court of Human Rights was established to interpret and enforce the American Convention on Human Rights. The Court hears cases concerning human rights violations committed by member states. Its judgments are legally binding, and states are required to comply with the Court's decisions and provide remedies to victims. The Court has contributed significantly to the development of human rights jurisprudence in the Americas.

12.6.3 African Human Rights System

The African human rights system operates under the African Union. It focuses on protecting both individual and collective rights within the African continent.

This system emphasizes not only individual rights but also the rights of communities and peoples, which reflects the social and cultural traditions of many African societies.

I. African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights, also known as the Banjul Charter, was adopted in 1981. The Charter guarantees civil, political, economic, social, and cultural rights. It also recognizes collective rights, such as the right of peoples to development, self-determination, and control over natural resources.

II. African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights was established to strengthen the enforcement of the African Charter. The Court hears cases involving violations of human rights and provides legal remedies to victims. It works alongside the African Commission on Human and Peoples' Rights to promote and protect human rights in Africa.

12.7 ROLE OF NON-STATE ACTORS AND CIVIL SOCIETY

While governments and international organizations play a major role in protecting human rights, non-state actors and civil society organizations are equally important in promoting and safeguarding these rights. These actors help monitor human rights conditions, raise awareness about violations, and advocate for stronger legal protections.

Civil society groups often act as a bridge between the public and international institutions by documenting abuses, supporting victims, and encouraging governments to fulfill their human rights obligations. Their involvement strengthens transparency, accountability, and public participation in the human rights protection system.

12.7.1 Non-Governmental Organizations (NGOs)

Non-governmental organizations (NGOs) play a crucial role in promoting and protecting human rights at both national and international levels. NGOs are independent organizations that operate outside government control and work to address social, political, and humanitarian issues.

Prominent human rights NGOs include organizations such as Amnesty International and Human Rights Watch. These organizations investigate human rights violations, publish reports, and campaign for justice and accountability.

NGOs also assist victims of human rights abuses, raise public awareness through advocacy campaigns, and influence government policies and international law by providing research and recommendations.

12.7.2 National Human Rights Institutions

National Human Rights Institutions (NHRIs) are independent bodies established by governments to promote and protect human rights at the domestic level. These institutions operate according to international standards known as the Paris Principles.

NHRIs typically perform functions such as investigating complaints, advising governments on human rights issues, conducting research, and educating the public about human rights. For example, in India, the National Human Rights Commission plays an important role in addressing human rights violations and promoting awareness of human rights laws.

12.7.3 International Advocacy and Monitoring

Civil society organizations and international advocacy groups also contribute significantly to the monitoring of human rights at the global level. They provide valuable information to international institutions such as the United Nations Human Rights Council and treaty monitoring bodies.

These organizations often submit shadow reports or alternative reports that highlight human rights concern that may not be fully reflected in official government reports. This helps international institutions obtain a more accurate picture of human rights conditions within a country.

Through advocacy campaigns, public reporting, and international cooperation, civil society organizations help ensure that governments remain accountable for protecting human rights and addressing violations effectively.

12.8 NOTABLE INTERNATIONAL HUMAN RIGHTS CASES

International courts and tribunals have played an important role in interpreting human rights laws and ensuring accountability for violations. Through landmark judgments, these courts have strengthened the protection of fundamental rights and clarified the responsibilities of states under international law. The decisions of international courts not only provide justice to victims but also influence the development of human rights jurisprudence across the world.

12.8.1 European Court of Human Rights

The European Court of Human Rights has delivered several landmark judgments that have significantly shaped human rights law in Europe. One important case is Soering v. United

Kingdom (1989). In this case, a German national was facing extradition from the United Kingdom to the United States, where he could potentially face the death penalty.

The Court held that extraditing the accused to a country where he might face inhuman or degrading treatment would violate Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman treatment. This case established the principle that states must consider human rights implications before extraditing individuals. Another important decision is Dudgeon V. United Kingdom, which strengthened the protection of privacy rights and contributed to the decriminalization of homosexuality in several European countries.

12.8.2 Inter-American Court

The Inter-American Court of Human Rights has played a major role in addressing serious human rights violations in Latin America. A landmark case decided by the Court is Velásquez Rodríguez v. Honduras. The case involved the disappearance of a university student allegedly carried out by Honduran security forces.

The Court held that the state was responsible for the disappearance and established the principle that governments can be held accountable not only for direct violations but also for failing to prevent or investigate human rights abuses. This decision significantly strengthened the protection of victims of enforced disappearance in the region.

12.8.3 International Criminal Court

The International Criminal Court (ICC) prosecutes individuals responsible for the most serious international crimes, including genocide, crimes against humanity, and war crimes. One notable case is *Prosecutor v. Thomas Lubanga Dyilo*, in which the ICC convicted a Congolese militia leader for recruiting and using child soldiers in armed conflict.

This was the first conviction by the ICC and marked a significant step toward holding perpetrators accountable for crimes involving the exploitation of children in armed conflicts.

Through such cases, international courts have contributed significantly to the enforcement of human rights and the development of international justice. Their decisions reinforce the principle that serious human rights violations cannot go unpunished and that victims have the right to seek justice at the international level.

12.9 CONTEMPORARY CHALLENGES IN INTERNATIONAL HUMAN RIGHTS PROTECTION

Despite the development of numerous international treaties, institutions, and legal mechanisms, the protection of human rights continues to face several challenges in the modern world. Rapid political, economic, technological, and environmental changes have created new situations where human rights may be threatened. As a result, the international community must constantly adapt legal frameworks and enforcement mechanisms to address these evolving issues.

I. State Sovereignty and Limited Enforcement Power

One of the biggest challenges in protecting human rights globally is the principle of state sovereignty the idea that every country has the authority to govern its own internal affairs. The United Nations respects this principle, which means international bodies often cannot directly interfere, even when serious human rights violations occur within a country.

Although countries voluntarily accept obligations under international treaties, enforcing these obligations is not always easy. Unlike national courts, international institutions usually do not have strong powers to compel compliance. As a result, governments may sometimes ignore recommendations, delay reforms, or selectively implement human rights commitments.

For example, a country may sign a treaty against torture but fail to properly investigate abuses by its authorities. Similarly, recommendations made during international reviews may remain only on paper without real action.

In reality, this creates a gap between law and practice. While international human rights law sets important standards, its effectiveness often depends on the willingness of states to cooperate and genuinely commit to protecting human rights.

II. Political Influence and Selective Enforcement

Another challenge is the politicization of human rights issues. Decisions taken by international institutions may sometimes be influenced by political considerations rather than purely legal or humanitarian concerns.

Powerful states may avoid accountability for violations due to their political influence in international organizations, while weaker states may face greater scrutiny. This selective enforcement can undermine the credibility and effectiveness of international human rights mechanisms.

III. Armed Conflicts and Humanitarian Crises

Armed conflicts remain one of the most serious causes of human rights violations worldwide. Situations like the Syrian Civil War or the Russia-Ukraine War show how war can disrupt every aspect of life. Large populations are displaced, homes and infrastructure are destroyed, and grave violations such as unlawful killings, torture, and sexual violence become more frequent.

Recent reports by the United Nations High Commissioner for Refugees indicate that over 110 million people globally are forcibly displaced due to conflict, persecution, and violence—highlighting the scale of the crisis.

In such conditions, protecting human rights becomes extremely difficult. Government institutions may weaken or collapse, making it hard to maintain law and order. Courts may not function, and law enforcement may be ineffective or even involved in violations.

Humanitarian organizations often try to step in, but they face serious challenges like insecurity, lack of access, and political restrictions. In practical terms, armed conflict creates an environment where enforcing human rights becomes highly complex and uncertain.

IV. Rise of Authoritarianism and Restrictions on Civil Liberties

In recent years, there has been a noticeable rise in authoritarian tendencies in some parts of the world, where governments increasingly restrict civil liberties like freedom of speech, press, and peaceful assembly. Reports by organizations such as Freedom House consistently highlight a global decline in democratic freedoms over the past decade.

These restrictions often target journalists, human rights defenders, and civil society groups—those who play a key role in holding power accountable. For instance, independent media outlets may be censored, protests may be suppressed, and activists may face legal action or intimidation. For example, laws may be introduced to control online speech or limit foreign funding to NGOs, making it harder for them to function effectively.

In effect, such measures weaken democratic institutions and reduce transparency. When people cannot freely express opinions or question authority, public participation declines, and human rights protection becomes fragile. This creates an environment where violations can occur more easily, with limited accountability or resistance.

V. Challenges of Migration and Refugee Protection

Global migration and refugee crises have raised serious human rights concerns across the world. Millions of people are forced to leave their homes due to war, persecution, poverty, or even environmental disasters. According to the United Nations High Commissioner for Refugees, more than 110 million people are currently forcibly displaced worldwide, making it one of the largest humanitarian challenges of our time.

Migrants and refugees often face discrimination, exploitation, and limited access to essential services like healthcare and education. Many live in uncertain conditions, without proper legal protection or stable livelihoods.

For example, during the Syrian Civil War, millions of Syrians fled to neighboring countries such as Turkey, Lebanon, and Jordan, where many struggled with overcrowded camps and limited resources. Similarly, climate-related disasters in regions like sub-Saharan Africa have forced communities to migrate in search of safety and survival.

In practical terms, protecting migrants and refugees requires strong international cooperation, along with effective implementation of refugee laws and human rights standards to ensure dignity and security for all.

VI. Impact of Technological Developments

Rapid technological advancement has created new challenges for the protection of human rights. Issues such as digital surveillance, data privacy, cybercrime, and the misuse of artificial intelligence have become central concerns, raising serious questions about individual freedoms. As technology grows more powerful, it also increases the ability of governments and corporations to monitor individuals.

For instance, large-scale data collection by companies like Meta Platforms and Google demonstrates how vast amounts of personal information are stored and analyzed. While this can enhance services and innovation, it also creates risks of misuse, profiling, and invasion of privacy.

At the same time, both governments and private entities now hold unprecedented volumes of personal data, which may be used for surveillance or control. In essence, this growing digital power can threaten fundamental freedoms if left unchecked. Therefore, international human rights law must continuously evolve to regulate these developments and ensure effective protection of digital rights.

VII. Climate Change and Environmental Rights

Climate change is no longer just an environmental concern—it has become a serious human rights issue. The impacts of rising temperatures, extreme weather events, and environmental degradation directly affect rights such as life, health, food, water, and housing. The United Nations has also recognized that a clean, healthy, and sustainable environment is essential for the full enjoyment of human rights.

Recent findings by the Intergovernmental Panel on Climate Change show that climate change is intensifying floods, droughts, and heatwaves, with vulnerable communities suffering the most. For example, coastal populations face displacement due to rising sea levels, while farmers experience loss of livelihood due to erratic rainfall.

To address these challenges, several important principles have emerged in international environmental law. The principle of sustainable development emphasizes balancing environmental protection with economic growth. The precautionary principle suggests that lack of full scientific certainty should not delay action to prevent environmental harm. The polluter pays principle holds that those responsible for pollution must bear the costs of managing it. Additionally, the idea of intergenerational equity highlights the responsibility to protect the environment for future generations.

In essence, these principles guide global efforts to link environmental protection with human rights, ensuring a safer and more sustainable future for all.

VIII. Economic Inequality and Social Justice

Global economic inequality remains a major obstacle to the realization of human rights. Millions of people still lack access to basic necessities such as education, healthcare, housing, and decent employment. According to the World Bank, a significant portion of the global population continues to live in extreme poverty, limiting their ability to enjoy even the most basic rights.

Economic disparities also affect the capacity of governments to fulfill their obligations, particularly in developing countries where resources are limited. As a result, rights guaranteed under instruments like the International Covenant on Economic, Social and Cultural Rights often remain only partially realized.

At the same time, despite the development of strong international frameworks, several contemporary challenges such as political interference, armed conflicts, technological risks, migration crises, and climate change continue to hinder effective implementation. In reality, there is often a gap between legal commitments and actual practice.

Addressing these issues requires stronger international cooperation, better enforcement mechanisms, and active participation from governments, institutions, civil society, and individuals. Strengthening the global human rights system remains essential to ensure justice, equality, and dignity for all.

12.10 SUMMARY

International human rights law has evolved into a comprehensive and dynamic legal framework aimed at protecting the dignity, equality, and freedom of individuals worldwide. Its modern development began after the devastation of World War II, which exposed the urgent need for global standards of human rights protection. This led to the establishment of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights, which laid the foundation for the international human rights system.

Over time, this framework expanded through the adoption of legally binding treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These instruments collectively protect a wide spectrum of rights, including civil, political, economic, social, and cultural rights. Additionally, specialized conventions address issues relating to vulnerable groups such as women, children, refugees, and persons with disabilities.

The implementation and monitoring of these rights are carried out by various institutions, including the United Nations Human Rights Council, treaty monitoring bodies, and regional human rights courts. Civil society organizations, non-governmental organizations, and national human rights institutions also play a crucial role in promoting awareness, advocating reforms, and holding governments accountable.

Despite these significant advancements, numerous contemporary challenges continue to hinder the effective realization of human rights. Issues such as armed conflicts, political interference, economic inequality, technological risks, migration crises, and climate change create obstacles in enforcement and compliance.

To sum up, although the international human rights system has made significant and commendable progress over time, its true effectiveness lies in the genuine commitment of states, the strengthening of enforcement mechanisms, and sustained international cooperation. The protection of human rights is not a one-time achievement but a continuous and evolving process that requires vigilance, accountability, and collective responsibility. Only through coordinated global efforts, active participation of institutions, and an unwavering dedication to justice can the ideals of equality, dignity, and freedom be meaningfully realized for all individuals across the world.

12.11 GLOSSARY

a) **Human Rights** – Fundamental rights and freedoms inherent to all individuals regardless of nationality, race, religion, or gender.

b) **International Human Rights Law** – A body of international law designed to promote and protect human rights at the global level.
c) **Treaty** – A legally binding agreement between states under international law.
d) **Universal Declaration of Human Rights (UDHR)** – A landmark declaration adopted in 1948 establishing basic human rights standards.
e) **Civil and Political Rights** – Rights that protect individual liberty and participation in political life, such as freedom of speech and the right to a fair trial.
f) **Economic, Social, and Cultural Rights** – Rights related to social welfare and development, such as the rights to education, health, and work.
g) **Treaty Bodies** – Committees of independent experts that monitor the implementation of international human rights treaties.
h) **Universal Periodic Review (UPR)** – A mechanism of the Human Rights Council that reviews the human rights record of all UN member states.
i) **Non-Governmental Organization (NGO)** – An independent organization that works to promote social, humanitarian, or human rights objectives.
j) **Enforced Disappearance** – The secret detention or abduction of individuals by state authorities or with their support, followed by refusal to acknowledge the detention.

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12.14 SELF ASSESSMENT QUESTIONS (SAQs)

A. Short Answer Questions

1) What is meant by international human rights law?
2) What are the main principles underlying human rights protection?
3) Explain the significance of the Universal Declaration of Human Rights.
4) What are the main components of the International Bill of Human Rights?
5) What is the role of the United Nations Human Rights Council?
6) Define the concept of Universal Periodic Review.
7) What is treaty monitoring bodies?
8) Explain the role of non-governmental organizations in promoting human rights.
9) What are regional human rights systems?
10) What are the major contemporary challenges in protecting human rights?

B. Terminal and Model Questions

1) Discuss the historical development of international human rights law.
2) Explain the core international human rights treaties and their significance.
3) Examine the role of the United Nations institutions in protecting human rights.
4) Discuss the regional human rights systems in Europe, the Americas, and Africa.
5) Analyse the contemporary challenges in the protection of international human rights.

C. True / False

1) Human rights are rights that depend on nationality, religion, or social status. **Answer: False**
2) The modern system of international human rights developed mainly after World War II **Answer: True**
3) The Universal Declaration of Human Rights (UDHR) is legally binding on all countries. **Answer: False**
4) The International Covenant on Civil and Political Rights (ICCPR) protects rights like freedom of speech and fair trial.
   Answer: True
5) Torture can be justified in situations like war or national emergency. **Answer: False**

UNIT – 13

CONFLICTS AND WOMEN'S RIGHTS

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13.2.2 Forced Displacement

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13.8.1 Significant Issues Arising from Lack of Gender Data

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13.8.3 Importance for Policy and Justice

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13.11 GLOSSARY

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13.13 SUGGESTED READINGS

13.14 SELF-ASSESSMENT QUESTIONS (SAQs)

A. Short Answer Questions

B. Terminal and Modal Questions C. True / False

13.0 INTRODUCTION

Conflicts around the world clearly show how deeply war affects human rights. The unit will provide a better understanding of how these conflicts impact different groups, especially women, who are among the most vulnerable. It will explain how women face not only direct violence during war but also increased inequality during displacement, resettlement, and post-conflict situations. The module will help learners understand the connection between gender and conflict in a simple and clear way.

The unit will cover important issues such as sexual violence in armed conflicts, which is often used as a tool of war and has long-term effects on women's physical and mental well-being. It will also provide insight into forced displacement and how it affects women differently, including refugee women as well as Dalit and Adivasi women in India. The unit will help learners understand how factors like caste, tribal identity, and economic conditions create additional challenges for these groups. It will also offer a better understanding of the gaps in global policies related to war, peace, and gender justice.

To strengthen understanding, the unit will draw on different sources and perspectives. It will provide a clearer view of the Women, Peace, and Security (WPS) agenda through reports from organizations like the Council on Foreign Relations and Georgetown University. These discussions will help learners understand why women's participation in peace negotiations is important and why their underrepresentation remains a major issue. The unit will highlight the gap between policy goals and actual implementation.

The unit will also include real-life examples to make learning more meaningful. It will present **Lyla Mehta's** study, *"The Double Bind: A Gender Analysis of Forced Displacement and Resettlement,*" which focuses on Adivasi women in India. Through this case study, the unit will provide a deeper understanding of the "double bind" situation, where women face multiple layers of challenges due to both displacement and gender discrimination. This will help learners connect theoretical ideas with real-world experiences.

The unit is organized into different sections for better clarity. It will first provide an overview of armed conflict and then explain the specific challenges faced by refugee, Dalit, and Adivasi women. It will also introduce key theoretical concepts used to study gender and displacement, helping learners build a strong academic foundation. In addition, the unit will explain important international frameworks such as the United Nations Security Council Resolution 1325, which focuses on women's participation and protection in conflict and peace processes.

Finally, the critical understanding of the gaps that still exist in global policies will be provided. It will show that although many international laws and frameworks exist, they are often not properly implemented. The unit will encourage learners to think about how these gaps can be addressed and how policies can be improved to better protect women's rights.

Overall, the unit will serve as both an introductory and advanced learning resource. It will provide a clear understanding of women's rights in conflict situations by combining theory, real-life examples, and policy discussions. It will help learners develop a deeper awareness of the challenges women face and the importance of including them in peacebuilding for achieving equality and lasting peace.

13.1 LEARNING OBJECTIVES

This unit is designed to provide learners with a comprehensive understanding of the relationship between armed conflicts and women's human rights. It highlights how conflict situations disproportionately impact women and girls, while also introducing key international frameworks and legal mechanisms developed to address these challenges. The unit further encourages critical analysis of gender justice and intersectionality, particularly within the Indian context.

After studying this unit, learners will be able to:

1) Understand the relationship between armed conflicts and the violation of women's human rights.
2) Explain how war, displacement, and conflict situations disproportionately affect women and girls.
3) Analyse the significance of the Women, Peace and Security (WPS) agenda in promoting gender justice.
4) Evaluate the role of United Nations Security Council Resolution 1325 in ensuring women's participation and protection in peace processes.
5) Examine the challenges faced by refugee women in conflict and post-conflict situations.
6) Understand the international protection mechanisms available under the 1951 Refugee Convention and the role of UNHCR.
7) Analyse the intersection of gender with caste, tribe, and minority identity in India.
8) Critically assess the experiences of Dalit, Adivasi, and minority women in conflict situations.
9) Develop a critical understanding of legal protections related to women's rights during conflicts.
10) Appreciate the importance of women's participation in peacebuilding and conflict resolution processes.

13.2 WOMEN IN ARMED CONFLICT AND DISPLACEMENT

Armed conflicts affect entire societies and populations; however, their consequences are often deeply gendered. Women and girls frequently experience the impacts of war in ways that differ significantly from men because of existing social, economic, and cultural inequalities. Conflicts disrupt social structures, destroy livelihoods, and weaken legal and institutional protections. In such situations, women are exposed to heightened risks of violence, exploitation, displacement, and poverty.

Scholars and human rights experts have widely documented that women's experiences during war extend beyond physical violence and include economic marginalization, loss of social protection, increased domestic responsibilities, and psychological trauma. According to S. K. Kapoor in *Human Rights under International Law and Indian Law*, armed conflicts often create environments where human rights violations increase dramatically because legal enforcement mechanisms collapse and vulnerable groups, particularly women and children, become easy targets for abuse. Similarly, Dr. H. O. Agarwal in his book *Human Rights* explains that women

in conflict situations face multiple forms of discrimination arising from both war-related violence and deeply rooted patriarchal structures within societies.

Another major consequence of armed conflict is forced displacement. When wars destroy homes and communities, women often flee with children and elderly family members, becoming refugees or internally displaced persons. During displacement, they encounter numerous hardships such as lack of shelter, food insecurity, inadequate sanitation, and limited access to healthcare services. The breakdown of social protection mechanisms also increases the risk of sexual exploitation, trafficking, and forced labour.

International humanitarian law recognizes these vulnerabilities and provides special protection for women during armed conflicts. The Geneva Conventions of 1949 and their Additional Protocols emphasize the protection of civilians and prohibit violence against women, particularly sexual violence and degrading treatment. However, despite these legal safeguards, violations continue to occur in many contemporary conflicts, demonstrating the gap between legal norms and actual practice.

13.2.1 Sexual Violence as a Weapon of War

One of the most disturbing and widely documented aspects of modern armed conflicts is the systematic use of sexual violence as a weapon of war. Unlike isolated incidents of violence, such acts are often carried out deliberately and strategically to achieve military and political objectives. Sexual violence in conflict situations is intended not only to harm individual victims but also to terrorize communities, destabilize social structures, and humiliate opposing groups.

Forms of sexual violence during armed conflict may include:

a) Rape – the most common form of sexual violence in conflict zones, often committed by soldiers or armed groups against civilian women.

b) Sexual slavery – women and girls may be forcibly detained and repeatedly subjected to sexual exploitation by members of armed forces or militias.

c) Forced pregnancy – women may be deliberately impregnated in order to alter ethnic identities or cause long-term psychological trauma.

d) Forced sterilization – reproductive capacity may be deliberately destroyed to weaken or eliminate particular ethnic or social groups.

e) Trafficking – conflict situations create opportunities for criminal networks to traffic women and girls for forced labour or sexual exploitation.

Human rights scholars have emphasized that sexual violence in war serves several strategic purposes. According to Radhika Coomaraswamy, former United Nations Special Rapporteur on Violence against Women, sexual violence in conflict is often used as a method of intimidation, ethnic cleansing, and social destruction. By targeting women, perpetrators aim to weaken the morale of communities and disrupt family structures.

Similarly, feminist scholar Cynthia Enloe argues that sexual violence during war reflects broader gender inequalities present in societies. She emphasizes that war amplifies patriarchal

attitudes, enabling armed groups to treat women's bodies as symbolic battlegrounds for demonstrating power and domination.

International law now recognizes such acts as serious violations of human rights and humanitarian law. The International Criminal Court and other international tribunals classify rape, sexual slavery, forced pregnancy, and related crimes as war crimes and crimes against humanity when committed during armed conflict.

Case Illustration: The Bosnian War (1992–1995)

A powerful example of systematic sexual violence during conflict can be seen in the Bosnian War (1992–1995), which occurred following the breakup of Yugoslavia. During this conflict, thousands of women—primarily Bosniak Muslim women—were subjected to organized sexual violence by armed forces and paramilitary groups. Many women were detained in camps where they were repeatedly raped and subjected to other forms of physical and psychological abuse.

Investigations conducted after the war revealed that sexual violence was not random but systematically organized as part of a broader strategy of ethnic cleansing. The violence aimed to terrorize communities, force population displacement, and destroy the social fabric of targeted ethnic groups.

In response to these atrocities, the International Criminal Tribunal for the former Yugoslavia (ICTY) played a crucial role in establishing international legal accountability. In several landmark judgments, the tribunal recognized rape and sexual violence as crimes against humanity and violations of international humanitarian law. These decisions marked a major development in international criminal jurisprudence, as they formally acknowledged sexual violence as a serious international crime rather than an inevitable by-product of war.

The jurisprudence of the ICTY significantly influenced later international legal developments, including the establishment of the International Criminal Court and the inclusion of sexual violence crimes within the Rome Statute of 1998. These legal advancements strengthened global efforts to hold perpetrators accountable and provided greater recognition to survivors of conflict-related sexual violence.

13.2.2 Forced Displacement

Armed conflicts often lead to **mass displacement**, forcing people to leave their homes in search of safety.

Displacement occurs in two main forms:

1. **Refugees** – people who cross international borders.
2. **Internally Displaced Persons (IDPs)** – people displaced within their own country.

Women living in displacement or refugee camps often face extremely difficult and insecure conditions. Many camps suffer from inadequate shelter, exposing women and their families to harsh weather and unsafe living environments. Access to basic sanitation facilities is frequently limited, which affects hygiene, privacy, and overall health. In such vulnerable settings, women are also at a heightened risk of sexual exploitation and gender-based violence, particularly when security mechanisms are weak. Additionally, many camps lack proper maternal and

reproductive health care services, making pregnancy and childbirth highly risky for displaced women. These conditions highlight the urgent need for stronger protection mechanisms and gender-sensitive humanitarian responses in displacement situations.

Illustration

Another example of gender insecurity in displacement settings can be seen in the humanitarian crisis caused by the **South Sudan Civil War**, which began in 2013 and led to massive internal displacement. Thousands of women and children were forced to seek shelter in **Protection of Civilian (PoC) camps** established by the **United Nations Mission in South Sudan**. Reports from humanitarian organizations indicated that women in these camps often faced significant risks while performing daily activities such as collecting firewood or travelling outside the camp to gather food and water. In several instances, women were subjected to harassment, sexual assault, and other forms of gender-based violence by armed groups or individuals operating near camp boundaries.

This example highlights that even in areas created for humanitarian protection, women may continue to experience insecurity due to weak law enforcement, inadequate infrastructure, and the absence of gender-sensitive planning. It demonstrates the importance of ensuring safe access to essential resources, improved camp security, and the active involvement of women in designing protection strategies within displacement settings.

13.2.3 Women as Invisible Participants in Conflict

Women in conflict situations are often portrayed only as victims of war, but this understanding is incomplete. In reality, women perform many important roles in their communities during conflict, even though their contributions are often ignored or underestimated. They are not just passive sufferers; they are active participants in survival, peacebuilding, and recovery.

In many conflict-affected regions, women act as primary caregivers and community supporters. When war disrupts normal life, women take responsibility for caring for children, the elderly, and the injured. They manage households under difficult conditions such as displacement, poverty, and lack of basic services. In refugee camps and war zones, women often organize food distribution, provide emotional support, and ensure that families survive. These everyday efforts are essential, yet they are rarely recognized as part of formal peacebuilding processes.

Women also emerge as peace activists and community leaders. They work to reduce tensions, promote dialogue, and rebuild trust between conflicting groups. A strong example is Liberia, where women organized mass protests during the civil war. Their movement pressured political leaders to enter peace negotiations, which eventually led to the 2003 peace agreement. This case clearly shows that women can play a powerful role in ending conflicts through collective action.

Another important example comes from Northern Ireland. Women formed the Northern Ireland Women's Coalition and participated directly in peace negotiations during the 1990s. They helped bring attention to issues such as human rights, education, and social justice—topics that were often ignored in traditional political discussions. Their involvement contributed to a more inclusive peace process and demonstrated the value of women's participation.

Despite these contributions, women remain significantly underrepresented in formal peace processes. According to global data from the Women, Peace and Security (WPS) framework, nearly ***90 percent*** of peace negotiations in recent years have taken place without any women negotiators. Overall, women make up only about 7 percent of negotiators and 14 percent of mediators worldwide. These figures highlight a major gap between women's actual involvement in peacebuilding at the community level and their participation in official decision-making roles.

Research also shows that including women in peace processes leads to better outcomes. Studies indicate that peace agreements are 35 percent more likely to last at least 15 years when women are involved. This is because women often focus on long-term social issues such as education, healthcare, and community welfare, which are essential for sustainable peace. Their participation helps create more inclusive agreements that address the needs of a wider population.

However, several barriers continue to limit women's participation. Cultural norms often restrict women's roles to the private sphere, preventing them from entering leadership positions. Political systems and institutions are also dominated by men, making it difficult for women to access negotiation spaces. Even when international policies support gender equality, these commitments are not always implemented effectively at the ground level.

Another reason for women's invisibility is that much of their work happens informally. Women often influence peace processes through grassroots activism, community organizing, and informal negotiations. For example, in Liberia, women not only protested publicly but also worked behind the scenes to maintain pressure on leaders. Similarly, in many African and Asian conflict zones, women act as mediators within communities without receiving official recognition. Because these roles are not documented in formal records, their contributions remain largely invisible.

In conclusion, women in conflict situations play multiple and essential roles as caregivers, activists, mediators, and peacebuilders. Real-world examples such as Liberia and Northern Ireland clearly demonstrate their ability to influence peace processes. However, despite strong evidence and global commitments, women continue to be underrepresented in formal negotiations. The data shows a clear gap between their actual contributions and their recognition. Addressing this imbalance is crucial for achieving not only gender equality but also more effective and long-lasting peace.

13.3 REFUGEE WOMEN AND HUMAN RIGHTS

13.3.1 Who is a Refugee?

The concept of a refugee is clearly defined in the **1951 Refugee Convention**, which provides the internationally accepted legal definition. According to this Convention, a refugee is a person who has a well-founded fear of persecution due to reasons such as race, religion, nationality, political opinion, or membership in a particular social group. Because of this fear, the person is unable or unwilling to return to their home country and instead seeks protection in another country where they can live safely.

This definition highlights two important elements: first, the presence of real danger or persecution, and second, the inability of the home country to provide protection. Refugees are therefore different from migrants, as they are forced to leave their country due to threats to their life or freedom, not by choice.

In modern times, the refugee situation has become more complex, especially for women. Women refugees often face additional risks that are not always clearly recognized in traditional definitions. These include gender-based violence, sexual exploitation, forced marriage, and discrimination, both during conflict and after displacement. Research and policy reports indicate that women and girls in refugee situations are among the most vulnerable groups and are at a higher risk of abuse, particularly in refugee camps and transit areas.

For example, studies on refugee populations show that many women flee not only general conflict but also specific threats such as domestic violence or harmful cultural practices. As a result, international organizations like the United Nations High Commissioner for Refugees (UNHCR) have expanded their understanding of persecution to include gender-related risks.

Thus, a refugee is someone forced to leave their country due to fear of persecution, but it is important to recognize that women refugees experience additional challenges. Addressing these gender-specific risks is essential for ensuring proper protection and support in refugee contexts.

13.3.2 Gender-Specific Challenges for Refugee Women

Refugee women face a range of gender-specific challenges that arise from displacement, insecurity, and limited access to legal and social protection systems. When conflicts force people to leave their homes, women often experience the consequences of displacement more severely because of pre-existing social inequalities and their roles within families and communities. As primary caregivers for children and elderly family members, women frequently carry additional responsibilities while also coping with the loss of homes, livelihoods, and community support systems. These conditions make refugee women particularly vulnerable to multiple forms of exploitation and discrimination.

One of the most serious challenges faced by refugee women is gender-based violence. In many refugee camps and displacement settings, the absence of strong policing systems and effective legal protection mechanisms creates environments where women and girls are exposed to risks of sexual exploitation, trafficking, forced marriage, and domestic violence. Women may also face harassment or assault when accessing essential resources such as water, food distribution centers, or sanitation facilities. Fear of stigma, social pressure, and lack of trust in authorities often discourage survivors from reporting such incidents, allowing perpetrators to escape accountability.

Another major problem is the lack of proper documentation. During sudden displacement caused by war or persecution, many refugee women lose important personal documents such as identity cards, passports, property ownership records, and educational certificates. Without these documents, it becomes extremely difficult for them to access essential services in host countries. For instance, the absence of legal identification may prevent refugee women from enrolling children in schools, accessing healthcare services, opening bank accounts, or securing

formal employment. Lack of documentation can also create obstacles in claiming property rights or returning to their homes after conflicts end.

Refugee women also face significant economic marginalization. In many host countries, refugees encounter legal restrictions on employment or lack access to formal job markets. As a result, women often find work in the informal sector, such as domestic work, agricultural labour, small-scale trading, or other low-paid occupations. These jobs are frequently unstable, poorly regulated, and lack basic labour protections. Consequently, refugee women may experience exploitation, wage discrimination, and unsafe working conditions. Economic dependence on aid or male family members can further reduce their autonomy and increase vulnerability to abuse.

In addition to these challenges, refugee women frequently struggle with limited access to healthcare and reproductive health services. Many refugee camps lack adequate medical facilities, trained healthcare professionals, and maternal health services. Pregnant women may therefore face life-threatening risks during pregnancy and childbirth. Psychological trauma resulting from conflict, displacement, and violence also affects the mental health and well-being of many refugee women.

These gender-specific challenges highlight the need for comprehensive humanitarian responses that integrate gender perspectives into refugee protection policies. Ensuring access to legal documentation, strengthening security measures in camps, promoting economic opportunities for refugee women, and providing adequate healthcare and psychosocial support are essential steps toward protecting their rights and dignity in displacement situations.

13.3.3 International Protection Mechanisms

The protection of refugee women is supported by several international institutions, treaties, and legal frameworks designed to safeguard the rights and dignity of individuals displaced by conflict, persecution, or violence. Refugee women often face multiple vulnerabilities such as gender-based violence, exploitation, lack of access to healthcare, and economic marginalization. Therefore, international protection mechanisms aim to provide both legal safeguards and humanitarian assistance to ensure that refugee women can live with dignity and security.

One of the most important institutions in this regard is the United Nations High Commissioner for Refugees (UNHCR). Established in 1950, UNHCR is the principal international organization responsible for protecting refugees and assisting displaced populations worldwide. The organization works closely with governments, international agencies, and civil society groups to ensure that refugees receive basic necessities such as food, shelter, healthcare, and education. UNHCR also plays a vital role in improving safety and security in refugee camps by promoting protective measures against sexual exploitation and gender-based violence.

In addition to humanitarian assistance, UNHCR supports education, vocational training, and livelihood programmes specifically designed for refugee women. These programmes help women develop skills, access employment opportunities, and achieve greater economic independence. By empowering women economically and socially, such initiatives contribute

to strengthening resilience among refugee communities and reducing vulnerability to exploitation.

Another important legal framework for protecting refugee women is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979. CEDAW is often referred to as the international bill of rights for women because it obligates states to eliminate discrimination against women in all areas of life, including education, employment, health, and political participation. The Convention also emphasizes that governments must take special measures to protect women in situations of conflict, migration, and displacement. Under CEDAW, states are expected to adopt legal, administrative, and policy measures that ensure equal treatment and protection for women, including refugee women.

In addition to these frameworks, international human rights law and humanitarian law collectively reinforce the protection of displaced populations. Various international organizations and non-governmental groups work alongside UN agencies to ensure that refugee women have access to justice mechanisms, healthcare services, education, and livelihood opportunities.

Through these international mechanisms, the global community seeks to ensure that refugee women receive protection, dignity, and equal opportunities, while also addressing the specific gender-based challenges they encounter in displacement situations. Effective implementation of these protections remains essential for promoting human rights and gender equality in refugee contexts.

13.4 DALIT WOMEN IN INDIA

Dalit women in India face a unique and severe form of discrimination that is often described as intersectional discrimination. This means that multiple forms of inequality—such as caste, gender, and class operate together and reinforce each other. As a result, Dalit women experience a level of marginalization that is different from both upper-caste women and Dalit men. Their position at the bottom of the social hierarchy exposes them to multiple layers of disadvantage.

One of the most serious issues affecting Dalit women is caste-based sexual violence. Violence against Dalit women is often used as a tool of power and control by dominant caste groups. Studies and reports have shown that Dalit women are disproportionately targeted in cases of rape and assault. For example, research indicates that several cases of violence against Dalit women are reported every day in India, though many remain unreported due to fear and social pressure. Such violence is not only a personal crime but also a way to reinforce caste hierarchy and suppress resistance.

Another major issue is economic exploitation. A large number of Dalit women work in low-paying and insecure jobs such as agricultural labour, sanitation work, and domestic service. They often receive lower wages than others and have little job security. Many Dalit women are also involved in manual scavenging and other hazardous occupations, which reflects deep-rooted caste discrimination in the labour system. Their economic vulnerability further limits their ability to escape exploitation and assert their rights.

Social exclusion is another important dimension of their marginalization. Dalit women often face discrimination in access to public spaces such as temples, water sources, and community facilities. In rural areas, they may be segregated from dominant caste groups and denied equal participation in social life. Education is also affected, as Dalit girls have higher dropout rates due to poverty, discrimination, and lack of opportunities. This limits their chances for upward mobility and reinforces the cycle of inequality.

Dalit women also struggle with limited access to justice. Even though laws exist to protect them, such as the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,* implementation remains weak. Many cases of violence are not reported due to fear of retaliation, social stigma, or lack of trust in the legal system. In some instances, police and local authorities may show bias or fail to take action. This creates a situation where perpetrators often go unpunished, further discouraging victims from seeking justice.

Health and living conditions also reflect inequality. Studies show that Dalit women face higher levels of malnutrition, poor healthcare access, and higher maternal mortality rates compared to other groups. Their living conditions are often inadequate, with limited access to sanitation, clean water, and basic services. These factors combine to create long-term disadvantages in both physical and social well-being.

A significant case that highlights the intersection of caste and gender oppression is the **Bhanwari Devi case (1992)**. Bhanwari Devi, a Dalit social worker in Rajasthan, was gang-raped for attempting to prevent child marriage in her village. Despite the seriousness of the crime, she faced immense social and legal challenges in seeking justice. However, this case led to a major legal development the **Vishaka Guidelines (1997)**, which established rules to prevent sexual harassment at the workplace. This example shows how the struggles of Dalit women can bring about important legal and social changes.

Another recent example is the **Hathras case (2020)**, where a young Dalit woman was brutally assaulted and later died from her injuries. The case sparked national outrage and highlighted the continued vulnerability of Dalit women to caste-based violence and the failures of the justice system.

Hence, Dalit women in India face complex and layered discrimination due to the combined effects of caste, gender, and economic inequality. Issues such as violence, exploitation, social exclusion, and lack of justice continue to shape their lives. While legal frameworks and social movements have brought some progress, significant challenges remain. Addressing these issues requires not only legal reforms but also deep social change to ensure dignity, equality, and justice for Dalit women.

13.5 ADIVASI WOMEN AND DEVELOPMENT INDUCED CONFLICTS

Adivasi (tribal) women in India are among the most affected groups when it comes to displacement caused by development projects such as mining, dams, industries, and forest conservation policies. Although these projects are often presented as necessary for national development, they have led to the large-scale displacement of tribal communities from their

ancestral lands. Since Adivasi communities depend heavily on forests and natural resources for their livelihood, culture, and identity, displacement creates deep social, economic, and cultural disruptions especially for women.

Data from various studies shows the scale of this problem. It is estimated that millions of people have been displaced in India due to development projects, with a significant proportion belonging to tribal communities. For instance, research indicates that around ***16.4 million*** people have been displaced by large dams alone, and millions more by mining and industrial projects. Adivasis, though forming a small percentage of the population, constitute a disproportionately large share of those displaced. This highlights the unequal burden of development on tribal populations.

One of the most serious consequences for Adivasi women is the loss of traditional livelihoods. Women in these communities are actively involved in collecting forest produce, farming, fishing, and livestock rearing. These activities are not only sources of income but also essential for household survival. When forests and land are taken away, women lose their primary means of livelihood. Studies on displacement in states like Odisha show that after relocation, many women are forced into low-paid wage labour or remain unemployed, leading to increased poverty and dependency.

Another major issue is land alienation. Even when compensation is provided, it is often given to male members of the household, leaving women without control over resources. This weakens their economic independence and decision-making power within the family. In many cases, displaced families are relocated to areas where the land is not suitable for farming, further reducing their ability to sustain themselves.

Displacement also leads to cultural disintegration. Adivasi life is closely connected to forests, traditions, and community networks. Women play a key role in preserving cultural practices, rituals, and indigenous knowledge systems. When communities are uprooted, these traditions weaken, and social bonds are disrupted. This loss of cultural identity can have long-term psychological and social effects, particularly on women.

Migration is another consequence of displacement. Many displaced families move to urban areas in search of work. This exposes Adivasi women, especially young girls, to increased risks of trafficking, exploitation, and unsafe working conditions. Reports indicate that tribal women working as domestic workers or labourers in cities often face abuse, low wages, and lack of legal protection.

A well-known case example is the mining-affected regions of Odisha and Jharkhand, where large-scale mining projects have displaced thousands of tribal families. Studies show that in these areas, women have lost access to forests and water sources, which were central to their daily lives. Similarly, the **Tehri Dam project** in Uttarakhand led to the displacement of many communities, where women reported loss of livelihood, increased workload, and reduced access to resources after relocation.

Another important example is the **Narmada Valley Project**, where large numbers of Adivasi communities were displaced due to dam construction. Many affected women struggled with

inadequate rehabilitation, lack of employment opportunities, and poor living conditions in resettlement areas.

Hence, displacement due to development projects has severe and long-lasting effects on Adivasi women in India. It leads to loss of livelihood, land alienation, cultural disruption, and increased vulnerability to exploitation. While development is important, it often comes at the cost of the most marginalized communities. Addressing these issues requires better rehabilitation policies, recognition of women's rights, and inclusive development approaches that respect the livelihoods and identities of Adivasi communities.

13.5.1 Legal Safeguards

In India, several constitutional provisions and legislative measures have been introduced to protect the rights of Adivasi or tribal communities, including Adivasi women. These safeguards aim to address the historical marginalization, displacement, and exploitation faced by tribal populations and to ensure their access to land, resources, and self-governance. Among the most important legal protections are the **Forest Rights Act, 2006** and the **Panchayats (Extension to Scheduled Areas) Act, 1996,** both of which play a crucial role in safeguarding the rights and livelihoods of forest-dwelling communities.

The Forest Rights Act, 2006 was enacted to recognize and restore the traditional rights of forest-dwelling Scheduled Tribes and other forest-dependent communities. For many decades, colonial forest laws and post-independence policies restricted the access of tribal communities to forests that they had traditionally inhabited and depended upon for survival. The Forest Rights Act seeks to correct these historical injustices by granting legal recognition to the rights of tribal communities over forest land, minor forest produce, grazing areas, and community forest resources. Importantly, the law also acknowledges the role of women in forest-based livelihoods by ensuring that land titles can be issued jointly in the names of both spouses, thereby strengthening women's rights over land and resources.

Another significant legal safeguard is the Panchayats (Extension to Scheduled Areas) Act, 1996, commonly known as PESA. This legislation extends the provisions of local self-governance under the Panchayati Raj system to tribal-dominated Scheduled Areas. The Act empowers Gram Sabhas (village assemblies) in tribal areas to participate actively in decision-making processes related to land acquisition, development projects, and the management of natural resources. By granting greater authority to local communities, PESA aims to ensure that development activities do not occur without the consent and participation of tribal populations.

For Adivasi women, these legal provisions are particularly important because their livelihoods are closely linked to forests, land, and natural resources. Access to forest produce, agricultural land, and community resources often plays a key role in sustaining household economies and maintaining cultural traditions. When these resources are taken away through displacement or development projects, women are among the most severely affected.

Together, the Forest Rights Act and the Panchayats (Extension to Scheduled Areas) Act seek to strengthen community control over land, forests, and natural resources while promoting participatory governance and protecting the socio-cultural identity of tribal communities.

Effective implementation of these laws is essential to ensure that Adivasi women are able to exercise their rights, maintain their livelihoods, and participate meaningfully in local decision-making processes.

13.6 Minority Women in India

Minority women in India experience what is often called double marginalization, meaning they face discrimination both as women and as members of religious minority communities. This dual disadvantage limits their access to education, employment, healthcare, and social participation. As a result, minority women often remain at the margins of economic and social development.

One of the key concerns is low literacy and educational attainment. Data from national and academic studies shows that literacy rates among minority women, especially Muslim women are lower than the national average. For example, earlier census-based studies and development reports have highlighted that Muslim women have among the lowest literacy rates in India, which directly affects their ability to access higher education and skilled jobs. Limited education also reduces awareness of legal rights and opportunities, reinforcing cycles of poverty and exclusion.

Another major issue is restricted employment opportunities. Minority women are often concentrated in low-paid, informal sectors such as domestic work, handicrafts, or small-scale labor. Research indicates that their labour force participation is significantly lower compared to other groups, and even when employed, they often receive lower wages and lack job security. Social norms, lack of education, and discrimination in hiring further restrict their economic independence.

Legal and social inequalities also affect minority women. In some cases, personal laws related to marriage, divorce, and inheritance may not fully ensure gender equality. While reforms have taken place in certain areas, gaps still remain in ensuring equal rights for women across different communities. These legal complexities can limit women's autonomy within family structures and affect their access to property and financial resources.

Another serious concern is their vulnerability during communal conflicts. Studies on communal violence in India show that women from minority communities are often targeted during riots and conflicts. They may face sexual violence, harassment, and forced displacement. For instance, during incidents such as the **Gujarat riots (2002)** and other communal disturbances, minority women were subjected to extreme forms of violence. These acts are not only gender-based but also intended to target and intimidate entire communities.

In addition, minority women often face social exclusion and discrimination in public spaces. They may encounter bias in housing, education, and employment due to their religious identity. This discrimination can lead to segregation and reduced access to basic services, further limiting their opportunities for advancement.

Health and well-being are also affected. Limited access to healthcare, combined with poverty and lack of awareness, leads to poor health outcomes among minority women. Reports indicate

higher levels of malnutrition and lower access to maternal healthcare services in some minority communities.

Despite these challenges, minority women have shown resilience and have increasingly participated in education, social movements, and community leadership. Government initiatives and civil society efforts have aimed to improve their conditions through education programs, skill development, and legal reforms. However, progress remains uneven and slow.

So, minority women in India face multiple and overlapping forms of discrimination that affect their overall development. Issues such as low literacy, limited employment, legal inequalities, and vulnerability to violence highlight their disadvantaged position. Addressing these challenges requires inclusive policies, better implementation of laws, and targeted efforts to ensure equal opportunities and protection for minority women.

13.7 Global Policy Gap: Investment in War Vs Peace

A significant concern highlighted in recent global discussions on Women, Peace and Security (WPS) is the growing imbalance between military expenditure and investment in peacebuilding initiatives, particularly those led by women. According to recent United Nations data, global military spending exceeded **USD 2.7 trillion in 2024,** representing the highest level ever recorded. This sharp increase reflects rising geopolitical tensions and prioritization of defense budgets across many countries. However, in contrast to this massive spending on military activities, financial support for peacebuilding, especially for grassroots women's organizations remains extremely limited.

One of the most striking aspects of this imbalance is the very low level of funding allocated to women-led organizations. Reports indicate that women's organizations in conflict-affected areas receive only about **0.4 percent** of total international aid. This is despite the fact that these organizations play a crucial role in addressing the immediate and long-term impacts of conflict. They are often deeply embedded within communities and are among the first to respond during crises. Their work includes providing humanitarian assistance, supporting survivors of violence, promoting dialogue, and rebuilding social cohesion.

The consequences of this funding gap are serious and far-reaching. Women-led organizations are frequently under-resourced and operate in highly unstable environments. Due to lack of consistent financial support, many struggle to maintain basic services such as shelters, healthcare assistance, and legal aid. Recent assessments suggest that more than half of women-led organizations working in crisis settings are at risk of shutting down if additional funding is not secured. This not only weakens local peacebuilding efforts but also leaves vulnerable populations without critical support systems.

Women's organizations contribute in multiple ways that are essential for sustainable peace. They provide psychological counselling to survivors of violence, which helps individuals cope with trauma and rebuild their lives. They also run safe shelters for displaced women and children, ensuring protection in situations where state support is limited or absent. In addition, many organizations offer legal assistance to victims of war crimes and human rights violations, helping them access justice. Importantly, women's groups are actively involved in community

mediation, where they facilitate dialogue between conflicting groups and promote reconciliation at the grassroots level.

Recent global conflicts clearly demonstrate both the importance of these contributions and the negative impact of funding shortages. In Ukraine, since the escalation of conflict, women-led organizations have been actively supporting displaced populations by providing food, healthcare, and trauma counselling. However, reports indicate that several such organizations have faced disruptions due to declining international funding, affecting their ability to operate shelters and deliver essential services.

Similarly, in the ongoing humanitarian crisis in **Gaza**, women and children have been among the most severely affected groups. High levels of displacement, food insecurity, and limited access to healthcare have created a critical situation. Women-led civil society organizations have attempted to provide relief and raise awareness, but their efforts are constrained by limited resources and restricted access.

Another important example is the conflict in **Sudan**, where humanitarian agencies have described the situation as a major gender crisis. Millions of people have been displaced, and women and girls face increasing risks of sexual violence, forced marriage, and lack of medical care. In such contexts, women's organizations often act as primary responders, organizing food distribution, providing shelter, and ensuring protection for vulnerable groups. Despite their essential role, these organizations operate with minimal funding and support.

This imbalance between military spending and peacebuilding investment reflects a deeper structural issue in the global security system. Governments and international actors continue to prioritize military solutions over preventive and community-based approaches to conflict resolution. However, evidence suggests that sustainable peace cannot be achieved through military means alone. Instead, it requires long-term investment in social development, gender equality, and inclusive governance.

Experts and policymakers have increasingly argued that even a small reallocation of global military expenditure toward peacebuilding initiatives could have a significant impact. Redirecting a fraction of the trillions spent on defense toward education, healthcare, and community programs could strengthen resilience, reduce conflict risks, and promote long-term stability.

Hence, the growing gap between military spending and support for women-led peacebuilding represents a major challenge for the international community. While enormous resources are invested in warfare, grassroots peace efforts, especially those led by women, remain underfunded and undervalued. Recognizing and supporting the role of women's organizations is essential for building sustainable peace. Adequate financial investment, combined with inclusive policies, can help strengthen these efforts and create more stable and just societies.

13.8 GENDER DATA, ACCOUNTABILITY AND THE FUTURE OF THE WOMEN, PEACE AND SECURITY AGENDA

One of the most important yet often neglected challenges in addressing women's rights in conflict situations is the lack of gender-disaggregated data. This type of data refers to

information that is collected separately for men and women to understand how conflict affects them differently. In many war zones, humanitarian crises, and displacement settings, such data is either incomplete or entirely absent. As a result, the specific experiences, needs, and vulnerabilities of women remain largely invisible in policy discussions and relief planning.

The absence of gender-sensitive data has serious implications for both policy and practice. Without reliable information, governments and international organizations struggle to design effective interventions. Many of the hardships faced by women—such as sexual violence, forced displacement, and health-related challenges—are underreported due to stigma, fear, and weak institutional systems. This creates a gap between the reality on the ground and the responses developed at national and global levels.

Recognizing this issue, international organizations have emphasized the need for a "gender data revolution." This approach calls for systematic data collection, better monitoring systems, and stronger accountability mechanisms. It aims to ensure that women's experiences are properly documented and reflected in peacebuilding policies, humanitarian programs, and legal frameworks.

13.8.1 Significant Issues Arising from Lack of Gender Data

1) **Underreporting of Women's Experiences:** In conflict situations, many forms of violence against women remain undocumented. Crimes such as sexual violence, trafficking, and forced marriage are often hidden due to social stigma and fear of retaliation. As a result, policymakers may underestimate the scale of these problems, leading to inadequate responses.
2) **Ineffective Policy and Humanitarian Response:** When gender-specific data is missing, aid programs may fail to address the real needs of women. For example, lack of data on maternal health or gender-based violence can result in insufficient healthcare services, protection mechanisms, and rehabilitation support in refugee camps and conflict zones.
3) **Weak Accountability and Justice Mechanisms:** The absence of proper data makes it difficult to investigate human rights violations and prosecute offenders. Without documented evidence, many cases of violence against women go unpunished, reinforcing a culture of impunity in conflict-affected areas.
4) **Limited Representation in Decision-Making:** Lack of data also contributes to the exclusion of women from peace negotiations and governance structures. When their experiences are not recorded, their voices are less likely to be considered in decision-making processes.

The importance of gender-disaggregated data can be clearly understood through recent global conflicts. During the Syrian Civil War, early humanitarian responses were not based on sufficient gender-specific data. As a result, key issues affecting women—such as child marriage, sexual exploitation, and maternal health risks—were not adequately addressed. Over time, studies revealed that child marriage had significantly increased among displaced Syrian communities. This highlighted the serious gap in early data collection and emphasized the need for gender-sensitive planning in humanitarian responses.

A similar situation was observed in the Ukraine conflict. In the initial stages of the war, most data focused on casualties, infrastructure damage, and military developments, with very little attention given to gender-specific concerns. However, as the situation evolved, it became evident that women made up a large proportion of internally displaced persons. They also faced increased risks of trafficking, exploitation, and economic insecurity, particularly while crossing borders or seeking employment. This demonstrated the importance of including gender-disaggregated data from the beginning of a crisis to ensure effective and inclusive policy responses.

The ongoing conflict in Sudan (2023–present) further illustrates the challenges caused by the lack of gender-sensitive data. While there have been widespread reports of displacement and sexual violence, the absence of systematic data collection has made it difficult to fully understand the scale and nature of these abuses. This has limited the ability of humanitarian agencies and legal institutions to respond effectively and ensure accountability. As a result, many cases remain underreported, highlighting the urgent need for improved data systems in conflict situations.

The lack of gender-disaggregated data represents a major challenge for the effective implementation of the Women, Peace and Security agenda. Without accurate and reliable data, women's experiences remain invisible, policies remain incomplete, and accountability remains weak. Strengthening data collection systems, improving reporting mechanisms, and ensuring women's inclusion in decision-making are essential steps toward achieving gender equality in conflict settings. A true "gender data revolution" is therefore necessary to build more inclusive, responsive, and sustainable peace processes.

13.8.2 Views of Human Rights Experts

Human rights experts across the world strongly emphasize that gender-sensitive and gender-disaggregated data is essential for understanding and addressing the realities faced by women in conflict situations. Without accurate and systematic data, women's experiences often remain invisible, leading to weak policy responses, lack of accountability, and ineffective humanitarian interventions. Several prominent scholars and practitioners have highlighted this issue, including Sima Bahous, Michelle Bachelet, Cynthia Enloe, and Radhika Coomaraswamy, among others.

Sima Bahous, *Executive Director of UN Women*, has emphasized that the invisibility of women in official data systems leads to serious gaps in policymaking. According to her, when data does not reflect women's lived experiences, their suffering in war zones, such as displacement, violence, and economic hardship, remains unrecognized in national and international decisions. This results in policies that fail to address the real needs of women. Her perspective highlights that without gender-disaggregated data, governments and institutions cannot design effective and inclusive responses.

Similarly, **Michelle Bachelet**, *former United Nations High Commissioner for Human Rights*, has stressed the importance of data for accountability and justice. She has argued that systematic documentation of gender-based violence—such as sexual abuse, trafficking, and forced marriage is essential for legal action. Without reliable evidence, it becomes difficult to

prosecute perpetrators or provide justice and compensation to survivors. Bachelet's view underlines that data is not only about understanding problems but also about ensuring that human rights violations are recognized and addressed through proper legal mechanisms.

The well-known feminist scholar **Cynthia Enloe** provides a different but equally important perspective. She argues that traditional security studies often focus too much on military strategies and battlefield outcomes, while ignoring the everyday experiences of women during conflict. According to Enloe, women's realities, such as increased domestic responsibilities, loss of livelihoods, and vulnerability to violence are often overlooked. She believes that collecting gender-disaggregated data helps shift attention toward the human and social consequences of war, making security analysis more inclusive and realistic.

Another influential expert, **Radhika Coomaraswamy**, *former UN Special Representative on Children and Armed Conflict,* highlights the role of data in prevention and policy planning. She argues that systematic data collection allows policymakers to identify patterns of violence and emerging risks. For example, increases in early marriage, trafficking, or exploitation in conflict zones can be detected through proper data systems. This enables governments and international organizations to take early action and design targeted interventions. Without such evidence, responses may come too late or fail to address the root causes of the problem.

In addition to these experts, other scholars such as **Jacqui True** and **Sara Davies** have also emphasized the importance of gender data in global security. They argue that gender inequality and lack of data are closely linked, and without proper documentation, women's issues remain marginalized in international policy discussions. Their work highlights that gender-sensitive data is essential for creating inclusive and sustainable peace.

Another important viewpoint shared by experts is that data improves representation and inclusion. When women's experiences are properly documented, they are more likely to be included in peace negotiations and decision-making processes. This leads to better and more sustainable outcomes. Studies have shown that peace agreements involving women are more inclusive and long-lasting, and gender data plays a key role in supporting such participation.

Finally, experts agree that the lack of gender-disaggregated data reinforces structural inequality. When women's experiences are not recorded, their issues remain invisible, and resources are not allocated to address them. This creates a cycle where inequality continues across generations. Strengthening data systems is therefore not just a technical requirement but a matter of justice and equality.

Hence, the views of the experts clearly show that gender-sensitive data is essential for effective policymaking, accountability, and peacebuilding. It helps make women's experiences visible, supports justice systems, improves policy design, and enables preventive action. Strengthening gender data systems is therefore crucial for advancing the goals of the Women, Peace and Security agenda and ensuring that women's rights are fully recognized in conflict-affected societies.

13.8.3 Importance for Policy and Justice

The demand for a gender data revolution is not merely a technical or statistical issue; it is a fundamental requirement for achieving gender justice, effective governance, and sustainable peace in conflict-affected societies. Gender-disaggregated data plays a crucial role in ensuring that the realities faced by women are properly understood and addressed in policymaking, humanitarian action, and legal systems.

1. Reliable gender data enables governments and international organizations to design targeted humanitarian interventions. In conflict situations, women and men experience crises differently. Women may face challenges such as sexual violence, lack of reproductive healthcare, and increased caregiving responsibilities. Without accurate data, humanitarian programs may overlook these needs. Research shows that the absence of sex-disaggregated data often leads to poorly designed aid programs that fail to reach the most vulnerable populations. Therefore, gender data ensures that resources are allocated effectively and interventions are tailored to real needs.

2. Gender-disaggregated data is essential to monitor violations of human rights and international humanitarian law. Conflicts often involve serious crimes such as sexual violence, forced displacement, trafficking, and exploitation. However, these violations are frequently underreported. Systematic data collection helps document such abuses and provides evidence for human rights monitoring. Without proper data systems, many cases of violence remain invisible, weakening efforts to hold perpetrators accountable. Thus, data becomes a powerful tool for exposing injustice and ensuring that violations are recognized.

3. Gender data allows policymakers to evaluate the effectiveness of peacebuilding and development programs. Governments and international agencies invest significant resources in rebuilding societies after conflict. However, without proper data, it is difficult to assess whether these programs are benefiting women equally. Gender-disaggregated indicators help measure progress in areas such as education, employment, health, and political participation. This ensures that peacebuilding efforts are inclusive and that gender equality is integrated into recovery processes.

4. Gender-sensitive data ensures that women's voices and experiences are incorporated into policy frameworks. When data reflects the realities of women's lives, it becomes harder for policymakers to ignore their needs. This leads to more inclusive decision-making and strengthens women's participation in governance and peace processes. Inclusive policies based on gender data contribute to more sustainable and long-lasting peace outcomes.

In addition to improving policy design, gender-disaggregated data plays a crucial role in strengthening legal accountability mechanisms. Courts and international tribunals rely on evidence to investigate and prosecute crimes. Accurate data helps document patterns of violence, identify perpetrators, and support survivors in seeking justice. For example, in cases of wartime sexual violence or forced displacement, detailed data can provide critical proof needed for legal proceedings. Without such data, many crimes go unpunished, reinforcing a culture of impunity.

Furthermore, gender data contributes to the broader concept of data justice, which emphasizes fairness, inclusion, and human rights in data collection and use. Scholars argue that when

women's experiences are excluded, it reflects and reinforces existing inequalities. Therefore, improving gender data systems is essential for ensuring that development and humanitarian efforts are equitable and just.

Despite its importance, the lack of gender-disaggregated data remains a major obstacle. In many conflict-affected regions, data collection systems are weak, underfunded, or disrupted by violence. Cultural barriers, stigma, and fear also prevent women from reporting their experiences. As a result, policymakers often rely on incomplete or inaccurate information, leading to ineffective responses.

To address this challenge, initiatives such as the "gender data revolution" promoted by international organizations aim to improve data collection, analysis, and use. These efforts focus on strengthening national data systems, promoting transparency, and ensuring that gender perspectives are integrated into policymaking. The goal is to place women's experiences at the center of governance and peacebuilding.

Therefore, it can be said that gender-disaggregated data is essential for both policy effectiveness and justice. It enables targeted interventions, strengthens human rights monitoring, supports legal accountability, and ensures inclusive governance. Without accurate data, women's experiences remain invisible, policies remain inadequate, and justice remains incomplete. Strengthening gender-sensitive data systems is therefore a critical step toward achieving equality and sustainable peace in conflict-affected societies.

13.9 CONCLUSION

Conflicts often expose and deepen the structural inequalities that already exist within societies. While war affects entire populations, its impact is not equal. Women, particularly those from marginalized groups such as refugees, Dalits, Adivasis, and religious minorities, experience the most severe consequences. They face multiple and overlapping forms of discrimination that increase their vulnerability during and after conflict. These include higher risks of sexual and gender-based violence, loss of livelihoods, displacement, social exclusion, and limited access to healthcare, education, and justice systems. Such realities demonstrate that conflict is not only a political or military issue but also a serious human rights and gender justice concern.

One of the key lessons emerging from the study of conflict and women's rights is that inequality becomes more visible and more harmful during crises. Women's economic dependence, restricted mobility, and social discrimination make it harder for them to cope with displacement and insecurity. At the same time, their contributions—such as caregiving, community support, and peacebuilding—are often ignored or undervalued. This imbalance highlights the urgent need to address gender inequality as part of conflict resolution and recovery processes.

Achieving meaningful gender justice in conflict situations requires a comprehensive and inclusive approach. An important step is ensuring the active participation of women in peace negotiations and decision-making processes. Evidence shows that peace agreements are more sustainable and inclusive when women are involved. However, women continue to be underrepresented in formal peace processes, which limits the effectiveness of conflict resolution efforts. Therefore, increasing women's representation is not only a matter of equality but also a practical necessity for lasting peace.

Another crucial aspect is strengthening legal accountability mechanisms. Conflicts often lead to serious violations of human rights, including sexual violence, forced displacement, and exploitation. Ensuring justice for victims requires proper documentation, strong legal frameworks, and effective implementation of laws. Without accountability, a culture of impunity develops, which allows such crimes to continue. Therefore, national and international legal systems must be strengthened to protect women and punish perpetrators.

Equally important is the need for greater financial and institutional support for women-led initiatives. Grassroots women's organizations play a vital role in conflict situations by providing humanitarian aid, supporting survivors of violence, promoting dialogue, and rebuilding communities. Despite their importance, these organizations often receive very limited funding. Increasing support for such initiatives can significantly improve local peacebuilding efforts and strengthen community resilience.

The role of international cooperation is also essential. Governments, international organizations, and civil society must work together to ensure the protection and empowerment of women in conflict zones. Policies such as the Women, Peace and Security agenda provide a strong framework, but effective implementation is necessary to bring real change on the ground.

Another important requirement is improving gender-sensitive data systems, which help make women's experiences visible and inform better policymaking. Without accurate data, women's needs remain unrecognized, and responses remain incomplete.

Ultimately, women should not be seen merely as victims of conflict. They are agents of change, leaders, and key contributors to peacebuilding and recovery. Recognizing their roles and ensuring their equal participation in all stages of conflict resolution is essential. Empowering women is not only a matter of justice and human rights but also a critical condition for achieving sustainable, inclusive, and long-lasting peace in conflict-affected societies.

13.10 SUMMARY

This unit explored the complex relationship between conflict and women's rights, emphasizing that armed conflicts, displacement, and social instability have a disproportionately severe impact on women and girls. While conflicts affect entire populations, women often face specific gender-based risks that intensify their vulnerability. At the same time, the unit highlighted that women are not only victims but also active participants in survival, resilience, and peacebuilding processes.

The unit began by discussing the global rise in conflicts and the increasing risks faced by women in war-affected regions. It explained that modern conflicts often target civilian populations, exposing women to sexual violence, forced displacement, trafficking, and loss of livelihoods. Health risks, including lack of reproductive care and psychological trauma, further worsen their situation. Despite these challenges, women continue to play vital roles in maintaining families and communities during crises.

A key focus of the unit was the Women, Peace and Security (WPS) agenda, introduced through United Nations Security Council Resolution 1325. This framework recognizes the importance

of women's participation in peace processes, protection from violence, and inclusion in decision-making. However, the unit highlighted a significant gap between policy commitments and actual practice, as women remain underrepresented in formal peace negotiations despite evidence that their involvement leads to more sustainable and inclusive peace agreements.

The unit also examined women's roles as "invisible participants" in conflict. Women often act as caregivers, humanitarian workers, community organizers, and peace activists. They provide essential support such as caring for displaced populations, mediating local conflicts, and promoting reconciliation. However, their contributions are frequently overlooked because they occur outside formal political structures. This invisibility reinforces the perception that women are passive victims rather than active agents of change.

Another important theme was the situation of refugee women. The unit explained the definition of a refugee under the 1951 Refugee Convention, which describes individuals fleeing persecution based on factors such as race, religion, nationality, or political opinion. It also discussed the role of the United Nations High Commissioner for Refugees (UNHCR) in providing protection and assistance. Refugee women face additional challenges, including gender-based violence, exploitation, and limited access to healthcare and employment, making their condition particularly vulnerable.

The unit further explored intersectional discrimination in India, focusing on Dalit women, Adivasi women, and minority women. Dalit women experience combined oppression based on caste, gender, and economic status, often facing violence, exploitation, and social exclusion. Adivasi women are severely affected by displacement caused by development projects such as mining and dams, which disrupt their livelihoods and cultural identity. Minority women, on the other hand, face discrimination due to both gender and religious identity, limiting their access to education, employment, and justice. These examples demonstrate how multiple forms of inequality intersect to deepen marginalization.

A significant issue discussed in the unit was the lack of gender-disaggregated data in conflict situations. The absence of reliable data makes women's experiences invisible in policy discussions and weakens accountability mechanisms. Without proper documentation, issues such as sexual violence, trafficking, and displacement are often underestimated or ignored. The concept of a "gender data revolution" was introduced as a solution to improve data collection, policymaking, and justice systems.

The unit also highlighted the global imbalance between military expenditure and investment in peacebuilding. While countries spend trillions on military activities, only a very small portion of funding is directed toward women-led organizations working in conflict zones. These organizations play a crucial role in providing humanitarian aid, supporting survivors, and promoting peace at the grassroots level. However, lack of funding threatens their sustainability and limits their impact.

Finally, the unit emphasized the importance of recognizing women as leaders and decision-makers in conflict resolution. Including women in peace processes, strengthening legal protections, improving data systems, and increasing financial support for grassroots initiatives are essential steps toward achieving long-term peace.

In conclusion, the unit demonstrated that addressing women's rights in conflict requires a comprehensive approach that combines protection, participation, data-driven policymaking, and inclusive development. Recognizing women's contributions and ensuring their active involvement in peacebuilding is crucial for achieving sustainable peace, social justice, and gender equality.

13.11 GLOSSARY

1) **Armed Conflict** – A situation of prolonged violent confrontation between states, groups, or communities, often resulting in social and humanitarian crises.
2) **Gender-Based Violence** – Violence directed against a person because of their gender, including sexual violence, trafficking, and exploitation.
3) **Refugee –** A person who flees their country due to persecution, war, or violence and seeks protection in another country, as defined under the 1951 Refugee Convention.
4) **Internally Displaced Persons (IDPs)** – Individuals who are forced to leave their homes due to conflict or disaster but remain within the borders of their own country.
5) **Intersectional Discrimination** – A form of discrimination that occurs when multiple social identities such as caste, gender, class, or religion combine to create overlapping systems of disadvantage.
6) **Peacebuilding** – Efforts aimed at resolving conflict and establishing long-term stability and harmony within societies.
7) **Gender-Disaggregated Data** – Data that is collected and analysed separately for men and women to understand differences in experiences and needs.
8) **Women, Peace and Security (WPS) Agenda** – An international policy framework promoted by the United Nations to ensure women's participation and protection in peace and security processes.

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13.13 SUGGESTED READINGS

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b. Dr. H. O. Agarwal – *Human Rights*
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e. Reports of UN Women on Women, Peace and Security
f. Publications of the United Nations High Commissioner for Refugees on refugee protection and gender equality.

13.14 SHORT ANSWER QUESTIONS

1. Explain the impact of armed conflict on women's rights.
2. What is meant by the Women, Peace and Security agenda?
3. Who is considered a refugee under international law?
4. What are the main challenges faced by refugee women?
5. Explain the concept of intersectional discrimination with reference to Dalit women.

A. Terminal and Model Questions

1. Discuss the impact of armed conflict and displacement on women with suitable examples.
2. Analyse the role of international organizations in protecting refugee women's rights.
3. Examine the intersectional challenges faced by Dalit, Adivasi, and minority women in India.
4. Critically analyse the importance of women's participation in peacebuilding and conflict resolution.
5. Discuss the global imbalance between military spending and peacebuilding initiatives.

C. True/False

1. The 1951 Refugee Convention defines a refugee as a person who fears persecution based on factors such as race, religion, or political opinion.
   True
2. Dalit women in India face discrimination only on the basis of gender and not caste.
   False
3. Women-led organizations in conflict zones receive a large share of international aid funding.
   False
4. Gender-disaggregated data helps improve policymaking and accountability in conflict situations.
   True
5. Women in conflict situations are only victims and do not play any active role in peacebuilding.
   False

UNIT 14

CONTEMPORARY ISSUES AND EMERGING DEBATES IN HUMAN RIGHTS

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A. Short Answer Questions

B. Terminal and Modal Questions

C. True / False

14.0 INTRODUCTION

Human rights represent the moral and legal foundation of a just society. They are fundamental, universal, and inalienable, meaning they belong to every individual simply by virtue of being human, irrespective of nationality, race, gender, religion, or social status. These rights are essential for preserving human dignity, promoting equality, and ensuring freedom. Over time, the concept of human rights has evolved from a philosophical ideal into a comprehensive legal framework that continues to adapt to the changing realities of the modern world.

14.1 LEARNING OBJECTIVES

This unit aims to provide learners with a comprehensive understanding of the concept of human rights as fundamental, universal, and inalienable rights inherent to every individual. It seeks to familiarize students with the basic meaning, nature, and essential characteristics of human rights, emphasizing their role in ensuring dignity, equality, and justice in society.

The unit also intends to highlight the historical foundations of modern human rights law by examining the role of the United Nations and the significance of the Universal Declaration of Human Rights. Through this, learners will gain insight into how a global framework for the protection of civil, political, economic, social, and cultural rights was established.

Further, the unit focuses on tracing the evolution of human rights over time. It enables learners to understand how the scope of human rights has expanded from traditional concerns such as freedom of speech, equality before law, protection against discrimination, and safeguards against arbitrary detention, to a broader recognition of socio-economic and collective rights.

In addition, the unit aims to develop an understanding of contemporary human rights challenges. It encourages learners to examine emerging issues such as digital privacy, artificial intelligence, climate change, gender identity, refugee crises, and public health emergencies, including the COVID-19 Pandemic. This helps in appreciating the dynamic and evolving nature of human rights in the modern era.

The unit also seeks to analyze the impact of globalization and technological advancements on human rights discourse. Learners will explore how these forces have reshaped debates, particularly in relation to data protection, environmental rights, and the balance between state authority and individual freedoms.

Moreover, it aims to sensitize learners to the challenges faced by marginalized groups, including women, LGBTQ+ individuals, refugees, and indigenous communities. By doing so, the unit emphasizes the importance of inclusivity and equal protection under the law.

Finally, the unit aspires to develop critical thinking and analytical skills among learners, enabling them to evaluate contemporary human rights debates and apply human rights principles to real-life situations. It underscores the need for continuous reinterpretation, effective enforcement, and active advocacy to ensure that the ideals of justice, equality, and human dignity remain relevant in a rapidly changing world.

14.2 INTERSECTION OF WOMEN'S RIGHTS AND LGBTQ+ RIGHTS

The intersection of women's rights and LGBTQ+ rights represent an important and evolving area within human rights discourse. Both movements seek to challenge deeply rooted systems of discrimination, inequality, and social exclusion that are often based on gender, identity, and sexuality. While historically treated as separate struggles, there is increasing recognition that these rights are interconnected and must be addressed collectively to achieve substantive equality and social justice.

At the core of this intersection lies the understanding that individuals may face multiple and overlapping forms of discrimination. Women belonging to LGBTQ+ communities, such as lesbian, bisexual, and transgender individuals, often experience layered marginalization due to

both their gender and sexual or gender identity. Therefore, a comprehensive human rights approach must consider these overlapping identities and the unique challenges they create.

14.2.1 Conceptual Framework

The conceptual framework for understanding the intersection of women's rights and LGBTQ+ rights is grounded in the principles of equality, non-discrimination, dignity, and autonomy. Human rights law recognizes that all individuals are entitled to equal protection regardless of sex, gender identity, or sexual orientation.

Traditionally, women's rights movements focused on addressing gender-based inequalities such as patriarchy, unequal access to education and employment, and gender-based violence. On the other hand, LGBTQ+ rights movements have concentrated on issues such as decriminalization, recognition of relationships, and protection from discrimination based on sexual orientation and gender identity.

However, these frameworks increasingly overlap, as both challenge rigid gender norms and societal expectations. This convergence highlights the need for inclusive policies and legal frameworks that address the rights of all individuals without reinforcing binary or exclusionary notions of gender.

14.2.2 Understanding Gender Identity and Sexual Orientation

A clear understanding of gender identity and sexual orientation is essential for analyzing LGBTQ+ rights within the broader human rights framework. Gender identity refers to an individual's deeply felt internal sense of being male, female, both, neither, or somewhere along the gender spectrum. It may or may not align with the sex assigned at birth.

Sexual orientation, on the other hand, relates to an individual's emotional, romantic, or sexual attraction to others. It includes identities such as heterosexual, homosexual, bisexual, and others. Human rights principles emphasize that both gender identity and sexual orientation are integral aspects of personal identity and must be respected and protected. Discrimination or violence based on these characteristics constitutes a violation of fundamental rights, including the right to dignity, privacy, and equality before the law.

14.2.3 Intersectionality in Human Rights Discourse

The concept of intersectionality plays a crucial role in understanding how different forms of discrimination interact and reinforce one another. Coined by Kimberlé Crenshaw, intersectionality explains how individuals experience oppression differently based on the combination of their identities, such as gender, sexuality, race, class, and ethnicity.

In the context of women's and LGBTQ+ rights, intersectionality highlights how lesbian, bisexual, and transgender women often face compounded discrimination. For example, a transgender woman may encounter both gender-based violence and transphobia, while a lesbian woman may face exclusion not only from mainstream society but also within certain cultural or familial structures. Recognizing intersectionality is essential for developing inclusive human rights policies that address the specific needs of marginalized groups rather than adopting a one-size-fits-all approach.

14.2.4 Feminist Perspectives on LGBTQ+ Rights

Feminist perspectives have significantly contributed to the advancement of LGBTQ+ rights by challenging traditional gender roles and advocating for bodily autonomy, equality, and freedom of expression. Many contemporary feminist approaches emphasize inclusivity and recognize that the struggle for gender justice must encompass diverse gender identities and sexual orientations.

However, there have also been debates within feminist movements regarding the inclusion of transgender rights, reflecting the complexity of aligning different perspectives. Despite these differences, an increasing number of feminist scholars and activists support an intersectional approach that integrates LGBTQ+ concerns into broader gender justice frameworks.

This evolving perspective underscores the importance of solidarity between women's rights and LGBTQ+ movements. By working together, these movements can more effectively challenge systemic discrimination and promote a more inclusive and equitable society.

14.3 FORMS OF DISCRIMINATION FACED BY LGBTQ+ WOMEN

LGBTQ+ women particularly those who identify as lesbian, bisexual, transgender, or queer experience multiple and intersecting forms of discrimination rooted in both gender inequality and heteronormative societal structures. Unlike other groups, they often face compounded marginalization due to their gender as well as their sexual orientation or gender identity. This intersectional disadvantage places them in a uniquely vulnerable position, where discrimination operates at personal, institutional, and structural levels. Understanding these forms of discrimination is essential for developing inclusive human rights frameworks and ensuring effective protection of their rights.

14.3.1 Social Stigma and Marginalization

One of the most pervasive challenges faced by LGBTQ+ women is social stigma and marginalization. In many societies, deeply entrenched cultural, religious, and traditional norms reinforce rigid ideas about gender roles and heterosexual relationships. Women who deviate from these expectations by identifying as lesbian, bisexual, or transgender are often viewed as "abnormal" or "deviant," leading to social exclusion.

This stigma frequently begins within the family, which is expected to be a primary source of support. LGBTQ+ women may face rejection, emotional abuse, or even expulsion from their homes upon disclosing their identity. Such experiences not only disrupt familial relationships but also increase vulnerability to homelessness, poverty, and psychological distress.

Beyond the family, social marginalization extends to educational institutions, workplaces, and community spaces. LGBTQ+ women may encounter bullying, harassment, and discrimination that hinder their access to education and employment opportunities. In many cases, they are compelled to conceal their identity to avoid social backlash, which can lead to a constant sense of fear, isolation, and loss of self-worth.

Furthermore, societal invisibility is another dimension of marginalization. LGBTQ+ women are often underrepresented or misrepresented in media, policy-making, and public discourse. This lack of visibility contributes to their exclusion from mainstream narratives and reinforces stereotypes, making it difficult for them to assert their rights and identities.

14.3.2 Violence and Hate Crimes Against LGBTQ+ Women

Violence against LGBTQ+ women is a serious and widespread human rights concern. It manifests in various forms, including physical assault, sexual violence, psychological abuse, and hate crimes motivated by prejudice against sexual orientation or gender identity.

Lesbian and bisexual women, for instance, may be subjected to "corrective rape," a heinous practice aimed at forcing them to conform to heterosexual norms. Transgender women, particularly those from marginalized socio-economic backgrounds, often face heightened risks of violence in public and private spaces. Such violence is frequently accompanied by impunity, as perpetrators may not be adequately punished due to societal bias or lack of legal recognition of such crimes.

Domestic violence is another critical issue. LGBTQ+ women may face abuse within intimate relationships, but they often lack access to appropriate support systems. Shelters and protection services are frequently designed with heteronormative assumptions, making them inaccessible or unwelcoming to LGBTQ+ individuals.

Moreover, law enforcement agencies may fail to respond effectively to complaints of violence against LGBTQ+ women. Victims may be reluctant to report crimes due to fear of discrimination, ridicule, or secondary victimization by authorities. This underreporting perpetuates a cycle of violence and invisibility.

The intersection of gender and sexual identity intensifies vulnerability. LGBTQ+ women are not only targeted for being women in patriarchal societies but also for challenging normative expectations of sexuality and gender expression. This dual discrimination amplifies the risk and severity of violence they experience.

14.3.3 Barriers to Healthcare and Social Services

Access to healthcare and social services remains a significant challenge for LGBTQ+ women. Discrimination, lack of awareness, and institutional bias often prevent them from receiving adequate and respectful care.

In healthcare settings, LGBTQ+ women may face stigma from medical professionals who lack sensitivity or training regarding diverse sexual orientations and gender identities. This can result in misdiagnosis, denial of treatment, or inappropriate medical advice. For transgender women, access to gender-affirming healthcare services is often limited, expensive, or altogether unavailable.

Mental health is another critical concern. The cumulative effects of discrimination, social rejection, and violence can lead to higher rates of depression, anxiety, and suicidal tendencies among LGBTQ+ women. However, mental health services are frequently inaccessible or not tailored to their specific needs, further exacerbating these issues.

Reproductive and sexual health services also pose challenges. Healthcare systems often operate on heteronormative assumptions, overlooking the unique needs of lesbian and bisexual women. As a result, they may not receive appropriate information or care related to their sexual and reproductive health.

In addition to healthcare, access to broader social services—such as housing, legal aid, and welfare programs—is often restricted. Discriminatory policies and practices may exclude LGBTQ+ individuals from benefiting fully from these services. For example, transgender women may face difficulties in obtaining identity documents that reflect their gender identity, which in turn affects their access to employment, education, and public services.

14.4 LEGAL RECOGNITION AND PROTECTION

Legal recognition and protection of LGBTQ+ rights have emerged as crucial components of contemporary human rights discourse. Over the years, there has been a gradual shift from criminalization and social exclusion toward recognition, equality, and dignity. However, this progress remains uneven across jurisdictions, with significant variations in legal frameworks and societal acceptance. The legal protection of LGBTQ+ individuals—particularly women—requires a combination of international standards, progressive judicial interpretation, and comprehensive legislative reforms.

The core objective of legal recognition is to ensure that individuals are not discriminated against on the basis of sexual orientation or gender identity, and that they are afforded equal protection under the law. This includes not only decriminalization but also the positive recognition of rights related to identity, relationships, family, employment, and access to services. In this regard, international human rights law, constitutional jurisprudence, and statutory reforms play a vital role in shaping an inclusive legal landscape.

14.4.1 International Human Rights Standards

International human rights standards provide the foundational framework for the protection of LGBTQ+ rights. Although early human rights instruments did not explicitly mention sexual orientation or gender identity, their broad guarantees of equality, dignity, and non-discrimination have been interpreted to include these aspects.

The Universal Declaration of Human Rights establishes the principle that all human beings are born free and equal in dignity and rights. Similarly, treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibit discrimination and protect fundamental freedoms.

A significant development in this area is the Yogyakarta Principles, which specifically articulate how existing international human rights law applies to issues of sexual orientation and gender identity. These principles emphasize rights such as equality before the law, protection from violence, the right to privacy, and the right to health.

Additionally, bodies associated with the United Nations, including the Human Rights Council, have increasingly recognized the need to address discrimination and violence against LGBTQ+

individuals. Special rapporteurs and independent experts have played a key role in documenting abuses and advocating for inclusive policies.

14.4.2 Judicial Developments and Legal Reforms

Judicial interpretation has been instrumental in advancing LGBTQ+ rights, particularly in countries where legislative action has been slow. Courts have often acted as catalysts for change by interpreting constitutional guarantees of equality, liberty, and dignity in an inclusive manner.

In India, landmark judgments have significantly transformed the legal landscape. In *Navtej Singh Johar v. Union of India*, the Supreme Court decriminalized consensual same-sex relations by reading down Section 377 of the Indian Penal Code. The Court recognized that discrimination based on sexual orientation violates fundamental rights under Articles 14, 15, and 21 of the Constitution.

Similarly, in *NALSA v. Union of India*, the Court acknowledged the rights of transgender persons, affirming their right to self-identification and directing the state to provide legal recognition and protection.

These judicial developments have been complemented by legislative reforms such as the Transgender Persons (Protection of Rights) Act, 2019, which aims to prohibit discrimination and ensure welfare measures for transgender individuals, although it has also faced criticism for certain limitations.

Globally, several countries have enacted anti-discrimination laws and policies protecting LGBTQ+ individuals in areas such as employment, education, and healthcare. However, in many parts of the world, same-sex relationships remain criminalized, and legal protections are either weak or non-existent.

14.4.3 Recognition of Same-Sex Relationships and Rights

The recognition of same-sex relationships is a key aspect of legal equality. It encompasses rights related to marriage, civil unions, adoption, inheritance, and social security benefits. Over the past two decades, there has been a growing trend toward recognizing such relationships, particularly in Europe, the Americas, and parts of Asia.

Legal recognition provides not only material benefits but also symbolic affirmation of equality and dignity. It acknowledges that LGBTQ+ relationships are entitled to the same respect and protection as heterosexual relationships.

In India, while consensual same-sex relations have been decriminalized, the legal recognition of same-sex marriage remains a subject of ongoing debate. In *Supriyo v. Union of India*, the Supreme Court declined to legalize same-sex marriage but emphasized the need to protect queer relationships from discrimination and called for legislative action.

The absence of formal recognition often results in denial of various rights, including inheritance, medical decision-making, and spousal benefits. This legal vacuum disproportionately affects LGBTQ+ women, who may already face gender-based disadvantages.

At the same time, several countries have taken progressive steps by legalizing same-sex marriage and granting equal rights to LGBTQ+ couples. These developments reflect a broader shift toward inclusivity and recognition of diverse family structures.

14.5 CHALLENGES AND FUTURE DIRECTIONS

Despite notable progress in the recognition of LGBTQ+ rights, particularly in legal and judicial domains, significant challenges continue to hinder the realization of full equality and dignity. These challenges are deeply rooted in social, cultural, and institutional structures that resist change. At the same time, the evolving nature of human rights demands forward-looking strategies that emphasize inclusivity, awareness, and effective legal protection. Addressing these challenges requires not only reforms in law but also transformation in societal attitudes and governance frameworks.

14.5.1 Cultural Resistance and Social Barriers

One of the most persistent obstacles to the advancement of LGBTQ+ rights is cultural resistance. In many societies, traditional beliefs, religious doctrines, and deeply ingrained social norms continue to uphold heteronormative and patriarchal values. These frameworks often view non-conforming gender identities and sexual orientations as deviant or unacceptable, leading to stigma, discrimination, and exclusion.

Such resistance is particularly evident in family and community structures, where conformity to established gender roles is strongly enforced. LGBTQ+ individuals, especially women, may face rejection, coercion, or pressure to conform to heterosexual norms, including forced marriages. This not only restricts their personal freedom but also undermines their mental and emotional well-being.

Social barriers also manifest in the form of limited awareness and widespread misconceptions about gender identity and sexual orientation. Lack of education and sensitization contributes to prejudice and intolerance, which in turn perpetuate discrimination in everyday life. Educational institutions, workplaces, and public spaces often fail to provide safe and inclusive environments for LGBTQ+ individuals.

Moreover, media representation and public discourse frequently reinforce stereotypes or exclude LGBTQ+ narratives altogether. This invisibility further marginalizes the community and prevents meaningful engagement with their issues. In many cases, fear of social backlash discourages individuals from openly expressing their identity, resulting in a cycle of silence and invisibility.

14.5.2 Need for Inclusive Policies and Legal Frameworks

To address these challenges, there is an urgent need for comprehensive and inclusive policies and legal frameworks that go beyond mere recognition to ensure substantive equality. While judicial pronouncements such as *Navtej Singh Johar v. Union of India* have decriminalized same-sex relationships, the absence of a robust legislative framework continues to leave many rights unprotected.

Inclusive policies must address key areas such as anti-discrimination protections, access to healthcare, education, employment, housing, and social security. Legal frameworks should explicitly prohibit discrimination based on sexual orientation and gender identity, and provide effective remedies for violations.

In addition, there is a need for recognition of diverse family structures, including same-sex partnerships, to ensure equal access to rights such as inheritance, adoption, and spousal benefits. Without such recognition, LGBTQ+ individuals remain excluded from essential legal and social protections.

Policy-making should also adopt an intersectional approach, recognizing that LGBTQ+ individuals may face multiple forms of discrimination based on gender, class, caste, or ethnicity. This is particularly important for LGBTQ+ women, who experience layered disadvantages that require targeted interventions.

Capacity-building and sensitization of institutions such as law enforcement agencies, healthcare providers, and educational bodies are equally crucial. Training programs can help eliminate bias, improve service delivery, and create supportive environments for LGBTQ+ individuals.

Furthermore, collaboration between government, civil society, and international organizations can play a vital role in promoting awareness and advocating for reforms. The United Nations and other global bodies have emphasized the importance of inclusive governance and human rights-based approaches in addressing these issues.

14.6 GENDER AND CLIMATE JUSTICE

The concept of gender and climate justice has gained increasing prominence in contemporary human rights discourse, as the impacts of climate change are neither neutral nor equally distributed. Climate change interacts with existing social inequalities, disproportionately affecting vulnerable groups particularly women. Gender justice in the climate context emphasizes fairness in both the distribution of environmental benefits and burdens, as well as equal participation in decision-making processes. It recognizes that addressing climate change effectively requires integrating gender perspectives into environmental policies and governance frameworks.

14.6.1 Climate Change as a Human Rights Issue

Climate change is no longer viewed solely as an environmental concern; it is increasingly recognized as a critical human rights issue. Its impacts directly threaten the enjoyment of fundamental rights such as the right to life, health, food, water, and adequate housing. Environmental degradation, extreme weather events, and resource scarcity undermine human dignity and survival, particularly for those already living in vulnerable conditions.

14.6.1.1 Environmental Degradation and Human Rights

Environmental degradation including deforestation, air and water pollution, and loss of biodiversity has severe implications for human rights. Communities that depend on natural

resources for their livelihoods are particularly affected. The degradation of ecosystems can lead to displacement, loss of income, and reduced access to essential resources such as clean water and fertile land.

Increasingly, there is global recognition of the right to a clean and healthy environment as an essential human right. This reflects an understanding that environmental protection is intrinsically linked to the protection of human dignity and well-being.

14.6.1.2 Gendered Dimensions of Climate Change

Climate change impacts men and women differently due to existing gender inequalities. Women, especially in developing countries, are more likely to depend on natural resources for their daily survival and livelihood. They are also more likely to face barriers in accessing resources, information, and decision-making power.

As a result, climate change tends to exacerbate pre-existing gender inequalities. Women often bear a disproportionate burden of environmental stress, including increased responsibilities for securing water, food, and fuel in the face of resource scarcity.

14.6.2 Impact of Climate Change on Women

The effects of climate change on women are multifaceted, affecting economic stability, social security, and overall well-being. These impacts are often intensified by structural inequalities and limited access to resources.

14.6.2.1 Economic and Livelihood Vulnerabilities

Women, particularly in rural and agrarian societies, are heavily dependent on climate-sensitive sectors such as agriculture, forestry, and fisheries. Changes in weather patterns, droughts, and floods can disrupt these livelihoods, leading to loss of income and economic insecurity.

Limited access to land ownership, credit, and financial resources further restricts women's ability to adapt to changing environmental conditions. As a result, they are more vulnerable to poverty and economic displacement.

14.6.2.2 Displacement and Migration Due to Climate Disasters

Climate-induced disasters such as floods, cyclones, and rising sea levels have led to large-scale displacement and migration. Women and girls often face heightened risks during such events, including loss of shelter, increased exposure to violence, and lack of access to essential services.

Displacement disrupts social networks and support systems, making it more difficult for women to recover and rebuild their lives. In many cases, women are left with increased caregiving responsibilities in already challenging circumstances.

14.6.2.3 Health and Food Security Challenges

Climate change significantly affects health and food security, with women bearing a disproportionate burden. Malnutrition, water scarcity, and the spread of climate-sensitive diseases pose serious risks to women's health.

In many societies, women are responsible for food preparation and household nutrition. Resource scarcity can force them to reduce their own food intake to prioritize other family members. Additionally, lack of access to healthcare services further exacerbates health challenges.

14.6.3 Women as Agents of Environmental Protection

Women are not only vulnerable to the impacts of climate change but also play a transformative role in protecting the environment. Across communities, especially in rural and indigenous settings, women possess deep traditional knowledge about natural resources, biodiversity, and sustainable practices. They actively participate in conservation activities such as water management, afforestation, waste reduction, and sustainable agriculture. Women often lead grassroots environmental movements, advocating for eco-friendly policies and responsible resource use. Their roles as caregivers and managers of household resources further strengthen their commitment to sustainability. Additionally, when women are included in decision-making processes, environmental policies tend to be more inclusive and effective. Empowering women through education, access to resources, and leadership opportunities enhances their capacity to contribute meaningfully to climate action. Therefore, recognizing women as agents of environmental protection is essential for achieving long-term ecological balance and sustainable development goals.

14.6.3.1 Role of Women in Sustainable Resource Management

Women have traditionally been involved in managing natural resources such as water, forests, and agricultural land. Their close relationship with the environment provides them with valuable knowledge about sustainable practices.

By incorporating women's perspectives and expertise into environmental policies, more effective and sustainable solutions can be developed. Empowering women through education, access to resources, and decision-making authority enhances their ability to contribute to climate resilience.

14.6.3.2 Community Leadership in Climate Adaptation

Women play a vital role in leading community-based climate adaptation efforts, especially at the grassroots level. Drawing on their close connection with natural resources and everyday survival strategies, women often organize local initiatives such as water conservation, sustainable farming, and disaster preparedness programs. They actively participate in spreading awareness about climate risks and encourage the adoption of eco-friendly practices within their communities. During natural disasters, women contribute significantly to relief, rehabilitation, and recovery efforts by mobilizing resources and supporting vulnerable groups.

Their leadership helps build stronger, more resilient communities that can better cope with environmental challenges. Moreover, when women are included in local governance and decision-making processes, climate adaptation strategies become more inclusive, practical, and effective. Therefore, promoting women's active participation and leadership in climate action is essential for achieving sustainable and community-driven solutions to climate change.

14.6.4 Global Climate Governance and Gender

Global climate governance has increasingly recognized the importance of integrating gender perspectives into climate policies and actions. International frameworks such as the United Nations Framework Convention on Climate Change and the Paris Agreement emphasize inclusive and equitable approaches that address the specific needs and contributions of women. These frameworks acknowledge that climate change affects men and women differently, often placing a heavier burden on women, especially in vulnerable and developing regions.

Incorporating gender perspectives ensures that policies are more responsive, fair, and effective. It promotes women's participation in decision-making, enhances access to resources, and supports gender-responsive climate finance and capacity-building initiatives. By recognizing women not only as vulnerable groups but also as key stakeholders and leaders, global climate governance aims to create more sustainable and just climate solutions.

14.6.4.1 Gender Provisions in International Climate Agreements

Global agreements under the United Nations framework, such as the Paris Agreement, acknowledge the importance of gender equality in addressing climate change. These agreements emphasize the need for gender-responsive policies and the inclusion of women in climate-related decision-making.

The incorporation of gender considerations into climate policies ensures that the specific needs and vulnerabilities of women are addressed. It also promotes more equitable and effective climate solutions.

14.6.4.2 Women's Participation in Environmental Decision-Making

Women's participation in environmental decision-making remains limited despite growing global recognition of gender equality in climate action. At both national and international levels, women are often underrepresented in leadership roles, policy formulation, and governance institutions. This gap restricts the inclusion of diverse perspectives that are crucial for addressing complex environmental challenges.

Ensuring meaningful participation of women is essential for achieving gender justice and more effective climate policies. When women are involved in decision-making, outcomes tend to be more inclusive, community-oriented, and sustainable, as women often bring practical knowledge and long-term perspectives on resource management.

To enhance women's participation, it is important to create enabling environments through education, skill development, and capacity-building initiatives. Institutional reforms, such as gender quotas and supportive policies, can further promote women's leadership in environmental governance. By empowering women to actively contribute to decision-making processes, societies can move towards more equitable and sustainable environmental solutions.

14.7 TECHNOLOGY, DIGITAL SPACES, AND WOMEN'S HUMAN RIGHTS

The rapid expansion of technology and digital spaces has fundamentally transformed the way society's function, communicate, and interact. While technological advancement has created

unprecedented opportunities for development and empowerment, it has also introduced new challenges, particularly in the context of women's human rights. Digital spaces have become arenas where both empowerment and discrimination coexist. For women, especially those from marginalized backgrounds, the digital world offers tools for education, participation, and economic independence, but also exposes them to new forms of inequality and violence.

Understanding the relationship between technology and women's human rights requires a balanced approach, one that acknowledges both the transformative potential of digital innovation and the risks associated with exclusion, misuse, and lack of regulation.

14.7.1 Technology and Social Transformation

Technology has become a powerful force driving social transformation across the world. The rapid growth of digital tools and platforms has reshaped economies by creating new industries, job opportunities, and modes of work such as remote employment and the gig economy. In governance, technology has improved transparency, accountability, and efficiency through e-governance initiatives, digital records, and online public services.

The digital revolution has also transformed social interactions by enabling instant communication through social media, messaging platforms, and virtual communities. People now have greater access to information, education, and awareness, which empowers them to participate more actively in public life and decision-making processes. Additionally, technology has amplified voices that were previously marginalized, allowing for broader civic engagement and social movements.

However, these advancements also bring challenges such as the digital divide, privacy concerns, and misinformation. Therefore, while technology accelerates social transformation, it must be used responsibly and inclusively to ensure equitable and sustainable development.

14.7.1.1 Digital Revolution and Human Rights

The digital revolution has significantly impacted the realization of human rights. Access to the internet is increasingly seen as essential for exercising rights such as freedom of expression, access to information, education, and participation in democratic processes. Digital platforms provide spaces for individuals to voice opinions, mobilize support, and engage in advocacy.

However, the same technologies can also threaten human rights. Issues such as mass surveillance, data breaches, and misuse of personal information raise concerns about privacy and security. Governments and corporations now possess vast amounts of data, leading to debates about the balance between technological innovation and protection of individual freedoms.

Digital inequality further complicates this landscape. Without equal access to digital tools and infrastructure, certain groups are excluded from the benefits of the digital age, reinforcing existing social and economic disparities.

14.7.1.2 Technology as a Tool for Women's Empowerment

Technology has the potential to significantly empower women by enhancing access to education, employment, healthcare, and financial services. Online learning platforms, digital

banking, and e-commerce have opened new avenues for women to participate in economic activities and achieve financial independence.

Social media and digital platforms have also enabled women to organize, advocate, and raise awareness about issues such as gender-based violence, discrimination, and inequality. Global movements for women's rights have gained momentum through digital activism, demonstrating the power of technology as a tool for collective action.

Moreover, digital tools can help bridge geographical and social barriers, allowing women in remote or conservative settings to access information and opportunities that were previously unavailable. However, this empowerment is contingent upon equitable access and safe digital environments.

14.7.2 Gender Digital Divide

Despite the potential benefits of technology, a significant gender digital divide persists, limiting women's ability to fully participate in the digital world. This divide is influenced by socio-economic, cultural, and educational factors.

14.7.2.1 Unequal Access to Internet and Digital Resources

Women, particularly in developing countries, often have less access to digital devices, internet connectivity, and technological infrastructure compared to men. Economic constraints, social norms, and restrictions on mobility contribute to this disparity.

In many households, men are prioritized when it comes to access to technology, leaving women with limited opportunities to engage with digital platforms. This unequal access not only restricts women's participation in the digital economy but also limits their ability to access essential services such as online education and healthcare.

The digital divide also reflects broader structural inequalities, including poverty, lack of infrastructure, and gender-based discrimination. Addressing this issue requires targeted interventions that ensure affordable and inclusive access to digital resources.

14.7.2.2 Digital Literacy and Educational Barriers

Even when access to technology is available, lack of digital literacy remains a significant barrier for women. Many women do not have the necessary skills to effectively use digital tools, limiting their ability to benefit from technological advancements.

Educational disparities play a key role in this context. Lower levels of education among women, particularly in rural areas, restrict their ability to acquire digital skills. Cultural norms that discourage female education further exacerbate this issue.

Digital literacy is essential not only for economic participation but also for navigating online spaces safely. Without adequate knowledge and awareness, women are more vulnerable to online fraud, misinformation, and cyber threats.

14.7.3 Online Violence Against Women

Online violence against women means harmful behavior that women face on the internet, such as social media, messaging apps, or online platforms. This includes actions like sending

abusive messages, spreading rumors, sharing private photos without permission, cyberstalking, and making threats. Studies show that such behavior is very common and can seriously affect women's mental health, confidence, and sense of safety.

In simple terms, the internet is supposed to be a safe place for communication and learning, but for many women, it becomes a place of fear and harassment. This problem is not new it is similar to how women face discrimination and violence in real life. The difference is that online abuse can spread faster, reach a larger audience, and continue for a long time because of anonymity.

Online violence can discourage women and girls from sharing their opinions, participating in discussions, or even using digital platforms. This creates inequality because it limits their opportunities compared to others. Therefore, it is important to create awareness, promote respectful online behavior, and strengthen laws and platform rules to protect women in digital spaces.

14.7.3.1 Cyber Harassment and Cyberbullying

Cyber harassment includes abusive messages, threats, trolling, and targeted attacks aimed at intimidating or silencing women. Women who express opinions on public platforms, particularly on political or social issues, are often subjected to disproportionate levels of online abuse.

Cyberbullying can have severe psychological effects, including anxiety, depression, and loss of self-confidence. In extreme cases, it may lead to withdrawal from digital spaces, effectively silencing women's voices and limiting their participation in public discourse.

14.7.3.2 Non-consensual Sharing of Images and Privacy Violations

The non-consensual sharing of intimate images often referred to as "revenge porn" is a serious violation of privacy and dignity. Such acts can have devastating consequences for victims, including social stigma, emotional trauma, and damage to personal and professional reputations.

Privacy violations also occur through unauthorized access to personal data, doxxing (public release of private information), and surveillance. These practices disproportionately affect women and can create a climate of fear and insecurity in digital spaces.

14.7.3.3 Legal Challenges in Regulating Online Abuse

Regulating online abuse presents significant legal challenges due to the borderless nature of the internet and the rapid evolution of technology. Existing legal frameworks often struggle to keep pace with new forms of digital harm.

Jurisdictional issues, anonymity of perpetrators, and lack of uniform laws across countries complicate enforcement. Additionally, victims may face difficulties in reporting abuse due to lack of awareness, fear of stigma, or inadequate support systems.

While many countries have introduced laws to address cybercrime and online harassment, implementation remains inconsistent. There is a need for comprehensive and gender-sensitive legal frameworks that effectively address online violence.

14.7.4 Promoting Safe Digital Environments

Promoting safe and inclusive digital environments is essential to ensure that women can freely and confidently use online platforms without fear of harassment or abuse. In today's digital world, the internet plays a major role in education, communication, employment, and social participation. However, many women face challenges such as cyberbullying, online harassment, and privacy violations, which limit their ability to fully benefit from digital opportunities.

Creating a safe digital environment requires joint efforts from multiple stakeholders. Governments must introduce and enforce strict laws and policies to prevent online violence and protect victims. Technology companies should design safer platforms by improving privacy settings, strengthening reporting mechanisms, and taking quick action against harmful content. Civil society organizations play an important role in raising awareness, providing support to victims, and promoting digital rights.

In addition, digital literacy and education are crucial. Teaching users about safe internet practices, respectful behavior, and responsible use of technology can help reduce online risks. Encouraging ethical online conduct and creating supportive online communities can further enhance safety.

14.7.4.1 Legal and Policy Measures

Governments play a crucial role in establishing legal and policy frameworks that protect women from online harm. This includes enacting laws that criminalize cyber harassment, privacy violations, and digital exploitation.

Policies should also focus on prevention, awareness, and capacity-building. Educational programs that promote digital literacy and online safety can empower women to navigate digital spaces confidently. Support mechanisms, such as helplines and reporting systems, are essential for assisting victims of online abuse.

International cooperation is also important; as digital crimes often transcend national boundaries. Harmonizing legal standards and sharing best practices can enhance the effectiveness of regulatory efforts.

14.7.4.2 Role of Technology Companies in Protecting Users

Technology companies have a significant responsibility in ensuring user safety on digital platforms. They must implement robust policies to prevent and address online abuse, including content moderation, reporting mechanisms, and user protection tools.

Platforms should adopt proactive measures such as detecting harmful content, removing abusive material, and suspending accounts that engage in harassment. Transparency in decision-making and accountability are essential for building trust among users.

Additionally, companies should prioritize user privacy and data protection by implementing strong security measures and minimizing the risk of data breaches. Designing platforms with a gender-sensitive approach can help create safer and more inclusive digital environments.

14.8 ARTIFICIAL INTELLIGENCE AND GENDER EQUALITY

Artificial Intelligence (AI) has emerged as one of the most transformative technologies of the 21st century, reshaping economies, governance systems, and everyday life. From automated decision-making to predictive analytics, AI systems are increasingly influencing how opportunities are distributed and how rights are exercised. While AI holds immense potential for innovation and efficiency, it also raises critical concerns regarding fairness, accountability, and equality particularly in relation to gender.

The intersection of AI and gender equality highlights both opportunities and risks. On one hand, AI can be a powerful tool for advancing women's empowerment and inclusion. On the other hand, if not carefully designed and regulated, it can reinforce existing gender biases and deepen inequalities. Therefore, understanding the implications of AI from a gender perspective is essential for ensuring that technological progress aligns with human rights principles.

14.8.1 Understanding Artificial Intelligence in Modern Society

Artificial Intelligence refers to the ability of machines and computer systems to perform tasks that typically require human intelligence, such as learning, reasoning, problem-solving, and decision-making. AI technologies are increasingly integrated into various sectors, including healthcare, education, finance, governance, and employment.

14.8.1.1 AI Technologies and Their Applications

AI encompasses a wide range of technologies, including machine learning, natural language processing, computer vision, and robotics. These technologies are used in applications such as facial recognition, virtual assistants, automated hiring systems, and predictive policing.

In everyday life, AI systems power recommendation algorithms on digital platforms, assist in medical diagnoses, and optimize business operations. Governments also use AI for public service delivery, surveillance, and policy implementation. While these applications enhance efficiency and convenience, they also raise concerns about privacy, transparency, and fairness.

14.8.1.2 Impact of AI on Governance and Employment

AI is transforming governance by enabling data-driven decision-making and improving public service delivery. However, it also introduces challenges related to accountability and oversight. Automated systems used in governance may lack transparency, making it difficult to understand how decisions are made and whether they are fair.

In the employment sector, AI is reshaping job markets through automation and digitalization. While AI creates new opportunities in technology-driven fields, it also threatens to displace workers in routine and repetitive jobs. Women, who are often overrepresented in such sectors, may be disproportionately affected by automation.

At the same time, AI-driven recruitment tools are increasingly used by organizations to screen candidates. If these systems are biased, they can perpetuate discrimination and limit opportunities for women.

14.8.2 Gender Bias in Artificial Intelligence

One of the most significant concerns in AI development is the presence of gender bias. AI systems are not inherently neutral; they reflect the data on which they are trained and the assumptions of their designers.

14.8.2.1 Algorithmic Bias and Data Discrimination

Algorithmic bias occurs when AI systems produce outcomes that are systematically unfair to certain groups. This often results from biased or incomplete training data. For example, if an AI system is trained on historical data that reflects gender discrimination, it may replicate and even amplify those biases.

In hiring algorithms, this can lead to the exclusion of women from job opportunities. Similarly, facial recognition systems have been found to perform less accurately for women, particularly those from minority backgrounds. Such biases raise serious concerns about equality and non-discrimination.

Data discrimination also occurs when certain groups are underrepresented in datasets. This lack of representation leads to systems that fail to recognize or adequately respond to the needs of women, reinforcing existing inequalities.

14.8.2.2 Gender Stereotypes in Automated Systems

AI systems can also perpetuate gender stereotypes. For instance, virtual assistants are often designed with female voices and personalities, reinforcing traditional notions of women as caregivers or service providers. Similarly, automated translation tools may associate certain professions with specific genders, reflecting societal biases.

These seemingly subtle representations can have broader implications, as they shape perceptions and reinforce stereotypes at a societal level. Addressing such biases requires conscious efforts to design AI systems that challenge, rather than reinforce, discriminatory norms.

14.8.3 AI and Women in the Workforce

The relationship between artificial intelligence (AI) and women in the workforce is complex, as it presents both opportunities and challenges. On the positive side, AI can empower women by creating new job roles, improving efficiency, and enabling flexible work arrangements. It can also reduce human bias in recruitment and decision-making if designed fairly. AI-driven tools can help women access education, develop digital skills, and participate in emerging sectors such as data science and technology.

However, AI also poses significant risks. Automation may replace jobs that are traditionally held by women, such as administrative and routine service roles, leading to job displacement. In addition, gender bias in AI systems caused by biased data or lack of diversity in development teams can result in unfair hiring practices and workplace discrimination. Women are also underrepresented in AI-related fields, which limits their influence in shaping these technologies.

Furthermore, AI can reinforce existing inequalities by widening the gender pay gap and reducing career advancement opportunities. Therefore, it is important to promote gender-

inclusive policies, invest in women's digital education, and ensure ethical AI development. Hence, AI has the potential to empower women, careful planning and inclusive strategies are necessary to prevent exclusion and ensure equal opportunities in the workforce.

14.8.3.1 Automation and Employment Opportunities

Automation has the potential to both create and eliminate jobs. While AI can generate new employment opportunities in fields such as data science, software development, and digital services, it can also displace workers in sectors where women are heavily represented, such as administrative support and manufacturing.

To ensure that women benefit from AI-driven economic transformation, it is essential to invest in education, skill development, and reskilling programs. Encouraging women's participation in science, technology, engineering, and mathematics (STEM) fields can help bridge the gap and promote inclusive growth.

14.8.3.2 Underrepresentation of Women in the AI Industry

A major challenge in achieving gender equality in AI is the underrepresentation of women in the technology sector. Women are significantly underrepresented in AI research, development, and leadership roles. This lack of diversity affects the design and outcomes of AI systems.

When women are not involved in the development process, their perspectives and experiences may be overlooked, leading to products that do not adequately address their needs. Increasing women's participation in the AI industry is therefore crucial for creating inclusive and equitable technologies.

14.8.4 Ethical and Inclusive AI Governance

Ensuring that AI promotes gender equality requires robust ethical frameworks and inclusive governance mechanisms. Policymakers, developers, and stakeholders must work together to address the risks associated with AI and ensure that its benefits are shared equitably.

14.8.4.1 Need for Gender-Sensitive AI Policies

Gender-sensitive AI policies are essential for preventing discrimination and promoting inclusivity. Such policies should require transparency, accountability, and fairness in AI systems. They should also mandate regular audits to identify and address biases.

Incorporating gender perspectives into AI development involves not only technical adjustments but also broader social considerations. This includes ensuring diverse representation in AI teams, consulting affected communities, and adopting inclusive design practices.

14.8.4.2 International Efforts for Responsible AI Development

International organizations, including the United Nations, have emphasized the importance of responsible AI development that respects human rights and promotes equality. Various global initiatives and guidelines advocate for ethical AI, highlighting principles such as fairness, accountability, transparency, and inclusivity.

Efforts are also being made to develop international standards and frameworks for AI governance. These initiatives aim to ensure that technological advancements align with human rights values and contribute to sustainable and inclusive development.

14.9. WOMEN'S RIGHTS IN A GLOBALIZED WORLD

Globalization has fundamentally reshaped economic, social, and political structures across the world. It has facilitated the movement of goods, services, capital, information, and people across borders, creating new opportunities for growth and development. However, globalization has also produced complex challenges, particularly in relation to human rights and gender equality. Women's experiences of globalization are often shaped by existing inequalities, making it essential to examine how global processes affect their rights, opportunities, and vulnerabilities.

While globalization has opened new avenues for women's empowerment such as increased access to employment, education, and information it has also exposed them to new forms of exploitation, marginalization, and insecurity. Understanding women's rights in a globalized world requires a nuanced approach that considers both the opportunities and risks associated with global integration.

14.9.1 Globalization and Human Rights

Globalization has had a profound impact on the development and enforcement of human rights. It has contributed to the spread of human rights norms and facilitated international cooperation. At the same time, it has created new challenges in regulating economic activities and ensuring accountability across borders.

14.9.1.1 Economic Globalization and Social Transformation

Economic globalization refers to the integration of national economies into a global market through trade liberalization, foreign investment, and technological advancement. This process has led to significant social transformation, including urbanization, changes in labor markets, and shifts in traditional social structures. For women, economic globalization has created both opportunities and challenges. On one hand, it has expanded employment opportunities, particularly in export-oriented industries such as textiles, manufacturing, and services. On the other hand, these jobs are often characterized by low wages, poor working conditions, and lack of job security.

Global economic policies and market-driven practices can sometimes undermine labor protections and social welfare systems. This disproportionately affects women, who are more likely to be employed in informal or precarious sectors.

14.9.1.2 Impact of Globalization on Gender Equality

Globalization has contributed to increased awareness of gender equality and women's rights through the exchange of ideas and the influence of international organizations such as the United Nations. Global platforms have enabled advocacy for gender justice and the adoption of international standards. However, the benefits of globalization are not evenly distributed.

Structural inequalities, cultural norms, and economic disparities continue to limit women's access to resources and opportunities. In many cases, globalization has reinforced gendered divisions of labor, with women concentrated in low-paid and undervalued work.

The intersection of globalization with local contexts determines its impact on gender equality. While some women have benefited from increased economic participation, others have faced heightened vulnerability and exploitation.

14.9.2 Women in Global Labor Markets

Globalization has significantly altered labor markets, increasing women's participation in the workforce. However, this participation often occurs under conditions that raise concerns about labor rights and social justice.

14.9.2.1 Participation in Global Supply Chains

Women play a crucial role in global supply chains, particularly in industries such as garment manufacturing, electronics, and agriculture. These sectors rely heavily on female labor due to perceptions of women as more compliant and cost-effective workers. Participation in global supply chains has provided employment opportunities for women, contributing to economic independence and social mobility. However, these jobs are often characterized by long working hours, low wages, and limited access to benefits such as healthcare and social security.

The lack of bargaining power and representation further exacerbates these challenges. Women workers often face difficulties in organizing and advocating for their rights, making them vulnerable to exploitation.

14.9.2.2 Exploitation and Labor Rights Violations

Labor rights violations remain a significant concern in globalized economies. Women workers are particularly vulnerable to exploitation, including unsafe working conditions, wage discrimination, and harassment. In many cases, multinational corporations outsource production to countries with weaker labor regulations, leading to a "race to the bottom" in labor standards. This results in the erosion of workers' rights and protections.

Women in informal sectors, such as domestic work and home-based industries, face even greater challenges, as they are often excluded from legal protections. Ensuring labor rights for women requires stronger regulatory frameworks, corporate accountability, and effective enforcement mechanisms.

14.9.3 Migration and Women's Rights

Globalization has increased the movement of people across borders, leading to a rise in migration for employment and better opportunities. Women constitute a significant proportion of migrants, and their experiences highlight both opportunities and risks.

14.9.3.1 Female Migration and Economic Opportunities

Migration can provide women with access to better employment opportunities, higher wages, and improved living conditions. It can also enhance their autonomy and decision-making power within families and communities. Women migrants contribute significantly to both their host

and home countries through labor and remittances. They are employed in sectors such as domestic work, healthcare, hospitality, and agriculture.

However, the benefits of migration are often accompanied by challenges, including legal restrictions, cultural barriers, and limited access to rights and services. Women migrants may face isolation, language barriers, and lack of support networks.

14.9.3.2 Vulnerability to Human Trafficking and Exploitation

One of the most serious risks associated with migration is vulnerability to human trafficking and exploitation. Women and girls are disproportionately affected by trafficking for purposes such as forced labor and sexual exploitation.

Factors such as poverty, lack of education, and limited employment opportunities increase susceptibility to trafficking. Migrant women may also face exploitation by employers, including non-payment of wages, confiscation of documents, and abusive working conditions. Legal and institutional barriers often prevent migrant women from seeking justice. Fear of deportation, lack of awareness of rights, and limited access to legal assistance contribute to their vulnerability.

14.9.4 Role of Global Feminist Movements

Global feminist movements have played a crucial role in advancing women's rights in a globalized world. These movements have mobilized resources, built networks, and advocated for policy changes at national and international levels.

14.9.4.1 Transnational Advocacy Networks

Transnational advocacy networks connect activists, organizations, and institutions across borders to promote shared goals. These networks facilitate the exchange of information, strategies, and resources, strengthening the global movement for gender equality.

Through campaigns, conferences, and digital platforms, these networks raise awareness about issues such as gender-based violence, labor rights, and reproductive rights. They also hold governments and corporations accountable for human rights violations. The global nature of these networks allows for coordinated action and solidarity, amplifying the voices of women from diverse backgrounds.

14.9.4.2 International Cooperation for Gender Equality

International cooperation is essential for addressing the challenges faced by women in a globalized world. Multilateral institutions and agreements play a key role in setting standards and promoting gender equality.

Organizations like the United Nations have developed frameworks and initiatives to advance women's rights, including conventions, declarations, and sustainable development goals. Collaboration between governments, civil society, and international organizations is necessary to ensure effective implementation of these frameworks. Sharing best practices, providing technical assistance, and supporting capacity-building initiatives can enhance the impact of global efforts.

Women's rights in a globalized world are shaped by a complex interplay of opportunities and challenges. While globalization has created new pathways for empowerment and participation, it has also exposed women to new forms of exploitation and inequality. Addressing these issues requires a comprehensive approach that integrates human rights principles into global economic and social policies. Strengthening labor protections, ensuring safe migration, and promoting inclusive governance are essential steps toward achieving gender equality.

Global feminist movements and international cooperation play a vital role in advancing these goals. By fostering solidarity, advocating for change, and holding stakeholders accountable, they contribute to the realization of women's rights in an increasingly interconnected world. Ultimately, achieving gender justice in the context of globalization requires a commitment to equity, inclusion, and respect for human dignity, ensuring that the benefits of global progress are shared by all.

14.10 EMERGING GLOBAL CHALLENGES TO WOMEN'S HUMAN RIGHTS

Women's human rights have witnessed significant advancements over the past decades through legal reforms, international commitments, and social movements. However, the contemporary global landscape presents new and complex challenges that continue to hinder the full realization of these rights. These emerging issues are shaped by rapid technological developments, shifting political dynamics, socio-economic inequalities, and cultural resistance. Addressing them requires a multidimensional and forward-looking approach grounded in equality, dignity, and justice.

14.10.1 Reproductive Rights and Bodily Autonomy

Reproductive rights and bodily autonomy are central to women's human rights. They encompass the right of women to make informed decisions about their own bodies, including matters related to reproduction, contraception, and healthcare, free from coercion, discrimination, or violence.

14.10.1.1 Access to Reproductive Healthcare

Access to reproductive healthcare remains uneven across the world. Many women face barriers such as lack of healthcare infrastructure, financial constraints, social stigma, and restrictive legal frameworks. These barriers limit access to essential services such as contraception, safe abortion, maternal healthcare, and reproductive education.

Inadequate access to reproductive healthcare has serious implications for women's health and well-being. It contributes to higher maternal mortality rates, unsafe medical practices, and reduced control over reproductive choices. Ensuring universal access to reproductive healthcare is therefore essential for safeguarding women's rights and promoting gender equality.

14.10.1.2 Global Debates on Reproductive Rights

Reproductive rights are often at the center of global debates, influenced by cultural, religious, and political factors. Issues such as abortion, contraception, and family planning generate significant controversy, leading to divergent legal approaches across countries.

While some nations have expanded reproductive rights, others have imposed restrictions, reflecting ongoing tensions between individual autonomy and societal norms. These debates highlight the need for a rights-based approach that prioritizes women's health, dignity, and freedom of choice.

14.10.2 Political Participation and Representation

Political participation is a fundamental aspect of democratic governance and an essential component of women's empowerment. However, women continue to be underrepresented in political and decision-making processes worldwide.

14.10.2.1 Women in Governance and Leadership

Increasing women's representation in governance and leadership positions is crucial for ensuring inclusive and equitable decision-making. Women leaders bring diverse perspectives and experiences that contribute to more comprehensive policy outcomes.

Global initiatives supported by organizations such as the United Nations emphasize the importance of gender parity in political institutions. While progress has been made in some regions through measures such as gender quotas and reservation policies, overall representation remains insufficient.

14.10.2.2 Barriers to Political Participation

Women face numerous barriers to political participation, including socio-cultural norms, economic constraints, and institutional biases. Gender stereotypes often discourage women from entering politics, while lack of access to resources and networks limits their opportunities.

Additionally, women in politics frequently encounter harassment, discrimination, and violence, both offline and online. These challenges create a hostile environment that discourages participation and undermines democratic inclusivity.

14.10.3 Digital Surveillance and Privacy

The expansion of digital technologies has introduced new concerns regarding surveillance and privacy. While these technologies can enhance security and governance, they also pose risks to individual freedoms and human rights.

14.10.3.1 Surveillance Technologies and Human Rights

Governments and private entities increasingly use surveillance technologies such as facial recognition, data tracking, and monitoring systems. While these tools can serve legitimate purposes, they raise concerns about privacy, accountability, and misuse of power.

Excessive surveillance can infringe upon fundamental rights, including the right to privacy and freedom of expression. Lack of transparency and oversight further exacerbates these concerns, making it difficult to ensure that surveillance practices are lawful and proportionate.

14.10.3.2 Risks to Women's Privacy and Security

Women are particularly vulnerable to privacy violations in digital spaces. Surveillance technologies can be misused for stalking, harassment, and monitoring of personal activities. For example, spyware and tracking applications may be used in abusive relationships to control and monitor women. Online platforms also expose women to risks such as data breaches, identity theft, and unauthorized sharing of personal information. These violations can have severe psychological, social, and economic consequences.

Ensuring digital privacy for women requires robust legal protections, technological safeguards, and awareness about safe online practices.

14.10.4 Intersectionality in Human Rights

The concept of intersectionality is essential for understanding the complexity of discrimination faced by women. It recognizes that women's experiences are shaped by multiple and overlapping identities, such as race, class, ethnicity, religion, and sexual orientation.

14.10.4.1 Multiple Forms of Discrimination

Women who belong to marginalized groups often face compounded forms of discrimination. For example, a woman from a minority community may experience both gender-based and racial discrimination. Similarly, LGBTQ+ women may face additional challenges related to their sexual orientation or gender identity.

This layered discrimination affects access to resources, opportunities, and justice, making it more difficult for marginalized women to assert their rights.

14.10.4.2 Inclusive Human Rights Frameworks for the Future

Addressing intersectional discrimination requires inclusive and responsive human rights frameworks. Policies and laws must be designed to recognize diversity and address the specific needs of different groups of women.

An inclusive approach involves participation of marginalized communities in decision-making processes, ensuring that their voices are heard and their concerns are addressed. It also requires collaboration between governments, civil society, and international organizations. Future human rights frameworks must adapt to emerging challenges while maintaining a strong commitment to equality, dignity, and justice.

Emerging global challenges to women's human rights highlight the dynamic and evolving nature of human rights discourse. Issues such as reproductive rights, political participation, digital surveillance, and intersectionality require continuous attention and action.

While significant progress has been made, persistent inequalities and new challenges demand renewed commitment from all stakeholders. Legal reforms, policy innovation, education, and advocacy are essential for addressing these issues effectively.

Ultimately, ensuring women's human rights in the contemporary world requires a holistic approach that integrates social, economic, technological, and cultural dimensions. By embracing inclusivity and promoting justice, societies can work toward a future where all women can live with dignity, freedom, and equality.

14.11 CONCLUSION

This unit has explored the evolving landscape of human rights with a particular focus on women's rights in contemporary global contexts. Beginning with the foundational principles of human rights as universal, inalienable, and essential for human dignity, the discussion expanded to examine how these rights have adapted to modern challenges. The intersection of gender with emerging issues such as climate change, digital technology, artificial intelligence, globalization, and socio-political transformations highlights the dynamic and complex nature of human rights today.

A key insight from this unit is that women's rights cannot be understood in isolation. They are deeply interconnected with broader human rights concerns and are influenced by structural inequalities, cultural norms, and institutional practices. Issues such as discrimination, violence, economic marginalization, and limited political participation continue to affect women across different regions and communities.

At the same time, the unit emphasizes that women are not merely passive recipients of rights but active agents of change. From grassroots leadership in climate action to participation in global advocacy movements, women play a crucial role in shaping a more just and equitable society. However, achieving substantive equality requires continuous efforts in legal reform, policy development, and societal transformation. Ultimately, the unit underscores the importance of adopting an inclusive, intersectional, and forward-looking approach to human rights. As new challenges emerge, it is essential to ensure that the principles of equality, dignity, and justice remain at the core of all efforts to protect and promote women's human rights.

14.12 SUMMARY

This unit examined contemporary issues and emerging debates in human rights with a specific focus on gender dimensions. It began by outlining the historical foundations of human rights and their evolution from traditional civil and political rights to broader socio-economic and cultural rights.

The unit then explored the intersection of women's rights and LGBTQ+ rights, highlighting the importance of understanding gender identity, sexual orientation, and intersectionality in addressing discrimination. It analyzed various forms of discrimination faced by LGBTQ+ women, including social stigma, violence, and barriers to healthcare.

Further, the unit discussed legal recognition and protection of LGBTQ+ rights through international standards, judicial developments, and debates on same-sex relationships. It also examined ongoing challenges such as cultural resistance and the need for inclusive legal frameworks.

The concept of gender and climate justice was explored, emphasizing the disproportionate impact of climate change on women and their role in environmental protection. The unit also addressed the impact of technology and digital spaces on women's rights, including issues such as the gender digital divide and online violence.

In addition, the role of artificial intelligence in shaping gender equality was analyzed, highlighting concerns related to algorithmic bias and underrepresentation of women in the technology sector. The discussion on globalization examined women's participation in global labor markets, migration, and the role of global feminist movements.

Finally, the unit addressed emerging global challenges such as reproductive rights, political participation, digital surveillance, and intersectionality. Overall, the unit emphasized the need for continuous adaptation of human rights frameworks to address evolving global realities.

14.13 GLOSSARY

1) Human Rights – Basic rights and freedoms inherent to all individuals, ensuring dignity, equality, and justice.

2) **Gender Equality –** The state in which individuals of all genders have equal rights, responsibilities, and opportunities.

3) Intersectionality – A framework for understanding how multiple forms of discrimination (e.g., gender, race, class) overlap and interact.

4) LGBTQ+ – A collective term referring to lesbian, gay, bisexual, transgender, queer, and other diverse sexual and gender identities.

5) Digital Divide – The gap between individuals who have access to digital technologies and those who do not.

6) Cyber Harassment – Abuse or intimidation carried out through digital platforms.

7) Artificial Intelligence (AI) – Technology that enables machines to perform tasks requiring human intelligence, such as learning and decision-making.

8) Algorithmic Bias – Systematic and unfair discrimination embedded in automated systems due to biased data or design.

9) Climate Justice – The concept that addresses climate change through the lens of social justice, emphasizing equity and human rights.

10) Globalization – The process of increased interconnectedness of economies, cultures, and societies across the world.

11) Reproductive Rights – Rights related to reproductive health, including access to healthcare and the freedom to make decisions about one's body.

12) Bodily Autonomy – The right of individuals to have control over their own bodies without external interference.

13) Human Trafficking – The illegal trade of people for exploitation, including forced labor and sexual exploitation.

14) Surveillance – Monitoring of individuals' activities, often through digital technologies.

15) Gender Digital Divide – The disparity between men and women in access to and use of digital technologies.

14.14 SUGGESTED READINGS

1) Universal Declaration of Human Rights
2) Convention on the Elimination of All Forms of Discrimination Against Women
3) United Nations Women – Reports on Gender Equality
4) Amartya Sen – *Development as Freedom*
5) Martha Nussbaum – *Women and Human Development*
6) Kimberlé Crenshaw – Writings on Intersectionality
7) UNDP Human Development Reports (latest editions)
8) World Bank Reports on Gender and Development
9) Reports on AI Ethics and Gender by UNESCO
10) IPCC Reports on Climate Change and Gender

14.15 REFERENCES / BIBLIOGRAPHY

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2) United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979.
3) United Nations Development Programme (UNDP), *Human Development Reports*.
4) United Nations Women, *Gender Equality and Women's Empowerment Reports*.
5) UNESCO, *Reports on Artificial Intelligence and Gender Bias*.
6) Intergovernmental Panel on Climate Change (IPCC), *Climate Change and Gender Reports*.
7) United Nations, *Charter of the United Nations,* 1945.
8) United Nations, *Universal Declaration of Human Rights (UDHR),* 1948.
9) United Nations, *International Covenant on Civil and Political Rights (ICCPR),* 1966.
10) United Nations, *International Covenant on Economic, Social and Cultural Rights (ICESCR),* 1966.
11) United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),* 1979.
12) Amartya Sen, *Development as Freedom*, Oxford University Press.
13) Martha C. Nussbaum, *Women and Human Development*, Cambridge University Press.
14) Kimberlé Crenshaw, *Intersectionality and Human Rights Writings*.
15) Andrew Clapham, *Human Rights: A Very Short Introduction*, Oxford University Press.
16) Jack Donnelly, *Universal Human Rights in Theory and Practice*, Cornell University Press.
17) *Navtej Singh Johar v. Union of India* (2018).
18) *NALSA v. Union of India* (2014).
19) *Supriyo v. Union of India* (2023).
20) Transgender Persons (Protection of Rights) Act, 2019 (India).

14.14 SELF-ASSESSMENT QUESTIONS (SAQs)

A. Short Answer Questions

1. Define human rights and explain their key characteristics.
2. What is meant by intersectionality in human rights discourse?
3. Explain the concept of gender digital divide.
4. What are reproductive rights?
5. Briefly discuss algorithmic bias in AI systems.

B. Long Answer Questions

1. Discuss the evolution of human rights from traditional to contemporary perspectives.
2. Analyse the intersection of women's rights and LGBTQ+ rights with suitable examples.
3. Examine the impact of climate change on women and explain the concept of climate justice.
4. Discuss the challenges faced by women in digital spaces and suggest measures to ensure safety.
5. Evaluate the role of globalization in shaping women's rights in the modern world.
6. Critically analyse the impact of artificial intelligence on gender equality.

C. True / False

1) Human rights are universal and apply to all individuals regardless of nationality, gender, or religion.
   Answer: True
2) Intersectionality refers to a single form of discrimination experienced by individuals.
   Answer: False
3) Climate change affects men and women equally without any gender-specific impact.
   Answer: False
4) Artificial Intelligence systems are always neutral and free from bias.
   Answer: False
5) Globalization has created both opportunities and challenges for women's rights.
   Answer: True