GENDER ISSUES AND LEGAL FRAME WORK

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• Gender is an integral component of every aspect of the economic, social, daily and private lives of individuals and societies, and of the different roles ascribed by society to men and women.
World without Women

- Sex ratio decline in India
- Correction between development and sex ration
- More than 75% labor force in agriculture in women folk
- Almost 100% kitchen work, child care and household work is taken care of exclusively by women.
Causes of gender discrimination, exploitation of women both at home and work place, all kinds of injustice women etc.
Discrimination through the life cycle of girls and women

**Adult women**
- Domestic violence, rape, trafficking, commercial sex work, abortion, HIV/AIDS, desertion, anemia, unpaid care work, unpaid farm work, lack of asset base
- Malnutrition, anemia, child marriage, child labour, school dropout HIV/AIDS, Trafficking, commercial rework

**Adolescent (11-18 years)**
- Infanticide, Infant mortality, Discrimination in Breast feeding, health care

**Infant (0-1 year)**
- Infanticide, Infant mortality, Discrimination in Breast feeding, health care

**Child (1-10 years)**
- Child Mortality, Malnutrition, Polio, Anemia, iodine Deficiency disorder, school drop out, child labour, discrimination in food, health care, Child Abuse

**Conception**

**Foeticide**

**Worker**
- Sexual abuse at work place, wage discrimination, discrimination in employment, safety & security, lack of support facilities, absence of women friendly tools & equipments

**Wife**
- Domestic violence, dowry harassment, sati, polygamy, desertion, divorce unpaid care work

**Pregnancy**
- Maternal mortality, anemia, unsafe delivery, early and frequent deliveries, under nutrition

**Older women**
- Ill health, widowhood, insecurity, destitution begging
- Female Foeticide
- Domestic Violence
- Dowry Harassment and Bride Burning
- Abetment to suicide
- Women Murder
- Rape
- Kidnapping
- Outraging modesty
- Bigamy
- Honour Killings
- Trafficking in women and children
Sex Selective Abortions

- According to Census 2011, India’s sex ratio of 940 is the second lowest (after China 926) amongst the top ten most populous countries in the world.

Every year 2 out of every 100 women aged 15-44 have an abortion; nearly 50% of them have had at least previous abortion and 55% have had a previous birth.
Female Infanticide

• In China and India, some women chose to terminate their pregnancies when they expecting daughter but carries their pregnancies to term when expecting sons.

Everyday 250 girls die in Punjab before they born
Child labour

- Under the hot sunny day 10 years old children working morning to till night whole week, trafficked by the family.
- Child labourers, aged 5–14, to be at 4.35 million
The Immoral traffic act was passed in 1956, however many cases of trafficking of young girls and women have seen reported. These women are forced by either Prostitution or child labor.

- Section 366B. Importation of girl from foreign country
- Section 372. Selling minor for purposes of prostitution, etc
Child Marriage

Earlier a child marriages were highly prevalent in India. The young girls would live with their parents till they reached puberty. They were married to the person much elder to them
DOWRY SYSTEM

✓ Dowry Is The Money Given In The Form Of Shelter To Bride At The Time Of Marriage So That She Is Well Maintained By The Bride Groom............

✓ And Those Who Fail To Pay Dowry Either Daughters Are ill Treated And They Finally Commit Suicide
According to a National Family and Health Survey in 2005, total lifetime prevalence of domestic violence was 33.5% and 8.5% for sexual violence among women aged 15–49. Domestic abuse includes physical, emotional and sexual violence of any form.
DOMESTIC VIOLENCE

He says he loves me
He says he is sorry
He says it won’t happen again
WIDOW EXPLOITATION

Widows Are Still ill Treated. They Are Condemned To A Life Of Great Agony Shaving Their Heads, Living In Isolation, Shunned From The Society.
Sexual Harassment

- Sexual Harassment - unwelcome sexually determined behaviour, as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands whether by words, gestures or actions.

- Such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory when the complainant has reasonable grounds to believe that his or her objection would disadvantage them in connection with employment, including recruiting or promotion or when it creates a hostile working environment.
Legal framework

• United Nations and other international agencies have adopted several conventions, toward.
• The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it came into force on 3 September 1981.
• The Declaration on the Elimination of Violence Against Women was adopted by the United Nations General Assembly in 1993.
• In 1994, the twenty-year Cairo Programme of Action was adopted at the International Conference on Population and Development (ICPD) in Cairo. It called for family planning, reproductive rights services, and strategies to promote gender equality and stop violence against women.

• At the end of the Fourth World Conference on Women, the UN adopted the Beijing Declaration on 15 September 1995 - a resolution adopted to promulgate a set of principles concerning gender equality.
• The Maputo Protocol guarantees comprehensive rights to women, including the right to take part in the political process, to social and political equality with men, to control of their reproductive health, and an end to female genital mutilation came into force in 2005.

• The Council of Europe's Convention on preventing and combating violence against women and domestic violence, the first legally binding instrument
The government of India enacted the several Acts to preventing violence against women, protection of women and their rights. The following the enacted Acts are categorized

- **Constitutional Rights of Women**
- **Features and Provisions related to women in Criminal Laws**
- **Laws related to Women’s Working conditions**
- **Land and property rights**
Constitutional Rights of Women

• Article 14 – Equality before law
• Article 15 - Prohibition and protection from discrimination on the ground of religion, race, caste, sex, and place of birth
• Article 15(3) – Nothing in this article shall prevent the state from making any special provision for women and children
• Article 16 – Equality of opportunity in matter of public employment
• Art 51-A(e) relates to women It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women
• **Directive Principles of State Policy** cater to social needs – part IV of Constitution Not enforceable in any court of law Provide for the welfare of the people, including women

• Art 39 (a) – right to an adequate means of livelihood

• 39(d) – equal pay for equal work for both men and women – Equal Remuneration Act, 1976

• Art 39(e) – state not to abuse the health and strength of workers, men and women

• Art 42 – State to make provisions for securing just and humane conditions of work and for maternity relief – state has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.,

• Art 44 – state to secure for citizens a Uniform Civil Code applicable throughout the territory of India – Uniformity in application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc – as it is only a directive it cannot be enforced in a court of law
A case study on Employment (service) rules and Gender Discrimination

PETITIONER: AIR INDIA ETC. ETC. Vs. RESPONDENT: NERGESH MEERZA & ORS. ETC. ETC. DATE OF JUDGMENT 28/08/1981

Conditions of service - Discrimination - Determination of question

A.H. under A.I. was retired from service in the following contingencies:

• (a) On attaining the age of 35 years;
• (b) On marriage if it took place within four years of the service; and
• (c) On first pregnancy
• Managing Director- excessive delegation of power
• The Supreme Court observed that Articles 14 (equality before law), 15(1) (non-discrimination on grounds of sex), and 16(2) (non-discrimination on grounds of sex in public employment) are violated.

• An AH shall retire from the service of the Corporation on her attaining the age of 30 years or when she gets married, whichever is earlier. The General Manager, may however, retain in the service an unmarried Air Hostess upto the age of 35 years."

• This amendment continued the bar of marriage but gave discretion to the General Manager to retain an unmarried AH upto 35 years. In order, however, to bring the provision in line with the A.I. Regulation, the I.A.C. Regulation was further amended by a Notification dated 12.4.80
Features and Provisions related to women in Criminal Laws

- Protection of Children from sexual Harassment Act- 2012.
- Nirbhaya Act (Criminal Law Amendment) 3-02-2013.
- Protection against women sexual harassment Act 2013.
The Dowry Prohibition Act, 1961
• Dowry: Deaths and Suicides – 304-B (not less than 7 years – extend for life imprisonment)

The Immoral Traffic (Prevention) Act, 1956
• Inhibit or abolish the commercial vice of traffic in women, men and children for the purpose of prostitution as an organised means of living
• Art 23 of the constitution – prohibition of trafficking and all forms of exploitation

The Indecent Representation of Women (Prohibition) Act, 1986
• Prohibition of advertisement containing indecent representation of woman
• Prohibition of publication or sending by post of books, pamphlets, etc containing indecent representation of woman
The Medical Termination of Pregnancy Act, 1971

• Object is to save life of pregnant woman – it is in consonance with Art 21 of the Constitution
• 8 sections – various aspects like time, place and circumstances in which a pregnancy can be terminated legally
• Grave injury to Mental Health
• Age and consent of pregnant woman
• Place

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

• for the purpose of detecting genetic or metabolic disorders
• For the prevention of misuse of such technique
• Purpose of pre-natal sex-determination leading to female foeticide
Domestic Violence Act, 2005

• Any act/conduct/omission/ commission that harms or injures or has the potential to harm or injure will be considered 'domestic violence.'

• The law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same.

• Wife & woman who is the sexual partner of the male irrespective of whether she is his legal wife or not.

• Recognises live-in relationships

• Daughter, mother, sister, child (male or female), widowed relative,

• Offences are Cognisable and non-bailable

• Punishment upto one year imprisonment

• Maximum fine of Rs.20,000/

• Applicants under this Act will only be women
Protection against women sexual harassment Act 2013

1997 - first time Supreme court recognised sexual harassment at the workplace as a human rights violation

- Sexually offensive physical contact or advances
- A demand or request for sexual favours
- Sexually covered remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature
- Loaded comments having sexually offensive connotations
- Remarks or jokes having sexually offensive connotations
- Obscene e-mails or phone calls having sexually offensive connotations
- Sexual physical gestures, lewed stares
- Physical contact having sexually offensive connotations and stalking
Constitution of Internal Complaints Committee

• Women presiding Officer
• Not less than 2 members from amongst employees – experience in social work or have legal knowledge
• One representative of NGO – committed to the cause of women or familiar with the issue of sexual harassment
• At least one half shall be woman
• 50 or more employees are employed
• 50 of more students in the preceding twelve months in a calendar year
• Shall institute an Internal Complaints Committee
Nirbhaya Act, 2013

• Punishment for rape also changed under section 376 life imprisonment for rape as the maximum sentence, yet sets down the death penalty for repeat offenders

• 326A Acid attack
ten years but which may extend to imprisonment for life

• 326B Attempt to Acid attack-less than five years

• 354A Sexual harassment-Rigorous imprisonment

• 354B Act with intent to disrobe a woman (3-7)

• 354C Voyeurism(1-3)

• 354D Stalking(1-3)
Laws related to Women’s Working and Economic conditions

- Factories Act, 1948
- Minimum Wages Act, 1948
- Maternity Benefit Act, 1961
- Equal Remuneration Act, 1976
Factories Act, 1948

- Sections 19, dealing with health of women workers in every factory.
- Section 22 (b) deals the women are exempted from carrying any such examination on any part of machinery in motion.
- Section 27 prohibition of employment of women and children's wear cotton openers.
- Section 34 (1) (2) deals the adult women to carrying or lifting the weight controlled.
- Section 42 washing facilities dealing with women workers. Section 48 dealing with room accommodation.
- Section 66 (b) no women shall be required or allowed to work in any factory except between the hours of 6 A.M and 7 P.M.
- Section 79 (b) in case of female worker, maternity leave for any number of days not exceeding twelve weeks shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more.
Minimum Wages Act 1948

- The concept of 'need based minimum wage' means nothing but fixing of wage should be based on the needs of workman. The following norms are accepted by Tripati Committee of the Indian labor conference held at New Delhi in 1957.
- In including minimum wage, the standard of working class family should be taken to consist of three consumption units for one earner, the earnings women, children and adolescent should be disregarded.
- Minimum food requirements should calculated on the basis of net intake of 2,700 calories, for an average Indian adult of moderate activity.
- In respect of hosing, clothing requirements, fuel, lightening and other miscellaneous items of expenditure should constitute 20 percent of total minimum wage.
- Children's education, medical requirement, minimum recreation including festival/ceremonies and provision for old age, marriages, etc, should further constitute 25 percent of the total minimum wage.
Maternity Benefit Act, 1961

• Article 42 of the Indian constitution declares that maternity relief and just and Human conditions of work for women. The maternity Benefit act is an act to regulate the employment of women in certain establishments for certain period before and after child birth and to provide for maternity and certain other benefits.

• Maternity Leave and benefit To protect the dignity of Motherhood by providing complete & healthy care to women and her child when she is unable to perform her duty due to health condition. Maternity Act 1961 : Gives her the assurance that her rights will be looked after while she is at home to care for her child.

• Applicability: The Act extends to whole to India. Every factory, mine or plantation (including those belonging to Government) and to every shop or establishment wherein 10 or more persons are employed on any day preceding 12 months.
To bring uniformity Maternity Benefit Act, 1961 was passed

- Payment of medical bonus
- Leave for miscarriage
- Leave with wages for tubectomy
- Leave for illness arising out of pregnancy, etc
- Nursing breaks
- Prohibition of dismissal during absence or pregnancy
- No deduction of wages
- Forfeiture of maternity benefit
- In 2008 GOI enhanced existing ceiling 135 in 180 days provide for maternity leave (Rule 43(1) Central civil Services)
Eligible for Maternity Benefit:

• Must work in the establishment for 80 days in 12 months before her date of Delivery.

Duties of Employee for Maternity Benefit:

• Ten weeks before the expected delivery date she may ask employer to give her light work.[Produce certificate of pregnancy]

• Should intimate the employer Seven Weeks before her delivery date about the leave period.

• Name the person to whom the payment will be made in case she cannot take herself.
Equal Remuneration Act 1976

- To provide for Equal Remuneration to men and women workers
- Prevention of discrimination on the grounds of sex, against women in the matter of employment
- Matters connected therewith or incidental thereto
- Art 39 Constitution – equal pay for equal work for both men and women
- No discrimination against recruitment of women
- India ratified the equal remuneration convention of International Labour Organisation in 1958
- Honoured the promise of equal pay in 1975
- Equal Remuneration Ordinance was promulgated to commemorate the International Women’s Year.
• **Remuneration** - Basic wage or salary and any additional emoluments, either in cash or kind, payable to a person in respect of employment or work done in such employment

• **Equal Work** – work in respect of which 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

• **Employer’s duty** – sec. 4
  - to pay equal remuneration
  - Cannot reduce the rate of remuneration
Land and property rights

• In most Indian families, women do not own any property in their own names
• Do not get a share of parental property
• Women continue to have little access to land and property
• Some of the laws discriminate against women, when it comes to land and property rights.
• The Hindu personal laws of mid-1956s (applied to Hindus, Buddhists, Sikhs and Jains) gave women rights to inheritance

• Sons had an independent share in the ancestral property, while the daughters' shares were based on the share received by their father

• Father could effectively disinherit a daughter by renouncing his share of the ancestral property

• Son will continue to have a share in his own right

• Married daughters, even those facing marital harassment, had no residential rights in the ancestral home

• After amendment of Hindu laws in 2005, now women in have been provided the same status as that of men.
• 1986 - Supreme Court of India ruled that Shah Bano, an old divorced Muslim woman was eligible for maintenance money

• The decision was vociferously opposed by fundamentalist Muslim leaders, who alleged that the court was interfering in their personal law

• Union Government subsequently passed the Muslim Women's (Protection of Rights Upon Divorce) Act.
• Similarly, Christian women have struggled over years for equal rights of divorce and succession

• 1994, all the churches, jointly with women's organisations, drew up a draft law called the Christian Marriage and Matrimonial Causes Bill

• Government has still not amended the relevant laws
• Such legislation and affirmative action policies have been critical to bringing about changes in societal attitudes.

• Though there has been progress for women in India in the form of pro-gender laws, the effective implementation of such laws continues to be a challenge.

• Generalized acceptance of violence against women, lack of political will, inadequate legal protections and enforcement, insufficient resource allocation and/or poor implementation of national commitments contribute to pervasive impunity.