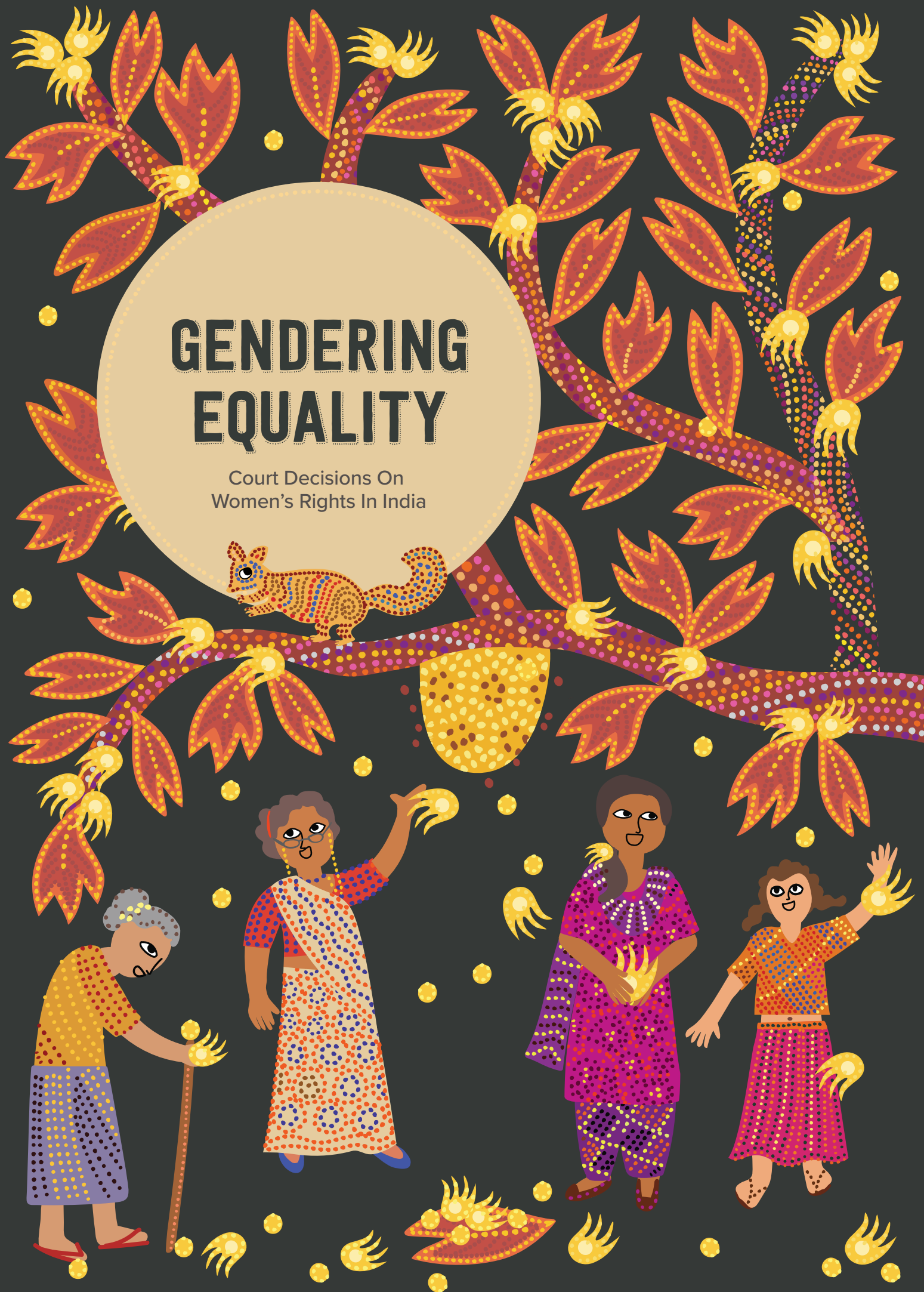


GENDERING EQUALITY

Court Decisions On
Women's Rights In India





The Centre for Law & Policy Research is a not-for-profit organisation that is dedicated to making the Constitution work for everyone, through law and policy research, social and governance interventions and strategic impact litigation.

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INTRODUCTION

Women's rights in India have evolved over the last several decades in complex and interesting ways. This has been both due to a vibrant women's movement and a robust Constitution. In the initial decades post-independence, the fight for women's rights focused on formal equality claims in the work place. This led to the enactment of equal pay legislation, the maternity benefits legislation and labour laws that provided for welfare measures.

In the seventies and eighties, the women's movement concentrated on law reform to address violence against women. The tragic Mathura rape case, where the Supreme Court acquitted two police men accused of raping a minor tribal girl in a police station sparked outrage all over the country and was a lightning rod for change. It led to reform in rape laws, the introduction of domestic violence as a criminal offence under Section 498A of the Indian Penal Code, 1860 and dowry-related abuse.

The women's movement championed women's empowerment, challenged patriarchal power structures, and questioned the conservative role of women as subordinate in the home and in society.

While these reforms conveyed a positive picture of achievement, the statistics revealed a dismal story as the number of reported cases of rapes and unnatural deaths of married women increased. During this time, there were also legal challenges to personal laws which discriminated against women in the area of inheritance and property.

The nineties saw the evolution of new rights to recognise the different forms of discrimination faced by women, such as sexual harassment at the workplace. The development of the law on sexual harassment was a direct consequence of the Supreme Court's directions in *Vishaka v. State of Rajasthan* in 1997.

As more challenges were taken to the courts for blatant exclusions of women from the workplace, discriminatory personal laws and other forms of direct discrimination, the Supreme Court in 2007 laid the foundation for securing substantive equality for women in *Anuj Garg v. Hotels Association of India*. Since then, the courts have increasingly addressed instances of indirect gender discrimination, where women are disproportionately affected by gender neutral rules. During this time, the Protection of Women from Domestic Violence Act, 2005 ("PWDVA") was also enacted. The PWDVA was universally applicable to women of all faiths to secure protection from domestic violence. It was the result of a two-decade-long campaign against domestic violence and was enacted as a civil law that gave women rights within their shared household, to residence orders, maintenance, child custody, and protection from future violence.

There were also reforms in Christian personal law, including the amendment to the Indian Divorce Act, 1869 that made it possible for Christian women to seek divorce only on grounds of cruelty which they did not have earlier.

Presently, the campaign for equal rights for women and girls is an integral part of other social movements, including the broader human rights movements, LGBTQI rights, and campaigns against caste-based violence. Over the years, the courts have been instrumental in holding the State and other actors accountable to their constitutional and statutory duties to protect, promote and secure the rights of women. These judgments serve an important function by enabling persons to articulate, advocate for, and ultimately realise the rights of women and girls in India.

WHAT ARE THE AIMS OF THIS RESOURCE BOOK?

This Resource Book aims to enable wider access to the seminal Supreme Court and High Court decisions on women's rights by presenting them in simple and clear language, along with the explaining the relevance and significance of each case. The book looks at the various intersections of women and the law which unduly affect their fundamental and statutory rights. It covers judgments that include both the denials and realisations of rights of women and girls to provide a holistic understanding of how courts have interpreted and implemented women's rights.



WHO IS THIS BOOK FOR?

There are a wide range of stakeholders responsible for promoting and protecting the rights of women and girls in India, including lawyers, activists, lawmakers, judges and women themselves. This Resource Book has therefore been developed for use by:

- 1 **Women & Girls**
Women and girls seeking to understand the scope of their rights and entitlements;
- 2 **Women's Rights Groups & NGOs**
Women's rights groups and non-governmental organisations seeking to raise awareness amongst the community and advocate for the rights of women and girls;
- 3 **Civil society activists**
Civil society activists seeking to implement the rights and entitlements of women and girls;
- 4 **Government Functionaries & Law Enforcement Agencies**
Government functionaries and police responsible for enabling, ensuring and enforcing rights and entitlements to women;
- 5 **Academics & Lawyers**
Academics and lawyers who can use this as a ready-reckoner on important women's rights judgments;
- 6 **Grievance Redressal Bodies**
The National and State-level Commissions for Women, Internal Complaints Committees and judges interpreting and applying the law related to women.

HOW IS THIS BOOK STRUCTURED?

This Resource Book is structured to enable readers to immediately identify the themes and topics they wish to find information on and engage with. It does not need to be read in any specific order.

1

INTRODUCTION TO TO WOMEN'S RIGHTS LAW

An overview of the current legal framework on women's rights law for persons who are being introduced to topic for the first time.

2

CASE BRIEFS ON WOMEN'S RIGHTS

This section covers summaries of judgments on the substantive rights and entitlements guaranteed to women and girls. The summaries are organised thematically and by order of date. They comprise:

Case details – Title, Court, Judges and Citations. The Resource Book has Manupatra citations for all cases and neutral citations such as INSC citations from the official Supreme Court reports, where available.

Case summary – This comprises the applicable right, facts, court's decision and the significance of the case in the panoply of women's rights judgments.

QR codes – Each case summary contains a QR code which gives the link to free versions of the judgment for those who wish to read them.

INTRODUCTION

LEGAL FRAMEWORK ON WOMEN'S RIGHTS IN INDIA

There is a wide range of constitutional and statutory provisions focused on women. These include provisions upholding their rights and those impacting the enjoyment of their rights in various spheres of life, including the workplace, in their families, sexual and reproductive choice and under criminal law. The provisions covered in this chapter cover the most significant legislative developments in the realm of women's rights, and is by no means an exhaustive list. This section further does not include the gamut of personal laws affecting marriage, custody and guardianship and property and land rights which are specific to different religious communities in India.

01

CONSTITUTION OF INDIA, 1950

The Constitution of India sets out the founding principles of the nation and lays down the structures for political, economic, and social justice.

The Fundamental Rights of all citizens are set out in Chapter III. **Article 14** guarantees the right to equality under the law and equal protection of the law. **Article 15(1)** is an equal partner to **Article 14** in its guarantee of non-discrimination on certain protected grounds, including "religion, race, caste, sex, place of birth or any of them". Judicial developments over the last few decades have led to the expansion of the scope of discrimination "on the basis of sex" to include discrimination on the basis of gender, gender identity and sexual orientation. **Article 15 (3)** expressly permits the State to make special provisions for women and children in the form of reservations or other means. **Article 15 (4)** states that the State can make special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. **Article 16(1)** guarantees equal opportunity in matters of public employment and **Article 17** proscribes the social evil of untouchability. Together these articles underpin the rights to equality and equitable opportunities for all persons, and are known as the "Equality Code." **Article 19** protects the rights of citizens to freedom of speech and expression, to move freely throughout the country and to practice a profession, trade, or occupation of their choice. This Article is relevant to the rights of women to not have their movements restricted, and to pursue the employment of their choice. **Article 21** guarantees the right to life and personal liberty of all persons, and the Supreme Court of India has interpreted it to include the rights to live with dignity and autonomy, the right to privacy, the right to livelihood and the right to health. The Fundamental Rights together enshrine the doctrines of equality, life, and liberty, forming the philosophical foundation of the human rights of all persons, particularly women. They not only ensure that the State not interfere with the enjoyment of rights, but further place a positive obligation on the State to ensure the rights of its citizens.

The Directive Principles of State Policy (DPSPs) in Chapter IV of the Constitution also include provisions intended to guide the State's actions on the upliftment of women. **Article 39(a)** states that the State shall direct its policy towards securing that men and women equally have the right to an adequate means of livelihood. **Article 39(d)** provides that there should be equal pay for equal work for both men and women. **Article 42** states that the State shall make provision for securing just and humane conditions of work and for maternity relief. **Article 44** provides that the State shall endeavour to secure for its citizens a uniform civil code. The DPSPs are intended to be guidelines to the State and cannot be judicially enforced. However, courts have often read DPSPs along with Fundamental Rights to secure the socio-economic rights of people.

The Fundamental Duties are prescribed in **Article 51A**, which states in **51(A)(e)** that it shall be the duty of every citizen to renounce practices derogatory to the dignity of women.

02

THE EQUAL REMUNERATION ACT, 1976 (“ERA”)

Under this law, all employers are prohibited from paying any worker rates less favourable than that paid to workers of the opposite sex, when both are performing the same work or work of a similar nature (Section 4). Moreover, employers cannot discriminate against women in recruitment, promotions, training, or transfer in comparison to men for the same position (Section 5). The ERA applies to every shop or establishment in which ten or more persons are employed, as well as all factories, mines, oilfields, plantations, ports and railway companies. It stipulates that when an offence is committed by a company, every person who was in charge of and responsible to the company at the time of the offence shall be liable (Section 10).

03

THE MATERNITY BENEFITS ACT, 1961

The Maternity Benefits Act is a legislation designed to protect the rights and interests of women during pregnancy and after childbirth. The law also provides for paid leave for six weeks in cases of miscarriage or medical termination of pregnancy (Section 4(2)). The Act was amended in 2017, following which, it entitles every employed, whether directly or through any agency, for maternity leave of up to twenty-six weeks (six months), of which not more than eight weeks leave can be taken before the date of her expected delivery (Section 5(3)). It further requires any establishment having fifty or more employees to provide a creche facility to its employees and make provision for nursing breaks (Section 11A). The Act also covers adoptive mothers and mothers commissioning surrogacy, enabling them to avail of maternity leave for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother (Section 5(4)).

04

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (“POSH ACT”)

The POSH Act was enacted to provide a formal redressal system for any woman, whether employed or not, who has been subject to sexual harassment at a workplace.

Sexual Harassment

Sexual harassment is defined in Section 2(n) under the Act to include:

- Physical contact and advances;
- A demand or request for sexual favours;
- Making sexually coloured remarks;
- Showing pornography;
- Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature.

This is identical to the definition of sexual harassment in Section 75 of the Bharatiya Nyaya Sanhita (BNS). Women facing sexual harassment are free to take criminal action against the accused person over and above the remedies provided in the POSH Act.

Persons Covered

The Act governs any instance of sexual harassment caused by or to an employee. This includes temporary and ad-hoc employees such as contract labour and unpaid voluntary workers (Section 2(f)).

Other Prohibited Behaviour

The Act also covers victimization where explicit or implied promises of preferential treatment or threats of detrimental treatment are made in relation to other acts of sexual harassment will also amount to sexual harassment (Section 3).

Establishment of Internal Complaints Committee

The Act requires all establishments to form an Internal Complaints Committee (‘ICC’) to deal with complaints of sexual harassment. ICCs must have a woman Presiding Officer and at least half of the members must be women (Section 4).

Complaints Procedure

The ICC is empowered to inquire into the complaint, giving both parties, as long as they are employees, an opportunity to be heard. If the allegation is proved, the ICC has the power to order payment of compensation, and direct the filing of misconduct charges against the Respondent under the appropriate service rules (Sections 12-18).

05

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (“PWDVA”)

The PWDVA governs instances of domestic violence faced by women in a domestic relationship and in the shared household, empowering them to claim protection.

Domestic Violence

Domestic violence includes any act, omission or conduct that harms the physical and mental health of the aggrieved person and includes sexual, verbal, emotional and economic abuse (Section 3).

Respondent

Under the Act, the person accused of domestic violence, the ‘Respondent’, can include any person who has been in a domestic relationship with the aggrieved woman and against whom such woman has sought relief under the Act. (Section 2(q)).

Domestic Relationship

A domestic relationship includes any relationship by blood, by marriage, consanguinity, or through a relationship in the nature of marriage or relations as a result of living together as a joint family (Section 2(f)).

Shared Household

The Act grants every woman a right to reside in the “shared household,” which is any house where she lives or at any stage has lived in, and includes the household belonging to the joint family. The aggrieved woman cannot be evicted or excluded from the property except in accordance with procedure established by law (Section 17).

Reliefs Under The Act

A Judicial Magistrate of the First Class or a Metropolitan Magistrate has jurisdiction to grant relief under the PWDVA, which can range from protection orders, residence orders and temporary custody orders to monetary relief and compensation for domestic violence. The non-compliance of an order is a criminal offence (Sections 18 - 22).

A THE INDIAN PENAL CODE, 1860 (“IPC”) AND THE BHARATIYA NYAYA SANHITA, 2023 (“BNS”)

The IPC was the criminal code in effect in India until its repeal in 2023, with the coming into effect of the Bharatiya Nyaya Sanhita 2023. Although the IPC is no longer in effect, the cases on criminal law covered in this book rely on the IPC. The law laid down in these cases will be equally applicable to corresponding provisions in the new BNS Act, unless otherwise specified. Both the IPC and the BNS list various provisions penalising violence, rape and other offences against women including:

Dowry Death	The unnatural death of a woman who was subjected to cruelty by her husband or his relatives in connection with dowry, is an offence attracting at least seven years imprisonment (Section 304B IPC / Section 80 BNS).
Causing of Miscarriage	The causing of miscarriage, whether involving the consent of the pregnant woman or not, is criminalised in several provisions (Sections 312-324 IPC / Sections 88-90 BNS).
Sexual Assault	Sexual assault of a woman with the intent to outrage her modesty or disrobe her and not including rape (Section 354, 354B IPC/ Section 74, 76 BNS). Acts outraging the modesty of a woman but not amounting to physical assault are also punishable. (Section 509 IPC / Section 79 BNS)
Sexual Harassment	Sexual harassment, stalking and voyeurism (Sections 354A, 354C, 354D IPC / Section 75, 77, 78 BNS).
Rape	Covers instances of rape by a man of a woman, and involves non-consensual penetration of any bodily orifice or oral sex. Marital rape where the wife is above 18 years is not punishable (Section 375 IPC / Section 63 BNS), but rape where the couple is separated is an offence (Section 376B IPC/ Section 67 BNS). Gangrape is specifically criminalised (Sections 376D, 376DA, 376DB IPC / Section 70, BNS).
Other Sexual Offences	Includes sexual intercourse by a person in a position of authority, including a fiduciary relationship or having custodial authority (Section 376C IPC / Section 68 BNS) and sexual intercourse by means of deceit or false promises (Section 69 BNS).
Fraudulent Marriage	Deceit or fraud relating to a belief of lawful marriage (Sections 493-496 IPC / Sections 81-83 BNS)
Domestic Cruelty	Domestic cruelty inflicted by a husband or his family upon his wife is an important provision for women subjected to domestic violence (Section 498A IPC / Sections 85-86 BNS).

B THE CODE OF CRIMINAL PROCEDURE 1873 (“CRPC”) & BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (“BNSS”)

The CrPC was the companion code to the IPC, detailing the procedures relevant to the charging of any criminal offence. While there are many procedures integrated within the code to ensure the safety of women during arrest or during the collection of evidence, by far the most significant woman-centric provision was Section 125. Section 125 of the CrPC, and now Section 144 of the BNSS, empower women to claim financial maintenance from their husbands where they have neglected to do so. It serves as a critical tool for women to be able to support themselves and their children during separation and divorce.

C THE DOWRY PROHIBITION ACT, 1961

The Dowry Prohibition Act, 1961 is a gender-neutral legislation and applies to both men and women who demand dowry. Traditionally, dowry is demanded of women in India leading to immense economic insecurity for families with daughters, and further perpetuating a preference for sons. Under the Act, giving, taking or abetting of dowry is punishable with imprisonment of 5 years and a fine (Section 3). The demand for dowry is by itself punishable (Section 4). Dowry however continues to be a pernicious social evil across socio-economic, religious, caste and regional lines, and is often passed off as wedding gifts, which are exempted from the Act.



REPRODUCTIVE RIGHTS LEGISLATIONS

A THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The Medical Termination of Pregnancy Act, 1971 (“MTP Act”) prescribes the situations where medical termination of a pregnancy is legally permissible. Section 3 serves as an exception to Section 312 of the Indian Penal Code, 1860 which criminalises the causing of miscarriage. These penal provisions have been carried over into the Bharatiya Nyaya Sanhita, 2023 under Section 88. The MTP Act provides for the following:

Termination Of Pregnancy Before 20 Weeks

The Act permits the termination of a pregnancy before the completion of 20 weeks if one medical practitioner believes in good faith that its continuation would not pose a risk to the life or physical or mental health of the woman or if it is believed that the child, if born, would suffer from serious physical or mental abnormalities. [Section 3(2)(a)]

Termination Of Pregnancy Between 20-24 Weeks

For pregnancies within this window, termination is permitted in the same circumstances but the opinion of two medical practitioners is required [Section 3(2)(b)]. Women eligible for termination up to 24 weeks include survivors of rape or incest; minors; women with severe physical disabilities; women who have undergone a change in marital status; women with mental illness or intellectual disability; foetal malformation; and women in emergency or disaster settings [Rule 3B, MTP (Amendment) Rules, 2021].

Grave Injury To Mental Health Of The Woman

Pregnancy caused as a result of rape or failure of a contraceptive device or method shall be presumed to constitute a grave injury to the mental health of the woman. [Explanation 1 and 2 to Section 3(2)]

Exemptions

The bar on termination of pregnancies beyond twenty or twenty-four weeks does not apply if the Medical Board deems it immediately necessary to save the life of the pregnant woman, or where it discovers substantial foetal abnormalities. [Section 3(2B) and Section 5]

B THE ASSISTED REPRODUCTIVE TECHNOLOGY ACT, 2021 (“ART ACT”)

The Assisted Reproductive Technology Act, 2021 (“ART Act”) regulates clinics and practitioners of assisted reproductive technology, and makes ART services available to single women above the age of 21 and married heterosexual couples who are infertile. The ART Act expressly forbids sex selective assisted reproductive technology.

C THE SURROGACY (REGULATION) ACT, 2021

The Surrogacy (Regulation) Act, 2021 (“Surrogacy Act”) specifically regulates surrogacy as a mode of ART, and has been criticised for severely limiting access to surrogacy in India. Some of the main provisions of the Surrogacy Act are:

Intending Woman Or Couple

Surrogacy is only available to heterosexual married couples (the ‘intending couple’) or widowed or divorced women (‘intending woman’), on the condition that there exists a certified medical necessity (Section 4). Single unmarried women, men or queer couples cannot use a surrogate.

Prohibition Of Commercial Surrogacy

Altruistic surrogacy, in which no remuneration except the medical expenses and the insurance coverage for the surrogate mother are given, is permitted. The commercialisation of surrogacy is expressly prohibited (Section 3).

Eligible Surrogates

The Act also prescribes who is eligible to be a surrogate. Only a woman between 25 to 35 years having a child of her own, who is or was married, shall be allowed to be a surrogate mother once in her lifetime (Section 4). This provision is also intended to prevent commercial or exploitative surrogacy.

CONVENTION THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979 (“CEDAW”)

The Convention on the Elimination of all Forms of Discrimination Against Women was adopted in 1979 by the United Nations General Assembly, and was ratified by India in 1993. The preamble acknowledges the continuing discrimination experienced by women, and contains binding obligations for the elimination of harmful practices based on gender stereotypes and patriarchal prejudice. Discrimination against women is taken to mean any distinction, exclusion or restriction which impairs or nullifies the human rights and fundamental freedoms of women. The CEDAW enshrined the following key principles and important obligations on States Parties in the fight against gender discrimination:

1. To refrain from engaging in any act or practice of discrimination against women.
2. To incorporate principles of gender equality in domestic legislation and repeal all discriminatory domestic laws.
3. To adopt special measures to accelerate de facto equality between men and women.

The CEDAW prescribes specific areas of public policy where the states must focus their efforts to eliminate discrimination:

1. Access to voting rights and participation in the formulation of policy, both within and outside the government mechanisms.
2. Access to education.
3. Ability to represent their governments at the international level.
4. Access to employment.
5. Prevention of discrimination on the grounds of marriage, maternity, or pregnancy.
6. Access to healthcare.
7. Right to enter or not enter a marriage and to choose a spouse, and equal rights with regards to the family.



JUDGMENT SUMMARIES

01

THE RIGHT TO WOMEN'S EQUALITY IN THE WORKPLACE

ABOUT

THE RIGHT TO WOMEN'S EQUALITY IN THE WORKPLACE

The evolution of women's rights in the workplace in India has been a complex and multifaceted journey, shaped by legislative reforms, constitutional mandates, and landmark court decisions.

The Constitution explicitly prohibits discrimination on the grounds of gender, and legislations like the Equal Remuneration Act, 1976 (ERA) and the Maternity Benefit Act, 1961 were and continue to be a cornerstone for safeguarding the rights of working women.

However, the enforcement of these laws has often been inconsistent, reflecting deep-seated patriarchal values and socio-economic disparities. For instance, the ERA has been criticised for its limited impact on the ground, as wage disparities and gender biases persist in various sectors even today. Significant court rulings have further fortified women's workplace rights, but they also highlight the reactive rather than proactive nature of legal reforms. The Vishaka Guidelines, formulated by the Supreme Court in 1997, addressed sexual harassment at the workplace only after the tragic case of Bhanwari Devi, a social worker who was gang-raped for attempting to stop a child marriage. This ultimately led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013, which, while a major step forward, still faces challenges in implementation and awareness.

These legal frameworks, combined with progressive judicial interpretations, have been instrumental in promoting gender equality and enhancing women's rights in the workplace. Yet, they also reflect the country's ongoing struggle to balance traditional socio-cultural norms with modern legal standards, underscoring the need for continuous socio-political advocacy and grassroots movements to truly realize gender justice in the workplace.

The cases in this section cover the rights of women to not be discriminated in the workplace and equal opportunities for recruitment and progression as compared to men; the right against discrimination due to marital status and pregnancy; the right to be free from sexual harassment at the workplace and the rights of sex workers.

A. NON-DISCRIMINATION ON THE BASIS OF SEX

The cases in this sub-section cover the cases of women fighting to be treated on an equal basis as their male counterparts in the context of the workplace. In the early years of the women's movement, the main battles were for equal pay for equal work for women and seeking formal equality. This was then taken over by claims of women seeking the right to work in different vocations and not to be excluded from work on the ground of sex. This led to the formulation of the concept of substantive equality and recognition of gender-based stereotypes. In *Anuj Garg v. Hotel Association of India and Others*, 2007 INSC 1242, the Supreme Court ruled that exclusion of women from places serving liquor was a form of "protective discrimination" whose ultimate effect is the perpetuation of the oppression of women and outdated gender stereotypes. Since then, the Courts have considered and held unconstitutional various forms of "indirect discrimination" against women that only serve to limit their opportunities for work. This was further developed in the *Lt. Colonel Nitisha v. Union of India and Others* case where the Supreme Court elaborated not only on the idea of substantive equality, but also indirect discrimination.

01

Mackinnon Mackenzie & Co. Ltd. v. Audrey D’Costa & Others

RIGHT IN QUESTION

The right of women to equal pay for performing the same or similar work.

CASE NUMBER

SLP (C) No.1265 of 1987, decided on March 26, 1987

COURT

Supreme Court of India

JUDGES

E. S. Venkataramaiah & M. M. Dutt, JJ.

CITATION

1987 INSC 81; MANU/SC/0446/1987



FACTS

The Respondents were terminated by the Appellant company from their positions as stenographers. The Appellant company had categorised male and female stenographers differently. Women were named ‘Confidential Lady Stenographers’ and men were designated as ‘Clerical & Subordinate Staff’. The Respondents filed complaints under the Equal Remuneration Act 1976 (ERA), stating that they were paid lesser than male stenographers, despite performing the same duties and claimed recovery of the difference in dues over their employment tenure.

COURT DECISION AND REASONING

The Supreme Court held that differential treatment of male and female stenographers by the company smacked of discrimination, and held that the management was liable to pay the same remuneration to all stenographers, irrespective of their sex. The Court relied on the Equal Remuneration Act and Article 39 (d) of the Constitution of India, which provides that the State shall, in particular, direct its policy towards securing equal pay for equal work for both men and women. It held that a broad view must be taken to decide whether a particular work is the same or similar in nature as another. Similar work may have differences in detail, but these differences cannot defeat a claim for equality. Furthermore, the Courts must look at the duties actually performed, not those which were theoretically possible. In this case, the women were doing the same or similar work as the male stenographers. Accordingly, the Court upheld the decision of the High Court and reiterated the applicability of ERA to all companies.

SIGNIFICANCE

This was a pioneering case in recognizing equal pay for women. Particularly, it emphasised that employers could not create a practice, in this case assigning different job titles to men and women, only to subvert the ERA and deny women equal remuneration. Notably, Article 15(1) of the Constitution was neither raised nor relied upon in this case. Given the prevailing gender pay disparity in many sectors, this judgment can be used to challenge the practice. Significantly, the provisions of Equal Remuneration Act apply equally to public and private sectors.

02

Vasantha R. v. Union of India

RIGHT IN QUESTION

Right to equality in opportunity and safe working conditions for women.

CASE NUMBER

W.P. No.4604-4606 of 1999, decided on December 8, 2000

COURT

Madras High Court

JUDGE

E. Padmanabhan, J.

CITATION

(2001) IILLJ 843 MAD; MANU/TN/0549/2000



FACTS

The Petitioners challenged the constitutionality of Section 66(2) of the Factories Act of 1948, which prohibited women from working in factories during a night shift, on the ground that it led to unequal work opportunities on the basis of gender.

COURT DECISION AND REASONING

The Court held that Section 66(2) resulted in the denial of livelihood and the opportunity for improvement in status to women, and violated the guarantee of non-discrimination under Articles 14 and 15(1) of the Constitution. It analysed the differential treatment under the “reasonableness” test, and found that there was no connection between the prohibition of women and the object sought to be achieved by the Act i.e. safe working conditions. There was no difference with regards to the nature, scope, or hours of work between an adult male or female worker in a factory in a given period of time, and therefore no reason to discriminate between them. The prohibition was also an unreasonable restriction on the rights of women to carry on an occupation of their choice under Article 19(1)(g). The Court held that instead of prohibiting women’s work, the State should ensure safe working conditions. It accordingly issued guidelines and welfare measures for women workers who come forward to work during the night shifts, ranging from protection against sexual harassment, sufficient security, adequate transportation and ensuring an adequate number of women workers working together in a shift.

SIGNIFICANCE

The Court’s guidelines for a protective environment for women, as opposed to paternalistic restrictions prohibiting women from entering workplaces during the night shift, was a significant development in the legal recognition of women’s right to access public spaces.

03

Anuj Garg v. Hotel Association of India & Others

RIGHT IN QUESTION

Right of women to not be excluded from employment due to gender-based stereotypes.

CASE NUMBER

C.A. No.5657-5658 of 2007, decided on December 6, 2007

COURT

Supreme Court of India

JUDGES

S. B. Sinha & H. S. Bedi, JJ.

CITATION

2007 INSC 1242; AIR 2008 SCC 663; MANU/SC/8444/2007



FACTS

The First Respondent, the Hotel Association of India, challenged the constitutional validity of S.30 of Punjab Excise Act, 1914 which prohibited the employment of “any man under the age of 25 years” or “any woman” in any premises where liquor or intoxicating drugs are consumed by the public before the Delhi High Court, leading to the exclusion of women from employment in all bars, restaurants and hotels. The High Court struck down the provision as unconstitutional under Articles 19(1)(g), 14 and 15 to the extent of its prohibition on the employment of women, following which a few private citizens appealed to the Supreme Court.

COURT DECISION AND REASONING

The Court observed that while the right to employment was not a fundamental right per se, the right to be considered for employment (subject to just exceptions) is recognised by Article 16. The Court held that the present law ends up curbing women’s freedom instead of empowering them, relying on the US Supreme Court decision in *Frontiero v. Richardson*. The case analysed the concept of “romantic paternalism,” which denotes a discriminatory rule that “puts women in a cage in the name of putting them on a pedestal.” It held that the present law ends up victimizing its subject in the name of protection. Instead of putting curbs on women’s freedom, women workers could be provided the security needed, and the cost of security in the establishment can be distributed between the state and the employer. It held that instead of prohibiting women’s employment in bars altogether, the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is the State’s duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance with the requirements of the profession they choose to follow. The Court dismissed the appeal and upheld the High Court’s decision striking down S.30 of the Punjab Excise Act.

SIGNIFICANCE

This judgment laid down the anti-stereotyping principle. It held that if the justification for a discriminatory provision on the basis of sex, rested upon “stereotypes” of the role of men and women in society, the classification was considered unconstitutional. This anti-stereotyping principle was further developed by the Supreme Court in *Navtej Singh Johar v. Union of India* (2018), which led to the decriminalisation of homosexual intercourse between consenting adults.

“ It is to be borne in mind that legislations with pronounced “protective discrimination” aims, such as this one, potentially serve as double edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. The impugned legislation suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means.

...No law in its ultimate effect should end up perpetuating the oppression of women. Personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until unless there is a compelling state purpose.”

JUSTICE S.B. SINHA

In Anuj Garg & Others v. Hotel Association of India & Others

04

Charu Khurana v. Union of India & Others

RIGHT IN QUESTION

Right of a woman to not be deprived of a career in her chosen field because of her sex.

CASE NUMBER

W.P. (C) No.78 of 2013, decided on November 10, 2014

COURT

Supreme Court of India

JUDGES

Dipak Misra & Uday Umesh Lalit, JJ.

CITATION

2014 INSC 1024; AIR 2015 SC 839; MANU/SC/1044/2014



FACTS

The Petitioner was refused membership as a make-up artist in the Cine Costume Make-up Artists and Hairdressers' Association, whose rules only allowed men to be make-up artists.

COURT DECISION AND REASONING

The Court held that the Petitioner could not be denied membership, as discrimination on grounds of gender was a clear violation of her right to equality and a denial of "her capacity to earn her livelihood which affects her individual dignity." It also relied on Article 39A of the Constitution which provides that the State shall direct its policies towards securing adequate means of livelihood for men and women equally, observing that fundamental rights must be interpreted in light of the Directive Principles. Notably, the Court here enforced the constitutional guarantee of non-discrimination and equality against the Respondent Association, a private entity. It reasoned that any clause in the bye-laws of a trade union calling itself an Association cannot violate Articles 14 and 21. The Court concluded that though the Association was not a public entity, its bye-laws preventing female membership were violative of provisions of the Trade Unions Act, 1926 and the constitutional mandate against discrimination.

SIGNIFICANCE

This judgment enforces the principles of anti-discrimination and equal remuneration on a private body, on the basis of its establishment under general regulatory provisions, thereby reinforcing the universal application of Articles 14 and 16 in the case of gender discrimination.

05

Secretary, Ministry of Defence v. Babita Puniya

RIGHT IN QUESTION

Right of women Short Service Commission Officers in the Indian Army to be eligible for Permanent Commission.

CASE NUMBER

C.A. Nos.9367-9369 of 2011, decided on February 17, 2020

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud & Ajay Rastogi, JJ.

CITATION

2020 INSC 198; AIR 2020 SC 1000; MANU/SC/0194/2020



FACTS

A PIL was filed in the Delhi High Court in 2003 seeking Permanent Commission (PC) for women Short Service Commission (SSC) officers in the Indian Army. Women were allowed to join the SSC in certain cadres from 1992, and through various circulars issued by the Central Government, their appointments were extended, however PC was denied. In 2008, the Government agreed to extend PC for women officers prospectively to certain cadres only. The High Court declined to interfere in the decision to limit PC to certain cadres, but directed that existing and retired SSC female officers who had applied for PC were entitled to all consequential benefits under the 2008 Government order. This decision was challenged by the Union Government before the Supreme Court.

COURT DECISION AND REASONING

While the case was pending, the Government issued a Policy Letter in 2019 granting PC to women officers in all ten streams of SSC on a prospective basis for those women who had completed three but not four years of SSC. An additional proposal to grant pensionary benefits to existing and retired women SSC officers who had completed 14 years of service was also made. The Court considered whether the 2019 Policy letter was valid and found that the distinction made between women officers who have been in service for a period of less than fourteen years and those beyond was not reasoned or compliant with the decision of the High Court. In looking at the Policy letter's restriction to PCs granted only for staff appointments, the Court noted that when the State differentiates between men and women, the burden falls on it to justify such differentiation. In this case, no such justification was provided and an absolute exclusion of women from all other posts except staff assignments was held to be indefensible.

SIGNIFICANCE

The case marked a huge victory for women seeking to cement their role and contribution to the Indian Army through entitlement to Permanent Commissions on an equal basis with men.

06

Lt. Colonel Nitisha & Others v. Union of India & Others

RIGHT IN QUESTION

Right of women
SSC officers to not
be subjected to
discriminatory selection
criteria for obtaining
Permanent Commission
in the Army.

CASE NUMBER

W.P. (Civil) No.1109 of 2020,
decided on March 25, 2021

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud &
M. R. Shah, JJ.

CITATION

2021 INSC 210; (2021) 15 SCC
125; MANU/SC/0216/2021



FACTS

Following the verdict in Babita Punya, the Union Government introduced a procedure for granting Permanent Commissions (PC) to eligible women officers. However, the selection criteria applicable to the women who were long excluded from PC applied the same medical fitness criteria as male officers who were much younger. It also included an assessment of the Annual Confidential Reports but failed to account for the fact that women's ACRs were unlike men's and did not assess them for an opportunity which had not been created yet.

COURT DECISION AND REASONING

The Supreme Court reviewed the selection criteria instituted by the Selection Board and found that it amounted to indirect discrimination because of gender. The Court laid down a guide for understanding and addressing "indirect discrimination"

- Discrimination need not be based on intent and can be a consequence of unconscious biases and existing structures that perpetuate an unjust status quo.
- Indirect discrimination occurs when there's an effect of unfair treatment.
- The evidence required can but need not necessarily be statistical
- Along with assessing whether a disproportionate effect on a particular group has occurred, the court must also look at whether the law has had an effect of 'reinforcing, perpetuating or exacerbating' disadvantage.
- Courts must determine if the rule in question was necessary for 'successful job performance', as well as whether less discriminatory alternatives exist.

A combined study of both direct and indirect discrimination was to be done to shed light on the systemic discrimination existing in this country. It stated that courts cannot just compensate the aggrieved or strike down discriminatory actions. It must also go above and beyond to identify and change the structural inequality. With regards to this case, the Court held that medical fitness should be tested at 10 to 14 years of service and any delay that has occurred in allowing women into Permanent Commissions cannot disadvantage the women themselves.

SIGNIFICANCE

This case is vital in understanding indirect discrimination and how it contributes to discrimination at a systemic level in India. The Supreme Court for the first time recognized "indirect discrimination" as a violation of the right to equality.

“ We must recognize here that the structures of our society have been created by males and for males. As a result, certain structures that may seem to be the “norm” and may appear to be harmless, are a reflection of the insidious patriarchal system. At the time of Independence, our Constitution sought to ac’hieve a transformation in our society by envisaging equal opportunity in public employment and gender equality. Since then, we have continuously endeavored to achieve the guarantee of equality enshrined in our Constitution. A facially equal application of laws to unequal parties is a farce, when the law is structured to cater to a male standpoint. ... It is not enough to proudly state that women officers are allowed to serve the nation in the Armed Forces, when the true picture of their service conditions tells a different story. A superficial sense of equality is not in the true spirit of the Constitution and attempts to make equality only symbolic.”

JUSTICE DR. D.Y. CHANDRACHUD

In Lt. Col. Nitisha & Others v. Union of India & Others

B. NON-DISCRIMINATION ON THE BASIS OF MARRIAGE OR PREGNANCY

There has been an entire range of cases that were taken to the courts where women were discriminated in the workplace due to their marital status or pregnancy.

The “maternity tax” is the negative price paid by women as a result of gender-based stereotypes on the role of women in the home and the presumption that mothers or married women are a liability to employers.

The earliest cases on this issue were of *Air India v. Nergeesh Meerza* and *C.B. Muthamma v. Union of India* and Others. While in these cases the ground of pregnancy or marital status was not seen as a being part of sex discrimination under Article 15 (1) of the Constitution, some of the later judgements do make that articulation. The Delhi High Court in particular has held in several judgments that discrimination due to pregnancy amounts to sex-based discrimination under Article 15(1), and violates the Equality Code.

07

Bombay Labour Union Representing the Workmen of International Franchise Pvt. Ltd. v. International Franchise Pvt. Ltd.

RIGHT IN QUESTION

Right of women employees to not be barred from service due to their marital status.

CASE NUMBER
Civil Appeal No. 274 of 1964, decided on November 3, 1965

COURT
Supreme Court of India

JUDGES
P. B. Gajendragadkar, CJI
& K. N. Wanchoo,
M. Hidayatullah &
V. Ramaswami, JJ.

CITATION
1965 INSC 239; AIR 1966 SC 942; MANU/SC/0247/1965



FACTS

The Appellant, Bombay Labour Union, represented the workmen of the Respondent, a pharmaceutical company. The Respondent mandated that unmarried women employees were to resign upon getting married. This rule applied exclusively to one department of the company. The Appellant contested the rule before the Industrial Tribunal, Maharashtra, which upheld the rule, following which the present appeal was filed.

COURT DECISION AND REASONING

The Supreme Court overturned the Tribunal’s decision and struck down the rule. It rejected the reasons given by the Respondent that the rule was needed to ensure regularity in team-based work and avert concerns over absenteeism among married women. The Court observed that the assumption that married women would be less productive was not supported by any evidence. Further, absenteeism among married women would only differ from that of unmarried women as a result of maternity leave, which could be managed by employing additional workers as leave reserves. The Court concluded that the employers could not impose unreasonable conditions on labour.

SIGNIFICANCE

This is a significant case as it reinforced the principle of social justice in labour establishing that employment conditions must be fair. It rejected blanket assumptions about married women’s efficiency and absenteeism, setting a precedent against discriminatory employment rules.

08

C.B. Muthamma v. Union of India & Others

RIGHT IN QUESTION

The right of women in public employment to not be discriminated due to their marital status.

CASE NUMBER

W.P. No.743 of 1979, decided on September 17, 1979

COURT

Supreme Court

JUDGES

V. R. Krishna Iyer & P. N. Singhal, JJ.

CITATION

1979 INSC 184; (1979) 4 SCC 260; MANU/SC/0580/1979



FACTS

The Petitioner was the first woman IFS officer in India, appointed in 1948. She challenged Rule 8(2) of the Indian Foreign Service (Conduct & Discipline) Rules, 1961 as being discriminatory on the ground of sex. This rule required a woman to obtain the permission of the Government in writing before her marriage. Further, she also had to give an undertaking that at any time after her marriage, she may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the efficient discharge of her duties.

COURT DECISION AND REASONING

The Supreme Court held in very direct terms that discrimination against women was “traumatically transparent” in this rule, because the same risk is run by government if a male member contracts a marriage. The Court criticised the discriminatory service rules that had survived for so long, and held that Rule 8(2) blatantly discriminated against women by imposing conditions on their marriage and coercing their resignation, a rule that does not apply to men. This was clearly in violation of Article 16, which guarantees equal opportunity in public employment. Additionally, Rule 18(4), which denied married women the right to be appointed to the service, was equally unconstitutional. The Court observed that the Government needed to overhaul the Service Rules to remove all forms of sex discrimination. Following this, the Government promoted Muthamma and appointed her as the Ambassador of India to The Hague and the Court directed the government to review her seniority in light of her promotion. Despite such a finding, the rule was not set aside on the assurance of the Solicitor-General that the Union of India will review the seniority of the Petitioner. Hence, the Court did not make a specific finding striking down the Rules.

SIGNIFICANCE

This was a landmark judgment which for the first time upheld the rights of women to not be discriminated against in employment on the basis of their marital status.

09

Air India v. Nergesh Meerza & Others

RIGHT IN QUESTION

Women’s right to not be discriminated in employment on the basis of marriage and pregnancy.

CASE NUMBER

W.P.Nos. 3045, 1107, 2458 and 1624-1628 of 1981, decided on August 28, 1981

COURT

Supreme Court of India

JUDGES

S. Murtaza Fazal Ali, A. Vardarajan & Amarendra Nath Sen, JJ.

CITATION

1981 INSC 152, (1981) 4 SCC 335; MANU/SC/0688/1981



FACTS

The Respondents, air hostesses in Air India, challenged the Air India Employees’ Service Regulation regulations as being discriminatory on the basis of sex. The Regulations categorised male stewards as Assistant Flight Pursers and female stewards as Air Hostesses, and discriminated in the pay and promotional opportunities available for male and female in-flight cabin crew. While the retirement age for male stewards was 58, for females it was 35 and they were terminated if they married within 4 years of joining or when they first became pregnant.

COURT DECISION AND REASONING

The Supreme Court held that the Air Hostesses and Assistant Flight Pursers belonged to different categories based on distinct recruitment processes, qualifications, duties, and promotional avenues. It accepted Air India’s argument that Air Hostesses formed a separate class due to the nature of their work and factors such as health and appearance, which were deemed important for the job. The differentiation in treatment therefore did not amount to discrimination under Article 14. As regards the bar on marriage within four years of joining, the Court reasoned that such a provision served the public interest by promoting family planning and ensuring that the corporation did not face operational difficulties in replacing Air Hostesses on maternity leave. However, the provision terminating their service on the occurrence of the employee’s first pregnancy was struck down. The Court found this condition arbitrary, unreasonable, and violative of Article 14. It was held that pregnancy was a natural consequence of marriage and could not be used as a ground for termination, as it imposed an unfair burden on women and interfered with their reproductive rights. The retirement age of 35 years, with possible extensions up to 45 years was upheld. However, the Court found that Regulation 47, which granted the Managing Director discretion to extend retirement, was arbitrary and lacked guidelines and in absence of clear principles governing the exercise of discretion, it held the regulation violative of Article 14.

SIGNIFICANCE

This judgment upheld several discriminatory provisions that significantly limited women’s rights in employment, particularly in sectors where women were subject to different and unequal conditions compared to men.

“ We are also unable to understand the argument of the Corporation that a woman after bearing children becomes weak in physique or in her constitution. There is neither any legal nor medical authority for this bald proposition. Having taken the AH [Air Hostess] in service and after having utilised her services for four years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep-rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Art. 14 of the Constitution. “

JUSTICE SYED MURTAZA FAZALALI
In Air India v. Nergesh Meerza and Others.

10

RIGHT IN QUESTION

Protection against discrimination based on pregnancy and privacy regarding personal information required during employment procedures.

CASE NUMBER

Civil Appeal No. 4488 of 1991, decided on October 31, 1991

COURT

Supreme Court of India

JUDGES

K. Jagannatha Shetty & Yogeshwar Dayal, JJ.

CITATION

1991 INSC 282; AIR 1992 SC 392; MANU/SC/0064/1992



Neera Mathur v. Life Insurance Corporation of India & Another

FACTS

The Petitioner, an Assistant at the Respondent company was made to submit a declaration form and undergo a medical examination, following which she was found fit for the job and appointed on probation for six months. The Petitioner took maternity leave after joining and thereafter her service was terminated without providing any specific reason. She challenged her termination stating that the real reason for her dismissal was her pregnancy.

COURT DECISION AND REASONING

The Supreme Court held that there was no record of the Petitioner's work during probation being unsatisfactory. Instead, the termination appeared to be based on the declaration form she submitted before joining where she did not disclose her pregnancy. It noted that the Petitioner cannot be blamed, for she was found medically fit to join the post. The Court took strong exception to the nature of the information required in the declaration for women employees including details of their menstrual cycles, history of conception etc. It held that the disclosure of such details served to humiliate and violate the modesty and self-respect of women. The Court directed that the Appellant be reinstated in service, but did not entitle her to recover dues from the intervening period.

SIGNIFICANCE

This case highlights the right of women to not be discriminated against due to pregnancy. The Court pointed out the discriminatory nature of requiring female candidates to disclose intimate details such as menstrual cycles and pregnancies, which violate their dignity and privacy.

11

Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Another

RIGHT IN QUESTION

Right of women workers employed on a contractual basis to maternity benefits.

CASE NUMBER

Special Leave Petition (Civil) 12797 of 1998, decided on March 8, 2000

COURT

Supreme Court of India

JUDGES

S. Saghir Ahmad & D. P. Wadhwa, JJ.

CITATION

2000 INSC 129; AIR 2000 SC 1274; MANU/SC/0164/2000



FACTS

The Petitioners were female contractual workers engaged by the Municipal Corporation of Delhi, claiming the grant of maternity leave, which was made available only to regular female workers. The Industrial Tribunal held that the provisions of Maternity Benefit Act, 1961 did not apply to the MCD due to lacuna in the Act and issued directions to extend maternity benefits to muster roll female employees who were in continuous service for over 10 years. The Petitioners appealed this decision before the Supreme Court.

COURT DECISION AND REASONING

The Court noted that women on muster rolls working at the site of construction are engaged on daily wages. They work even in advanced stages of pregnancy and soon after delivery, much to the detriment of their health. It drew upon Articles 14 and 15, which guarantee equality and non-discrimination based on sex, and the Directive Principles of State Policy to hold that maternity benefits made available to a class of employees must be extended to casual workers or workers employed on daily wage basis. In examining the provisions of the Maternity Benefit Act, the Court noted that there is nothing in the Act which only entitles regular women employees to the benefit of maternity leave, and not to those engaged on a casual basis or on muster roll on daily wage basis. Further, it dismissed the argument that the Industrial Disputes Act, 1947 did not apply to muster roll women employees, citing previous cases where a municipal corporation was held to be an industry.

SIGNIFICANCE

The case recognized that the denial of maternity benefits to any class of women on mere technicalities, as in the present case, was a form of exploitation and completely in violation of their fundamental rights to equality under the Constitution.

12

Seema Gupta v. Guru Nanak Institute of Management

RIGHT IN QUESTION

The right to not be dismissed on the ground of availing extended maternity leave.

CASE NUMBER

W.P. (C) No.651 of 2005, decided on November 20, 2006

COURT

Delhi High Court

JUDGE

S. Ravindra Bhat, J.

CITATION

2006 DLT 135 404; MANU/DE/9866/2006



FACTS

The Petitioner was a lecturer at the Respondent University and took maternity leave after giving birth to her child in December 2003. When she sought an extension up to one year as allowed under the Central Civil Service Rules (CCS Rules), the college issued multiple show cause notices and eventually terminated her employment in October 2004, citing unauthorised absence.

COURT DECISION AND REASONING

The Court noted that Rule 43 (4)(b) of the CCS Rules enables employees to seek up to one year's leave in continuation of the initial maternity leave. It held that this provision must be construed in the background of India's obligations under CEDAW and the Directive Principles embodied in Article 42 of the Constitution. Further, the rule also constitutes a special provision under Article 15(3). The Court held that the Respondent is admittedly governed by the CCS Rules, which gives shape to these fundamental guarantees and so has a duty to fulfill those conditions despite not being a state actor. Accordingly, it held that the Respondent did not apply its mind to the Petitioner's leave request, nor did it furnish any reasons or justification as to why the right to claim the extended period of leave had to be rejected. The Petitioner's termination was quashed, and the college was directed to reinstate her with full arrears of salary.

SIGNIFICANCE

This is a significant case as it reinforces the requirement of employers, including private employers, to make accommodations for female employees for maternity leave, since it forms a part of the special provisions under the Constitution for women.

13

Rama Pandey v. Union of India & Others

RIGHT IN QUESTION

Right of a female government employee to avail maternity leave when motherhood is attained through surrogacy.

CASE NUMBER

W.P. (C) No.844 of 2014, decided on July 17, 2015

COURT

Delhi High Court

JUDGE

Rajiv Shakdher, J.

CITATION

2015 LAB IC 3921; MANU/DE/2054/2015



FACTS

The Petitioner, a government employee entered into a surrogacy arrangement in 2012 and became the mother of twins born via a surrogate in February 2013. She applied for 180 days of maternity leave and three months of Child Care Leave (CCL). Her request for leave was denied on the ground that the benefits were only available to women who become pregnant, and did not apply in cases where the child was born via a surrogate.

COURT DECISION AND REASONING

The High Court ruled in favour of the Petitioner, holding that even a woman who has become a mother through surrogacy is entitled to maternity leave. The Court reasoned that the term ‘maternity’ under Rule 43 of the Central Civil Service Rules should not be limited to biological mothers. Maternity encompasses the legal and emotional role of the commissioning mother, and her responsibility for the well-being and care of the child after birth. Denying leave based solely on the method of childbirth would be unfair to both the mother and the child. While referring to the advancements in reproductive technologies, the Court also emphasized that legal frameworks must evolve to address these new realities. The Court accordingly allowed the petition and directed the government to grant her request for maternity leave.

SIGNIFICANCE

This decision expanded the scope of maternity leave benefits to also include women who become mothers through surrogacy, recognizing the different ways that one could take on the responsibility of motherhood through advancements in reproductive technology.

14

State of Maharashtra & Others v. Indian Hotel & Restaurants Association & Others

RIGHT IN QUESTION

Right of women to not be excluded from the profession of bar dancing due to their sex.

CASE NUMBER

Civil Appeal Nos. 2704 and 2705 of 2006 and 5504 of 2013, decided on July 16, 2013

COURT

Supreme Court of India

JUDGES

Altamas Kabir & S. S. Nijjar, JJ.

CITATION

MANU/SC/0702/2013



FACTS

The Bombay Police Act, 1951 (BPA) regulated public places of entertainment, and dance performances were allowed under certain rules. However, the Maharashtra Government amended the Act in 2005 to include Sections 33A and 33B, prohibiting dance performances in beer bars, eating houses, and permit rooms but permitting them in specifically exempted establishments like three-star hotels and auditoriums. The State cited indecent and vulgar performances in such bars, exploitation of women, and their use as hubs for prostitution and criminal activities as reasons for the prohibition. These amendments were challenged in the Bombay High Court on grounds of discrimination under Article 14 and infringement of fundamental rights under Articles 19(1)(a), 19(1)(g), and 21. The High Court allowed the petition, striking the provisions down, leading to the present appeal.

COURT DECISION AND REASONING

The Supreme Court upheld the High Court’s judgment, declaring Sections 33A and 33B of the BPA unconstitutional. The Court reasoned that the amendments violated the right to equality under Article 14 and the right to trade, occupation, and profession under Article 19(1)(g). It found the classification between prohibited and exempted establishments arbitrary, as it lacked a rational nexus with the law’s stated objective of protecting public morality and women’s dignity. The Court also noted that the blanket prohibition imposed an unreasonable restriction on the livelihood of bar dancers and business owners without providing adequate rehabilitation measures or alternative opportunities. Furthermore, it observed that the State’s approach was inconsistent, as it allowed similar performances in exempted establishments. The Court emphasized the principles of proportionality and non-discrimination in making any sort of legal classification, which was not followed in the case of the amendments.

SIGNIFICANCE

The decision reaffirmed the right of women to not be excluded from their right to work due to outdated ideas of public morality. It emphasized that measures aimed at protecting public morality and women’s dignity should not perpetuate economic disempowerment.

15

Inspector (Mahila) Ravina v. Union of India

RIGHT IN QUESTION

The right of a woman to not be discriminated in matters of employment based on her pregnancy.

CASE NUMBER

W.P. (C) No.4525 of 2014, decided on August 6, 2015

COURT

Delhi High Court

JUDGES

S. Ravindra Bhat & V. K. Shali, JJ.

CITATION

2015 DHC 6330, MANU/DE/3946/2015



FACTS

The Petitioner, a female member of the Central Reserve Police Force (CRPF) was unable to attend a pre-promotional course for upward movement to the cadre of Assistant Commandant due to her pregnancy, and she was declared medically unfit at the time (Shape III). Although she qualified in the next available course and was selected for promotion, the Petitioner's seniority was impacted, since her juniors were promoted over her. The Respondent refused to restore her seniority citing her absence from the course as 'unwillingness'.

COURT DECISION AND REASONING

The Court ruled in favour of the Petitioner and held that treating pregnancy as 'unwillingness' to attend a promotional course was both discriminatory and unconstitutional. It emphasized that pregnancy is personal and a physically taxing time for women and should not be treated as a lack of interest in promotion. The right to reproduction is an essential aspect of Article 21 and it is the State's duty to ensure conducive circumstances to the exercise of this choice. The Court highlighted that it would be a travesty of justice if female employees were forced to choose between motherhood and their careers. It also pointed out that seniority for male and female officials should be treated equally in promotion avenues. Therefore, the denial of the seniority benefit was in violation of Article 16(2). Consequently, the CRPF was directed to restore the Petitioner's seniority on compassionate grounds, grant her promotion and provide all consequential pay benefits, including arrears.

SIGNIFICANCE

This is a significant case as it reinforces the protection of women's reproductive rights in employment and ensures that pregnancy cannot be treated as a hindrance in career progression.

16

Sharmila Yadav v. Union of India & Others

RIGHT IN QUESTION

Right of women to not be denied promotional opportunities due to pregnancy.

CASE NUMBER

W.P. (C) No.4651 of 2017, decided on December 19, 2017

COURT

Delhi High Court

JUDGES

Sanjiv Khanna & Navin Chawla, JJ.

CITATION

2017:DHC:7914-DB; MANU/DE/6324/2017



FACTS

The Petitioner was a head constable (Mahila) in the Central Reserve Police Force (CRPF) who sought promotion to the rank of Assistant Sub-Inspector in 2011. Despite qualifying, she was not promoted due to being temporarily placed in a lower medical category (Shape II) as a result of pregnancy. When she regained her fitness in May 2012, she was promoted but her seniority was not restored, placing her below her juniors in the rank list.

COURT DECISION AND REASONING

A Division Bench of the Delhi High Court held that such action reeks of discrimination and violates Articles 14, 15, 16 and 21 of the Constitution. It held that pregnancy discrimination cannot be accepted as it violates the principle of equality and discriminates on the ground of gender. The Court held that the Petitioner, who has by choice become a mother, must be given the same opportunity and chance of promotion as others and that gender discrimination would include discrimination on ground of pregnancy and maternity, and it is unlawful to treat the Petitioner unfavorably and deny her promotion due to her pregnancy. The Constitutional mandate imposes a duty and obligation on the Respondents to ensure that equal opportunity for promotion is provided to all similarly situated employees including those who have exercised their right to be a mother. Reference was also made to Article 10 of the International Covenant on Economic, Social and Cultural Rights, which states that special measures should be accorded to mothers before and after child birth. The Court also relied on its judgment in Air India v. Nergesh Meerza and Ors., and other judgments of the Delhi High Court to hold that her pregnancy cannot be treated as a disability and disqualification as Shape-II medical category. The Court quashed the orders denying seniority to the Petitioner based on her rank in the selection test and directed that she be granted promotion and notional seniority along with her batch mates and was also entitled to arrears of her pay.

SIGNIFICANCE

The Court recognized pregnancy related discrimination as gender-based discrimination under Articles 14, 15, 16 and 21 of the Constitution.

17

Deepika Singh v. Central Administrative Tribunal & Others

RIGHT IN QUESTION

Right of women with two or more non-biological children to not be denied maternity benefits for their first biological child.

CASE NUMBER

Civil Appeal No. 5308 of 2022, decided on August 16, 2022

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud & A. S. Bopanna, JJ.

CITATION

2022 INSC 834; AIR 2022 SC 4108; MANU/SC/1056/2022



FACTS

In 2014, the Appellant married her spouse, who had two surviving children from his previous marriage. Following that, she delivered her first biological child in 2019, for which she applied for maternity leave. Her request for maternity leave was rejected on the ground that she had two surviving children and had earlier availed childcare leave for them. Upon the suit being dismissed by the Central Administrative Tribunal, an appeal was filed in the High Court, which was again dismissed.

COURT DECISION AND REASONING

The Supreme Court held that a purposive interpretation must be adopted in the case of a beneficial legislation or provision, such as the Maternity Benefits Act, 2017. Under the Act, maternity leave becomes available whenever there has been a ‘delivery’, i.e., the birth of a child and is thus meant for the care of a newborn child. This is distinguishable from childcare leave, which is meant to look after the child’s needs, such as education, sickness etc. It was held that childcare leave and maternity leave constitute separate entitlements. Thus, the grant of childcare leave cannot be used to disentitle the Appellant to the benefit of maternity leave. Further, it held that the right to reproductive choice is an aspect of the right to dignity protected under Article 21. Notably, the Court observed that atypical families i.e. single-parent households or families with guardians, caretakers and adoptive parents ought to be recognized and were also entitled to equal protection under law and of social legislation benefits.

SIGNIFICANCE

The case emphasises the beneficial nature of maternity leave provisions, and recognizes that a broad view must be taken to ensure women are not excluded from its cover. The Court further acknowledged the disproportionate burden of childcare and unpaid work that falls on women in India due to gendered societal expectations.

C. SEXUAL HARASSMENT AT THE WORKPLACE

Sexual harassment at the workplace in India was first recognised by the Supreme Court in Vishakha and Others v. State of Rajasthan and Others (1997), a public interest litigation filed by Sakshi, a women’s rights organisation, taking up the case of Bhanwari Devi, a government worker who was sexually assaulted and raped during her work duties.

In this landmark judgment, the Supreme Court recognized sexual harassment as a violation of women’s right to equality and dignity at the workplace. Noting the absence of legislation to protect women from sexual harassment, and relying upon India’s international obligations under CEDAW, the Supreme Court framed the Vishakha guidelines which laid down a detailed grievance redressal procedure to be followed by all employers to prevent sexual harassment of working women.

Despite the Vishakha Guidelines, implementation and enforcement of redressal mechanisms was weak and complainants continued to face stigma and discrimination for speaking out. Finally in 2013, the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act (“POSH Act”), was passed along with amendments to the IPC, making sexual harassment a criminal offence under Section 354A (now Section 75 of the BNS). Numerous aspects of the POSH Act have been clarified through litigation in the past several years and its implementation remains concerningly irregular, which renders it much less effective than it could be. Of serious concern is the view often taken by courts, as done in the Aureliano Fernandes v. State of Goa that even after prolonged proceedings, courts often re-open proceedings and set aside findings of sexual harassment on grounds of natural justice raised by the alleged harasser. This often undermines the process and deters women from coming forward and filing complaints of harassment.

The judgments in this section cover the landmark cases recognizing sexual harassment, the expansion of the idea of a workplace and timeframe for institution of complaints. The cases also cover the procedural barriers and challenges which persist in preventing women from accessing justice.

18

Vishaka & Others v. State of Rajasthan & Others

RIGHT IN QUESTION

The right of women to safe workplaces and grievance redressal mechanisms to address workplace sexual harassment.

CASE NUMBER

W.P. (Criminal) Nos. 666-70 of 1992, decided on August 13, 1997

COURT

Supreme Court of India

JUDGES

J. S. Verma, CJ & Sujata V. Manohar & B. N Kirpal, JJ.

CITATION

1997 INSC 604; (1997) 6 SCC 241; MANU/SC/0786/1997



FACTS

This petition was filed under Article 32 for the enforcement of fundamental rights of working women, the right to life, and the right to work with dignity under Articles 14, 15, 19(1)(g), and 21. It was filed by social activists and NGOs in response to an incident of brutal gang rape of a social worker in Rajasthan. The incident highlighted the vulnerability of women in workplaces and the lack of adequate legal protection against sexual harassment.

COURT DECISION AND REASONING

The Court recognized that sexual harassment in the workplace violated a woman’s right to equality and right to life with dignity. These violations not only undermined women’s ability to work but also created a hostile environment. In the absence of specific legislation addressing sexual harassment at the workplace, the Court invoked the provisions of Articles 14, 15, 19, and 21 and referred to international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Court held that these conventions, though not yet codified into domestic law, could be relied upon to uphold the fundamental rights of women. The Court issued Guidelines were issued to address the legislative vacuum and were to be treated as the law until legislation on sexual harassment was enacted. The guidelines included the definition of sexual harassment at the workplace and the duty of employers, both private and public to put in place a grievance redressal mechanism to address complaints of sexual harassment, preventive measures, disciplinary action, and third-party harassment.

SIGNIFICANCE

The Vishaka Guidelines marked a landmark moment in India’s legal history, providing the first clear legal framework for addressing sexual harassment in the workplace. As there was no law in India to address the issue of sexual harassment at the workplace, this judgment filled the gap and the guidelines laid down became the law of the land from 1997 to 2013, till the POSH Act was enacted. The judgment provided a tool to women’s rights activists for advocating for redressal mechanisms to be set up in public and private sectors.

“ The fundamental right to carry on any occupation, trade or profession depends on the availability of a “safe” working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.”

CHIEF JUSTICE J. S. VERMA

In Vishaka and Others v. State of Rajasthan

Apparel Export Promotion Council v. A.K. Chopra

RIGHT IN QUESTION

Right to redressal for sexual harassment at the workplace

CASE NUMBER

Civil Appeal Nos. 226-227 of 1999, decided on January 20, 1999

COURT

Supreme Court of India

JUDGES

Dr. A. S. Anand, CJI & V. N. Khare, J.

CITATION

1999 INSC 12; AIR 1999 SC 625; MANU/SC/0014/1999



FACTS

A.K. Chopra, the Respondent, was a private secretary to the chairman of the Apparel Export Promotion Council, who used his position of power to compel a female employee to accompany him to a business centre in a hotel, where he sexually harassed her. The enquiry officer concluded that the Respondent was in fact guilty of molestation and his conduct with the female employee did not meet the test of decency and modesty. The Respondent was dismissed by the disciplinary authority, and both the Single Bench and Division Bench of the High Court dismissed his petition but directed reinstatement outside Delhi for two years without back wages. The Appellant then filed a special leave petition to the Supreme Court.

COURT DECISION AND REASONING

The Court, referencing the definition of “sexual harassment” from Vishaka v. State of Rajasthan, held that it encompasses unwelcome sexually determined conduct, including physical contact, requests for sexual favours, sexually coloured remarks, showing pornography, and other unwelcome sexual behaviour. It emphasized that sexual harassment could manifest as any form of sex discrimination, especially when such conduct affects a female employee’s work or creates a hostile environment. The Court held that physical contact is not the sole factor in sexual harassment cases. It concluded that the Respondent’s actions lacked decency and amounted to sexual harassment, urging courts to consider the broader context of cases rather than fixating on minor discrepancies or narrow definitions. The Court also held that the High Court did not have the authority to interfere with the quantum of punishment as it did not have the jurisdiction to interfere with the disciplinary proceedings unless there was an arbitrary exercise of power in arriving at the punishment.

SIGNIFICANCE

The Supreme Court dismissed the narrow interpretation of what constitutes sexual harassment, and has therefore upheld the spirit of Vishaka v. State of Rajasthan. This judgment positively contributes to the legal jurisprudence surrounding the recognition of sexual harassment as beyond conduct that is physical in nature.

“ An analysis of the above definition, shows that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India.”

CHIEF JUSTICE A.S. ANAND

In Apparel Export Promotion Council v. A.K. Chopra

20

Medha Kotwal Lele & Others v. Union of India & Others

RIGHT IN QUESTION

Findings of a sexual harassment Complaints Committee to be treated as findings for the purpose of inquiries into employee misconduct.

CASE NUMBER

W.P. (CrI) No.173-177 of 1999, decided on October 19, 2012

COURT

Supreme Court of India

JUDGES

R. M. Lodha, Ranjan Gogoi & Anil R. Dave, JJ.

CITATION

2012 INSC 488; [2012] 9 SCR 895; MANU/SC/0898/2012



FACTS

Medha Kotwal Lele petitioned the Supreme Court presenting several instances of sexual harassment within workplaces to demonstrate the fact that the Vishaka Guidelines were not implemented effectively, and sought directions for their implementation.

COURT DECISION AND REASONING

The Court noted that the Vishaka guidelines ought not to remain just symbolic and issued various directions to the State Governments and Union Territories to ensure strict enforcement, including:

- State Governments must amend the Civil Service Conduct Rules to include that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under the Civil Services Conduct Rules. Thus, the disciplinary authority shall not treat the findings and the report of the Complaints Committee as a mere preliminary investigation leading to a disciplinary action, but as a final finding in an inquiry into the misconduct of the employee.
- States must amend the Industrial Employment (Standing Orders) Rules within two months.
- States should establish Complaint Committees at the taluka, district, and state levels within two months, with each committee headed by a woman and including independent members.
- State and private organizations must implement the Vishaka Guidelines, ensuring that if an alleged harasser is found guilty, the complainant is not forced to work with them, and if possible, the harasser should be transferred. Strict disciplinary action must be taken against harassment or intimidation of witnesses and complainants.

SIGNIFICANCE

This judgment led to the government authorities putting in place measures to recognise the proceedings of the Internal Complainants Committee enquiry as the disciplinary process against the harassers and following this, Rule 14 of the CCS (CCA) Rules, 1965 was amended.

21

Global Health Private Ltd. v. Local Complaints Committee, District Indore & Others

RIGHT IN QUESTION

Right of a woman to compensation for unjustified termination during the pendency of a complaint of sexual harassment.

CASE NUMBER

W.P. No.22317 of 2017, decided on September 16, 2019

COURT

High Court of Madhya Pradesh (Indore Bench)

JUDGE

Rohit Arya, J.

CITATION

2020 LLR 40 (MP HC); 2019 SCC ONLINE MP 5453; MANU/MP/1007/2019



FACTS

This case arose from the sexual harassment faced by an employee of the Petitioner company at the hands of her supervisor. The aggrieved woman's complaints against her supervisor were continuously ignored by the Petitioner, and they also refused to constitute an ICC. Upon the aggrieved woman approaching the Local Complaints Committee, she was terminated by the company. The Petitioner company challenged the LCC decision, which cancelled the termination letter of the Complainant and directed them to pay compensation and submit an apology letter.

COURT DECISION AND REASONING

The Court upheld the order of the LCC, noting the continued refusal of the company to cooperate with the LCC or comply with its obligations under the POSH Act. It held that Complainant woman was subjected to unwelcome sexual harassment at the workplace and had undergone severe emotional distress, loss of her reputation and livelihood, and suffering. She was accordingly entitled to compensation to the tune of INR 25,00,000/- (Rupees Twenty-five Lakhs only). The hospital was also required to pay a penalty of INR 50,000/- (Rupees Fifty Thousand only) under Section 26 of the POSH Act for non-existence of its ICC.

SIGNIFICANCE

This decision is significant because the Court came down strongly against the actions of the Petitioner company and its non-compliance with the POSH Act. The quantum of compensation awarded by the Court is one of the largest sums on record to be awarded in a case of sexual harassment.

22

Punjab & Sind Bank & Others
v. Mrs. Durgesh Kuwar

RIGHT IN QUESTION

Right of a woman to not be transferred from her job for raising a complaint.

CASE NUMBER

C.A. No.1809 of 2020, decided on February 25, 2020

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud & Ajay Rastogi, JJ.

CITATION

2020 INSC 225; AIR 2020 SC 3040; MANU/SC/0316/2020



FACTS

This appeal arose from the Respondent woman’s allegations of irregularities and corruption in the bank branch in which she was employed as a Branch Manager. While raising her concerns with her Zonal Manager, she reported being sexually harassed by him. The rejection of his advances led to her transfer from Indore to a small rural branch, which was below her rank as a Scale IV officer. While her complaint under the POSH Act was ongoing, the Respondent also challenged her order of transfer before the Madhya Pradesh High Court which quashed the transfer order. The Bank appealed the decision before the Supreme Court.

COURT DECISION AND REASONING

The Court held that sexual harassment at the workplace was an affront to the fundamental right of a woman to equality under Articles 14 and 15 and her right to live with dignity under Article 21, as well as her right to practice any profession or trade or business. It concluded that there was no doubt that the Respondent was victimized and faced a reprisal for raising questions about irregularities at the bank and unfair treatment at the workplace. The transfer to a rural branch which was expected to be occupied by a Scale I officer instead of a Scale IV undermined the dignity of the Respondent and right to fair treatment. The Court dismissed the Bank’s appeal and ordered her reinstatement at the Indore branch for a period of 1 year and Rs. 50,000 as costs.

SIGNIFICANCE

The Court here took a strong stance against reprisals faced by women at the workplace for speaking out on sexual harassment and other issues of unfair treatment and grounded it as a violation of the right to dignity under Article 21.

23

Sanjeev Mishra v.
The Disciplinary Authority &
General Manager

RIGHT IN QUESTION

The right of a woman to file a complaint on incidents of sexual harassment which take place online.

CASE NUMBER

S.B. Civil Writ Petition No.150 of 2021, decided on January 11, 2021

COURT

High Court of Rajasthan

JUDGE

Sanjeev Prakash Sharma, J.

CITATION

Not available



FACTS

This case was filed by the Petitioner, Sanjeev Mishra, a Chief Manager at a bank, challenging the chargesheet and notice issued to him by the disciplinary authority set up by his bank on allegations of sexual harassment by a female colleague. The Petitioner claimed that the disciplinary authority had no jurisdiction over the allegations by the Complainant-woman, as he and the Complainant were working in different States at the time. Further, the alleged messages constituting harassment were sent after working hours and on the day he was not on duty.

COURT DECISION AND REASONING

The Court held that disciplinary authority had the jurisdiction to inquire into the allegations in the case. It held that for the purpose of the POSH Act, a “workplace” included communications on a digital platform between employees who had earlier worked in the same branch and were now in separate branches. Further, the Court observed that the Appellant cannot be allowed to escape the consequences of the POSH Act, on the ground that he was not required to act in his official capacity of a Chief Manager after office hours, or on days when he was not on official duty.

SIGNIFICANCE

Incidents of sexual harassment which take place virtually or during un-official hours are not exempted from the purview of the POSH Act, as long as there exists a working relationship between the parties. Given the practice of ‘work from home’ during the Covid 19 pandemic in 2020-21, and the increased use of virtual spaces and remote locations from where professional work is undertaken, this judgment is significant as it extends protection to women from sexual harassment in such contexts.

24

Aureliano Fernandes v.
State of Goa

RIGHT IN QUESTION

Right to fair process and
natural justice in sexual
harassment proceedings.

CASE NUMBER

C.A. No. 2482 of 2014,
decided on May 12, 2023

COURT

Supreme Court of India

JUDGES

Hima Kohli & A.S. Bopanna,
JJ.

CITATION

2023 INSC 527; AIR 2023 SC
2485; MANU/SC/0572/2023



FACTS

The Appellant, a University faculty member, was accused of harassment by several female students. A Complaints Committee was constituted to initiate an inquiry, over the course of which, the Appellant repeatedly sought time before the Committee. The Committee granted him an extension and a final opportunity to appear. However, on this date, the Appellant remained absent on grounds of ill health. Finally, the Committee proceeded without him and conducted 18 meetings, culminating in a report that suggested termination of his services. The University dismissed the Appellant, following which the termination was challenged before the Bombay High Court, and then in appeal to the Supreme Court.

COURT DECISION AND REASONING

The Court found that the inquiry proceedings that took place exhibited glaring defects and procedural lapses. It held that very short dates were given to file replies and reasonable time was not given. The Committee conducted the proceedings in a “tearing hurry,” reaching its conclusion in only 39 days, whereas the CCS Rules give 6 months’ time. It held that even when rules are silent, principles of natural justice must be read into them and that a balance should be struck between the rights of the victim of harassment and the delinquent employee. Finally, it concluded that the proceedings of the Committee defied the principles of natural justice and remanded the case back for consideration, with specific instructions to give opportunity to the Appellant to be heard and to complete the process within 3 months. While passing this order, the Court also passed directions observing that there were “serious lapses in the enforcement of the Act” and wrote about the importance of the POSH Act in furthering gender equality in India. It gave broad directions for the verification of the constitution of complaints committees for all government bodies, familiarizing committee members with proper inquiry procedure and conducting awareness programmes.

SIGNIFICANCE

While this judgment laid down positive directions for implementation of the POSH Act, it also allowed the delinquent employee to re-open his case on the ground of natural justice, and held that the rights of the accused must be balanced with the rights of the victim.

25

Initiatives for Inclusion
Foundation v. Union of India

RIGHT IN QUESTION

Right to institutional
mechanisms for
redressal against
sexual harassment.

CASE NUMBER

W.P. (C) No.1224 of 2017,
decided on October 19, 2023

COURT

Supreme Court of India

JUDGES

S. Ravindra Bhat &
Dipankar Datta, JJ.

CITATION

2023 INSC 927; MANU/
SC/1165/2023



FACTS

This was a public interest petition filed by an NGO seeking appropriate orders directing the states to enforce the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and corresponding 2013 Rules. The petition specifically highlighted the government’s failure to appoint District Officers and Nodal Officers, set up Local Complaints Committees, collect compliance reports and monitor implementation of the POSH Act and Rules.

COURT DECISION AND REASONING

The Court noted that in the Aureliano Fernandes case, comprehensive directions on enforcing the provisions of the Act were issued. However, it observed that in there were some aspects relating to effective implementation of POSH that still required the Court’s attention. Consequently, it issued sweeping directions to the States and Union to effectively comply with the mandate of the POSH Act. It directed the Union and States to take steps to ensure better coordination between them; appoint District Officers within four weeks of the judgment; ensure appointment of nodal officers and Local Committees, the information for which should be available online for the public; mandatory gender-sensitisation training for District Officers and Local Committees; allocation of resources for awareness campaigns; and establishment of Standard Operating Procedures to monitor the implementation of the Act, maintain and collect data. Additionally, the Court directed that all hospitals, nursing homes, sports facilities and competition and game venues establish Internal Committees and report compliance under the Act.

SIGNIFICANCE

The directions issued by the Court mark a significant step towards ensuring safe and inclusive workplaces for women by addressing the gaps and inefficiencies in the implementation of the POSH Act.

26

Union of India v. Dilip Paul

RIGHT IN QUESTION

Standard of proof required for disciplinary proceedings in sexual harassment.

CASE NUMBER

C.A. No. 6190 of 2023, decided on November 6, 2023

COURT

Calcutta High Court

JUDGES

Dr. D. Y. Chandrachud, CJI & J. B. Pardiwala & Manoj Misra, JJ.

CITATION

2023 INSC 975, MANU/SC/1213/2023



FACTS

A female Field Assistant filed complaints of sexual harassment against her employer, the Respondent, who was the local Area Head of the Service Selection Board in Assam. She alleged that the Respondent had made late-night calls, unwelcome visits, and sexually coloured remarks. Two inquiries were initiated, an “on-the-spot” fact-finding inquiry by the Deputy Inspector at Tezpur and a Frontier Complaints Committee inquiry, both of which did not find any substantive evidence supporting the allegations. A Central Complaints Committee (CCC) was then set up to inquire into sexual harassment allegations, which concluded that the Respondent was guilty of sexual harassment. The Central Administrative Tribunal dismissed the Respondent’s appeal and imposed a penalty of withholding 50% of his monthly pension. Upon appeal, the High Court overturned the penalty, on the grounds that the CCC overstepped its mandate by investigating a second complaint; improperly assumed a prosecutorial role during the inquiry; and based its findings on no evidence.

COURT DECISION AND REASONING

The Court referenced the Central Civil Service (Conduct) Rules, 1964, the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and the 2006 Standing Order which outline the disciplinary process for civil servants. It rejected the argument that the CCC proceedings were improperly conducted and held that the CCCs are deemed to be inquiry authorities and restricting this power would reduce them to a mere recording entity, undermining their role in the disciplinary process. Further, the Court noted that the CCC did not base its findings solely on conjectures, since there was sufficient evidence to have arrived at a conclusion. It emphasized that the standard of proof in disciplinary proceedings is based on a preponderance of probability, and the criminal standard of beyond any reasonable doubt was not applicable.

SIGNIFICANCE

The judgment reaffirms the powers of CCCs and other disciplinary committees to take the necessary action against perpetrators of sexual harassment and empowers women to seek justice without procedural barriers.

27

Binu Tamta & Another v. High Court of Delhi & Others

RIGHT IN QUESTION

Right of LGBTQIA+ persons to be included within the scope of sexual harassment regulations.

CASE NUMBER

M.A. No.2308 of 2023 in W.P. (C) No.162 of 2013, decided on November 7, 2023.

COURT

Supreme Court of India

JUDGES

B. V. Nagarathna & Ujjal Bhuyan, JJ.

CITATION

MANU/SCOR/143038/2023



FACTS

This case arises from a writ petition filed by two Supreme Court Advocates, Ms. Binu Tamta and Ms. Vibha Datta Makhija, on the basis of a newspaper report on an incident which occurred in Delhi High Court, alleging that an employee of the High Court had been filming lady advocates in the chamber toilet. This order was issued on an application to amend the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 (‘Regulations’) to make it gender-neutral and protect queer and transgender persons from sexual harassment. The Petitioners asserted that the Supreme Court’s recognition of the constitutional rights of LGBTQIA+ persons in the NALSA v. Union of India judgment entitled them to sexual harassment regulations that are inclusive and accommodative of all genders.

COURT DECISION AND REASONING

The Court held that the Regulations were formulated to protect ‘aggrieved women’ at the Supreme Court in line with Article 15(3) and Article 14 of the Constitution. While recognizing that the current Regulations excluded LGBTQIA+ persons, the Court found that it would be inappropriate to direct such amendments as the principal objective of the Act i.e., protection of women from sexual harassment, at the Supreme Court would be lost. Further, the Court relied on State of Jammu & Kashmir v. A.R. Zakki and Union of India v. K. Pushpavanam, where it has been held that a writ court cannot direct the government or the executive to enact a particular bill or legislation within a particular time frame. The Petitioner subsequently withdrew the petition and conveyed her intention to petition the Gender Sensitization Committee of the Supreme Court to formulate Regulations inclusive of the LGBTQIA+ community.

SIGNIFICANCE

The Court took a rigid approach in restricting the application of the Supreme Court’s Regulations and refused to apply this policy to LGBTQIA+ persons.

R. Mohanakrishnan v. Deputy Inspector General of Police

RIGHT IN QUESTION

Right of a woman’s complaint of sexual harassment to not be time-barred in cases of continuing sexual harassment.

CASE NUMBER

W.P No.10707 of 2024 and W.M.P No.11796 of 2024, decided on June 11, 2024

COURT

Madras High Court

JUDGE

D. Bharatha Chakravarthy, J.

CITATION

2024 SCC Online Mad 2123; MANU/TN/2712/2024



FACTS

The Petitioner, R. Mohanakrishnan, was accused of sexually harassing a woman through frequent calls, sexually coloured conversations, and WhatsApp messages. The woman stated that the Petitioner had thereafter come to her house and had forcible sexual intercourse in 2018. The Preliminary Inquiry revealed prima facie grounds to proceed with the complaint against the Accused, and a criminal case was also registered. The ICC proceeded with the inquiry despite the time-barred complaint. The primary issue for consideration was whether or not the inquiry report is liable to be quashed as the complaint is beyond six months, i.e., three months from date of incident as per Section 9 of the POSH Act and further extension of only three more months under circumstances in cases where the woman was prevented from filing the complaint within the said period.

COURT DECISION AND REASONING

The Court noted that when the offence complained of is a serious one having the effect of causing grave mental trauma, and has contributed to the victim being unable to withstand, swallow or suppress the same, then that state of the victim can be understood as a case of continuous sexual harassment. The Court held that so long as the victim experiences this type of severe trauma, the same is directly attributable only to the perpetrator. Such a phenomenon is not just the effect of the act but is the injury itself. The Court stated that the injury adds up every day when the victim is made to silently keep quiet and face the delinquent at the workplace. In noting this, the Court stated that this was not an isolated incident of misconduct, but was continuous until the situation could be redressed or brought to notice of appropriate authority. The purpose of limitation under Section 9 has to be understood in this manner.

SIGNIFICANCE

The Court, in noting that incidents of sexual harassment are of a continuing nature until the victim brings it to the notice of the appropriate authority, acknowledged the trauma faced by victims in coming forward and being forced to face the perpetrator on a daily basis.

D. RIGHTS OF SEX WORKERS

In the 1970s, the sex workers’ movement adopted the term ‘sex worker’ to reframe the women engaged in sex work as ‘workers’, instead of victims or criminals. The movement sought to establish that sex work is ‘work’ that includes both formal and informal work arrangements, part-time or full-time work, and is an income generating activity contributing to the economy. Proponents of this movement contend that sex workers should be afforded the same labour rights and social protections afforded to other types of workers, and advocate for the decriminalisation of sex work and associated activities, not including human trafficking.

The International Labour Organisation (ILO) also recognises sex workers as part of the informal economy, advocating for their inclusion in labour rights protections. In India however, the legal framework continues to reflect the narrative that all sex work is inherently exploitative, and all women engaged in it are victims. The Immoral Traffic (Prevention) Act, 1956 (“ITPA”) does not criminalise sex workers directly, but all surrounding activities including the operation of brothels, living on the earnings of prostitution and solicitation of clients are illegal.

Sex workers in India do not have any type of legal or social protections. They are exposed to exploitative, unhealthy and violent working conditions, which limits their ability to seek recourse or protection from the police or other authority. The judicial decisions on sex work in India have largely reflected the same view that sex work is inherently immoral and exploitative.

In this chapter we have covered two significant cases which shifted the needle on the response of the State towards sex work and trafficking. In Vishal Jeet v. Union of India (1990), the Supreme Court for the first time discussed the socio-economic conditions driving trafficking and sex work. It directed the State to move beyond a law-and-order approach and look at preventative measures, while also providing rehabilitation facilities for trafficked women and girls with adequate doctors, social workers and mental health professionals. In Budhaddev Karmaskar v. State of West Bengal, the right to dignity of sex workers under Article 21 was upheld for the first time.

29

Vishal Jeet v. Union of India & Others

RIGHT IN QUESTION

Right against exploitation and trafficking of women and children into prostitution.

CASE NUMBER

W.P. (Crl) No.421 of 1989, decided on May 2, 1990

COURT

Supreme Court of India

JUDGES

S. Ratnavel Pandian & K. Jayachandra Reddy, JJ.

CITATION

1990 INSC 171, 1990 SCC CRI 482, MANU/SC/0277/1990



FACTS

This case was filed in public interest, seeking directions against the CBI to investigate police officers under whose jurisdiction red-light areas, Devadasi and Jogin systems were flourishing. Additionally, the Petition prayed for the Court to make provisions for the rescue and rehabilitation of children and young girls forced into prostitution, submitting evidence of how poverty and deprivation forced families to sell their children into the sex trade.

COURT DECISION AND REASONING

The Supreme Court ordered all State governments and Union Territories to take appropriate and speedy action under the existing law to eradicate child prostitution. It also instructed them to establish advisory committees consisting of law enforcement and social welfare experts to provide suggestions for eradicating child prostitution and rehabilitating victims and, to look deeper into the Devadasi system and Jogin tradition. Additionally, the court emphasized the need for the creation of rehabilitative homes for rescued children and girls with well-trained social workers, psychiatrists, and doctors. The Court also emphasized that measures to tackle the issue should be preventive rather than punitive, while addressing the root causes of poverty, exploitation, and ignorance. Legal actions should target the pimps, brothel owners, and traffickers who are the perpetrators of trafficking, instead of the sex workers.

SIGNIFICANCE

The case is significant as it underscores the role of the State in protecting children and women from human trafficking and prostitution, focusing on preventive rather than punitive measures and highlighting the need for socio-economic interventions to eradicate the root causes of child prostitution. The case also reinforced the importance of rehabilitation and reintegration of victims into society.

30

Budhadev Karmaskar v. State of West Bengal

RIGHT IN QUESTION

The right to life with dignity under Article 21 for sex workers and their children.

CASE NUMBER

Crl. Appeal No.135 of 2010, decided on May 19, 2022

COURT

Supreme Court of India

JUDGES

L. Nageswara Rao, B. R. Gavai & A. S. Bopanna, JJ.

CITATION

MANU/SCOR/55689/2022



FACTS

Budhadev Karmaskar was convicted for brutally murdering Chhaya Rani Pal, a sex worker in Kolkata. While the Supreme Court dismissed the criminal appeal, it suo motu converted it to a PIL to address the broader issues faced by sex workers.

COURT DECISION AND REASONING

The Court reiterated its earlier order in this case that sex workers had the right to live with dignity under Article 21 of the Constitution. The right to human dignity and a decent life affording the bare necessities are fundamental tenets under Article 21. This extends to sex workers as well as their children, who, bearing the brunt of social stigma attached to their work, are removed to the fringes of the society and are deprived of their right to live with dignity and opportunities. The Court invoked Article 142 to fill the legislative vacuum on the protection of sex workers' rights and issued the following directions to the Government to address the issue:

- Sex workers are entitled to equal protection of the law. If sex worker is an adult and is participating with consent, the police must refrain from criminal action.
- Any sex worker who is a victim of sexual assault should be provided with all facilities available to a survivor of sexual assault, including immediate medical assistance.
- Police should treat all sex workers with dignity and should not abuse them.
- Media to take utmost care not to reveal the identities of sex workers, during arrest, raid and rescue operations and should be strictly enforced against electronic media.
- Harassment, arrest and victimization of sex workers during brothel raids was prohibited in the case of voluntary sex work.
- No child of a sex worker should be separated solely due to the mother's profession, and any claims of parenthood should be verified without presumption of trafficking.
- Aadhaar cards should be issued to sex workers without proof of residence through a certified process to enable access to government services.

SIGNIFICANCE

This judgment is significant as it takes a rights-based approach to sex work, acknowledging their consent in every interaction with the state, including during criminal raids, special rehabilitation schemes and ensuring their participation in policymaking processes.

02

AFFIRMATIVE ACTION FOR WOMEN UNDER ARTICLE 15 (3)

ABOUT

AFFIRMATIVE ACTION FOR WOMEN UNDER ARTICLE 15 (3)

The principle of affirmative action for women is rooted in Article 15(3) of the Indian Constitution and serves as a critical tool in advancing gender equality

Article 15(3) provides an exception to the general prohibition of discrimination on the grounds of sex, empowering the State to make special provisions for women and children. This provision has been instrumental in addressing historical and structural inequalities and fostering greater gender equality in governance, public employment, and education.

The judicial interpretation of Article 15(3) and its interplay with other constitutional guarantees like Articles 14 and 16 can be exemplified in the following cases. In *Dattatraya Motiram More v. State of Bombay*, the Bombay High Court upheld the constitutionality of reserving elected seats for women in municipal elections and affirmed that such measures are a legitimate exercise of the State's power to promote women's representation in public office. Similarly, in *Om Narain Agarwal v. Nagar Palika, Shahjahanpur*, the Court reaffirmed the constitutionality of provisions for the nomination of women in municipal boards, highlighting the State's discretion in ensuring nominated representation for women.

Additionally, in *Vinayak Sudame v. State of Maharashtra*, the Bombay High Court endorsed the preferential appointment of women as headmistresses of girls' schools, recognizing the importance of gender-sensitive policies in education. Lastly, the Supreme Court in *Government of Andhra Pradesh v. P.B. Vijayakumar* extended the scope of affirmative action to public employment, validating a policy providing preferential treatment to women candidates and emphasizing that Article 15(3) supplements rather than diminishes the guarantees under Article 16. Through these cases, this section explores how the judiciary has navigated the tensions between formal equality and substantive equality, affirming the necessity of affirmative action measures to achieve a more inclusive and equitable society.

31

RIGHT IN QUESTION

Validity of reservation for women elected to public office.

CASE NUMBER

Special C.A. No.1653, 1855 and 1917 of 1952 decided on November 18, 1952

COURT

Bombay High Court

JUDGES

M. C. Chagla, C.J. & Y. V. Dixit, J.

CITATION

AIR 1953 Bom 311, MANU/MH/0142/1953



Dattatraya Motiram More v. State of Bombay

FACTS

This Petition challenged Section 10(1)(c) of the Bombay Municipal Boroughs Act, 1925, which allowed for the reservation of seats for women in municipal elections. The Act reserved 4 out of the 35 seats in the Jalgaon Municipality were for women candidates. The Petitioner argued that this reservation was in violation of Articles 14, 15, and 16 of the Constitution, which guarantees equality and prohibits discrimination based on sex.

COURT DECISION AND REASONING

The Bombay High Court upheld the provision and found that the reservation was constitutional. It held that Articles 16(1) and 16(2) which guarantee equality of opportunity in public employment were inapplicable to municipal councillors as they did not hold an office "under the State". While Article 15(1) prohibits discrimination on grounds of sex, Article 15(3) permits the State to make special provisions for women and children. It is therefore permissible to discriminate in favour of women, as it was not arbitrary or unreasonable. Further, the Court noted that women being historically disadvantaged and underrepresented require special measures such as reserved seats to ensure their participation in governance. It emphasized that such provisions further constitutional goals of equality and social justice. In this particular case, the State has made special provisions for women by giving them reserved seats, which is permitted even though the provision may result in discrimination only on the ground of sex. Therefore, it held that the legislation does not offend the guarantee of non-discrimination under Art 15(1) of the Constitution.

SIGNIFICANCE

The Court upheld the reservation of seats for women in public office, signifying an important step towards promoting the representation of women in leadership and public administration.

32

Vinayak S/o Ramchandra Sudame v. State of Maharashtra and Others

RIGHT IN QUESTION

Validity of affirmative actions promoting employment opportunities for women.

CASE NUMBER

Spl. C.A. No.1490 of 1977, decided on February 21, 1985

COURT

Bombay High Court

JUDGES

V. A. Mohta & S. W. Puranik, JJ.

CITATION

1982 (2) BomCR 671; MANU/MH/0403/1985



FACTS

The Petitioner, a male teacher at the school run by the New High School Society in Maharashtra, was senior to Shrimati Mayabai Ganu in the seniority list for teachers. However, based on Rule 61(2)(a) of the Secondary School Code, which allowed for the appointment of a woman as the headmistress of a girls' school regardless of seniority vis-à-vis male teachers, Ganu was appointed as the headmistress of Nutan Kanya Shala, a girls' school. The Petitioner challenged Ganu's appointment and Rule 61(2), arguing that it discriminated against him on the basis of sex and violated Article 16(2) which prohibits discrimination in public employment.

COURT DECISION AND REASONING

The Bombay High Court dismissed Sudame's petition upholding the validity of Rule 61(2)(a). The Court reasoned that while Articles 15 and 16 prohibit discrimination on grounds of sex, Article 15(3) allows the state to make special provisions for women. It held that in interpreting Articles 14, 15, and 16 together, special provisions for women could extend to public employment if it served a legitimate policy goal. Further, the Court justified the rule based on the unique needs of a girl's school, emphasising that having a woman headmistress could create a more comfortable environment for female students and teachers. The decision noted that the provision aimed at benefiting girls and women, making it a reasonable classification in furtherance of constitutional aims.

SIGNIFICANCE

This case is significant as it reinforced the principle of affirmative action for women in education and employment and upheld that it is permissible under Article 15(3) if it serves legitimate public policy.

33

Om Narain Agarwal v. Nagar Palika, Shahjahanpur

RIGHT IN QUESTION

Right of women to reservation in municipal boards.

CASE NUMBER

C.A. No. 714-16 and 717 of 1993, decided on February 19, 1993

COURT

Supreme Court of India

JUDGES

N. M. Kasliwal & Yogeshwar Dayal, JJ.

CITATION

1993 INSC 62; 1993 SCC 2 242; MANU/SC/0224/1993



FACTS

A proviso to Section 9 of United Provinces Municipalities Act 1916 provided for the nomination of one woman as a member of the Municipal Board by the State Government. Further, there was no provision permitting the State Government to cancel the nomination of such a member at its pleasure. However, by an Ordinance introduced later that replaced this Act, the proviso was amended to provide for the nomination of two women members and a fourth proviso was introduced that said that such nomination was at the pleasure of the State Government. Soon after, a general notification was issued cancelling the nomination of women members in several municipal boards. This petition challenges the fourth proviso to Section 9 as arbitrary, unreasonable and unconstitutional.

COURT DECISION AND REASONING

The Court held that in its view, such provision, neither violates any Article of the Constitution nor the same is against any public policy or the democratic values enshrined under the Constitution. It was stated that Article 15(3) is an exception to Articles 14, 15(1) and 15(2), and that this means that in case any special provision is made for women, the same would not be violative of Article 15(1) and 15(2). Therefore, the special provision for nominating one or two women members stands protected from challenge by virtue of Article 15(3). The Court also notes that the provision of pleasure doctrine under proviso four does not take away from the right of representation of women members in the Board, but simply permits State Governments to keep nominated women members of its own choice.

SIGNIFICANCE

This was a significant ruling where the Court laid down that the mere presence of discretion with the State in appointment while entitling women for the position does not attract the provisions of unequal or discriminatory treatment under Articles 14 or 15.

34

RIGHT IN QUESTION

Affirmative action for women in public employment.

CASE NUMBER

C.A. No. 2532-33 of 1989, decided on May 12, 1995

COURT

Supreme Court of India

JUDGES

R. M. Sahai & Sujata V. Manohar, JJ.

CITATION

1995 INSC 375, 1995 SCC (4) 520; MANU/SC/0317/1995



Government of Andhra Pradesh v. P. B. Vijayakumar & Another

FACTS

The Government of Andhra Pradesh in 1984 introduced a policy providing preferential treatment to women candidates in direct recruitment to posts in the following manner: (1) where women are better suited than men, then women will be given preference; (2) where both men and women are equally suited, then also preference shall be given to women and they shall be selected to an extent of at least 30% of the posts in each category of OC, BC, SC and ST quota; (3) posts which are reserved exclusively for women shall be filled by women only. The Petitioner challenged the policy as violative of his right to equality under Articles 14 and 16(4). The Andhra Pradesh High Court struck down sub-rule (2) to the extent that women shall be selected to an extent of at least 30% in each category mentioned, while upholding sub-rules (1) and (3).

COURT DECISION AND REASONING

The Court examined the interrelationship of Articles 14, 15 and 16 in cases of public employment. Although Article 16 is more specific to reservations in public employment, it did not mean that Article 15, which provides for special provisions to women was not applicable. The Court noted that sub-rule (2) is not a reservation for women in the normal sense and as it does entail a separate quota that is reserved for a special category of persons. The preference of 30% is a form of affirmative action among a pool of equally meritorious candidates. It held that there was nothing to show that the rule was not within the ambit of Article 15(3), nor was it violative of Article 16(2) or 16(4). The Supreme Court set aside the judgment of the High Court so far as it struck down the second part of sub-rule (2) and upheld all the provisions of the Andhra Pradesh policy.

SIGNIFICANCE

The Court importantly noted that Article 15(3) is not whittled down in any manner by Article 16 and holds that both reservation and affirmative action are permissible under Article 15(3) with regards to employment under the State.

03

RIGHTS WITHIN THE FAMILY

ABOUT

RIGHTS WITHIN THE FAMILY

Women's rights within the family are thrown open in a wide range of contexts – from equal rights within marriage, equal rights to inherit property and the right to maintenance and to protections against domestic violence. The legal framework of these rights is complex, as they are covered under civil law and personal laws on marriage, divorce, inheritance and adoption unique to each religious community.

Personal law is, at its core, a question of women's rights. Women have historically been a central focus of personal law, both as subjects of patriarchal control and as the focus of judicial reform. Their rights, or lack thereof, have been the battleground on which the debate on the Uniform Civil Code has been fought.

However, the agency and participation of women at the intersection of gender, religion and caste has not been as clearly visible. The developing jurisprudence in personal law is a reflection of women asserting themselves and reclaiming their space and autonomy - from the margins to the center.

The cases in these following sections trace landmark judgments on property rights within personal law such as Mary Roy and Ors. v. State of Kerala and Ors. which granted equal inheritance rights to Christian women and Madhu Kishwar and Others v. State of Bihar, which included Adivasi women in the Hindu Succession Act, 1956.

On women's rights within marriage, the Supreme Court's verdict in Mohd. Ahmed Khan v. Shah Bano Begum and Ors which recognized the right of a divorced Muslim woman to claim maintenance under Section 125 of Code of Criminal Procedure, 1973 is significant. So too is the declaration of the practice of triple talaq as void in Shayara Bano v. Union of India and Others. The Supreme Court has also expanded the right to maintenance outside marriage, to include women in relationships in the nature of marriage in D. Velusamy v. Patchiammal.

In Githa Hariharan v. Reserve Bank of India, 1999, the Supreme Court's verdict permitted Hindu mothers equal guardianship rights over their child, undoing a long-standing patriarchal law only granting natural guardianship rights to fathers. In 2015, in ABC v. State of NCT Delhi, the Supreme Court expanded on the rights of mothers, holding that unwed mothers could not be forced to disclose the paternity of their child by the State.

Each of these judgments were informed by the prevailing socio-political landscape, which we aim to bring forth. This section also includes developments under the The Protection of Women from Domestic Violence Act, 2005 ("PWDVA"), a landmark legislation which has served to protect all women in India from domestic abuse, regardless of applicable personal laws.

A. JUDGMENTS ON PROPERTY AND LAND RIGHTS

35

Mary Roy & Others v. State of Kerala & Others

RIGHT IN QUESTION

The right of Christian women to equal inheritance rights as guaranteed under the Indian Succession Act, 1925.

CASE NUMBER

W.P. (C) Nos.8260 of 83, 651-52 and 657 of 85, decided on February 24, 1986

COURT

Supreme Court of India

JUDGES

P. N. Bhagwati & R. S. Pathak, JJ.

CITATION

1986 AIR SC 1011; MANU/SC/0716/1986; 1986 AIR 1011



FACTS

The Petitioner was a member of the Indian Christian community and had challenged the Travancore Christian Succession Act, 1092 ("TCS Act") which was applicable to Syrian Christians. The TCS Act limited the rights of Christian women by granting them only a life interest in immovable property and unequal shares as compared to men. Daughters received one-fourth the value of a son's share or Rs. 5000, whichever was lesser, and this right was further restricted if they had already received a Streedhanam (gift) during the lifetime of the intestate.

COURT DECISION AND REASONING

The Court, prior to determining the challenge to the TCS Act, considered the question of whether the TCS Act was still in force or if it had been repealed by the Part B States (Laws) Act, 1951 which extended the TCS Act to the state of Travancore-Cochin. The Supreme Court ruled that the TCS Act stood repealed by the extension of the Indian Succession Act, 1925 when the latter came into force in Travancore. The Succession Act provided uniform rules for intestate succession including for the Indian Christian, guaranteeing equal inheritance rights to men and women. Therefore, the discriminatory provisions of the TCS Act which granted women inferior inheritance rights were no longer valid.

SIGNIFICANCE

This judgment upheld the equal rights to inheritance for Christian women in accordance with the Indian Succession Act, 1925. However, they did not venture into the constitutionality of the TCS Act since it was repealed.

36

Madhu Kishwar & Others v. State of Bihar

RIGHT IN QUESTION

Right to equality for women and their exclusion from indigenous inheritance laws under the Chota Nagpur Tenancy Act, 1908.

CASE NUMBER

W.P. (C) No.5723 of 1982, decided on April 17, 1996

COURT

Supreme Court of India

JUDGES

Kuldip Singh, M. M. Punchhi & K. Ramaswamy, JJ.

CITATION

AIR 1996 SC 1864; MANU/SC/0468/1996



FACTS

The Petitioner challenged the constitutionality of Sections 6, 7, 8, and 76 of the Chota Nagpur Tenancy Act, 1908 which excluded tribal women from inheriting land or property. The Petitioner's argument was that the customary laws favoured male heirs in matters of inheritance, and this was in violation of the fundamental right to equality and non-discrimination under the Constitution.

COURT DECISION AND REASONING

The Supreme Court held that the provisions of the Tenancy Act were discriminatory in its denial of equal inheritance rights to tribal women. It ruled that under the principles of justice, equity, and good conscience, tribal women ought to have equal inheritance rights in line with the Hindu Succession Act, 1956 and the Indian Succession Act, 1925. While the Court did not declare the entire provisions under Sections 7 and 8 of the Act to be unconstitutional, it read them down to include female descendants within the purview of inheritance. The Court upheld the proactive measures under Article 15(3) of the Constitution that allow for special provisions for women and reasoned that Articles 14 and 15 prohibit discrimination based on sex, and tribal women must be granted equal protection under these laws. It observed that a balance must be struck between the protection of customs and constitutional rights to ensure that the law does not propagate discriminatory practices. Additionally, the Court acknowledged that the right to livelihood under Article 21 is intrinsically linked to the right to property, and the exclusion of women from inheriting land, which is a critical resource for livelihood in tribal communities was a violation of their right to life and livelihood under Article 21.

SIGNIFICANCE

The case is significant for establishing that tribal women have the same inheritance rights as men even in communities governed by customary laws. The ruling was a significant step toward eliminating gender discrimination in tribal areas and thus looking at intersectionality of women from Adivasi communities and the discrimination they face.

37

Kamla Neti (Dead) through L.Rs. v. The Special Land Acquisition Officer & Others

RIGHT IN QUESTION

Right of women belonging to Scheduled Tribes to inherit property under the Hindu Succession Act, 1956.

CASE NUMBER

Civil Appeal No. 6901 of 2022, decided on December 9, 2022

COURT

Supreme Court of India

JUDGES

M. R. Shah & Krishna Murari, JJ.

CITATION

MANU/SC/1598/2022; 2022 INSC 1264



FACTS

The Appellant, Kamla Neti was the granddaughter of the original owner of a piece of land through her father. She claimed a 1/5th share in the compensation for the land acquired by the government, which was rejected on the ground that the Hindu Succession Act does not apply to Scheduled Tribe communities, as stated under Section 2(2) of the Act. The High Court upheld this decision, and the Appellant then appealed to the Supreme Court. The Appellant argued that denying her a share in the compensation based on her gender was unconstitutional and cited the case Madhu Kishwar v. State of Bihar to support her claim that Scheduled Tribe women are entitled to equal rights in succession.

COURT DECISION AND REASONING

The Supreme Court dismissed the appeal, upholding the decision that the Hindu Succession Act does not apply to Scheduled Tribes, as per Section 2(2) of the Act. It held that until this section was amended by the legislature, Scheduled Tribe women cannot claim inheritance under the Hindu Succession Act. The Court emphasized that it is the role of the legislature, not the judiciary, to amend laws. While acknowledging the Appellant's argument on equity grounds, the Court reiterated that the law as it stands excludes Scheduled Tribe women from inheritance rights under the Hindu Succession Act. The Court also referred to Madhu Kishwar, where the majority view refused to strike down gender-based succession provisions for Scheduled Tribes, but recognized the need for the legislature to address the issue.

SIGNIFICANCE

The case was a major setback to the rights of Scheduled Tribe women to equal inheritance. The judgment however highlighted the ongoing gender disparity in succession laws for tribal communities and called for legislative amendments to ensure equality for women, in line with constitutional guarantees of equality under Articles 14 and 21.

38

Kannaian Naidu & Others v. Kamsala Ammal & Others

RIGHT IN QUESTION

The right of a wife to properties acquired together with her spouse during marriage.

CASE NUMBER

S.A. No. 59 of 2016 and Cross Objection No. 26 of 2017, decided on June 21, 2023.

COURT

Madras High Court

JUDGE

Krishnan Ramasamy, J.

CITATION

2023(2) UC 1145; MANU/TN/3343/2023



FACTS

The case is a claim of ownership rights over properties acquired by the Respondent, Kamsala Ammal, together with her husband, the Appellant, Kannaian Naidu, in this case. The Appellant-husband had worked abroad, sending remittances to the wife in India to manage family affairs. The couple acquired the suit properties in the wife's name and with the funds provided by the husband. Following a period of marital discord, the husband filed a suit for injunction against his wife over the original property deeds and claimed full ownership of the same. The Appellant-husband claimed that his wife merely acted as his fiduciary, managing assets on his behalf. The Respondent-wife states that she contributed indirectly by managing the household, and directly by selling ancestral property to fund her husband's initial travel and was thus entitled to full ownership.

COURT DECISION AND REASONING

The Madras High Court ruled that both parties contributed to the acquisition in different ways. It noted that the wife, as a homemaker, played a vital role in managing the household chores, looking after the couple's three children, cooking, cleaning, and managing the day-to-day affairs of the family while the husband was working abroad. Further, she sacrificed her own dreams and spent her entire life focused on her family and children. The Court held that it was the wife's role in the home that enabled the husband to do his job, so she was entitled to share in the fruits of that labour. It determined that the properties in question were jointly owned due to the husband's financial input and the wife's indirect contributions. However, it upheld the Respondent-wife's sole ownership of properties which she purchased by pledging her jewels, and through the gifts from the Appellant.

SIGNIFICANCE

The judgment emphasizes the invisible contributions of women towards the assets acquired by a couple during marriage, recognizing that non-financial support from a spouse justifies the co-ownership of assets acquired during the marriage.

B. JUDGMENTS ON MARRIAGE, MAINTENANCE AND DIVORCE

39

RIGHT IN QUESTION

The right of a divorced Muslim woman to claim maintenance from her former husband under Section 125 of the Code of Criminal Procedure, 1971 (CrPC).

CASE NUMBER

Criminal Appeal No. 103 of 1981, decided on April 23, 1985

COURT

Supreme Court of India

JUDGES

Y. V. Chandrachud, CJI & D. A. Desai, E. S Venkataramiah, O. Chinnappa Reddy & Ranganath Misra, JJ.

CITATION

1985 SCC CRI 245; MANU/SC/0194/1985; 1985 AIR 945



Mohd. Ahmed Khan v. Shah Bano Begum & Others ("Shah Bano case")

FACTS

Shah Bano Begum was married to Mohd. Ahmed Khan, a lawyer, in 1932. They had five children. In 1975, Shah Bano was driven out of her matrimonial home. She filed a petition under Section 125, CrPC demanding a monthly maintenance of Rs.500 from her husband. Mohd. Ahmed Khan responded that he divorced her through irrevocable talaq and argued that he was no longer liable to provide for her maintenance since he had already paid Rs.3000 in mehr (dower) during the iddat period and had no obligation to maintain her after the iddat period according to Muslim law. The Judicial Magistrate ordered a minimal monthly maintenance of Rs. 25, later revised to Rs. 179.20 by the High Court. The decision of the High Court was challenged by Shah Bano's husband before the Supreme Court.

COURT DECISION AND REASONING

The Supreme Court upheld the decision of the High Court and held that Section 125 of the CrPC is a secular provision applicable to all citizens irrespective of religion. The objective behind the law was to prevent vagrancy and destitution by providing a quick remedy to women, children, and elderly parents who are unable to maintain themselves. The Court held that a divorced Muslim woman unless she is not remarried, is also entitled to maintenance under Section 125. It clarified that personal laws cannot override the fundamental right to maintenance as provided under the CrPC. Additionally, the mehr is not equivalent to the maintenance. Mehr is a consideration for marriage, not divorce, and cannot fulfil the husband's obligation to provide maintenance.

SIGNIFICANCE

The judgment was significant for Muslim women's rights affirming their right to maintenance beyond the iddat period under secular law (CrPC). The case caused a nationwide debate on the Uniform Civil Code (UCC) and the tension between personal laws and constitutional rights. It ultimately led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which reversed the effect of Shah Bano by stating that Muslim men were obligated to provide fair and reasonable maintenance to their wives "within the iddat period".

40

Danial Latifi & Others v. Union of India

RIGHT IN QUESTION

The right of a divorced Muslim woman to maintenance beyond the iddat period.

CASE NUMBER

Writ Petition (Civil) 868 of 1986, decided on September 28, 2001

COURT

Supreme Court of India

JUDGES

G. B. Pattanaik, S. Rajendra Babu, D. P. Mohapatra, Doraiswamy Raju & Shivaraj V. Patil, JJ.

CITATION

2001 INSC 468 ; AIR2001SC 3958; MANU/SC/1639/2001



FACTS

The Petitioners challenged the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986, asserting it effectively nullified the Shah Bano judgment, which had extended a Muslim husband's maintenance obligation beyond the iddat period if the wife could not maintain herself. The 1986 Act specified that the husband must provide a "reasonable and fair provision and maintenance" during the iddat period, after which relatives or the State Wakf Board might provide support. The Petitioners contended that this law violated the equality and dignity of Muslim women, rendering them vulnerable to poverty after iddat.

COURT DECISION AND REASONING

The Supreme Court upheld the validity of the Act but interpreted it in a manner consistent with the Shah Bano ruling. It held that the Act required a husband to make reasonable provisions for his divorced wife's future, not just for the iddat period. The Court emphasized that the phrase "within the iddat period" meant that the husband must arrange for maintenance during the iddat, but the provision itself could extend beyond it, thus safeguarding the woman's right to life with dignity under Article 21. The Court clarified that if the husband fulfils this obligation, he cannot be held liable post-iddat, but he must provide adequately for her future.

SIGNIFICANCE

The case upheld the purpose of the Shah Bano judgment and Muslim women's right to live with dignity, while balancing it against the 1986 Act. The ruling set a precedent for interpreting personal law within the framework of the Constitution to secure the fundamental rights of women.

“ In interpreting the provisions where matrimonial relationship is involved, we have to consider the social conditions prevalent in our society. In our society, whether they belong to the majority or the minority group, what is apparent is that there exists a great disparity in the matter of economic resourcefulness between a man and woman. Our society is male dominated both economically and socially women are assigned, invariably, a dependant role, irrespective of the class of society to which she belongs. ... It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions, and it is difficult to perceive Muslim law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life as the heirs who were likely to inherent the property from her or the wakf boards.”

JUSTICE S. RAJENDRA BABU

In Danial Latifi and Others v. Union of India

41

National Insurance Co. Ltd. & Others v. Deepika & Others

RIGHT IN QUESTION

The right to fair valuation of the contributions of homemakers, in the context of compensation claims.

CASE NUMBER

Civil Miscellaneous Appeal Nos.3049, 3050 and 3775 of 2004 and 605 of 2007, decided on April 27, 2009

COURT

Madras High Court

JUDGES

Prabha Sridevan & T. S. Sivagnanam, JJ.

CITATION

2010 AC J2221; 2009 SCC Online Mad 828; MANU/TN/1304/2009

FACTS

The Respondent, Deepika, lost both her parents in a road accident. She claimed compensation for their deaths, asserting that her father operated a business while her mother assisted as a homemaker. The tribunal awarded compensation amounts based on assumed incomes for both parents. The father's income was estimated without substantial documentation, and the mother's role as a homemaker was valued by notional income, using a benchmark based on housewife contributions.

COURT DECISION AND REASONING

The Madras High Court affirmed the Tribunal's income calculation, maintaining the father's monthly income at Rs. 5000 and fixing the mother's income at Rs. 3500 based on her homemaker contributions. The Court adopted the "partnership method," attributing half of the father's income plus an additional Rs. 750 to the mother's homemaker role. It held that since the Respondent lost both parents, deductions for personal expenses would not apply, and the entire notional income of Rs. 3,500 per month would constitute the compensation basis. The Court emphasized the need to recognize the economic value of unpaid homemaker labour.

SIGNIFICANCE

This is a significant case as it acknowledges the homemakers' contribution aligning with a recommendation from CEDAW to value unpaid domestic work, and was affirmed by the Supreme Court as well. While the contribution of a homemaker to the household has been recognised and given monetary value, it is important to note that this is often done, as shown in this case only after the homemaker's demise, for purposes of determining the quantum of compensation. This judgment therefore has the potential to pave the way for the courts to adopt a similar approach in other cases particularly in matrimonial disputes, in dividing matrimonial property and considering a home marker's contribution.



42

D. Velusamy v. D. Patchaiammal

RIGHT IN QUESTION

The right of a woman in a "relationship in the nature of marriage" to claim maintenance under Section 125 of the Code of Criminal Procedure, 1971.

CASE NUMBER

Criminal Appeal Nos. 2028-29 of 2010, decided on October 21, 2010

COURT

Supreme Court of India

JUDGES

Markandey Katju & T. S. Thakur, JJ.

CITATION

2010 INSC 716; 2010 SCC 10 469; MANU/SC/0872/2010



FACTS

D. Patchaiammal, the Respondent, filed a petition under Section 125, Code of Criminal Procedure (CrPC) in 2001 claiming that she was married to the Appellant, D. Velusamy, and that they lived together for two or three years before he left her with no means of livelihood. The Appellant denied the claim stating that he had married another woman, Lakshmi, and they had a son together, for which he provided proof. The Family Court ruled in favour of the Respondent, stating that Velusamy was married to her and not to Lakshmi. This decision was upheld by the Madras High Court.

COURT DECISION AND REASONING

The Supreme Court overturned the judgments of the Family Court and High Court on the ground that Lakshmi was not made a party to the proceedings. The Respondent could not claim to be the Appellant's wife unless his first marriage to Lakshmi was established. The Court also considered whether Patchaiammal was in a 'relationship in the nature of marriage' with Velusamy as defined under The Protection of Women from Domestic Violence Act, 2005. The Court explained that the term 'relationship in the nature of marriage' includes more than just a live-in relationship. The couple must fulfil specific criteria, including living together for a significant time holding themselves out as spouses and meeting the legal requirements for marriage such as being unmarried. The Court clarified that a woman in a 'relationship in the nature of marriage' could claim maintenance under Section 125 CrPC but Patchaiammal had to prove this relationship by satisfying the conditions laid out by the court.

SIGNIFICANCE

This case is significant to the Court, particularly in the Indian legal landscape where live-in relationships are becoming more recognized but remain legally ambiguous. It emphasized the rights associated with non-marital relationships. It acknowledges the evolving nature of relationships and stresses that some live-in relationships like marriages deserve legal protection such as maintenance.

43

Shayara Bano v. Union of India & Others

RIGHT IN QUESTION

Muslim women's right to equality and non-discrimination in marriage and divorce.

CASE NUMBER

W.P. (Civil) Nos. 118, 288, 327, 665 of 2016, 43 of 2017, & Suo Moto W.P. (Civil) No. 2 of 2015, decided on August 22, 2017

COURT

Supreme Court of India

JUDGES

J. S. Khehar, CJI & Kurian Joseph, Rohinton Fali Nariman, Uday U. Lalit & S. Abdul Nazeer, JJ.

CITATION

(2017) 9 SCC 1, AIR 2017 SC 4609; MANU/SC/1031/2017; 2017 INSC 785



FACTS

The Petitioner, a Muslim woman, filed a writ petition in the Supreme Court challenging the practice of triple talaq (talaq-e-biddat), which permitted a Muslim man to instantly divorce his wife by pronouncing "talaq" three times in one sitting. The Petitioner's husband had divorced her in 2015 following the practice of triple talaq, which she challenged, arguing that such a practice was unconstitutional and arbitrary under Articles 13, 14, 15 and 21 of the Constitution and it was contended that triple talaq violated the fundamental rights of Muslim women. Although the petition had also challenged the constitutional validity of other practices including nikah halala and polygamy, the Court limited the scope of the case to triple talaq.

COURT DECISION AND REASONING

By a majority of 3-2, the Court found the practice of instant triple talaq to be unconstitutional for violating the fundamental rights of Muslim women. The Court held that Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 was subject to constitutional scrutiny for violating fundamental rights. It found that it violated the right to equality under Article 14, since it gave husbands arbitrary and unilateral authority to dissolve a marriage without reasonable cause, and denied women an opportunity to be heard. Additionally, the Court ruled that triple talaq was not protected under Article 25 since it was not an essential part of Islamic practice and was contrary to the teachings of the Quran, which only allowed for divorce after attempts at reconciliation. The dissenting judges, CJI, J.S. Khehar and Justice S. Abdul Nazeer, held that the practice of triple talaq, even if unreasonable in the current era, was a matter of personal law, and was protected under Article 25. It observed that it was the Parliament's role to bring about legislative reforms to end the practice, and out of the scope of judicial intervention. However, they issued an injunction banning triple talaq for six months, giving the legislature time to act.

SIGNIFICANCE

This is a landmark judgment on the protection of Muslim women's rights in India and led to the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice of instant triple talaq. The case is significant for asserting that personal laws are subject to the fundamental rights enshrined in the Constitution.

C. JUDGMENTS ON ADOPTION, GUARDIANSHIP AND CUSTODY

44

Githa Hariharan & Another v. Reserve Bank of India & Another

RIGHT IN QUESTION

The right of a Hindu mother to equal guardianship rights over her minor child.

CASE NUMBER

W.P. Nos. 489 of 1995 and 1016 of 1991, decided on February 17, 1999

COURT

Supreme Court of India

JUDGES

Dr. A. S. Anand, CJI, & M. Srinivasan & Umesh C. Banerjee, JJ.

CITATION

1999 INSC 66; 1999 AIR SC 1149; MANU/SC/ 0117/1999



FACTS

The Petitioner, Githa Hariharan, applied to the Reserve Bank of India (RBI) for bonds in her minor son's name and designated herself as his guardian, as agreed by her husband, from who she was separated and seeking a divorce. The RBI however refused to accept her application unless it was signed by the child's father, or a court-issued guardianship certificate was provided. This prompted the Petitioner to challenge the constitutionality of Section 6(a) of the Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 which provided that the natural guardian of a Hindu child is "the father, and after him, the mother".

COURT DECISION AND REASONING

The Supreme Court stated that the word "after" in Section 6(a) of the Hindu Minority and Guardianship Act need not be interpreted as "after the father's lifetime" but rather "in the absence of." The Court concluded that if the father is unavailable, indifferent, incapacitated, or absent for any reason, the mother can act as the natural guardian during his lifetime. The Court emphasized that the welfare of the child is paramount, and both parents have a duty to ensure the child's well-being. The Court also recognized the need to harmonize domestic laws with international norms, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to prevent gender discrimination. It further ruled that the RBI's insistence on the father's signature or a court order was unjustified, especially when the father had already consented to the mother acting as the guardian.

SIGNIFICANCE

This is a significant judgment because it challenged the gender-biased interpretation of the law concerning parental guardianship. The decision reinforced the principle of gender equality in family law and clarified that mothers have equal rights to act as natural guardians of their minor children, even during the father's lifetime.

45

Dhannulal & Others v. Ganeshram & Others

RIGHT IN QUESTION

Whether there can be a legal presumption of marriage on the basis of long-term cohabitation.

CASE NUMBER

Civil Appeal Nos. 3410 and 3411 of 2007, decided on April 8, 2015

COURT

Supreme Court of India

JUDGES

M. Y. Eqbal & Amitava Roy, JJ.

CITATION

2015 INSC 292; MANU/SC/0391/2015



FACTS

The case arose from a dispute about the property willed by a woman, Phoolbasa Bai, to Dhannulal and others. The property had been inherited by her from her husband, Chhatrapati who was deceased. However, in a suit filed by the Ganeshram, a nephew of Chhatrapati, he alleged that Phoolbasa Bai was not the legal wife of Chhatrapati, rather she was a mistress, hence she did not inherit the property in question. He therefore contested the validity of the will executed by Phoolbasa Bai and a sale deed she executed in favour of the fifth defendant. The Trial Court and the High Court found in favour of Dhannulal and the other original defendants, however the High Court ruled that the will was not validly executed, hence the case was appealed by both parties.

COURT DECISION AND REASONING

The Supreme Court held that Phoolbasa Bai was presumed to be the legally wedded wife of Chhatrapati based on their long-term cohabitation and recognition by the community. The Court cited legal precedents that support the presumption of marriage when a man and woman live together as husband and wife over an extended period. It dismissed the claim that Phoolbasa was merely a mistress, as the Plaintiff failed to provide unimpeachable evidence to rebut the presumption of marriage. However, regarding the will, the Supreme Court agreed with the High Court's conclusion that the will was not validly executed.

SIGNIFICANCE

This is a significant case as it reaffirms the legal presumption of marriage when a couple has cohabited for a long period and has been recognized as such by the community.

46

ABC v. The State (NCT of Delhi)

RIGHT IN QUESTION

The right of an unwed mother to not disclose the identity of the father.

CASE NUMBER

Civil Appeal No. 5003 of 2015, decided on July 6, 2015

COURT

Supreme Court of India

JUDGES

Vikramajit Sen & Abhay Manohar Sapre, JJ.

CITATION

2015 INSC 482; MANU/SC/0718/2015



FACTS

The Appellant, an unwed Christian mother, gave birth to a child and raised him without any involvement from the father. She sought to designate her son as the beneficiary of her savings and insurance policies but was told she must either disclose the father's name or obtain a guardianship certificate. The Appellant filed a petition under Section 7 of the Guardians and Wards Act, 1890, seeking sole guardianship of her son. However, she refused to disclose the father's identity, due to which the Guardian Court dismissed her application.

COURT DECISION AND REASONING

On appeal, the Supreme Court held that the Appellant's guardianship application could proceed without disclosing the father's identity. The Court held that under Section 6(b) of the Hindu Minority and Guardianship Act, 1956, the mother is the natural guardian of an illegitimate child, and a similar principle should apply to the Appellant's case. The Court emphasized that the welfare of the child takes precedence over procedural requirements, such as notifying an uninvolved father. It reasoned that the father's involvement in the child's life had been non-existent, and compelling the mother to reveal his identity would not serve the child's welfare. The Appellant had already issued a public notice regarding her guardianship petition, and the Court noted that if the father were to show interest later, he could seek to modify the guardianship arrangement. Further, forcing the disclosure of the father's name would infringe on the mother's right to privacy, stating that requiring her to reveal the father's identity could cause unnecessary social complications and stigma for both the mother and child.

SIGNIFICANCE

This case affirmed the rights of unwed mothers to be the legal guardians of their children, without notifying an uninvolved father. Additionally, it highlighted the constitutional right to privacy and its relevance in cases involving personal family matters.

“ It is imperative that the rights of the mother must also be given due consideration...the Appellant's fundamental right of privacy would be violated if she is forced to disclose the name and particulars of the father of her child. Any responsible man would keep track of his offspring and be concerned for the welfare of the child he has brought into the world; this does not appear to be so in the present case, on a perusal of the pleading as they presently portray. Furthermore, Christian unwed mothers in India are disadvantaged when compared to their Hindu counterparts, who are the natural guardians of their illegitimate children by virtue of their maternity alone, without the requirement of any notice to the putative fathers.”

JUSTICE VIKRAMJIT SEN

In ABC v. The State (NCT of Delhi)

D. JUDGMENTS ON DOMESTIC VIOLENCE

47

RIGHT IN QUESTION

Right to protection from domestic violence against women perpetrators.

CASE NUMBER

C.A. No. 10084 of 2016,
decided on October 6, 2016

COURT

High Court of Kerala

JUDGES

Kurian Joseph & Rohinton Fali
Nariman, JJ.

CITATION

2016 INSC 955; AIR 2016 SC
4774; MANU/SC/1269/2016



Hiral P. Harsora & Others v. Kusum Narottamdas Harsora & Another

FACTS

The Respondent, Kusum, had filed a writ petition before the Bombay High Court challenging the constitutional validity of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 where the term “Respondent” has been defined to mean 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. The Respondent and her mother had filed complaints under the Act against female relatives of the Respondent’s husband, the Appellants in this case.

COURT DECISION AND REASONING

The issue before the Court was whether the inclusion of “adult male” in Section 2(q) restricts the aggrieved person from seeking protection under the Act, and if the provision stands in violation of Article 14 of the Constitution. The Court sought to examine the true purpose or object of the enactment to ascertain if the classification was reasonable. It observed that the 2005 Act aimed to provide for the effective protection of rights of women who are victims of any kind of violence occurring within the family, and that it is obvious that perpetrators and abettors of such violence can in any situation include women. In examining other provisions of the Act defining a domestic relationship and domestic violence, the Court noted that the object of the Act would be defeated if the “Respondent” could only be an adult male person. Accordingly, the Court struck down the words “adult male” before the word “person” in the definition of “Respondent” under Section 2(q) as the words discriminate between persons who are similarly situated, therefore violating Article 14 of the Constitution.

SIGNIFICANCE

The Court identified the anomaly that disentitles women from seeking protection against perpetrators who were women, and positively affirmed that protection under this Act includes any kind of domestic violence, even when the perpetrators or abettors are women.

Prabha Tyagi v. Kamlesh Devi

RIGHT IN QUESTION

The right of a woman to file a complaint of domestic violence against persons who she did not reside with in a shared household at the time of the incident of cruelty.

CASE NUMBER

Criminal Appeal No. 511 of 2022, decided on May 12, 2022

COURT

Supreme Court of India

JUDGES

M. R. Shah & B. V. Nagarathna, JJ.

CITATION

2022 INSC 563; MANU/SC/0631/2022



FACTS

The Appellant was married to Kuldeep Tyagi, however, was widowed immediately after her marriage. While attempting to claim her entitlement to the properties owned by her husband, the Appellant was harassed by her in-laws, who challenged her claim and forced the Appellant to leave her matrimonial home. The Appellant filed a complaint under the Protection of Women from Domestic Violence Act, 2005 against her mother-in-law, the Respondent and her husband’s family. The Trial Court held in her favour; however the High Court overturned the order on the ground that the Appellant was not residing in a shared household with the Respondent at the time of the incident of cruelty.

COURT DECISION AND REASONING

The Court held that it was not mandatory for the aggrieved person to have actually lived or resided with those persons against whom the allegations have been levelled at the time of seeking relief. The Court also held that ‘family members living together as a joint family’ are not restricted to those who are related by consanguinity, marriage, or adoption only. Moreover, ‘domestic relationship’ under the DV Act includes not just subsisting relationships, but also past domestic relationships. Finally, the Court clarified that filing of Domestic Incident Report by the Protection Officer is not mandatory for seeking relief under the DV Act. A contrary interpretation would render the opening words of Section 12(1) redundant. It held that the Magistrate is obliged to take into consideration any Domestic Incident Report filed by the Protection Officer in a case where the application is made to the Magistrate on behalf of the aggrieved person through a Protection Officer.

SIGNIFICANCE

The Court held that it was not necessary for women to reside in the same household as the perpetrators of domestic violence. Further, the domestic relationship was not limited to those who are related by blood, marriage or adoption and included any person who was part of a joint family or household.

05

SEXUAL AND REPRODUCTIVE RIGHTS

ABOUT

SEXUAL AND REPRODUCTIVE RIGHTS

The landscape of sexual and reproductive rights in India has undergone significant transformation, reflecting an evolving understanding of the rights to autonomy, dignity, and privacy of women in making choices for their body. The cases in this section cover the most significant developments in the areas of reproductive choice, informed consent and access to maternal and reproductive health services for women.

In Suchita Srivastava v. Chandigarh Administration (2009), the Supreme Court established the right to reproductive choice as an essential aspect of personal liberty under Article 21 of the Constitution. The Court, in holding that denying a woman control over her own body would violate her right to dignity, laid the groundwork for future legal protections.

The right against forced procedures was further reaffirmed by the Court in *Devika Biswas v. Union of India*, which addressed the issue of state-sponsored sterilization camps performing procedures in unsafe and unsanitary conditions, and without taking the informed consent of patients.

The Supreme Court in *Ms. X v. Union of India* (2017) addressed the complexities of abortion laws and permitted an abortion beyond the 20-week limit in cases of severe foetal abnormalities. It acknowledged the need for compassionate legal frameworks that adapt to medical and ethical realities. The *Amita Kujur v. State of Chhattisgarh* (2023) case brought attention to the State's obligation to ensure access to abortion services for women from marginalized communities. In *X v. Principal Secretary, Health* (2022), the Supreme Court further expanded the circumstances in which women may seek abortion up to 24 weeks, holding that an unmarried woman who was no longer in a relationship could seek termination on the same grounds as women who underwent divorce or became widows during the term of the pregnancy.

The Supreme Court has also taken cognizance of the need for available, accessible and adequate maternal health care services for all women. In *Laxmi Mandal v. Deen Dayal Harinagar Hospital and Another*, it held that the right to health and the right to food under Article 21 necessarily includes the reproductive rights of women and access to maternal health care, nutrition and care for mothers and children.

These cases illustrate both advancements to sexual and reproductive rights in India and serve as reminder of the continuing struggle towards reproductive justice and equality in India.

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RIGHT IN QUESTION

Right of a woman to informed consent for surgery to remove reproductive organs.

CASE NUMBER

C.A. No.1949 of 2004, decided on January 16, 2008

COURT

Supreme Court of India

JUDGES

B. N Agrawal, P. P Naolekar & R. V Raveendran, JJ.

CITATION

2008 INSC 56; AIR 2008 SC 138; MANU/SC/0430/2008



Samira Kohli v. Dr. Prabha Manchanda & Another

FACTS

The Appellant was a 44-year-old unmarried woman who visited the Respondent's clinic after nine days of prolonged menstrual bleeding. Upon examination, the Respondent advised the Appellant to undergo a laparoscopy test. While the Appellant was under general anaesthesia for a laparoscopic examination, the surgeon obtained her mother's consent to perform a hysterectomy (removal of uterus) and also remove her ovaries and fallopian tubes. The Appellant lodged a complaint alleging negligence and unauthorized removal of her reproductive organs.

COURT DECISION AND REASONING

The primary issue was whether informed consent was necessary for surgical procedures involving the removal of reproductive organs and the nature of that consent. The Court relied on Article 21 to observe that the right to health and medical care was an essential facet of the right to life. Referring to the issue of medical negligence, it held that where a surgeon is consulted by a patient, simple consent taken for a diagnostic procedure or surgery cannot be considered as authorisation or permission to perform therapeutic surgery, except in life-threatening emergency situations. Similarly, when consent is taken for a particular operative surgery, it cannot be treated as consent for an unauthorized additional procedure involving the removal of organs. The justification that such removal is beneficial to the patient or is likely to prevent any danger that may develop in the future is not sufficient. The Court held that the requirement for informed consent is rooted in the right of self-determination, which can only be effectively exercised when the patient possesses adequate information to enable an intelligent choice. It held that all information that is material to the treatment or procedure, and which could determine the patient's decision must be communicated to them. In this case, the Appellant's informed consent was not taken for either of the surgical procedures and the Court found the doctor liable for malpractice. It also ordered the hospital to compensate her for the unauthorized surgery.

SIGNIFICANCE

This is a landmark case on the right of all persons to provide their informed consent for all medical procedures. It particularly acknowledged the serious violation of the right to health, autonomy and bodily integrity of the woman due to the removal of her reproductive organs.

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Suchita Srivastava & Others v. Chandigarh Administration

RIGHT IN QUESTION

Right to reproductive autonomy of women with disabilities.

CASE NUMBER

Civil Appeal No. 5845 of 2009, decided on August 28, 2009

COURT

Supreme Court of India

JUDGES

K. G. Balakrishnan, CJI,
P. Sathasivam &
B. S. Chauhan, JJ.

CITATION

2009 INSC 1086; MANU/
SC/1580/2009



FACTS

A 19-year-old woman with a mental disability, residing in a government-run welfare institution, became pregnant due to sexual assault by a guard. The Chandigarh Administration approached the High Court to seek permission to terminate her pregnancy, citing her disability and the resultant incapacity to take care of herself and the child. The High Court ordered the termination of the pregnancy citing the 'best interest' of the woman even though an expert medical body had reported that she was willing and physically capable of carrying the pregnancy to term. The decision was appealed before the Supreme Court on grounds of violation of the woman's right to personal autonomy and her statutory rights under the Medical Termination of Pregnancy Act, 1971.

COURT DECISION AND REASONING

The Supreme Court overturned the High Court's decision to terminate the pregnancy, emphasizing that the woman's reproductive rights, including her decision to continue with the pregnancy should be respected regardless of her mental condition. The Court held that the woman's right to make reproductive choices, including the decision to bear a child, was protected under her right to personal liberty and dignity under Article 21. It held that the State cannot compel termination of pregnancy without women's consent unless explicitly permitted under the MTP Act. The woman in this case had clearly expressed her desire to continue with her pregnancy, and this decision was to be respected. Further, the Court rejected the High Court's application of the Parens Patriae doctrine and held that even if the woman had limited capacity due to mental disability, her reproductive choice had to be respected.

SIGNIFICANCE

This is a touchstone case on women's reproductive rights in India, since it held for the first time that a woman's right to make decisions about her body and pregnancy was a fundamental right encompassed by the rights to personal liberty and dignity under Article 21.

“ There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.”

CHIEF JUSTICE K.G. BALAKRISHNAN

In Suchita Srivastava and Others v. Chandigarh Administration

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Krupa Profilers v. State of Kerala

RIGHT IN QUESTION

Right of women to access over-the-counter emergency contraceptives.

CASE NUMBER

W.P.(C) No.37463 of 2008, decided on September 24, 2009

COURT

High Court of Kerala

JUDGES

S. R. Bannurmath, CJ & A. K. Basheer, J.

CITATION

MANU/KE/0499/2009; 2009:KER:36983



FACTS

The Petitioner sought a ban against the sale and distribution of i-pills, an emergency contraceptive pill that is available over the counter. The Petitioner had approached the Court arguing that advertising the i-pill and making them available over the counter was in violation of the Medical Termination of Pregnancy Act, 1971. As per the law, only a registered medical practitioner can terminate a pregnancy and the use of the i-pill within 72 hours of fertilization will lead to termination of a pregnancy against the law. Further, making i-pills easily available would result in adversely affecting the younger generation and was detrimental to social morality. The Petitioner's case was based on the argument that a pregnancy can result within 12 hours of conception and there is the beginning of human life in this period, so consuming an i-pill amounts to an unlawful abortion.

COURT DECISION AND REASONING

The Court dismissed the petition and refused to go into the question of morality, restricting itself to the issue of whether the i-pill, a drug being marketed as an emergency contraceptive, caused unlawful abortions. The Court observed that abortion refers to the termination of a pregnancy, while contraceptive measures prevent fertilization itself. Unless there is fertilization and the united cell (sperm + ovum/zygote) completes implantation into the lining of the uterus, there is no pregnancy. This implantation takes 5 to 7 days post-fertilization and is completed several days later. I-pills are solely intended to provide access to contraceptive measures to avoid instances of unwanted pregnancies and are not effective if the person taking them is already pregnant. Therefore, they are only contraceptives and do not constitute a method of termination. Further, the Court also noted that it is necessary to provide information on the availability of contraceptive measures and there was no merit in the Petitioner's argument that warranted any action by the Court in the case.

SIGNIFICANCE

This case is important as not only did the Court refrain from going into questions of individual morality, it also noted the importance of providing information on the availability and methods of contraception to address the issue of lack of awareness on issues of sexual and reproductive health.

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Laxmi Mandal & Others v. Deen Dayal Harinagar Hospital & Others

RIGHT IN QUESTION

The right to health and reproductive rights of women and access to reproductive health schemes.

CASE NUMBER

W.P. (Civil) No.8853 of 2008 and 10700 of 2009, decided on June 4, 2010

COURT

Delhi High Court

JUDGE

Dr. S. Muralidhar, J.

CITATION

MANU/DE/1268/2010; 2010:DHC:3102



FACTS

This petition was filed on behalf of two women who had died as a result of being denied essential and life-saving healthcare under government schemes targeting maternal and reproductive healthcare of women from socio-economically marginalised groups. Shanti Devi & Fatema were both women who belonged to the Below Poverty Line (BPL) category. Shanti Devi faced significant health challenges which included anaemia, tuberculosis, and malnutrition. During her fifth pregnancy, she suffered a miscarriage and was denied proper and timely healthcare which led to her death following the sixth pregnancy, even though she was eligible to avail the benefits under the Janani Suraksha Yojana (JSY) and National Maternity Benefit Scheme (NMBS). Similarly, Fatema delivered her baby in public under a tree without any access to medical care by a trained professional. She was homeless and suffering from malnutrition yet these health schemes were supposed to assist BPL women failed to provide adequate care or resources. Both women were denied cash assistance and health benefits that they were entitled to and had died owing to health complications.

COURT DECISION AND REASONING

The Delhi High Court found that there was a lack of proper implementation of these public health schemes which were aimed at reducing maternal and infant mortality. The Court ruled that both Shanti Devi and Fatema were denied their fundamental rights to life and health due to the failure of the public healthcare system to provide adequate care and resources. The Court further highlighted the failure of ASHA and other health workers to ensure that these women received proper antenatal care, nutrition, and financial assistance under the JSY and NMBS. Further, it observed that there was a systemic failure on part of the State and the public healthcare infrastructure which had led to denial of institutional deliveries and post-delivery care for the women. The Court emphasized the need for stricter implementation and monitoring of these schemes to prevent such failures in the future.

SIGNIFICANCE

This is a significant case because it shed light on the lack of implementation of maternal health schemes in India especially for women from socio-economically marginalised groups. The right to health is a fundamental right and an integral facet of the right to life protected under Article 21 and it is the State's responsibility to ensure that these rights are protected.

“ These petitions focus on two inalienable survival rights that form part of the right to life. One is the right to health, which would include the right to access government (public) health facilities and receive a minimum standard of treatment and care. In particular this would include the enforcement of the reproductive rights of the mother and the right to nutrition and medical care of the newly born child and continuously thereafter till the age of about six years. The other facet is the right to food, which is seen as integral to the right to life and right to health.

JUSTICE S. MURALIDHAR

In Laxmi Mandal & Others v. Deen Dayal Harlnagar Hospital & Others

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Sandesh Bansal v. Union of India

SRHR

RIGHT IN QUESTION

Right of women to
access state maternal
health schemes.

CASE NUMBER

W.P. No.9061 of 2008 decided
on February 6, 2012

COURT

High Court of Madhya
Pradesh

JUDGES

A. Singh & S. Yadav, JJ.

CITATION

Not available



FACTS

The National Rural Health Mission (NRHM) was launched to address high maternal mortality rates by providing accessible, affordable and quality healthcare. The State of Madhya Pradesh adopted a Programme Implementation Plan (PIP) with specific goals to address the issue of high maternal mortality rates. Regions in Madhya Pradesh were reporting a Maternal Mortality Rate (MMR) of 800 deaths per 1,00,000 live births, which was double the national average. The Petitioner, Sandesh Bansal was an activist who filed a public interest litigation alleging failure of effective implementation of the PIP, citing the State's high MMR as evidence of the failure of the program.

COURT DECISION AND REASONING

The Court held that the inability of women to survive pregnancy and childbirth violates her fundamental right to live as guaranteed under Article 21 of the Constitution of India. It is the primary duty of the government to ensure that every woman survives pregnancy and childbirth. The Court recommended measures for the effective implementation of the PIP and addressed issues of manpower and infrastructural shortages across the state by introducing measures such as 24 hours availability of ASHA workers and delivery services, vaccination drives for pregnant women and new-borns and the setting up of monitoring committees for better implementation.

SIGNIFICANCE

This case recognised that maternal mortality was a critical issue under the right to life and health of women which is protected under Article 21 of the Constitution.

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Amita Kujur v. State of Chhattisgarh

RIGHT IN QUESTION

Right of women, especially marginalized women to access safe and timely abortion services.

CASE NUMBER

WP (C) No. 976 of 2016,
decided on April 20, 2016

COURT

High Court of Chhattisgarh

JUDGE

Manindra Mohan Shrivastava,
J.

CITATION

(2016) 168 AIC 373; (2016)
3 Civil LJ 888; MANU/
CG/0649/2016



FACTS

The Petitioner was an Adivasi girl who became pregnant as result of rape. She had approached the District Hospital to terminate her pregnancy as she was well within the gestational limit of 12 weeks under the MTP Act. She was then referred to the Chhattisgarh Institute of Medical Sciences and asked to produce Medico-legal documents including the copy of the FIR, all which resulted in her being made to run from pillar to post and eventually being denied access to abortion services. The Petitioner had then moved a petition before the High Court for a direction to facilitate the termination of her pregnancy. The Court then directed a medical examination of the Petitioner to ascertain the gestational age, which was reported to have exceeded the legal limit for termination, i.e., 20 weeks.

COURT DECISION AND REASONING

The Court referred to the legal framework of the Medical Termination of Pregnancy Act, 1971 and specifically Sections 3 and 4 that provide for the circumstances under which a pregnancy may be terminated by registered medical practitioners. The Court took note of the circumstances of the Petitioner and applied the principle of best interest by relying on the decision in Suchita Srivastava v. Chandigarh Administration. Importantly, the Court noted that its decision should be guided by the interests of the survivor alone and not those of guardians or society in general. However, considering that the period of 21 weeks has elapsed, to ensure safety of life of Petitioner, the Court directed that a team of five doctors consider the feasibility of a termination at the gestational stage, and if they find that the pregnancy can be terminated, they shall carry out the same.

SIGNIFICANCE

This case illustrates the social and legal barriers to accessing safe abortion and reproductive healthcare services, especially for marginalised women. The Petitioner here had to go all the way to the High Court to seek a legal abortion only due to the laxness of the State authorities in failing to provide her the abortion before the legal limit elapsed.

55

Devika Biswas v. Union of India

RIGHT IN QUESTION

Right of women to complete information on the risks of sterilization and to not be subjected to sterilizations in unsafe and unsanitary conditions.

CASE NUMBER

W.P.(C) No. 95 of 2012
decided on September 14,
2016

COURT

Supreme Court of India

JUDGES

Madan B. Lokur &
Uday U. Lalit, JJ.

CITATION

(2016) 10 SCC 726; MANU/
SC/0999/2016



FACTS

This was a public interest litigation where the Petitioner, a health rights activist, approached the Supreme Court to draw attention to the rights violations that were occurring from the mass sterilization drives being run by the government. The Petitioner filed reports indicating the lack of any pre-operative measures such as testing and counselling and procedures taking place in unsanitary conditions & premises after 53 women had undergone sterilization in one day in Bihar. The Petitioner submitted that the sterilization procedures did not meet any of the conditions that had previously been laid down by the Supreme Court in Ramakant Rai (I) & Anr. v. Union of India & Ors.

COURT DECISION AND REASONING

The Court held that the manner in which the sterilizations had been carried out were violating the right to life of the women in question. First, the right to health is an essential facet of the right to life and it is the duty of the State to ensure that women from socio-economically weaker sections are not exploited. Government policies must not mirror the systemic discrimination but develop policies that are gender neutral and do not place the disproportionate burden of sterilization on women. The Court held that the sterilization program as it operated endangered two components of the Article 21 right to life: the right to health and the reproductive rights of women. The Court also issued directions to discontinue sterilization camps and develop the necessary policies and infrastructure to make access to healthcare available to all persons. It made several additions to the Ramakant Rai (I) guidelines – it directed the government to ensure the proposed patient understands the risks and side-effects of the procedure, in the local language, and that the patient must also be allowed sufficient time before being asked to take a decision. The Court also suggested that the compensation under the Family Planning Indemnity Scheme should be doubled.

SIGNIFICANCE

The decision in this case was a landmark ruling where the Court banned mass sterilizations and addressed the issue of poor quality of care that was being provided to women undergoing sterilizations, under incentive-based schemes introduced by the government.

56

Ms. X v. Union of India

RIGHT IN QUESTION

Right of a woman to terminate a 24-week pregnancy where the foetus had severe anomalies, and the pregnancy threatened the life of the woman.

CASE NUMBER

Writ Petition (Civil) No. 81 of 2017, decided on February 7, 2017

COURT

Supreme Court of India

JUDGES

S. A. Bobde &
L. Nageswara Rao, JJ.

CITATION

2017 INSC 117; MANU/SC/0149/2017



FACTS

The Petitioner sought to terminate her 24-weeks pregnancy on the ground that the foetus suffered from multiple congenital abnormalities and was not compatible with extra-uterine life. The Medical Board also reported that there was a grave danger to the mother's physical and mental health, if the pregnancy was continued.

COURT DECISION AND REASONING

The Medical Termination of Pregnancy Act does not permit the termination of a pregnancy once it crosses the 20-week stage. However, the MTP Act also provides for certain exceptional cases where the 20-week limit may be breached. Section 5 allows the breach of this limit when the registered medical practitioner is of the opinion that termination of the pregnancy is necessary for saving the life of the pregnant woman. The Court invoked the exception under Section 5 in this case as the report by the Medical Board expressed that the patient should not continue with the pregnancy. The Court thus granted liberty to the Petitioner to terminate her pregnancy.

SIGNIFICANCE

The Court allowed the breaching of the 20-week bar under the MTP Act when the pregnant woman's life was endangered by the continuation of the pregnancy.

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X v. Principal Secretary, Health

RIGHT IN QUESTION

Right of an unmarried woman to terminate a pregnancy between 20-24 weeks.

CASE NUMBER

Civil Appeal No.5802 of 2022 (Arising out of SLP (C) No. 12612 of 2022) decided on September 29, 2022

COURT

Supreme Court of India

JUDGES

D. Y. Chandrachud,
A. S. Bopanna &
J. B. Pardiwala, JJ.

CITATION

AIR 2022 SC 4917; MANU/SC/1257/2022; 2022 INSC 1035



FACTS

An unmarried 25-year-old woman approached the Supreme Court of India seeking permission to terminate her pregnancy of 22 weeks gestational age. She had previously approached the High Court of Delhi, but her request was denied on the ground that she did not meet the criteria under Section 3(2)(b) of the MTP Act and Rule 3B of the MTP (Amendment) Rules, 2021 which was applicable in a case where there had been a change in marital circumstances.

COURT DECISION AND REASONING

The Court allowed the petition, noting that the right to privacy encompassed the right to reproductive autonomy and the provisions of the Medical Termination of Pregnancy Act, 1971 must not be read narrowly to defeat such a right. In deciding such cases, the change in material circumstances of the pregnant person must be considered. In the present case, the Petitioner was in a consensual relationship, but her partner had refused to marry her and this change in circumstances would mean that her case was within the ambit of the law which allows for termination of a pregnancy between 20-24 due to change in marital status. The Court imparted a purposive interpretation to Rule 3B, noting that the 2021 Amendment Act makes no distinction between married and unmarried women. Rule 3B provides for the categories of women for whom termination of pregnancy up to twenty-four weeks is permissible. Sub-rule (c) covers "change of marital status during the ongoing pregnancy (widowhood and divorce)." The Court held that the rationale behind it was to allow termination of pregnancy where there is a change in a woman's material circumstances. If Rule 3B(c) was to be interpreted to extend only to married women, it would perpetuate the stereotype that only married women indulge in sexual intercourse, and consequently, that the benefits in law should extend to them only. The Court held this distinction between married and single women to not be constitutionally sustainable.

SIGNIFICANCE

The Court expanded the scope of the MTP Act & also highlighted the issue of pregnancies resulting from forced sexual relations within marriages and noted the wide ambit of reproductive rights, including the right to contraception, the right to education about sexual health, the right to access safe and legal abortions.

06

CRIMINAL LAWS AND WOMEN

ABOUT

CRIMINAL LAWS AND WOMEN

The evolution of women's rights jurisprudence in India has been marked by several landmark criminal law decisions that have significantly advanced the rights and protections of women. This section covers a broad set of criminal judgments focusing on crimes of sexual violence, violent assault and other prohibited acts including adultery, bigamy and child marriage.

Criminal law as it intersects with domestic violence has been dealt with in the section on 'Rights within the Family'. Additionally, the rights of sex workers, who are often in conflict with criminal provisions, have been addressed in the section on 'Equality in the Workplace.'

In the first set of cases on sexual violence and assault, we look at some of the recent developments in criminal law which more appropriately address the rights of women. For example, historically, women victims of rape faced intense scrutiny, violations to their bodily integrity and their testimonies were often undermined, reflecting a broader societal bias and misogyny.

In State of Maharashtra v. Madhukar Narayan Mardikar (1991) the Supreme Court ruled for the first time that the past sexual history of a victim was irrelevant to the case, marking a shift towards giving full weight to the evidence of rape survivors, no matter who they were.

In the Chairman, Railway Board and Ors v. Chandrima Das and Ors. (2000), the Supreme Court awarded compensation to a Bangladeshi national who was gang-raped by railway employees. This case broadened the scope of compensation for victims of sexual violence and emphasized the State's responsibility to protect women from such crimes. Other cases focus on the courts' response to gender-based violence including acid attacks and honour crimes.

In the next set of cases on criminal laws prohibiting child marriage, adultery, and bigamy, the Independent Thought v. Union of India (2017) case was pivotal. The Supreme Court declared Section 376A of the Indian Penal Code, which allowed marital rape of a girl child between 15 and 18 years old, unconstitutional. However, the fight to criminalise all forms of marital rape continues. In Joseph Shine v. Union of India (2018), the Supreme Court decriminalized adultery, ruling that the law made women subservient to men within their marriages, violating their rights to equality, autonomy and dignity.

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RIGHT IN QUESTION

Sexual history of a rape victim has no relevance to the credibility of their evidence.

CASE NUMBER

Civil Appeal No. 424 of 1977, decided on October 23, 1990

COURT

Supreme Court of India

JUDGES

K. Jagannatha Shetty & A. M. Ahmadi, JJ.

CITATION

AIR 1991 SC 207, 1991 (1) SCC 57; MANU/SC/0032/1991



State of Maharashtra & Another v. Madhukar Narayan Mardikar

FACTS

The Respondent was serving as a Police Inspector and committed rape against a woman at her home. Following an enquiry into the incident, the Respondent was dismissed from service. In a challenge to his dismissal, the Trial Court overturned his dismissal, which was upheld by the Division Bench of the High Court, on the ground that the Respondent was denied a reasonable opportunity to meet the charges levelled against him and that one cannot reasonably arrive at finding the Respondent guilty. The State approached the Supreme Court in appeal.

COURT DECISION AND REASONING

The Court went over the evidence and noted that it was sufficient to return a finding of guilt against the Respondent. The Court adverted to the Trial Court's reasoning that the victim was an "unchaste woman", and it would be most unfortunate to jeopardize the career of a Government official if one were to rely on the uncorroborated evidence of a woman "who makes no secret of her illicit intimacy". The Supreme Court refuted this reasoning and noted that a woman who was a victim of rape must be entitled to her right to privacy and the protection of law when there is an attempt to violate it. It held that even a woman of easy virtue is entitled to privacy, and no one can invade her privacy as and when he likes. She was entitled to protect her person if there is an attempt to violate it against her wish and she was equally entitled to the protection of law. The Court accordingly overruled the High Court order which raised doubts about the victim's testimony due to her reputation as an "unchaste woman".

SIGNIFICANCE

This judgment led to a spate of law reforms, that culminated in repeal of the rule that allowed for introducing evidence of the woman's 'general immoral character' in 2003 and the irrelevance of character or previous sexual experience of victim in 2013. Women's movements in India played an active role in campaigning for these criminal law reforms.

59

Rupan Deol Bajaj & Others v. Kanwar Pal Singh Gill & Others

RIGHT IN QUESTION

The right of a woman to personal dignity in the context of the criminal offence of outraging the modesty of a woman.

CASE NUMBER

Criminal Appeal No. 1183 of 1995, decided on October 12, 1995

COURT

Supreme Court of India

JUDGE

Dr. A. S. Anand & M. K. Mukherjee, JJ.

CITATION

AIR 1996 SC 309; MANU/SC/0080/1996



FACTS

The Petitioner, an IAS officer, alleged that the Respondent, the Director General of Police in Punjab, committed acts that outraged her modesty at a social gathering. He pulled her chair close to him, standing inappropriately close, and eventually slapped her on the posterior in front of others. The Respondent petitioned the High Court to quash the First Information Report (FIR) filed by the Petitioner on the ground that the alleged actions were minor and did not amount to a cognizable offense, leading the High Court to quash both the FIR and subsequent complaints.

COURT DECISION AND REASONING

The Supreme Court reviewed the High Court decision and held that the allegations in the FIR constitute offenses under Section 354 (outraging the modesty of a woman) and 509 (insult to modesty through words or gestures) of the Indian Penal Code (IPC). The Court stated that acts violating a woman's modesty could not be trivialized under Section 95 IPC, which excuses minor harms, since the allegations in this case involved inappropriate behaviour as per societal norms and violated the Petitioner's dignity. The ultimate test for ascertaining whether modesty has been outraged is, whether the action of the offender could be perceived as one which is capable of shocking the sense of decency of a woman. In the present case, the Court held that the alleged act amounted to 'outraging of her modesty' for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady. The Court found that the High Court had erred in assessing the probability and credibility of the claims at the FIR stage, which is generally reserved for determination at the time of trial and refused to quash the FIR.

SIGNIFICANCE

This was one of the first cases of sexual harassment that was decided by the courts even before the Vishaka case and the POSH Act were brought into force. Despite the significance of this judgment, the concept of 'modesty' in S. 354 and S. 509, IPC stems from a very patriarchal articulation of the offence of 'outraging the modesty of a woman' and is discussed in a manner contrary to the contemporary discourse of sexual assault as a violation of bodily integrity, autonomy and agency of women. Unfortunately, these provisions that are couched in patriarchy have been reproduced in the Bharatiya Nyaya Sanhita, 2023.

60

The Chairman, Railway Board & Others v. Chandrima Das & Others

RIGHT IN QUESTION

Compensation from the State for rape and violation of fundamental rights by public officials on duty.

CASE NUMBER

C.A. No. 639, of 2000, decided on January 28, 2000

COURT

Supreme Court of India

JUDGES

Saiyed Saghir Ahmad & R. P. Sethi, JJ.

CITATION

AIR 2000 SC 988, (2000) 2 SCC 465, MANU/SC/0046/2000



FACTS

Mrs. Chandrima Das, a practicing advocate of Calcutta High Court, filed a petition under Article 226 against the Chairman, Railway Board and other officers to seek compensation for a victim of gang-rape who was of Bangladeshi nationality, by many including employees of Railways in a room at Howrah Station. The High Court had previously awarded a sum of Rs.10 lakhs as compensation for the victim as it was found that rape was committed in the building belonging to the Railways and was perpetrated by the employees of the Railways. The Appellants appealed the decision of the High Court.

COURT DECISION AND REASONING

The Court held that the High Court has jurisdiction to grant relief for enforcement of fundamental rights but also for "any purpose" that would include enforcement of public duties by public bodies, in order to prevent the State or public bodies from acting in an arbitrary manner. The Court then held that Article 21 guarantees the fundamental right to life to citizens as well as non-citizens and that the State was under a constitutional liability to pay compensation to the victim. It also upheld the judgment of the High Court and asserted that the Central Government shall be held vicariously liable for the offence of gang-rape committed by the employees of the Railways. It noted that in a welfare State, the functions of a government are diverse and extend to spheres beyond defence and administration to that of education, commercial, social, economic and marital.

SIGNIFICANCE

The Court affirmed that a victim of rape can claim compensation under public law owing to the flagrant violation of their fundamental rights guaranteed in the Constitution of India. In supporting the victim's compensation claim, the Court has held that if public officials are involved in violations of fundamental rights or public duties, a remedy under public law is available, even if a damages suit could also be filed under Private Law.

61

Laxmi v. Union of India

RIGHT IN QUESTION Compensation for victims of acid attacks.
CASE NUMBER WP(Crl.) No. 129 of 2006 decided on July 18, 2013
COURT Supreme Court of India
JUDGES R. M. Lodha & F. M. Ibrahim Kalifulla, JJ.
CITATION (2014) 4 SCC 427; MANU/SC/0756/2013



FACTS

This petition was filed in public interest by the Petitioner, who herself was a survivor of an acid attack, and was denied adequate compensation for the trauma and physical suffering undergone by her. The Petitioner sought proper regulation over the sale and distribution of acid in the market and directions to the States on the compensation and rehabilitation of acid attack victims.

COURT DECISION AND REASONING

The Supreme Court directed the Union Government to consider the enactment of appropriate provisions for the proper treatment, aftercare and compensation for victims of acid attacks and for regulating the sale of acid in States and Union Territories. Consequently, the Union of India filed the draft Poisons Possession and Sale Rules, 2013 to regulate the sale of acid and other corrosive substances. The Supreme Court directed States and UTs which had not yet framed similar regulations to make sure their proposed rules are in line with the Model Rules framed by the Union. It further issued directions for those States and UTs which had not yet framed appropriate rules, to adopt the Model rules which would operate in the interim. The directions barred the sale of acid unless the individual produced a government-issued photo ID with an address, and was above 18 years of age. The Supreme Court held that the compensation provided by most states for victims of acid attacks was inadequate and enhanced it to at least ₹ 3 lakhs, of which ₹ 1 lakh should be paid within 15 days of the occurrence of such incident.

SIGNIFICANCE

This judgment bears significance because of the Court’s interest and concern for the issue of acid violence. However, despite such positive judicial responses, restricting the sale of acid only addresses the manifestations of gender violence and does not address the root causes of acid violence against women, which stem from a patriarchal desire to curb women’s exercise of agency and decisional autonomy. This judgment was followed by other judgments of the Supreme Court in Parivartan Kendra v. Union of India and Nipun Saxena v. Union of India, where the Court held that the the ₹ 3 lakh compensation mandated in Laxmi was only a minimum and that governments could provide more compensation.

62

Manju Lakra v. State of Assam

RIGHT IN QUESTION Applicability of the Exception of ‘grave and sudden provocation’ to commit murder under the Indian Penal Code, 1860, where the murderer is a victim.
CASE NUMBER Criminal Appeal No.116(J) of 2007, decided on August 5, 2013
COURT High Court of Gauhati
JUDGES I. A. Ansari & Indira Shah, JJ.
CITATION MANU/GH/0272/2013



FACTS

The Appellant, Manju, was subjected to continuing domestic violence and assault by her husband for several years. One night during such an incident, the Appellant managed to snatch the wooden stick (lathi) being used by her husband to beat her and hit back. The Appellant’s husband later succumbed to his injuries and the Appellant made a judicial confession under S.164, Code of Criminal Procedure to the murder. However, at trial, she denied committing the offence. The Trial Court convicted the Appellant under Section 302 and sentenced her to life in prison.

COURT DECISION AND REASONING

In this appeal, the Supreme Court considered the First Exception to S.300 of the Indian Penal Code, under which a homicide is not murder if the offender, by grave and sudden provocation causes the death of the provoker by mistake or accident. Reliance was placed on the UK Supreme Court’s decision in R. v. Alhewalia (1993) 96 Cr App R133, which first recognised the ‘battered women syndrome’ to help explain the reasonableness of a woman’s actions in self-defence against her abuser. The High Court held that the law recognises the provocative effect of a series of abusive actions elsewhere, such as the case of dowry death under S.304B, where continued abuse leads a woman to commit suicide. This series of abuse by the husband or his family is seen as an incitement of the suicide, for which they face criminal liability. It held that the law should similarly recognize the potential of circumstances to provoke a woman to turn her into an aggressor. In this case, the circumstances “lead to a probable belief that more than the intention to kill her husband, the intention of the Accused was to put an end to the continuing violent acts of her husband.” The Court held that this case fell within the First Exception to S.300, IPC, and the Appellant was held to be guilty of culpable homicide not amounting to murder.

SIGNIFICANCE

The conventional defence of ‘grave and sudden provocation’ can be compared and contrasted with the concept of ‘sustained provocation’ recognised in R vs. Kiranjit Ahluwalia by the UK court, which was relied upon by the High Court in this case. This concept is more in tune with experiences and responses of women facing and enduring years of domestic violence.

63

Independent Thought v. Union of India & Others

RIGHT IN QUESTION

The right of a minor girl to live with dignity and to be protected from marital rape.

CASE NUMBER

Writ Petition (Civil) No. 382 of 2013, decided on October 11, 2017

COURT

Supreme Court of India

JUDGES

Madan B. Lokur & Deepak Gupta, JJ.

CITATION

(2017) 10 SCC 800; 2017 INSC 1030; MANU/SC/1298/2017



FACTS

Independent Thought, a child rights organization, filed a petition challenging the constitutionality of Exception 2 to Section 375 of the Indian Penal Code, 1860 and seeking a clarification to harmonize the provision with laws on child marriage and children’s rights. The Supreme Court heard the challenge but limited its inquiry solely to marital rape of girls under the age of 18.

COURT DECISION AND REASONING

The Court delivered two opinions in this matter, the main opinion by Justice Madan Lokur, and a concurring opinion by Justice Deepak Gupta. Both recognized that marital rape within child marriage violated girls’ constitutional and human rights. Justice Lokur explicitly rejected each of the State’s justifications for the exception, holding that the inconsistencies between the provisions in the IPC and the Protection of Children from Sexual Offences Act, 2012 (POCSO) on sexual assault of minors needed to be resolved in favour of protecting the girl child. The Court adopted a progressive interpretation of the IPC based on the rights of girl children to equality and dignity. It stated that laws that restrict girls’ enjoyment of these rights cannot override constitutional principles of equality. The Court highlighted how rape constitutes an attack on girls’ bodily integrity and reproductive choice, and emphasized that the protection of girls’ bodily autonomy persists regardless of her marital status. Consequently, it directed that Exception 2 of Section 375 of the IPC be read down to not apply to girls between the ages of 15-18. The Court rejected the State’s argument of allowing child marriages in the name of culture and tradition, recognizing that, as “times and situations change, so must views, traditions, and conventions.”

SIGNIFICANCE

This is the landmark judgment for the protection of girl child and child brides in India, effectively criminalizing marital rape for girls under 18 years of age. It further reconciled the provisions of POCSO, which strictly presumes all sexual acts with a minor girl as non-consensual and the erstwhile IPC. The Court, however, left open the question of marital rape of adult women, which is now pending before it in another matter, Hrishikesh Sahoo v. State of Karnataka.

64

Joseph Shine v. Union of India

RIGHT IN QUESTION

Rights of women to engage in consensual intimate relationships and to equality in marriage.

CASE NUMBER

WP (CrI.) No. 194 of 2017, decided on September 27, 2018

COURT

Supreme Court of India

JUDGES

Dipak Misra, CJI & A.M. Khanwilkar, Indu Malhotra, Rohinton Fali Nariman & D. Y. Chandrachud, JJ.

CITATION

AIR 2018 SC 4898, [2018] 11SCR 765; 2018 INSC 898; MANU/SC/1074/2018



FACTS

The petition was filed in public interest challenging the constitutionality of Section 497 of the Indian Penal Code and Section 198(2) of Code of Criminal Procedure, by which a husband may hold criminally responsible the man with whom his wife has engaged in adultery with. S.497 did not cover cases where the husband committed adultery with an unmarried woman or if he consented to his wife’s adultery with the other man.

COURT DECISION AND REASONING

In a unanimous verdict, the Supreme Court struck down Section 497 and read down Section 198(2) on the grounds that it violated Articles 14, 15 and 21 of the Constitution. The lead opinion (Dipak Misra, CJI and Khanwilkar, J.) held that the provisions placed women subordinate to men, treating women as chattel, since only a husband could be an aggrieved party. Further, it held that the offence was grounded upon invidious gender stereotypes which undermined the dignity of women under Article 21. It particularly noted the effect of the exception permitting the connivance of a husband with another man to have sexual intercourse with his wife. Justice Nariman emphasised the “manifest arbitrariness” of the provision which was inherently paternalistic in nature and served no purpose. He rejected the State’s submission that the provision protected the sanctity of marriage. Justice Chandrachud held that the provision was destructive of a woman’s right to agency, dignity and autonomy under Article 21, as it was based on the idea that women are not equal participants in a marriage and not competent to consent to sexual relationships and exercise sexual agency. He further relied on Navtej Singh Johar v. Union of India to hold that the right to sexual privacy protected consensual intimate relationships, and the state intrusion on this right was untenable.

SIGNIFICANCE

In recognizing women as equal participants of a marital relationship and in control of their sexual agency, the Court affirmed the fundamental rights enshrined to women in a marriage. In no longer treating them as sexual property of their spouses, the Court moves beyond notions of formal equality to affirm substantive equality guaranteed by the Constitution.

65

Aparna Bhat v. State of Madhya Pradesh

“ The ability to make choices within marriage and in every aspect concerning it is a facet of human liberty and dignity which the Constitution protects. In depriving the woman of that ability and recognising it in the man alone, Section 497 fails to meet the essence of substantive equality in its application to marriage. Equality of rights and entitlements between parties to a marriage is crucial to preserve the values of the Constitution”

JUSTICE D.Y. CHANDRACHUD

In his concurring opinion In Joseph Shine v. Union of India

RIGHT IN QUESTION

Right of women to not be judicially stereotyped in cases of sexual offences.

CASE NUMBER

Criminal Appeal No.329 of 2021, decided on March 18, 2021

COURT

Supreme Court of India

JUDGES

A. M. Khanwilkar &
S. Ravindra Bhat, JJ.

CITATION

AIR 2021 SC 1492; 2021 INSC 192; MANU/SC/0193/2021



FACTS

The case arose from an order of the Madhya Pradesh High Court directing a man accused of rape to visit the victim's house on Raksha Bandhan and get a rakhi tied by her, as a condition of parole. A group of lawyers challenged this order before the Supreme Court, seeking directions to be issued to all High Courts and Trial Courts to refrain from making observations and imposing bail conditions that “trivialize the trauma undergone by rape and sexual assault survivors and adversely affect their dignity.”

COURT DECISION AND REASONING

The Supreme Court in this petition prohibited courts from imposing measures that can have the effect of potentially re-exposing the survivors of sexual violence to their trauma, such as mandated mediation and ‘community service’ that involves being in touch with the accused and compromises that involve marriage between the Accused and the survivor. It was held that courts should also refrain from expressing any opinion to the effect that women are physically weak and need protection; women are incapable of or cannot take decisions on their own; men are the “head” of the household and should take all the decisions relating to family; women should be submissive and obedient according to our culture; “good” women are sexually chaste; motherhood is the duty and role of every woman and assumptions to the effect that she wants to be a mother; women should be the ones in charge of their children, their upbringing and care; being alone at night or wearing certain clothes make women responsible for being attacked; a woman consuming alcohol, smoking, etc. may justify unwelcome advances by men or “has asked for it”; women are emotional and often overreact or dramatize events, hence it is necessary to corroborate their testimony; testimonial evidence provided by women who are sexually active may be suspect when assessing “consent” in sexual offence cases; and lack of evidence of physical harm in sexual offence case leads to an inference of consent by the woman. The Court set aside the bail conditions issued by the High Court and expunged them from the record.

SIGNIFICANCE

The Supreme Court explicitly recognised the notion of judicial stereotyping in cases of sexual offences. Following this judgment, it issued a Handbook to prevent gender stereotyping and gender bias in the orders and judgments of the judiciary, which are binding on all courts in the country.

66

RIT Foundation v. Union of India

RIGHT IN QUESTION

Prohibition of marital rape to enforce the rights of women in marriage to equality, dignity and autonomy.

CASE NUMBER

W.P.(C) 284 of 2015 decided on May 11, 2022

COURT

Delhi High Court

JUDGE

Rajiv Shakdher & C. Hari Shankar, JJ.

CITATION

MANU/DE/1638/2022



FACTS

This petition was filed in public interest before the High Court challenging the constitutional validity of Exception 2 of Section 375 exempting marital rape as a criminal offence.

COURT DECISION AND REASONING

The 2-judge bench of the High Court delivered a split decision, with Justice Shakdher striking down the marital rape exception (MRE), while Justice Shankar upheld its constitutionality.

Justice Shakdher struck down the MRE as violating Articles 14, 15, 19(1)(a) and 21 of the Constitution. He held that the provision creates an unreasonable classification between married and unmarried women, and is manifestly arbitrary. The MRE further violated the right to life of women under Article 21, as the degrading and dehumanizing nature of the offence of rape and the injury it causes remains the same irrespective of who the offender is. He dismissed the argument that striking down the MRE will result in false complaints, citing data that most sexual assault cases remain unreported. Justice Shankar held that husbands were vested with the right of sexual communion with their wives, and such conjugal expectation distinguishes the case of marital rape from other instances of rape. He argued that non-consensual sex within marriage does not cause the same trauma as rape by a stranger, thereby holding that the MRE does not violate a woman's right to consent, nor was it arbitrary under Article 14. Further, he held the MRE was not violative of Article 21, as married women did not lose their dignity or experience the "deathless shame" caused in cases of non-marital rape.

SIGNIFICANCE

A highly contrasting judgment in terms of the understanding of the meaning of rape and its effect on women, the RIT Foundation case has now provided an opportunity for the Marital Rape Exception to be considered by Supreme Court. However, with the Constitution being the supreme law of the land, fundamental rights guaranteed to all (including married women) by the Constitution must trump over societal concerns for preserving the institutions of marriage and family. The appeal is currently pending before a three-judge bench of the Supreme Court in *Hrishikesh Sahoo v State of Karnataka*, SLP(Cr.) 4063-4064 of 2022.

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The State of Jharkhand v. Shailendra Kumar Rai

RIGHT IN QUESTION

Right of victims of rape to not be subjected to the two-finger test for rape.

CASE NUMBER

CrI. Appeal No. 1441 of 2022, decided on October 31, 2022.

COURT

Supreme Court of India

JUDGES

Dr. D. Y. Chandrachud & Hima Kohli, JJ.

CITATION

2022 INSC 1139;(2022) 14 SCC 299; MANU/SC/1411/2022



FACTS

The Respondent was convicted of raping and setting a woman on fire and the victim ultimately succumbed to her injuries. The victim was also subjected to the "two-finger test" by the Medical Board while being treated for her injuries. The Sessions Court convicted the Respondent, however the same was overturned by the High Court due to various reasons, including evidence by a doctor that he had not found any signs of sexual intercourse while treating the victim.

COURT DECISION AND REASONING

The Court reversed the order of acquittal passed by the High Court and held that the "two-finger test" was a regressive and invasive procedure that had no scientific basis, and neither proves nor disproves the allegations of rape. The Court reiterated the prohibition of 'two finger test' articulated in *Lillu @ Rajesh & Anr v. State of Haryana* (2013), where the Supreme Court stated that the test violates the "right of rape survivors to privacy, physical and mental integrity and dignity." Despite the Supreme Court outlawing the practice in 2013, medical practitioners had continued to subject rape victims to the 'two finger test', as in the present case. The Court held that this test only victimizes and re-traumatizes women who have been sexually assaulted. Further, the test was based on an incorrect assumption that a sexually active woman cannot be raped, and the probative value of a woman's testimony has no relation to her sexual history. The Court ordered the State to circulate guidelines from the Ministry to all government and private hospitals and conduct workshops on proper procedures for examining sexual assault survivors. It stated that anyone performing this test during such examinations would be guilty of misconduct.

SIGNIFICANCE

The Court struck down the violent and intrusive "two-finger test" and noted that patriarchal and sexual assumptions concerning the sexual history of the woman ought not to be relevant to the question of consent or quality of consent that is central to prosecutions of sexual offenses.

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OTHER CONSTITUTIONAL RIGHTS

OTHER CONSTITUTIONAL RIGHTS

The evolution of women’s rights in India is deeply tied to their recognition as full and equal citizens under the Constitution. However, women continue to face systemic barriers, societal pressures, and entrenched stereotypes that challenge their access to fundamental rights. This section delves into landmark cases where the judiciary has reinforced women’s constitutional rights in two critical areas: freedom of marital choice and religious practice.

The first set of cases in this section cover the right to marry and choose a life partner. In *Lata Singh v. State of U.P.*, the Supreme Court condemned caste-based harassment and threats against inter-caste couples, emphasizing that societal norms cannot override constitutional freedoms. Similarly, the *Shafin Jahan v. Asokan K.M. (Hadiya Case)* reinforced a woman’s right to marry and convert freely, rejecting paternalistic interventions by the State or family. *Shakti Vahini v. Union of India* addressed the grave issue of honour crimes, issuing comprehensive guidelines to protect couples from threats by family members or traditional assemblies like Khap Panchayats.

Read together, *Lata Singh v. State of U.P. (2006)*, *Shakti Vahini v. Union of India (2010)* and *Shafin Jahan v. Asokan K.M. (2018)* advance the right of women to choice in marriage as well as religious conversion. This goes in some measure to protect women’s agency and decisional autonomy in intimate relationships, by reading the right to marry a person of one’s choice into the fundamental right to life under Article 21.

However, the recent judgment in *Supriyo Chakroborty v. Union of India (2023)* stated unanimously that there was no fundamental right to marry – for heterosexual or queer couples. The judgment drew a technical distinction between the right to choice of partner and the fundamental right to marry. This has raised concerns about whether couples who defy their families’ wishes and assert their decisional autonomy would continue to be protected with the same vigour as in the pre-Supriyo era.

The second set of cases are on religious freedom and gender equality. In the *Sabarimala* case, the Supreme Court struck down the exclusion of women from temple entry, emphasizing equality and dignity over discriminatory customs. In contrast, one of the opinions in the split decision *Hijab ban* case upheld restrictions on wearing the hijab in schools, citing secularism and uniformity.

The judiciary’s efforts in advancing women’s constitutional rights, while laudable, also highlight the persistent need for an intersectional approach to dismantle systematic barriers and uphold equality, dignity, and autonomy for all women in India.

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RIGHT IN QUESTION

The right to marry and freedom to choose a partner.

CASE NUMBER

Writ Petition (Criminal) No. 208 of 2004 decided on July 7, 2006

COURT

The Supreme Court of India

JUDGES

Ashok Bhan & Markandey Katju, JJ.

CITATION

2006 INSC 407; MANU/SC/2960/2006



Lata Singh v. State of U.P & Others

FACTS

Lata Singh entered into an inter-caste union with Brahma Nand Gupta and their marriage was solemnised at the Arya Samaj Mandir in Delhi. Lata’s brothers opposed the inter-caste marriage and filed a false police report accusing Brahma of kidnapping their sister. Consequently, Brahma’s family members were wrongfully arrested and detained and Lata’s brothers also harassed Brahma’s family members. Lata approached the Supreme Court in a writ petition under Article 32 of the Constitution seeking the quashing of the criminal proceedings initiated against her husband’s family. Lata also sought protection from the harassment she and her husband had been facing.

COURT DECISION AND REASONING

The Supreme Court quashed the criminal proceedings stating that Lata Singh was free to marry anyone of her choice as there was no law preventing an inter-caste marriage. The Court stated that the threats and harassment against individuals for marrying outside their caste were illegal and such actions by Lata’s brothers were an abuse of the legal system. It further directed law enforcement agencies to ensure the protection of couples in inter-caste or inter-religious marriages from harassment, threats, or violence. The Court noted that parents opposed to such marriages may cut ties with their children, but they cannot be permitted to resort to violence and intimidation. The Court also took this opportunity to condemn ‘honour killings’ noting that such acts of violence were often justified in the name of family honour but were shameful and barbaric murders that deserved punishment. In a democratic country, every individual has the freedom to marry a partner of their choice without threat, coercion or intimidation.

SIGNIFICANCE

This is a significant case as it tackled the systemic issues of caste-based violence and violence in instances of inter-faith marriages to uphold the freedom to marry a partner of one’s choice. The Court went on to condemn honour crimes and called for strict legal action against those perpetrating violence in the name of caste. It further reinforced the constitutional right to marry freely and noted that the State was obligated to take measures to protect this right.

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Shakti Vahini v. Union of India & Others

RIGHT IN QUESTION

The right of persons to marry outside their caste or religion without family or societal interference.

CASE NUMBER

Writ Petition (Civil) No. 231 of 2010, decided on March 27, 2018.

COURT

The Supreme Court of India

JUDGES

Dipak Misra, CJI &
A. M. Khanwilkar &
Dr. D. Y. Chandrachud, JJ.

CITATION

AIR 2018 SC 1601; 2018 INSC 266; MANU/SC/0291/2018



FACTS

The Petitioner, an NGO working on the rights of women, sought the Supreme Court's intervention against honour crimes, specifically honour killings often instigated by local caste councils or family members opposed to certain marital alliances. The petition requested a directive for preventive, remedial, and punitive measures from the Union and State governments, including special cells for couple protection and safe houses. It cited multiple instances where young couples faced violence or even death due to marrying against societal expectations.

COURT DECISION AND REASONING

The Supreme Court recognized that the right to marry a person of one's choice was an inextricable part of individual liberty. It issued comprehensive directions to curb honour crimes, directing state governments to establish mechanisms for monitoring areas prone to honour crimes; establish vigilance for reported gatherings of Khap Panchayats; provide couples with safe accommodation if threatened; and register cases promptly under relevant criminal laws. The Court emphasized that any assembly passing unlawful diktats against individuals exercising their right to marry is unconstitutional and must be treated as a criminal offense. The Court also mandated disciplinary actions for police or district officials failing to act. The guidelines issued through this judgment, consist of preventive, remedial and punitive measures on honour crimes, and are binding on all States and Union Territories in India, till such time that a law is enacted.

SIGNIFICANCE

This case reinforces the constitutional protections on the right to choose a spouse. It highlights the role of the State in preventing societal practices that infringe upon individual freedoms. By ordering stringent actions against Khap Panchayat and similar bodies, the Court aimed to deter future honour crimes and promote a societal shift toward respecting individual rights over societal norms.

“The question that poignantly emanates for consideration is whether the elders of the family or clan can ever be allowed to proclaim a verdict guided by some notion of passion and eliminate the life of the young who have exercised their choice to get married against the wishes of their elders or contrary to the customary practice of the clan. The answer has to be an emphatic “No”. It is because the sea of liberty and the ingrained sense of dignity do not countenance such treatment inasmuch as the pattern of behaviour is based on some extra-constitutional perception. Class honour, howsoever perceived, cannot smother the choice of an individual which he or she is entitled to enjoy under our compassionate Constitution. And this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence.”

CHIEF JUSTICE DIPAK MISRA

In Shakti Vahini v. Union of India and Others

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Shafin Jahan v. Asokan K.M. & Others (“Hadiya Case”)

RIGHT IN QUESTION

The right of a woman to marry, her freedom to choose a partner and her right to exercise her freedom of religion.

CASE NUMBER

Criminal Appeal No. 366 of 2018, decided on April 9, 2018.

COURT

Supreme Court of India

JUDGES

Dipak Misra, CJI & A. M. Khanwilkar & Dr. D. Y. Chandrachud, JJ.

CITATION

MANU/SC/0340/2018; 2019 INSC 222



FACTS

Hadiya (formerly Akhila Asokan), a 26-year-old woman converted to Islam and married Shafin Jahan in December 2016. Asokan K.M., her father opposed the marriage and filed a habeas corpus petition in the Kerala High Court alleging that his daughter had been forced to convert and was likely to be taken overseas. The High Court of Kerala declared Hadiya's marriage to Shafin Jahan null and void and ordered that Hadiya be placed in the custody of her parents. The High Court also prohibited Hadiya from using her mobile phone or interacting with anyone outside of her family. The decision of the High Court was challenged before the Supreme Court by Shafin Jahan.

COURT DECISION AND REASONING

The Supreme Court overturned the decision of the Kerala High Court and ruled in favour of Shafin Jahan. The Court underscored that an adult's right to marry the person of their choice is a fundamental right protected under Articles 19 and 21 of the Constitution. Hadiya being an adult had the right to make decisions about her marriage and her faith. Additionally, the Supreme Court found that the High Court overstepped its jurisdiction by declaring the marriage void in a habeas corpus petition. It held that a habeas corpus petition, which is meant to address illegal detention, could not be used to annul a marriage or impose parental control over an adult's life decisions. The Court found no evidence of Hadiya being coerced into converting to Islam or marrying Shafin Jahan as she expressed her desire to continue her marriage and pursue her education. Consequently, the Court held that the parens patriae doctrine which authorises the State to act as a guardian for those unable to protect themselves, was not applicable in Hadiya's case and the High Court had erred in applying this doctrine to order Hadiya to be placed in the custody of her father. Hadiya was a mentally competent adult capable of making her own decisions.

SIGNIFICANCE

This is a landmark judgment as it upheld an individual's right to personal liberty and freedom of choice in the matters of marriage and religion, particularly the choice of a woman. This is especially important in the context of the “Love Jihad” movement and increasing threats to the secular fabric of the country.

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Indian Young Lawyers Association & Others v. The State of Kerala & Others (“Sabarimala case”)

RIGHT IN QUESTION

The right of women to not be denied entry to a temple to practice their religion.

CASE NUMBER

W.P. (Civil) No.373 of 2006, decided on September 28, 2018

COURT

Supreme Court of India

JUDGE

Dipak Misra, CJI & R. F. Nariman, A. M. Khanwilkar, D. Y. Chandrachud & Indu Malhotra, JJ.

CITATION

2017 INSC 1040; MANU/SC/1315/2017



FACTS

The Petitioners filed this public interest litigation challenging the ban on the entry of women in their ‘menstruating years’ (between the ages of 10 and 50) to the Sabarimala Temple. The custom was believed to protect the celibacy of the temple deity Lord Ayyappa. The Petition further challenged the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 (Public Worship Rules) which permitted restrictions on the entry of women to temples as per custom.

COURT DECISION AND REASONING

The judgment comprised four opinions, with the majority holding that the bar on women's entry and the Public Worship Rules was unconstitutional, and violated the right of women to practice their religion. In his concurring opinion, Justice Nariman held that Article 25(2) was enacted with the object of social reform and may go to the extent of trumping religious practice and the rights vested with religious authorities to control their own internal affairs under Article 26(b). Justice Chandrachud in his concurring opinion held that exclusion of women was contrary to “constitutional morality”, as it undermined the ideals of autonomy, liberty and dignity. The menstrual status of a women could not be a valid criterion to deny them their right to practice their religion and their basic right to dignity and respect. He further held that the practice attracted Article 17, which prohibits all forms of untouchability and is a guarantee against any social exclusion based on notions of purity and pollution. In the sole dissenting opinion, Justice Malhotra, the only woman on the bench, opined that courts should not determine which religious practices are to be struck down unless they qualify as social evils, and personal views of morality and rationality have no place in the question of forms of worship of deity.

SIGNIFICANCE

While the Supreme Court held that any exclusionary religious practice which infringed upon women's constitutional guarantees was unconstitutional, the status of this judgment is tenuous, with over fifty review petitions filed in challenge. The petitions are pending before a 9-judge constitutional bench of the Supreme Court, which is also tasked with looking at “overarching issues” pertaining to women's access to public religious institutions including women's access to mosques and Parsi women's access to fire temples.

“ The right guaranteed under Article 25(1) has nothing to do with gender or, for that matter, certain physiological factors, specifically attributable to women. Women of any age group have as much a right as men to visit and enter a temple in order to freely practise a religion as guaranteed under Article 25(1). ... We have no hesitation to say that such an exclusionary practice violates the right of women to visit and enter a temple to freely practise Hindu religion and to exhibit her devotion towards Lord Ayyappa. The denial of this right to women significantly denudes them of their right to worship. ...the right guaranteed under Article 25(1) is not only about inter-faith parity, but it is also about intra-faith parity. Therefore, the right to practise religion under Article 25(1), in its broad contour, encompasses a non-discriminatory right which is equally available to both men and women of all age groups professing the same religion.

CHIEF JUSTICE DIPAK MISRA,

In his opinion on behalf of himself and **JUSTICE A.M. KHANWILKAR**
In Indian Young Lawyers Association & Others v. State of Kerala & Others

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RIGHT IN QUESTION

The right of women to wear a hijab on the ground of freedom to practice their religion, without interference by the State.

CASE NUMBER

Civil Appeal No. 7095 of 2022 decided on October 13, 2022.

COURT

Supreme Court of India

JUDGE

Hemant Gupta & Sudhanshu Dhulia, JJ.

CITATION

2022 INSC 1085; (2023)2SCC 1; MANU/SC/1321/2022



Aishat Shifa v. The State of Karnataka & Others (“Hijab Ban case”)

FACTS

The Karnataka government issued a circular mandating that all government schools adhere to a uniform dress code, on the basis of which girls would not be allowed to wear a hijab. The Petitioners challenged this order, arguing that the prohibition of hijab in schools violated their right to religious freedom under Article 25, as well as other rights under Articles 14, 19 and 21. High Court of Karnataka upheld the circular, leading to an appeal before the Supreme Court.

COURT DECISION AND REASONING

The Court delivered a split decision, with Justice Hemant Gupta upholding the circular and Justice Sudhanshu Dhulia striking it down.

Justice Hemant Gupta held that the restriction on wearing hijab in government schools aimed at fostering uniformity among students, and was designed to promote a secular environment in schools, consistent with the right to equality under Article 14 of the Constitution. He noted that while the practice of wearing the hijab may be considered a religious or social practice, religious symbols should not be permitted in secular schools maintained out of State funds, and the State has the authority to restrict such practices. Further, fundamental rights to free expression and privacy could be reasonably restricted under the Constitution. Justice Gupta held that the right to education was not violated by the circular, since the girls who wished to violate the order were voluntarily absents themselves from school.

Justice Sudhanshu Dhulia issued a diametrically opposite decision, holding that the circular restricting the wearing of hijab violated the constitutional values of liberty, equality, and fraternity. He cited Ambedkar, who asserted that these three principles are interconnected and cannot function independently. Justice Dhulia explained that liberty without equality leads to the supremacy of the few, while equality without liberty will kill individual initiative. Therefore, it was held that the order restricting the hijab was an invasion of privacy and an attack on the girls' right to dignity, violating Article 21. It also denied their right to secular education, violating Articles 19(1)(a) and 25(1).

SIGNIFICANCE

The judgment is reflective of the current polarisation of ideology on the idea of secularism and the rights of minority communities, particularly women to express themselves. The case has now been referred to a larger bench, which has yet to be constituted by the Court.



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