

Gender Equality

= Roshan Dalvi

The Spirit and the Ethos

AFFIRMATIVE ACTION / POSITIVE DISCRIMINATION

- Diversity
- Equity
- Inclusion

Words, as much as weapons, shape history

Pre - Constitution Era

IPC, 1860

- Pornography, - Ss. 292 – 294
- Miscarriages, abortions, foeticide, infanticide – Ss. 312 – 318
- Abandonment of child – S. 317
- Outraging modesty (eve-teasing) – S. 354
- Slavery – S. 370
- Trafficking – S. 372
- Rape, Unnatural Offence - S. 375 and 377
- In marriages – 493 – 498

Not until half our population represented by women and girls can live free from fear, violence and everyday insecurity, can we truly say we live in a fair and equitable world. – Antonio Guterres, UN Secretary General

Reformation Movement Statutes

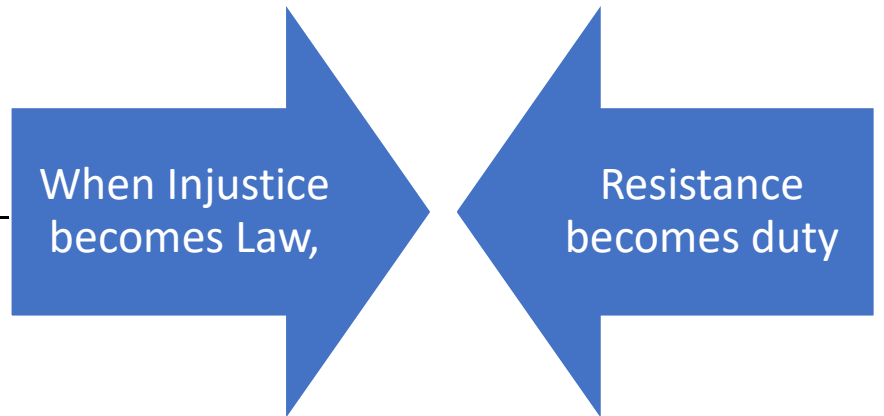
- Bengal Sati Regulation Act, 1929 – (for abolition of Sati)
- Later Sati Prevention Act, 1987

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- ❑ Bombay Devadasi Protection Act, 1934
 - ❑ Later Devadasi Abolition Act, 1947
 - ❑ Madras Devadasis (Prevention of Dedication) Act, 1947

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- ❖ Child Marriage Restraint Act, 1929 (CMRA)
 - ❖ Later Prohibition of Child Marriage Act, 2006

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- Bombay Prevention of Hindu Bigamous Marriages Act, 1946

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- ✓ Removal of Disqualification of Women Act, 1924



Procedural Codes

CPC, 1908

- Service upon male member of the defendant's family - O5 R15 (deleted)
- Imprisonment of women in execution of a money decree – S. 56

CrPC, 1898

- Search of a female only by a female officer
- Medical examination only by a female doctor
- No arrest of a female after sunset and before sunrise
- Allowing her release on bail upon her arrest S. 437 (1) First proviso

*To call woman the weaker sex is libel: it
is man's injustice to women.
- Mahatma Gandhi*

Constitution of India

Fundamental Rights

- ✓ Article 15 (3) – Laws in favour of women and children
- ✓ Article 21a – Right to education
- ✓ Article 23 – Prohibition of trafficking in humans and forced labour
- ✓ Article 24 – Prohibition of employment of children in factories

✓ **Fundamental Duties**

- ✓ Article 51A (e) – Renounce practices derogatory to the dignity of women

I measure the progress of a community by the degree of progress which women have achieved – B. R. Ambedkar

Constitution of India (Contd.)

Directive Principles of State Policy –

□ Article 39

- (a) Equal rights for men and women to livelihood
- (d) Equal pay for equal work for men and women
- (e) Health and work for men and women
- (f) Opportunities for children

□ Article 42 – Maternity relief

□ Article 45 – Compulsory education for children

The Sex Equality Clauses of our Constitution will remain frozen and be a perpetuation of ancient legal injustice unless activist Judges share the new concerns and values.

– Justice Krishna Iyer

Personal Laws

- The Special Marriage Act, 1954 (SMA)

The Hindu Code

- The Hindu Marriage Act, 1955 (HMA)
- The Hindu Adoption and Maintenance Act, 1956 (HAMA)
- The Hindu Minority and Guardianship Act, 1956 (HMGA)
- The Hindu Succession Act, 1956 (HSA)

The greatest threat to peace and security today is the marginalisation of women - Irene Santiago

Personal Laws (Contd..)

Muslim Personal Law

- Triple Talaq
- Dissolution of Muslim Marriages Act, 1939
- Muslim Women (Protection for Rights on Divorce) Act, 1986
- Muslim Women (Protection for Rights on Marriage) Act, 2019
- Guardianship Law

Christian Law

- The Indian Divorce Act, 1869 – S. 10
- The Indian Succession Act, 1925 – S. 37

Parsi Law

- ❖ The Parsi Marriage and Divorce Act, 1865 and later 1936
- ❖ The Indian Succession Act, 1925 (ISA) – Ss. 50 – 56

*Feminism is not about making women strong. Women are already strong.
Feminism is about the way the world perceives that strength.*

Physical and Sexual Laws – Welfare Legislations

- The Immoral Traffic (Prevention) Act, 1956 (ITPA) amended in 1986
- The Child Labour (Prohibition and Regulation) Act, 1986 (CLA).
- The Pre-Conception and Pre-Natal Diagnostic Techniques Act (PCPNDT Act), 1994 amended in 2020
- The Medical Termination of Pregnancy Act, 1971 (MTPA)
- The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA)

*To set right a misshapen circumference,
it is essential to set right the centre point.*

- Upanishad

Employment Laws

- ✓ Factories Act, 1948
- ✓ Mines Act, 1952
- ✓ Shops and Establishments Act, 1948
- ✓ Employees State Insurance Act, 1948
- ✓ Equal Remuneration Act, 1976
- ✓ Hazardous Work Prevention Act, 1986
- ✓ Kerala Shops and Establishments Act, 1960
- ✓ Protection of Women against Sexual harassment Act, 2013
- ✓ Forest Rights Act, 2006
- ✓ Maternity Benefit Act, 1961 amended in 2017 and 2019

There is no tool for development more effective than the empowerment of women – Kofi Annan

Family Laws

- The Family Courts Act, 1984
- S. 498-A of the IPC and the Protection of Women Against Domestic Violence Act, 2005 (DVA)
- The Protection of Children Against Sexual Offences Act, 2012 (POCSO)
- Population Control Bill, 2019

*Preferential treatment for women and children, then,
is not only easily explained, but also it is amply justified .
– Fali S. Nariman*

Military Laws

- Virginia Military Institute admissions
- S. 12 of the Army Act, 1950, S.12 of the Air Force Act, 1950 and S. 9 of the Indian Navy Act, 1957
- S. 6 of the Territorial Army Act, 1948
- JAG
- The Coast Guards Act, 1978
- The Disaster Management Act, 2005
- Military Nursing service
- Central Reserve Police Force (CRPF)
- Permanent Commission

A world created by males for males - Justice D. Y. Chandrachud

Subordinate Legislation

- ❖ Aanganwadi workers / primary school teachers
- ❖ 2% rebate on stamp duty for conveyances
- ❖ Court fees by women
- ❖ Transfer Policy
- ❖ Employee with 3 children
- ❖ Probation Policy
- ❖ Victim Compensation fund

Gender Equality has been adopted by 194 member states of the United Nations as one of the 17 Sustainable Development Goals (SDGs) resulting in Gender Responsive Budgeting (GRB).

Judicial Precedents

- ✓ Air India air hostess' case
- ✓ IFS Officer's Case
- ✓ RBI guardianship case
- ✓ Second marriage of a government servant
- ✓ Incest by a Naval Officer
- ✓ Eve-teasing resulting in death
- ✓ Prohibiting employment of women where liquor is served
- ✓ Husband's surname
- ✓ Husband's name by an unwed mother
- ✓ Mother's surname by her child
- ✓ Dissolving wrecked marriage in public interest

It is your road and
your road alone;

Others may walk it with
you, but no one can
walk it for you. - Rumi

Judicial Precedents (Contd.)

- Bar Dancers' case
- Kerosene licence
- Dependent cards for children of ex-defence personnel
- 10% quota for kin of ex-service personnel for recruitment of assistant professors
- Bollywood make up artists
- Maternity and Paternity Leave
- Mother of a surrogate child
- Maternal care for 3-month old child
- Defamatory articles
- Embarrassing question in application form
- Court Receiver
- Transfer of cases
- Reservation upon matriarchal descent
- Topper with 62% locomotor disability

If you want Peace, work for Justice

Judicial Precedents (Contd.)

- ❑ Cyber stalking
- ❑ Unsolicited text messages
- ❑ Accused kept between 2 cupboards during trial of sexual offence against a child
- ❑ Test Identification Parade in hospital
- ❑ Value of unpaid domestic work for compensation
- ❑ Sabrimala and Haji Ali Durgah
- ❑ Senior parents-in-law
- ❑ Widower caring for his child
- ❑ Woman's career and child
- ❑ No increment if promotion refused !

It is not laws that
oppress women;
It is menfolk who do.
- Fali S. Nariman

Judicial Precedents (Contd.)

Transgenders

- Sex Re-assignment surgery of a Naval Officer
- Admission to the NCC
- Contest Gram Panchayat Elections in Jalgaon
- Case of lesbians

Law is an equaliser. It is an instrument of social welfare.

Differently-abled Persons

- Writers' Cramp

Exclusion is accidental, but Inclusion should be deliberate
- Justice D. Y. Chandrachud

Judicial Precedents (Contd.)

Beginnings of the New Age of Gender Neutrality

Bail provision for Women

Maintenance For Men

Gender Equality is more than a goal in itself.

- Kofi Annan

In the Spirit of the Constitution

Therapeutic Jurisdiction

- Letter to children of separated parents / victim of crime
- Birdnesting
- Child Victims and Child Witnesses

*I hold that the more helpless a creature,
the more entitled it is to protection by men,
from the cruelty of men - Mahatma Gandhi*

She has fought a thousand battles

And is still standing tall.

She has cried a thousand tears

And is still smiling broad.

She has been broken, betrayed, abandoned, rejected,

And is still walking proud.

Laughs loud, lives without fear, loves without doubt.

She is a woman.