

## CHAPTER 10

# ACKNOWLEDGING SEXUAL EQUALITY VIS-A-VIS ARTICLE 21 OF THE INDIAN CONSTITUTION : ISSUES AND CHALLENGES

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## I. INTRODUCTION

For women, the right to have control over their own bodies and their sexuality, free of discrimination, coercion, and violence, is critical to their empowerment. If sexual rights of women are not recognized

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by the states then their right to self-determination and autonomy over their body cannot be guaranteed. The aim of the paper is to draw the attention of the readers towards the atrocities and discrimination that women face throughout their lifetime and how such ill treatment affects her sexual right and compromises her reproductive health. Through this paper, the authors have tried to analyse and evaluate the existing International and National Standards for the protection of sexual rights of women. The paper highlights the issues related to gender-based violence, forced marriage, female genital mutilation, and restrictions on their mobility, clothing, education, employment and participation in public life.

The expected outcomes of this paper are—

1. Underlining the fact that women alone should be vested with the right to decide for her body and life. The State should not encroach and decide for her on issues, which are pertinent for her existence.
2. Accentuating the role of Judiciary in protecting and promoting the Reproductive Rights of women through landmark judgements.
3. Highlighting the flaws and failure of the International and National Standard to protect the reproductive rights of women.

The key findings of the paper include the necessity of addressing the issues of sexual rights of women as these form the basic human rights and are pertinent to ensure equality and justice to women.

Sexuality is an important part of humanity, for this reason, a favourable environment is must where everyone can enjoy sexual rights as part of the development process. Sexual rights of women are important in all societies. Women have been discriminated and have been looked down by the society. At every stage of their life, their sexual rights have been taken down. There is very less effort made by the state to redeem the rights of women in their public as well as private life.

Sexual rights are universal human rights and it is based on the freedom of the environment, the dignity and equality of all. Ensuring proper promotion and protection of women sexual rights should be the first step towards achieving a high standard of life in the society for all, till women feels safe and empowered in society no country can

progress and prosper. Today, prejudice, discrimination, fear, and violence are all too common threats to women and prevent them from accessing the basic sexual rights.<sup>1</sup> These rights are committed to the freedom, equality and dignity of all people, and simply cannot be denied. There should be persistent efforts for reducing discrimination and improving access to services, to raise sexual awareness and sensitize the masses of sexual issues. Isolation groups such as youth, sex workers, gays, lesbians or transgender people and women need protection and empowerment from the society and government. Rights of women who are at a risk of experiencing sexual harassment, violence, including gruesome traditional practices such as female genital mutilation are at the top who need to be empowered and uplifted.<sup>2</sup>

## II. MEANING OF SEXUAL RIGHTS

Sexual rights are basic human rights that every individual in the society are entitled to, it includes the right to life, privacy, freedom of thought and expression, freedom from violence, right to education and information, equality, freedom from all forms of discrimination, and the highest level of health care. Sexual rights address a wide range of sexual and gender-related issues, which has implications upon the other existing rights. Sex is the essence of being human. Women and girls must have the freedom, power, and support to seek and achieve their sexual rights. They must be able to take and give consent to decisions surrounding their bodies and lives, such as choosing with whom to have sex and whom not; decide whom to marry; choose when to have children; and determine when and what health information to access. Women should not be subjected to violence, discrimination, based on their decisions.<sup>3</sup>

Sexual and reproductive health is the ability to seek, receive and impart sexual information; access to sex education; respect for physical integrity; free partner selection; the right to sexual relations, the right

1. Hein Online, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/tjw118&div=4&id=&page=>, (last visited Jul. 7, 2021).
2. iPleaders, <https://blog.ipleaders.in/gender-inequality-at-home-and-public/>, (last visited Jul. 7, 2021).
3. United Nation Global Compact, <https://www.unglobalcompact.org/what-is-gc/our-work/social/gender-equality>, (last visited Jul. 9, 2021).

to marry in harmony; the right to a satisfying, safe and happy sexual life.<sup>4</sup>

### III. HISTORICAL OVERVIEW OF SEXUAL RIGHTS

Although India was among the first countries in the world to grow legal policy and frameworks that ensured abortion as well as use of contraceptives, women and girls continue to face different barriers to enjoy their sexual rights, including poor quality of health services. In Indian society, women are traditionally discriminated and excluded from certain political and family decisions. Although there are many tasks, women have to perform on a daily basis to support their families, their views are rarely accepted and their rights are limited. From birth, young Indian girls are victims of discrimination. According to a report by India's Department of Health and Family Welfare, the infant mortality rate among girls is 61% higher than that of boys. This gender inequality also exists in education; only 2/3 of girls between the ages of 6 and 17 were sent to school, compared to 3/4 of boys. In addition, in rural areas, only 46% of women are literate, almost half of the literacy rate for men.<sup>5</sup> Instead of going to school, girls often find themselves forced to work to help their families, often since they are very young. Worst of all, almost 720 million girls get married before even attaining the age of majority and India is the largest contributor to this, India contributes 1/3<sup>rd</sup> towards the child marriage that takes place throughout the world.<sup>6</sup> This has profound consequences, especially on the health of women and their precarious status often prevents them from accessing appropriate health care. For many Indian women, abuse, violence, and exploitation occur daily.<sup>7</sup> The problems they have to face, however, are just the opposite. On one hand, women are worshiped as a Goddess and on the other hand, they

4. Diganth Raj Sehgal, "Growth of feminist jurisprudence in India", August 9, 2020.

5. Anchit Bhandari & Urvashi Jaswani, *A Critical Analysis Of Gender Inequality In The Existing Legislation Relating To Property Rights In India: A Comparative Study Of Hindu And Muslim Law*, Manupatra, (Jul. 7, 2021, 9:29 PM), <http://docs.manupatra.in/newslines/articles/Upload/06EF3D18-696B-4E5F-A61E-80646EC0E664.pdf>.

6. United Nations International Children's Emergency Fund, [https://www.unicef.org/media/files/Child\\_Marriage\\_Report\\_7\\_17\\_LR...pdf](https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR...pdf), (last visited Jul. 9, 2021).

7. The Hindu, <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>, (last visited Jul. 11, 2021).

are tormented endlessly and treated as inferior. Indian women often had one or more social problems that they face in society. The state needs to recognize these problems and address them urgently to ensure gender parity in the country. Violence against women is a major problem in India. In addition, there is sexual harassment, marital rape, genital mutilation, and countless others. Women are not treated equal to men. They face discrimination in almost every area, whether at work or at home. Even young girls fall prey to this prejudice. In addition, in education girl's literacy is lacking much behind as compared to the boys.<sup>8</sup>

### IV. COMPARATIVE OVERVIEW OF LAWS FOR THE PROTECTION OF SEXUAL RIGHTS OF WOMEN

#### a. LEGAL FRAMEWORK FOR THE PROTECTION OF SEXUAL RIGHTS IN UNITED KINGDOM

Equal participation of women and men in economic and social development, and women and men benefiting equally from community resources is essential in achieving gender justice. United Nations Development Fund for Women (UNIFEM)<sup>9</sup> was established in 1976 to provide technical and financial assistance for women's empowerment. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in the year 1979 by United Nation General Assembly (UNGA). It is described as the International Women's Rights Bill. The decade of women (between 1975 and 1995) contributed significantly to awareness and commitment to gender equality and gender justice.<sup>10</sup> In July 2010, the United Nations General Assembly adopted the United Nations Entity for Gender Equality and the Empowerment of Women. In doing so, UN member states have taken a historic step towards accelerating the Organization's goals for gender equality and the empowerment of women. In addition to the Commission on the Status of Women, the United Nations Economic and Social Council (ECOSOC) international policy-making body is committed solely to gender equality and the

8. Society for Human Resource Management, <https://www.shrm.org/hr-today/news/hr-magazine/pages/010215-gender-discrimination.aspx>, (last visited Jul. 11, 2021).

9. United Nations Development Fund for Women, a Human rights organization.

10. Office of the United Nations High Commissioner for Human Rights, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>, (last visited Jul. 11, 2021).

advancement of women.<sup>11</sup> United Nations Development Programme (UNDP) has established two well-known indicators of gender equality - the Gender Related Development Index and the Gender Empowerment Measure to compare and position member states on gender equality practice. India is ranked 113th in the Gender Related Development Index, while the USA is 16th and the UK is tenth.<sup>12</sup> In United Kingdom to address discrimination at the work place *The Equal Pay Act of 1970* was enacted which allowed workers to claim equal pay for equal work and for work of equal value. *The Sex Discrimination Act, 1986* also deals with sex equality laws. Abortion has been legal in Great Britain since 1967. There is no time limit on performing abortions to save the woman's life. Two medical practitioners must agree that the woman is not more than 24 weeks pregnant and that continuing the pregnancy would involve greater risk to her or the child.<sup>13</sup> All working women are entitled to 14-week maternity leave, mandated by the *Employment Protection Act, 1975*. The *Domestic Violence, Crimes and Victims Act, 2004* deals with domestic violence. Efforts have been made to make the judicial system and the police force more sensitive to the needs of victims in cases of domestic violence and at workplaces where they face discrimination or being subjugated.<sup>14</sup> Rape is a statutory offence under *The Sexual Offences Act, 2003*. United Kingdom is one of the few countries to offer sexual assault victims with financial compensation and also makes marital rape a criminal offence.<sup>15</sup> Prostitution itself is legal but a number of related activities such as soliciting in a public place and keeping a brothel are outlawed.<sup>16</sup> The *Sexual Offences Act, 2003* has made the word 'prostitute' gender neutral including in its

11. SCC Online, <https://www.scconline.com/blog/post/tag/patriarchal-society/>, (last visited Jul. 11, 2021).

12. Human Development Reports, UNITED NATIONS DEVELOPMENT PROGRAMME, [http://hdr.undp.org/sites/default/files/hdro\\_issue\\_paper\\_on\\_gender\\_indices\\_with\\_cover.pdf](http://hdr.undp.org/sites/default/files/hdro_issue_paper_on_gender_indices_with_cover.pdf), (last visited Jul. 11, 2021).

13. The Medical Termination Of Pregnancy (Amendment) Act, 2021.

14. International Labor Organization, [https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms\\_242615.pdf](https://www.ilo.org/wcmsp5/groups/public/-dgreports/-dcomm/-publ/documents/publication/wcms_242615.pdf), (last visited Jul. 12, 2021).

15. Supranote 10 at Pg. No. 7.

16. MYADVO, <https://www.myadvo.in/blog/prostitution-in-india-read-its-causes-legality-and-law/>, (last visited Jul. 13, 2021).

17. Female Genital Mutilation Act 2003.

purview now not only women but other genders. This has been a marvellous step towards achieving gender justice. *The Policing and Crime Act, 2009* makes forced service by a prostitute a strict liability offence. Lastly, the *Female Genital Act*<sup>17</sup> makes the perverse traditional ritual of female genital mutilation (mainly of immigrants from Africa and Asia) illegal. With regard to the third gender, Parliament passed *the Gender Recognition Act 2004*, which effectively granted full legal recognition for transgender people.

#### b. LEGAL FRAMEWORK FOR THE PROTECTION OF SEXUAL RIGHTS IN UNITED STATES OF AMERICA

The ruling in *Roe v. Wade*<sup>18</sup> given by the Supreme Court has put to rest the controversial issue of Abortion and it is now legal in every state. Every women has been guaranteed a right to self-determination and abortion falls under right to privacy. A women's decision should be free from unwarranted governmental intrusion into such a fundamental matter. In 1994, the *Violence Against Women Act* declared domestic violence a federal crime, entitling them to sue for damages.<sup>19</sup> *The Family and Medical Leave Act*<sup>20</sup> permits any employee, male or female, to take up to 12 weeks of unpaid leave per year for maternity leave or childcare.

#### V. NATIONAL STANDARDS FOR PROTECTION OF SEXUAL RIGHTS

Rape as a clearly defined case was first introduced in the Indian Penal Code<sup>21</sup> in 1860. Prior to this, there were often various and conflicting laws in place throughout India. Section 375 of the IPC provides for the punishment of a sexual act between a man and a woman if it is committed against the will of women or without her consent. The definition of rape also states that if the victim consent is obtained by placing her or another person of interest to her, under fear of death or injury then that amounts to rape.<sup>22</sup> According to section 375 of Indian Penal Code, consent given by

18. *Roe v. Wade*, 410 U.S. 113 (1973).

19. Government Info., <https://www.govinfo.gov/content/pkg/BILLS-113s47es/pdf/BILLS-113s47es.pdf>, (last visited Jul. 13, 2021).

20. Family and Medical Leave Act, 1993.

21. Indian Penal Code, 1860.

22. National Commission of Women, <http://ncw.nic.in/sites/default/files/Chapter02.pdf>, (last visited Jul.12, 2021).

the minor is of no relevance.<sup>23</sup> Section 376 provides for life imprisonment as the maximum punishment for committing rape. For more than hundred years, there was no change in the existing Indian Penal Code. The criminal law relating to rape and sexual assault cases did not change until the most devastating Mathura's rape case.<sup>24</sup> On March 26, 1972, police at the Desai Gunj police station in Maharashtra allegedly raped a young Adivasi girl named Mathura. The session court ruled that the victim was engaged in sexual intercourse at the police station with her consent and she wasn't raped by the policemen. The matter was appealed before the high court, in its decision of September 15, 1978; High court observed that there was no signs of injury on the body of the girl and held that the alleged offence was not rape under section 375 of Indian Penal Code. The court was of the opinion that the alleged sexual intercourse was with the consent of the victim as she didn't resist the act of the policemen. Prosecutor challenged the order of acquittal before the Hon'ble Supreme Court, which upheld the high court's decision and observed that the sexual act in the instant case was not a rape, as it doesn't fall under the definition of rape defined under Section 375 of IPC.<sup>25</sup> The controversial decision sparked widespread protests across the country demanding a change in existing rape laws. This eventually resulted in the Criminal Law (Second Amendment) Act of 1983.

#### a. NEED TO CRIMINALIZE MARITAL RAPE

The definition of rape included in section 375<sup>26</sup> includes all forms of sexual misconduct, including incest. However, Exception 2 to Section 375 exempts unlawful sexual intercourse between a couple where the wife is over the age of fifteen years and thus provides a blanket protection to the husband. Under current law, a wife is considered to give permanent consent to have sex with her husband after entering into a marriage contract. Marital Rape is considered a criminal offense in almost every country in the world, India is one of thirty-six countries that have not yet criminalized marital rape. The Supreme Court of India and the various High Courts in its various judgements upheld the exception 2 of section 375 of IPC and have

23. Indian Majority Act, 1875, establishes 18 years as a majority age.

24. Tuka Ram & Ors. v. State of Maharashtra, 1979 AIR 185, 1979 SCR (1) 810.

25. Chand Bibi vs State & Ors., CrI. App. No.592/ 2018.

26. Section 375 of the Indian Penal Code, 1860.

reiterated that having sex with own wife doesn't constitute rape when the wife age is above 15 years.<sup>27</sup>

#### b. NON-RECOGNITION OF SEXUAL RIGHTS A BLATANT VIOLATION OF ARTICLE 14 & 21

Article 14 of the Constitution of India guarantees that the State shall not deprive any person of equal opportunity and everyone shall be treated in accordance with law and equal protection of the laws shall be ensured. When IPC was enacted in the year 1860, a married woman was not considered as an independent legal entity. Instead, she was not entitled to any right as an independent person and was considered as subsidiary to men. As a result, women were deprived of many rights earlier, which are now guaranteed to them as an independent legal entity, including the right to sue anybody. Exception 2, which is a licence to men to rape their wives above 15 years is strongly influenced and has been taken from the doctrine of combining a woman's identity with that of her husband.<sup>28</sup>

The roots of this doctrine can be traced back to the colonial British rule. India was a British colony in the 19th century. All the Indian laws enacted during this time were based on English law and Victorian customs. Indian law now gives men and women separate and independent legal ownership, and majority of laws in the modern era clearly focusses on the protection of women.<sup>29</sup> This concern is reflected in a number of principles aimed at protecting women from violence and abuse perpetrated since the turn of the century, including the "Protection of Women from Domestic Violence, 2012 and the Sexual Harassment of Women in the Workplace (Prevention, Prevention and Redress) Act, 2013.<sup>30</sup> Exception 2 of Section 375 of Indian Penal Code is also a violation of Article 21 of the Constitution of India. Article 21

27. Aparna Bhat & Ors. v. State of Madhya Pradesh & Ors., Criminal Appeal No. 329 Of 2021.

28. Bhartiya Stree Shakti, *Tackling Violence Against Women: A Study of State Intervention Measures (A comparative study of impact of new laws, crime rate and reporting rate, Change in awareness level)*, Ministry Of Women & Child Development, (Jul. 7, 2021, 9:29 PM), [https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS\\_0.pdf](https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_0.pdf).

29. Dr. Bhavish Gupta & Dr. Meenu Gupta, *Marital Rape: - Current Legal Framework in India and the Need for Change*, Galgotias Journal of Legal Studies, (Jul. 7, 2021, 9:29 PM), <https://www.sconline.com/blog/wp-content/uploads/2020/07/20th-Harvard-bluebook.pdf>.

30. The Constitution of India, 1950.

states that no person shall be deprived of his life and personal liberty except for procedure in accordance with the law. The Supreme Court has defined Section 375 of Indian Penal Code in various decisions to pass beyond the actual guarantee of life and freedom. Instead, assume that the rights enshrined in Article 21 includes health rights, privacy, dignity, safe living conditions. In recent years, courts in India have begun to recognize the rights of married women and recognized their right to say 'NO' against unwanted sexual encroachment of their body. In *State of Karnataka v. Krishnappa*<sup>31</sup>, the Supreme Court stated "Marital violence and exploitation of women at their in-laws home is violation of the right to privacy and the sanctity of women. Further, the court held that unlawful sexual intercourse tantamount to physical and sexual violence. Later, in *Suchita Srivastava v. Chandigarh Administration*,<sup>32</sup> the Supreme Court held that women have the right to make decisions regarding their sexual life and they have the right to choose their sexual partner and any interference with the rights will lead to violation of personal freedom, privacy, dignity, and physical integrity, guaranteed under Article 21 of the Indian Constitution. Recently, the Supreme Court observed that Article 21 includes the right to make decisions regarding intimate relations. In *Justice K.S. Puttuswamy (Retd.) v. Union of India*<sup>33</sup>, the Supreme Court held the right to privacy is a form of fundamental rights of all citizens under Article 21 and includes decision-making privacy expressed by the ability to make intimate decisions primarily involving one's sexual or reproductive environment and decisions about intimate relationships. Forced sexual intercourse is a violation of that fundamental right. The above decisions do not discriminate between the rights of married and unmarried women and there is no objection to the right to privacy of a married couple, which has been guaranteed under Article 21 of the Constitution. In addition, Exception 2 of section 375 of Indian Penal Code violates right to live a dignified life enshrined under Article 21. Husband invading the body of his wife against her will and subjecting her to torture violates her right to live with dignity adversely affecting their physical and mental health. Thus Exception

31. *The State of Karnataka v. Krishnappa*, 2000 CriLJ 1793, JT 2000 (3) SC 516.

32. *Suchita Srivastava v. Chandigarh Administration*, (2009) 14 SCR 989, (2009) 9 SCC 1.

33. *Justice K.S. Puttuswamy (Retd.) v. The Union of India*, (2017) 10 SCC 1; AIR 2017 SC 4161.

2 to Section 375 of the IPC is a blatant violation of Articles 14 and 21 of the Constitution.<sup>34</sup>

## VI. JUDICIAL PRONOUNCEMENTS SAFEGUARDING THE SEXUAL RIGHTS OF WOMEN

Women in India are subjected to different social and political discrimination from time immemorial. After Independence, Indian legislature has initiated different schemes and practices and several legislations have been enacted in order to protect and safeguard the interest of women. Apart from legislature, the Judiciary has also played an active role in protecting and safeguarding the status of women in India.

### a. SAFEGUARDING THE RIGHTS OF WOMEN FROM SEXUAL HARASSMENT AT WORKPLACE

In *Vishaka v. State of Rajasthan*<sup>35</sup> for the first time, Hon'ble Supreme Court recognised that to work in a safer environment is a fundamental right and every woman is entitled to it. The court also held that sexual harassment was a clear violation of rights guaranteed under Articles 14, 19 and 21. The court in the present case laid down historic Vishaka guidelines. Later these guidelines were incorporated into *The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013*.

### b. ENHANCEMENT OF PUNISHMENT TO DEATH PENALTY IN RAREST OF RARE OF CASES

In *State v. Ram Singh and Ors.*<sup>36</sup> barbaric and terrifying incident of rape in a moving bus caused a sensation and compelled the parliament to enact stringent rape laws in the country. The court clearly pointed out that the crime committed by the defendants was not worthy of sympathy because it shocked the conscience of the country.

A bench composed of three judges unanimously upheld the death penalty for all defendants who ravished the identity and dignity of the victim. The court made the following observations on women's rights:

34. Legal Service India, <https://www.legalserviceindia.com/legal/article-958-whether-the-exception-ii-of-sec-375-of-ipc-1860-constitutionally-valid-or-not.html>, (last visited Jul. 12, 2021).

35. *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

36. *State v. Ram Singh and Ors.*, SC No. 114/2013.

"Public at large, in particular men, are to be sensitized on gender justice. The battle for gender justice can be won only with strict implementation of legislative provisions, sensitization of public, taking other pro-active steps at all levels for combating violence against women and ensuring widespread attitudinal changes and comprehensive change in the existing mind-set."<sup>37</sup>

### c. PENALISING ACID ATTACK

In *Laxmi v. Union of India*<sup>38</sup> Hon'ble Supreme Court ordered governments at all levels to formulate plans and prohibit unauthorized sales of acid throughout the country. The court also held that all the victims shall be compensated by their government and rehabilitated. This decision paved the way for the legislature to reflect on the criminals who committed such terrible crimes and to impose stricter punishments.

### d. CRIMINALIZING TRIPLE TALAQ

In *Shayara Bano v. Union of India*<sup>39</sup> Hon'ble Supreme Court observed the practice of Talaq-e-biddat, an inhumane Islamic practice, in which men can irrevocably divorce their wives by uttering the word "talaq" three times, and held it unconstitutional. The Court stated that this practice compromised with the dignity and equality of women and violated articles 14, 21 and of the Indian Constitution.

### e. WOMEN RIGHT TO PARENTAL PROPERTY

In *Vineeta Sharma v. Rakesh Sharma*<sup>40</sup> the Supreme Court held that women are equally eligible to have share in their father's property as per Hindu Succession Amendment Act 2005.

Moreover, the court also held that daughters have equal property rights in the Hindu Undivided Family (HUF) and are not disqualified to have property benefit out of their parental property.<sup>41</sup> Prior to this amendment in Hindu Succession Act, 1956 there was significant discrimination between son and daughter in inheriting the property.

37. Id.

38. *Laxmi v. Union of India*, 2014 4 SCC 427.

39. *Shayara Bano v. Union of India*, 2017 SCC Online SC 963.

40. *Vineeta Sharma v Rakesh Sharma*, Civil Appeal 32601/2018.

41. Hindu Succession Act, 1956 (2005 Amendment).

Daughters were disintitiled to access property right after her marriage as she was considered part of her husband's family.<sup>42</sup>

Achieving absolute gender justice in India seems to be difficult and complicated because of rigid traditions and multiculturalism. Inadequate law enforcement, deep-rooted patriarchy, lack of economic dependence. Various non-governmental organizations, human rights defenders, the United Nations and other government agencies have raised their voices against gender intolerance. In short, equal treatment of all genders is a prerequisite for welfare state.

### f. RIGHT TO SAY NO

In India women are sexually abused both before and after marriage. It is a constitutional and moral obligation upon the men to respect women and their decision, even the married women has right to say no if she does not wish to engage sexually with her spouse, but on the contrary men take their self-esteem and the result is lashes and marks on a woman's body. In other words, consensus is fundamental to all healthy sexual relations in marriages. Consent means that both parties know what is proposed and what is expected.<sup>43</sup> Respect, humility, and patience these are essential to all human relationships are very important in a marriage.

## VII. RECOMMENDATIONS

Sexual Discrimination of women is one of the most underreported of all crimes. Over the centuries, when the patriarchal traditions and customs were deeply entrenched, women's lives were severely curtailed and oppressed. Most women were denied education and their lives and roles were only restricted to household chores and they were not considered as asset for their family and society. Executive should implement constitutional benefits and policies in order to encourage and promote women in the main stream of the society. The centre, state and local governments, should cooperate for overall development of women.<sup>44</sup> Women's collective empowerment can be

42. Supranote 31 at Pg. No. 12.

43. Sarthak Makkar, *Marital Rape a non-Criminalized Crime in India*, Harvard Human Rights Journal, (Jul. 13, 2021, 9:29 PM), [https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/#\\_ftn1](https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/#_ftn1).

44. *Kakali Ghosh v. Chief Secy. A & N Administration*, CIVIL APPEAL NO. 4506 OF 2014.

transformative, and promotes social and policy changes. Considering the example of Nigeria where sexual violence against women and girls leads to an increased risk of unwanted pregnancies and unsafe abortions. The youth social media movement “# Choice4 Life” movement is sensitizing the masses of various sexual issues in the society.<sup>45</sup> Therefore, in country like India where women are subjected to discrimination, the government should take the responsibility to enact several schemes and policies in order to protect and empower women in the society and at family level. Apart from enacting new legislations, proper implementation of it should be ensured at the grassroots level. Apart from the above recommendations there are several amendments needed in the existing statues to empower women and to protect their sexual rights. It is very necessary to consider and appreciate the rights of married women especially their sexual rights. Women’s are subjected to sexual violence within matrimonial home. This problem can be tackled by amending *Section 498A IPC* and including marital rape into it. Criminalisation of marital rape and repealing exception 2 of *Section 375* will be a significant step in securing sexual rights of women. Repeal of *Section 6* of the *Armed Forces Special Powers Act, 1958* is necessary because it requires prior sanction to prosecute armed forces for sexual assault. Enacting a comprehensive anti-discrimination law that counters discrimination on the basis of sex, status, religion, disability, sexual orientation, gender identity, HIV status, will be a step in promoting sexual equality in the country.

With the progressive change in the socio-economic fabric of the country more and more women are leaving their homes in search of employment in big cities as well as urban and rural industrial clusters. One of the main difficulties faced by such women is lack of safe and conveniently located accommodation. The Government of India being concerned about the difficulties faced by such working women, introduced a scheme in 1972-73 to expand the existing buildings for providing hostel facilities to working women in cities, smaller towns and also in rural areas where employment opportunities for women exist. The objective of the scheme is to promote availability of safe and

45. International Planned Parenthood Federation, [https://www.ippf.org/sites/default/files/2020\\_gender\\_equality\\_report\\_web.pdf](https://www.ippf.org/sites/default/files/2020_gender_equality_report_web.pdf), (last visited Jul. 17, 2021).

conveniently located accommodation for working women, with day care facility for their children, wherever possible, in urban, semi urban, and even in rural areas.<sup>46</sup> The government scheme of *Beti Bachao Beti Padhao (BBBP)* is to celebrate the girl child and enable her education. The objectives of the Scheme is to prevent gender based sex selective elimination, to ensure survival and protection of the girl child and to ensure education and participation of the girl child.<sup>47</sup> Amendment in abortion policy is one step towards achieving and establishing sexual rights for women. Government amended the *Medical Termination of Pregnancy (MTP) Act 1971* and upper gestation limit has been increased from 20 to 24 weeks for special categories of women, including survivors of rape, victims of incest and other vulnerable women (differently abled women, minors, etc.). The opinion of one medical expert is now needed for the termination of pregnancy up to 20 weeks of gestation. In addition, opinion of two medical experts for the termination of pregnancy from 20-24 weeks of gestation period is required.<sup>48</sup>

## VIII. CONCLUSION

India is a developing country and seeking its growth towards a developed nation and this is only possible when we respect women and their rights. Government need to implement a comprehensive sexuality education programme so that adolescents regardless of sex have access to correct and safe information regarding their sexual, reproductive health and rights to promote informed choices. Assure comprehensive maternal health services, including access to abortion services in the public health sector. Ensure safety of deliveries in both home delivery and institutional delivery. Appoint special cadres of health care workers, if needed, in far-flung areas to assure that even home births are safe births. This would include the involvement of traditional birth attendants.<sup>49</sup> There are numerous schemes that has

46. Ministry of Women & Child Development, [https://wcd.nic.in/sites/default/files/Working%20Women%20Hostel\\_about\\_revised\\_about.pdf](https://wcd.nic.in/sites/default/files/Working%20Women%20Hostel_about_revised_about.pdf), (last visited Jul. 17, 2021).

47. Ministry of Women & Child Development, [https://wcd.nic.in/sites/default/files/Guideline\\_5.pdf](https://wcd.nic.in/sites/default/files/Guideline_5.pdf), (last visited Jul. 17, 2021).

48. The Medical Termination of Pregnancy (Amendment) Act, 2021.

49. National Human Rights Commission, [https://nhrc.nic.in/sites/default/files/sexual\\_health\\_reproductive\\_health\\_rights\\_SAMA\\_PLD\\_2018\\_01012019\\_1.pdf](https://nhrc.nic.in/sites/default/files/sexual_health_reproductive_health_rights_SAMA_PLD_2018_01012019_1.pdf) (last visited Jul. 17, 2021).



been initiated by the government for the protection, appreciation and welfare of women and many women are benefiting out of that. But, proper implementation of the schemes is very important in order to provide benefit to the women.

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