



Deposited via The University of Sheffield.

White Rose Research Online URL for this paper:

<https://eprints.whiterose.ac.uk/id/eprint/244278/>

Version: Published Version

Article:

Shukla, S. and Garnaik, U. (2026) The anti-female kink of agricultural ceiling laws: rewriting the Supreme Court's Ambika Prasad judgment. *Indian Law Review*, 10 (2). pp. 188-211. ISSN: 2473-0580

<https://doi.org/10.1080/24730580.2026.2688050>

Reuse

This article is distributed under the terms of the Creative Commons Attribution (CC BY) licence. This licence allows you to distribute, remix, tweak, and build upon the work, even commercially, as long as you credit the authors for the original work. More information and the full terms of the licence here:

<https://creativecommons.org/licenses/>

Takedown

If you consider content in White Rose Research Online to be in breach of UK law, please notify us by emailing eprints@whiterose.ac.uk including the URL of the record and the reason for the withdrawal request.



The anti-female kink of agricultural ceiling laws: rewriting the Supreme Court's *Ambika Prasad* judgment

Surabhi Shukla & Upasana Garnaik

To cite this article: Surabhi Shukla & Upasana Garnaik (2026) The anti-female kink of agricultural ceiling laws: rewriting the Supreme Court's *Ambika Prasad* judgment, Indian Law Review, 10:2, 188-211, DOI: [10.1080/24730580.2026.2688050](https://doi.org/10.1080/24730580.2026.2688050)

To link to this article: <https://doi.org/10.1080/24730580.2026.2688050>



© 2026 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.



Published online: 29 Jun 2026.



Submit your article to this journal [↗](#)



Article views: 395



View related articles [↗](#)



View Crossmark data [↗](#)

RESEARCH ARTICLE



OPEN ACCESS



Check for updates

The anti-female kink of agricultural ceiling laws: rewriting the Supreme Court's *Ambika Prasad* judgment

Surabhi Shukla ^a and Upasana Garnaik ^b

^aSchool of Law, University of Sheffield, Sheffield, UK; ^bDepartment of Sociology, University of California, Berkeley, USA

ABSTRACT

Women make up 64% of the agricultural workforce but own only 14% of rural agricultural land in India. This is a key feminist concern as land ownership is tied to many socio-economic outcomes. Further exacerbating this disparity are ceiling laws that govern ownership of agricultural land in states and provide for unequal gender-based ownership rights. Yet Indian feminist legal scholarship has failed to interrogate these laws. We address this by investigating the Uttar Pradesh Imposition of Ceiling on Land Holdings Act 1960, which systematically excludes daughters from land ownership. When it was challenged in *Ambika Prasad v State of Uttar Pradesh*, the Supreme Court reinforced the law's in-built gender discrimination, finding that the “anti-female” kink of the law did not “abridge, even a wee-bit the rights of women”. Rewriting the Supreme Court's judgement from a feminist perspective, we argue that even with the legal precedent and jurisprudence available at the time, a gender-just outcome was possible.

ARTICLE HISTORY

Received 23 July 2024

Revised 8 October 2025

Accepted 14 October 2025

KEYWORDS

Gender discrimination; ceiling laws; land laws; equality; Article 14; basic structure; feminist judgement project; ninth schedule

1. The agrarian structure in post-independence India

The discussion in the Constituent Assembly over the individual right to property and the compulsory state acquisition of land was heated. The leadership, headed by Jawaharlal Nehru, had been convinced for some time that the redistribution of land from the *zamindars* to the tenant farmers was essential for the economic and social regeneration of independent India.¹ Historically, zamindars had been tax collectors under the Mughal rule, but a radical mis-equation of their role to that of the English landlord during the British rule resulted in them being granted titles to the land through the Permanent Settlement Act 1793.² In return for the title, they paid a fixed amount in land revenue to the East India Company and, later, the Raj. Since the title vested in the zamindar and not the farmer, farmers did not make any permanent improvements to the land, focusing

CONTACT Surabhi Shukla  s.shukla@sheffield.ac.uk  School of Law, University of Sheffield, Bartolome House, Winter Street, Sheffield S3 7ND, UK

¹A zamindar is a landowner, especially one who leases his land to tenant farmers. See Namita Wahi, ‘The Constituent Assembly Debates on Property: Unravelling the Property Paradox’ (2021) Centre for Policy Research Working Paper, 4 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3918094> accessed 16 February 2026.

²Henry Baden Powell, ‘The Origin of the Zamindari Estates in Bengal’ [1896] 11(1) Quarterly Journal of Economics 36, 46.

© 2026 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.

instead on immediate profit. At the same time, there was no ceiling on the rent that a zamindar could charge from the tenant farmers. The cumulative effect was that land deteriorated qualitatively and returns diminished, while there emerged in India “a new class of people ... a class that had lived almost entirely on the fruits of the labor of others”.³

Along with the rise of this intermediary rent-collecting class, the British agrarian policy also encouraged oppressive moneylending practices which led to consequent losses of land. The net result was a concentration of land power in a small class of people that left vast numbers dispossessed. According to the 1976 Government of India Report on Agriculture, 57% of the privately cultivated agricultural land in the erstwhile British India was under zamindaris, while 38% was under *ryotwaris*, and 5% was under *mahalwaris*.⁴ Uttar Pradesh (“UP”), the focus of this article, was completely covered by the zamindari system. The agricultural dispossession was so coupled with the strengthening of the exploitative and oppressive regimes of the semi-feudal landlords that it led to mass uprisings even before independence, such as the historic land struggles in Tebhaga and Telangana.⁵ This forced the Indian National Congress (“the Congress”) to take notice and consider radical changes to the land tenure system in the country.⁶

By 1947, Dr Rajendra Prasad, the then Congress President, had appointed an Agrarian Reforms Committee. The Committee recommended a list of reforms based on the guiding principle of providing land to the tiller. The reforms rested on three major pillars: the abolition of zamindaris and other intermediaries, tenancy reforms, and a ceiling on land holding.⁷ The idea behind the ceiling on land was to serve the dual purpose of resource redistribution and increased productivity, based on the idea that smaller parcels of land were more productive than larger ones.⁸

In this article, we examine one such ceiling law, the Uttar Pradesh Imposition of Ceiling on Land Holdings Act 1960 (“the UP Ceiling Act”), which sought to limit the agricultural holdings each family could have based on the number of sons and daughters, among other things. The excess was to be acquired by the state government for redistribution among the landless and for other public purposes. We also rewrite the famed *Ambika Prasad v State of Uttar Pradesh*⁹ judgement which challenged the constitutionality of this legislation based

³Moolamattom Varkey Pylee, *Constitutional Government in India* (Asia Publishing House 1960) 273.

⁴Ministry of Agriculture and Irrigation, ‘Report on the National Commission on Agriculture’ Part XV (Government of India 1976) 6. Apart from the zamindari system, the other systems of land revenue introduced by the Company and sustained by the Raj were the ryotwari and the mahalwari system. These systems differed from the zamindari system in that the proprietorship vested with the peasant. However, land taxes were very high, leaving the peasants and labourers open to abusive moneylending practices. See Akina Ventakeshwarlu, *Land Reforms in India: Implementation in the Post-Independence Period* (Routledge 2021) 61.

⁵Ventakeshwarlu (n 4) 68; see also Chandra Rajeswara Rao, *The Historic Telangana Struggle: Some Useful Lessons from its Rich Experience* (Communist Party of India Publications 1972) 1–3. In a pamphlet written to mark the silver jubilee of Indian independence, Rao recounts the Telangana struggle which claimed the lives of 4,000 men and women and carried on for five years. The former State of Hyderabad had been ravaged by the worst of feudal exploitation: high rents, illegal extractive fee, like fee for cattle grazing, agricultural, and household implements taxes. The top of the ladder was the Nizam of Hyderabad. The Communist Party of India organized a mass resistance movement against the Nizam in the aftermath of the weakening imperialist position after the second world war which offered an opportunity for a public peasant uprising against the Nizam and the feudal lords.

⁶Report on the National Commission on Agriculture (n 4) 20.

⁷Ventakeshwarlu (n 4) 68–69.

⁸*Ibid* 76–77.

⁹*Ambika Prasad v State of Uttar Pradesh* (1980) 3 SCC 719.

on the abovementioned gendered criteria for ceiling land. The original decision of the Supreme Court in 1980 upheld the gender discrimination built into the Act.¹⁰

We first set the context by analysing the need and resolve for land reform in newly independent India and the constitutional compromises struck to achieve it, the early cases which tested this compromise, and the judicial and legislative tug-of-war that ensued for the next 22 years (section 2). We then introduce the UP Ceiling Act and explain the gender discrimination built into its provisions (section 3). In section 4, we evaluate the effectiveness of land ceiling legislation as a strategy for land reform, finding that it has been the least successful of the three reform strategies adopted by India, mentioned above. In section 5, we place the *Ambika Prasad* judgement of the Supreme Court in a limited global perspective, by showcasing that the Supreme Court of the United States and feminist scholarship of the time had clarified that gender discrimination on the basis of gender stereotypes was neither constitutional nor fair. Once the scene has been set up, we rewrite the *Ambika Prasad* judgement as a dissenting opinion in section 6. In the feminist judgement rewriting tradition, the rewritten judgement relies on precedent, jurisprudence, and scholarship available in 1980.

2. The resolve for reform

While there was a general agreement in the Constituent Assembly that the Constitution should support land reforms to address the grim situation of the Indian peasantry, finding the right balance between conserving existing property rights and ushering a more egalitarian society through land reform raised several complex questions.¹¹ The most difficult of them were that of compensation for land acquisition and the role of the courts. At the same time, the Assembly was apathetic to the zamindars, who were perceived as “usurpers of land, minions of past rulers” and therefore deserving little or no compensation.¹²

Article 31 of the Constitution (Article 24 of the Draft Constitution), which detailed the provisions for the compulsory acquisition of property by law, was introduced by no less towering a figure than Nehru himself. Of all the fundamental rights, Nehru introduced and put his influence behind only this one.¹³ Article 31 provided a fundamental right against the deprivation of property, enacting that no person shall be deprived of their property except by law. It also laid down the conditions under which a person may be deprived of their property. The compromise that was struck was that while no one was to be deprived of their property except by authority of the law, laws could be enacted to acquire property for public purposes on the payment of a “compensation”.¹⁴

As can be imagined, the zamindars were quick to challenge the land reform laws. Herbert Christian Laing Merillat notes that in the first year of the Constitution, three cases reached different High Courts.¹⁵ The Maharaja of Darbhanga, one of the largest

¹⁰ibid.

¹¹Wahi (n 1).

¹²ibid 17; cf Herbert Christian Laing Merillat, *Land and the Constitution of India* (Columbia University Press 1970) 55.

¹³George Gadbois, *Supreme Court of India: The Beginnings* (Oxford University Press 2017) 160.

¹⁴Constitution of India 1950, art 31 [omitted by the Constitution (Forty-Fourth Amendment) Act 1978, s 6].

¹⁵Merillat (n 12) 130.

landowners in India, challenged the Bihar Land Reforms Act 1950 before the Patna High Court for violating Article 14 of the Constitution, as it prescribed a graduated compensation scheme inversely proportional to the size of the seized holding.¹⁶ Nehru's own view on the Court's jurisdiction to question the compensation scheme had been that the "law should do it. Parliament should do it. There is no reference to any judiciary coming into the picture".¹⁷ The Patna High Court, however, held differently. It agreed with the zamindars, holding that the Act discriminated against the rich and favoured the poor. The Court could come to this finding because, as originally enacted, Article 31 did not place land acquisition laws beyond the pale of a fundamental rights inquiry.¹⁸

The Nehru government reacted by introducing the first amendment to the Constitution, noting scornfully that the Patna High Court's invocation of Article 14 in the garb of striking inequality, "[made] rigid the existing inequities before the law".¹⁹ The amendment introduced Article 31A, which exempted the laws that provided for the state acquisition, modification, and extinguishment of, land rights from the purview of fundamental rights review.²⁰ The first amendment also inserted Article 31B, which introduced the infamous Ninth Schedule to the Constitution, dubbed recently by retired Rohinton Nariman J as "a constitutional blackhole".²¹ Legislation placed within the Ninth Schedule could never be tested on the anvil of fundamental rights. Together, Article 31A and the Ninth Schedule provided a double assurance against any fundamental rights attacks on land reform legislation.²² The Bihar Land Reform Act 1950 was promptly placed in the Ninth Schedule, to "continue in force", "notwithstanding any decree, judgment or order of any court or tribunal to the contrary",²³ and so was the UP Ceiling Act.

For the next 22 years, the judiciary and the Parliament were involved in tactical one-upmanship, with the judiciary finding innovative ways to subject land reform legislation to judicial review and the Parliament responding with further amendments to nullify those judgements.²⁴ The final position, as it stands today, is that there is no fundamental right to hold, acquire, or dispose of property.²⁵ While there is still a constitutional right not to be deprived of property without law, it is no longer a fundamental right, meaning that one cannot directly move the High Court or the Supreme Court or invoke their writ jurisdiction or powers to do complete

¹⁶*Maharajadhiraj Sir Kameshwar Singh and Ors v State of Bihar and Ors* AIR 1951 Pat 91 (Patna High Court).

¹⁷Gadbois (n 13) 161.

¹⁸The Constitution (Fourth Amendment) Act 1955. It was the fourth amendment to the Constitution that ousted judicial review with respect to land acquisition by the state.

¹⁹Parliamentary Debate (1951) vol 12, Part II, 9083.

²⁰Constitution of India 1950, art 31A [inserted by the Constitution (First Amendment) Act 1951, s 4, with retrospective effect].

²¹Rohinton Nariman, 'The 13th V M Tarkunde Memorial Lecture' (India International Centre, New Delhi, 13 November 2022) <<https://www.youtube.com/watch?v=aUeOowjseXE>>accessed 7th April 2026.

²²The Ninth Schedule saves a much wider range of legislation but an exploration of that is beyond the scope of this comment.

²³The Constitution of India 1950, sch 9.

²⁴For example, *Bela Banerjee v State of West Bengal* AIR 1954 SC 170; The Constitution (Fourth) Amendment Act 1955; *P Vajravelu Mudaliar v Special Duty Collector* AIR 1965 SC 1017; *Union of India v Metal Corporation of India* AIR 1967 SC 637; and *Kesavananda Bharati v State of Kerala and Anr* (1973) 4 SCC 225.

²⁵Article 19(1)(f) was omitted by the Constitution (Forty-Fourth) Amendment Act 1978, s 2.

justice to avail a remedy in such matters.²⁶ Further, the State can now through law acquire property for a wider array of reasons than public purpose, and such acquisitions cannot be challenged for violating the fundamental rights of equality or freedom (Articles 14 and 19).

3. The UP ceiling Act

The UP Ceiling Act was a land ceiling legislation introduced by the State of UP. It sought to limit land ownership according to the size of the family. The controversial provision, which was challenged in *Ambika Prasad*,²⁷ concerned the definition of family, specifically the exclusion of adult children and married daughters, which disproportionately discriminated against the girl child. While the exclusion of adult children applied to both adult sons and daughters, the exclusion of married daughters disproportionately excluded the girl child due to the preponderance of child marriage. The gendered discrimination was challenged before a five-judge bench of the Supreme Court, which upheld the law as constitutional in 1980. Before investigating the judicial discourse in more detail later in this section, we discuss how the Court navigated the challenge posed by the Ninth Schedule in the paragraphs to follow.

3.1. The placement of the UP ceiling Act in the Ninth Schedule

The constitutionally subversive potential of Article 31A and the Ninth Schedule was lost on no one. Its constitutional status was confirmed in *Kesavananda Bharati v State of Kerala and Anr*,²⁸ where the Supreme Court held that while the schedule was constitutional, legislation placed under it must withstand basic structure scrutiny.²⁹ Therefore, the only ground for testing the vires of the legislation placed under the Ninth Schedule was its conformity with the basic structure of the Constitution.

However, no basic structure argument was made against the constitutionality of the UP Ceiling Act in the original judgement. In fact, the judgement went so far as to acknowledge, referring to Article 31A, that “the comprehensive vocabulary of that purposeful provision obviously catches within its protective net the present Act and, broadly speaking, the antiseptic effect of that Article is sufficient to immunize the Act against invalidation to the extent stated therein”.³⁰ The Court went on to note that “the amulet of Article 31A is, therefore, potent, so far as it goes, but beyond its ambit it is still possible, as counsel have endeavoured, to spin out some sound argument to nullify one section or the other”.³¹ While making this claim, the Court provided no reasons to justify its decision to test the constitutional vires of the impugned law. It could be said that the decision was reached in defiance of the constitutional immunity afforded by Article 31A

²⁶The Constitution of India 1950, art 300A. Further, art 31 was omitted by the Constitution (Forty-Fourth) Amendment Act 1978, s 6.

²⁷*Ambika Prasad* (n 9).

²⁸*Kesavananda Bharati* (n 24).

²⁹Shruti Rajagopalan, ‘Interest Groups Repairing Unconstitutionality: India’s Ninth Schedule’ [2021] 50(52) *The Journal of Legal Studies* S169; Surya Deva, ‘Saving Clauses: The Ninth Schedule and Articles 31A-C’ in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 627–643.

³⁰*Ambika Prasad* (n 9) [5].

³¹*ibid*.

and the Ninth Schedule. Krishna Iyer J, writing for the Court, acknowledged the constitutionally subversive potential of Article 31A and the Ninth Schedule but proceeded to examine the vires of the law regardless, convinced that the “impugned legislation can withstand constitutional invasion” on its own terms.³²

By contrast, in our re-writing of the judgement, we find the correct constitutional basis for investigating the merits of the UP Ceiling Act. A few months after the judgement in *Ambika Prasad*, the Court, in *Waman Rao v Union of India*, confirmed that laws placed in the Ninth Schedule “are open to challenge on the ground that they, or any one or more of them, are beyond the constituent power of the Parliament since they damage the basic or essential features of the Constitution or its basic structure”.³³ This position was reaffirmed by the Court in *IR Coelho v State of Tamil Nadu*.³⁴ *Waman Rao* also noted that laws placed within the Ninth Schedule before 24 April 1973 (the date of the *Keshavananda* decision) would be immune from basic structure scrutiny, while those placed within the Schedule after this date would not.³⁵ The UP Ceiling Act was placed in the Ninth Schedule in 1961, immediately upon its enactment. The *Ambika Prasad* case occurs in a fortuitous moment of history – after the *Keshavananda* decision but before the *Waman Rao* clarification. We take advantage of this moment to clarify that the basic structure test must apply to test the constitutional validity of legislation within the Ninth Schedule, regardless of when it was inserted – before or after 1973. After all, if the basic structure signifies those parts of the Constitution that are unamendable, in other words, those values and structures that are unalterable, then that must have always been true, even before the basic structure doctrine was formally named in 1973. Any other interpretation would render nugatory the very concept of a “basic structure”. Therefore, our reasoning rests on the *ab initio* applicability of the basic structure test, i.e. from the moment of enactment of the Constitution. Once the correct constitutional basis is identified, we focus on equality as a basic feature of the Constitution and demonstrate how the inequality built into the UP Ceiling Act damages and destroys the idea of constitutional equality.

3.2. The exclusion of daughters from the ambit of the family

We now move on to the substantive portions of the UP Ceiling Act. The Act established a ceiling on land ownership for every landholder or tenure-holder specified within the law. The ceiling was determined according to the size of the family.³⁶ A family was defined as the tenure-holder and their spouse, minor sons (married or not), and minor unmarried daughters.³⁷ The main question considered by the original decision was whether the exclusion of married daughters from the definition of a family unit was discriminatory on the basis of sex. Taken on its own, the technical ambit of discrimination may look narrow: minor married sons were included, while minor married daughters were not. However, two further points need to be made to fully understand the

³²*Ibid.*

³³*Waman Rao and Ors v Union of India and Ors* (1981) 2 SCC 362 [63], Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* (Oxford University Press 2010) 102.

³⁴*IR Coelho v State of Tamil Nadu* (2007) 2 SCC 1.

³⁵*Waman Rao* (n 33) [59].

³⁶Imposition of Ceiling on Land Holding Act 1960, s 5.

³⁷*Ibid* s 3(7).

breadth of discrimination. First, child marriage was widely prevalent in India at the time, meaning that a significant percentage of minor daughters in UP would have been married, automatically excluding them from being considered as a part of the family.³⁸ Second, while adult sons were excluded from the definition of family, they were counted (on fulfilling certain conditions)³⁹ for determining how many hectares each family would get. In other words, adult sons were snuck back in to determine the ceiling, but adult daughters continued to be excluded. The adult sons were counted even after they were dead if they left behind minor children, excluding, once again, their minor married daughters. Therefore, adult sons were counted back into the family, whereas adult daughters were excluded from the definition of family.

To cut a long story short, the UP Ceiling Act provided some measures for sons while excluding the daughters almost altogether. The definition of family did not include daughters-in-law, and this is the most baffling aspect – married daughters were accounted for neither in the natal family nor in the marital. Even cynics of sex equality can see the force of including married daughters in either of the family units, because the ceiling would then actually correlate to the number of mouths to feed. Individuals who were not members of a heteronormative nuclear family unit were not even imagined as subjects in this ceiling law. This shows the presumptions of the law. So, for example, queer households were not imagined. There were some other discriminatory provisions built into this legislation: for example, even when a woman held land in her own name, she would not be classified as a tenure-holder so long as her husband also held land, with the consequence that her land risked being declared as excess and seized by the government.

What one does know is that family, that “fact of extant societal life”,⁴⁰ which formed the basis of the impugned legislation, was not the only natural choice as the unit of division. Merillat notes that when states got down to enacting ceiling laws, the usual unit was the “individual” and not the family.⁴¹ However, there was some legislative anxiety over choosing the individual as the unit of division because people were dividing up their land among their family members, each having the maximum permissible land.⁴² Merillat notes this phenomenon in the following words:

The 2nd plan had suggested a definition of “family” for the purposes of imposing ceilings on holdings- husband, wife, and dependent sons, daughters, and grandchildren. It was recognized that this statutory definition might bear little relation to traditional notions of what constituted a family. In fact, a similar definition in Kerala was later struck down by the Supreme Court as being arbitrary and discriminatory against some families. Yet some such definition was essential to avoid widespread evasion of ceiling laws.⁴³

The anxiety over evasion and the traditional notions of family, where married daughters are not considered a part of the natal family, however, cannot support discriminatory

³⁸Sanjay Kumar, ‘Trends, Differentials and Determinants of Child Marriage in India: Evidence from Large Scale Surveys’ [2020] 55(6) Economic and Political Weekly 53, 54–55, estimating that anywhere around 57–59% of girls were in child marriages in the late 1970s and early 1980s.

³⁹They should either not be tenure-holders or hold less than two hectares of irrigated land.

⁴⁰*Ambika Prasad* (n 9) [26].

⁴¹Merillat (n 12) 114.

⁴²*ibid*, noting the observations in the third Five Year Plan. The Five-Year Plans of India were a series of national development programmes implemented by the Government of India.

⁴³*ibid*.

legislation. Further, one class of people (women in this case) cannot be made to bear the burden of these anxieties and notions, not least without demonstrating that they play any role in creating these conditions. As we note in the rewritten judgement below, relying on the work of Catharine MacKinnon, which existed at this time but was not referred to by the judges:

[when] distinctions and rationales based [on] existing social conditions and “realities” only contribute to the already existing disadvantage a particular group is being subjected to . . . it is our duty as upholders of the Constitution not to reify them at the very least and attempt to make an impact on such realities through striking such inequalities down.⁴⁴

Gender unequal ceiling laws continue to exist in various states, such as Delhi, Haryana, Punjab, Himachal Pradesh, Rajasthan, Bihar, Gujarat, Madhya Pradesh, Andhra Pradesh, and Tamil Nadu, to name a few. As we have shown in the sections above, they have a real impact on women’s entitlement to land. We can couple this with the personal laws on succession to truly understand the ways in which the law works to deprive women of land. For instance, the Hindu Succession Act 1956, which governs succession for about 83% of the population, did not provide a birthright to joint family property and exempted the application of succession rules to agricultural land holdings until 2005.⁴⁵ This meant that a daughter would inherit a share only in her father’s property, while her brothers’ claim would extend to a share of the whole joint family property. So, for example, if the agricultural land belonged to the joint family, the daughter had no share in it. A majority of Indian Muslims follow the *Hanafi* school that allows daughters to inherit half of the sons’ share.⁴⁶ However, the ceiling laws provide for a discriminatory regime regardless of one’s religion and continue to be a significant front for women’s agitation for equality.⁴⁷

4. Evaluating the effectiveness of the ceiling legislations

Studies have found that among all the land reform measures in India, the ceiling laws were the least successful.⁴⁸ The laws took more than two years to pass within state legislatures.⁴⁹ Scholars have questioned whether the state governments seriously intended to enforce these measures or simply used the law as a distraction to keep the masses away from a “revolutionary path to the disposal of the agrarian question”.⁵⁰ Scholars have also noted several loopholes in the ceiling legislation. High ceiling limits made surplus land gains infinitesimal. Landowners also used *benami* transactions and fake partitions to make family-owned land appear much smaller.⁵¹ Further, certain categories of land, such as religious lands, tank fisheries, and efficient farms, were

⁴⁴See [50] of the rewritten judgement below.

⁴⁵Hindu Succession Amendment Act 2005, s 6.

⁴⁶Sylvia Vatuk, ‘Extra-Judicial Khul’ Divorce in India’s Muslim Personal Law’ [2019] 26(1–2) Islamic Law and Society 111, 112.

⁴⁷The UP Ceiling Act formed the basis of litigation in two triple talaq cases decided by the Allahabad High Court: *Rahmat Ulla v State of UP*, WP No 45 of 1993 and *Khatoun Nisa v State of UP*, WP No 57 of 1993 (both tagged together and decided on 15 April 1994). See discussion of these cases in Flavia Agnes, *Law and Gender Inequality: The Politics of Women’s Rights in India* (Oxford University Press 1999) 112–114.

⁴⁸Ventakeshwarlu (n 4) 77.

⁴⁹*ibid.*

⁵⁰*ibid.*

⁵¹A *benami* transaction is when someone buys property using their own money but puts it in someone else’s name (the *benamidar*), often to hide the real owner (beneficial owner) for illegal purposes like tax evasion or money laundering.

exempted from ceiling limits. Taken together, these factors significantly reduced the redistributive impacts of these laws.⁵² Scholars have also noted that the quality of the surplus land is poor, the original owners continue to make intrusions into the land or file cases against ceiling decisions, and that the land remains unproductive due to a lack of agricultural capital investment.⁵³

Ceiling laws have also been ineffective in reducing inequality, especially given the caste-based nature of land ownership.⁵⁴ Almost 85% of the Indian farmers are marginal and small farmers, i.e. have less than two hectares of land, but they cultivate almost half of the land (44%), whereas large farmers, who comprise less than 1% of the farming population, hold 11% of the cultivable land.⁵⁵ The difference in size is that the average land holding is 32 hectares.⁵⁶ Dalits hold 9% of cultivable land.⁵⁷ About 80% of the land is owned by Other Backward Classes and other castes, while 12% is owned by Scheduled Tribes.⁵⁸

India does not collect gender-disaggregated data on land ownership.⁵⁹ A recent limited study of nine states in India has found that the percentage of land ownership of rural agricultural land for women is 14%.⁶⁰ A Government of India study, on the other hand, has found the number of women owning agricultural and other land to be 28%.⁶¹ But doubts have been cast over the accuracy of this claim because of possible non-sampling errors, and because it shows a reversal of expected regional variations.⁶²

Women's landownership can be extremely effective in responding to male dominance and breaking the poverty and patriarchy cycle.⁶³ It can also have transformative effects on the lives of their families and children.⁶⁴ This is because women spend more time on family improvements than men, who spend much of their time on personal improvement.⁶⁵ There is a direct positive effect on crops, fodder, and livestock, and indirect effects on bargaining power, access to credit, and an increase in social status.⁶⁶

⁵² *ibid* 78–79.

⁵³ Manjula Laxman, *Land Reforms and Dalits in Gujarat: With References to the Land Ceiling Act* (Reliable Publishing House 2019) 100–101.

⁵⁴ *ibid* 79–101.

⁵⁵ *ibid*.

⁵⁶ *ibid* 8–10.

⁵⁷ *ibid*.

⁵⁸ *ibid*.

⁵⁹ Bina Agarwal, Pervesh Anthwal, and Malvika Mahesh, 'How Many and Which Women Own Land in India' [2021] 57(11) *The Journal of Development Studies* 1807, 1809.

⁶⁰ *ibid*.

⁶¹ Ministry of Health and Family Welfare, 'National Family and Health Survey (NFHS-4), 2015–2016' (Government of India 2017).

⁶² *ibid*. The study has found that 51% of women own land in Bihar compared to 23% in Kerala, which has historically been matrilineal, leading Bina Agarwal and her colleagues to doubt the accuracy of these findings, in light of cultural geographies of these areas and other studies. See Agarwal, Anthwal, and Mahesh (n 60).

⁶³ Govind Kelkar and Santosh Kumar Jha, 'Women's Agential Power in the Political Economy of Agricultural Land' [2016] 5(1) *Agrarian South: Journal of Political Economy* 98, 115; see generally Ashok Khandelwal and Shipra Deo, *Women in Agriculture: Breaking the Grass Ceiling* (Routledge 2024).

⁶⁴ Hema Swaminathan, Rahul Lahoti, and JY Suchita, 'Women's Property, Mobility, and Decision Making: Evidence from Rural Karnataka, India' (2012) International Food Policy Research Institute Discussion Paper 1188 <<https://hdl.handle.net/10568/153885>>accessed 30 December 2025; Cheryl Doss, 'Intrahousehold Bargaining and Resource Allocation in Developing Countries' [2013] 28(1) *World Bank Research Observer* 52.

⁶⁵ Joan P Mencher, 'Women's Work and Poverty: Contribution to Household Maintenance in Two Regions of South Asia' in Daisy Dwyer and Judith Bruce (eds), *A Home Divided: Women and Income in the Third World* (Stanford University Press 1988).

⁶⁶ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press 1998) 27–30.

5. Challenging societal stereotypes and administrative logics

Through the works of Gayle Rubin and Simone de Beauvoir, as the rewritten judgement will show, even in 1980, feminist legal scholars were arguing that “one is not born, but rather becomes a woman”,⁶⁷ meaning that sexed bodies are gendered through societal stereotypes. Therefore, discrimination on the basis of sex must, by definition, cover discrimination on the basis of sex stereotypes; in this case, the expectations on women to get married and leave their natal home. Based on such sex-based stereotypes, married daughters were excluded from the definition of a family under the UP Ceiling Act. As the Supreme Court in *National Legal Services Authority v Union of India and Ors* would find decades later, the protection from sex discrimination was meant to “prevent the direct or indirect attitude to treat people differently, for the reason of not conforming with stereotypical generalizations of binary genders”.⁶⁸ It is now increasingly acceptable in Indian equality doctrine that discrimination based only on extant inequality is no reason to uphold it and that legislations should be assessed not only on its proposed aims but also on the implications and effects.⁶⁹ In fact, when there is prima facie sex discriminatory legislation, for example, a rape provision that imagines only a male assailant, and in that way discriminates against men, such legislation is considered justified because it recognizes that it is women who are disproportionately victims of rape committed by men. By contrast, the UP Ceiling Act, in the name of codifying the social reality of the time that daughters were married off as minors, only furthered their exclusion.

While the Indian judiciary was grappling with the challenges against ceiling laws, courts in other jurisdictions were rejecting codification of social disadvantage into legislation in the name of the law reflecting social reality and being administratively convenient. A few years before the *Ambika Prasad* judgement, Ruth Bader Ginsburg had founded the Women’s Rights Project at the American Civil Liberties Union, where she worked part-time. In 1973, she argued the case of *Fronterio v Richardson* before the Supreme Court of the United States.⁷⁰ The case tested the constitutionality of a military housing allowance provision that discriminated in the disbursement of spousal benefits, where married military men would automatically get an increased housing allowance, whereas married military women had to prove their husband’s dependency on them. The government justified the provision on the grounds of administrative convenience and the social reality of most wives being dependent on their husbands, whereas most husbands were not. Ginsburg argued before the Court that administrative convenience could not justify sex discrimination. The Supreme Court of the United States agreed, holding that “the Constitution recognizes higher values than speed and efficiency”.⁷¹ The discriminatory procedure was struck down. Seven years later, the Indian Supreme Court in *Ambika Prasad*

⁶⁷ Simone de Beauvoir, *The Second Sex* (Vintage Digital 2014) 146.

⁶⁸ *National Legal Services Authority v Union of India* (2014) 5 SCC 438 [8].

⁶⁹ See *Anuj Garg and Ors v Hotel Association of India and Ors* AIR 2008 SC 663 [46].

⁷⁰ *Fronterio v Richardson* (1973) 411 US 677.

⁷¹ *ibid* 690.

failed to take advantage of this ruling, doubling down on administrative convenience as a valid reason for discrimination.⁷²

What follows now is the original judgement rewritten by us, as a dissenting opinion in the feminist rewriting tradition of other jurisdictions.⁷³ The efforts of these rewriting projects have been to translate the feminist critique of legal rules and judgements into practice by reimagining what shape the judgement would have taken if written by a feminist judge. They transport us back in time so that what is now written is viewed as an alternative majority judgement, an unpublished judgement, or a dissenting judgement, published at the time of the original decision.⁷⁴ To do this most effectively, we will work with the laws and precedents available at the time and will not take recourse to later legal developments. The same rule will apply to scholarly material. We will work with the facts as available in the original judgement, as submissions to the court are not on public record. The same rule will apply to the evidence – that which can be gleaned from the original judgement will be used. However, this will not restrict us from using scholarship or cases available at the time, whether they are cited in the original judgement or not. This will demonstrate that even back then, it was possible to deliver an equitable outcome on the blatantly discriminatory UP Ceiling Act.

6. The rewritten judgment

(1980) 3 SCC 719

(BEFORE YV CHANDRACHUD, CJ, PN BHAGWATI, VR KRISHNA IYER, VD TULZAPURKAR, AP SEN, UPASANA GARNAIK AND SURABHI SHUKLA, JJ)

AMBIKA PRASAD MISHRA ... Petitioner;

Versus

STATE OF UTTAR PRADESH & OTHERS ... Respondent.

Writ Petition No. 1543 of 1977⁷⁵, decided on 9 May 1980

UPASANA GARNAIK AND SURABHI SHUKLA, JJ

JUDGMENT

(1) We have before us a series of cases from Uttar Pradesh (“UP”). These cases deal with the Uttar Pradesh Imposition of Ceiling on Land Holdings Act 1960 (hereinafter

⁷²Seth Nand Lal v Haryana AIR 1980 SC 2097 [15]. In this case decided on the same day by the same bench as *Ambika Prasad*, the Supreme Court was more explicit about the justifications of the distinction: “the case of an unmarried daughter or daughters living with the family ... was considered to be a rare case and it was presumed that daughters would in the normal course get married and become members of their husbands’ units, and that is why no separate provision was made for giving land for every unmarried major daughter living with the family ... it is not possible to strike down the enactment ... as violative of Article 14 of the constitution simply because it has failed to make a provision for what is regarded as an exceptional case or rare contingency”.

⁷³See generally Rosemary Hunter, Clare McGlynn, and Erika Rackley (eds), *Feminist Judgements: From Theory to Practice* (Hart Publishing 2010); Heather Douglas and others (eds), *Australian Feminist Judgements: Righting and Rewriting Law* (Hart Publishing 2014); Kathryn M Stanchi, Linda L Berger, and Bridget J Crawford (eds), *Feminist Judgements: Rewritten Opinions of the United States Supreme Court* (Cambridge University Press 2016); Máiréad Enright, Julie McCandless, and Aoife O’Donoghue (eds), *Northern/Irish Feminist Judgements: Judges’ Troubles and the Gendered Politics of Identity* (Hart Publishing 2017); Elisabeth McDonald and others (eds), *Feminist Judgements of Aotearoa New Zealand: Te Rino: A Two-Stranded Rope* (Hart Publishing 2017); Sharon Cowan, Chloë Kennedy, and Vanessa E Munro (eds), *Scottish Feminist Judgements: (Re)Creating Law from the Outside In* (Hart Publishing 2019); Loveday Hodson and Troy Lavers (eds), *Feminist Judgements in International Law* (Hart Publishing 2019).

⁷⁴Aparna Chandra, Jhuma Sen, and Rachna Chaudhary, ‘Introduction: The Indian Feminist Judgment Project’ [2021] 5(3) Indian Law Review 261, 262.

⁷⁵† Appeal by special leave from the judgement and order dated 6 February 1962 of the Bombay High Court in Criminal Revision Application No 1149 of 1961.

referred to as “the Act”) in the form of civil appeals, writ petitions, and special leave petitions. It has been argued in these petitions that certain provisions of the Act are discriminatory in nature, therefore, violative of Article 14. Deciding these challenges needs a careful examination of the Act, the purpose and objective of the Act, and the scope of Article 14 related thereto.

(2) We have had the opportunity to read the majority opinion of this Court delivered by Krishna Iyer J. We respectfully disagree with the honourable bench that the provisions of the Act are not violative of Article 14. We set out our reasons below.

(3) The majority opinion did not clearly address whether this Court has the authority to examine the constitutional validity of the Act. However, we must address this issue. As the Act is included in the Ninth Schedule to the Constitution, we must establish the basis for discussing its constitutional validity. The Ninth Schedule, introduced by the First Amendment of 1951, was enacted to shield certain laws, primarily related to land reforms and zamindari abolition, from judicial review. Does this imply that the Court lacks jurisdiction to entertain a constitutional challenge to the Act? We think not. The case of *Kesavananda Bharati v State of Kerala*⁷⁶ established the basic structure doctrine, limiting the power of the legislature to amend the Constitution. We think that the laws in the Ninth Schedule are not immune from judicial review if they contravene the Constitution’s basic structure. Article 14, which guarantees a right against arbitrariness, is a foundational tenet of the rule of law and an important aspect of the basic structure. Therefore, laws in the Ninth Schedule that violate this principle must be open to judicial scrutiny.

(4) There are two key aspects to consider in this context. First, the right to property was removed as a fundamental right by the 44th Amendment of 1978. Second, the Ninth Schedule was introduced to shield certain land “reform” laws from judicial review. Both legislative actions were aimed at promoting social and economic justice while preventing the concentration of wealth in a few hands. The Ninth Schedule was designed to facilitate the implementation of the Directive Principles of State Policy under Part IV of the Constitution, such as equitable resource distribution and minimizing inequalities. Its primary purpose was to enable governments to enact progressive land redistribution policies. However, if a law undermines the fundamental purpose of the provision, which is to establish conditions of equality, how can it claim constitutional immunity while perpetuating gender-based discrimination? A discriminatory law cannot seek refuge under a provision intended to promote equality. Legislators must critically evaluate which laws/provisions qualify for inclusion in the Ninth Schedule. These laws/provisions must align with the basic structure of the Constitution and adhere to the objectives of the Ninth Schedule.

(5) Although *Kesavananda Bharati* established the basic structure doctrine, there is an ongoing debate over its retroactive application, especially regarding laws enacted before the ruling. This uncertainty comes from the question of whether the judiciary has the authority to scrutinize and potentially invalidate laws that were passed before 1973, based on the basic structure doctrine. My learned colleagues in the majority opinion argue that a retroactive interpretation of the doctrine might be necessary to preserve the constitutional framework’s integrity. Specifically, they state that, “Surely, the legislature cannot

⁷⁶*Kesavananda Bharati* (n 24).

run amok in the blind belief that Article 31A is omnipotent”,⁷⁷ which suggests that the legislature’s power should not be seen as absolute, particularly in the face of constitutional principles such as the fundamental right to equality. Article 31A, which protects certain laws from being challenged on the grounds of violating fundamental rights, cannot be viewed as a blanket justification for enacting laws that violate the core values of the Constitution. We agree with this view that a retroactive reading of the basic structure doctrine may be necessary to ensure that laws, particularly dealing with issues like land reforms, are consistent with the foundational principles of justice and equality enshrined in the Constitution. It is important, therefore, to critically and substantively evaluate this case.

(6) Moving on to the essence of this case, one pertinent question of interest is, what is the purpose and objective of land reforms and laws related to it? To answer this question, we need to look at the history of the land reform movement. Land reforms are usually seen as an instrument of social justice. In an agrarian context, land reforms are necessary for restructuring exploitative agrarian relations and are considered a move towards an egalitarian social structure. There are persuasive economic and political arguments for land reforms in an agrarian economy such as India.

(7) Soon after independence and the adoption of the Constitution of India, the Agrarian Reforms Committee of the Congress (hereinafter referred to as the “Kamarappa Committee”)⁷⁸ was formed to study the existing inequalities in terms of land ownership and to formulate recommendations related to it. The Kamarappa Committee recommended massive reforms, and the state legislatures turned their attention to the problems of social inequality through land.

(8) Amongst many recommendations, such as the abolition of intermediaries, one of the most important recommendations made by the Kamarappa Committee was the imposition of ceilings on existing agricultural land holdings. This was a massive shift from a focus on issues such as increase and variety in production. The main objective of this recommendation was grounded in the socialist ethos of the country under Article 39 of the Constitution. Article 39 of the Constitution directs that the material resources of the country be distributed or redistributed to avoid the concentration of wealth and means of production. Further, this distribution would promote the common good. The imposition of a ceiling on land holdings would ensure the availability of surplus land that can be distributed among landless workers. Hence, the main goal of the Kamarappa Committee’s recommendation was to reduce existing disparities in rural land rights and, ultimately, wealth.

(9) Twenty-one states, including the State of UP, introduced laws for the imposition of ceilings on land holdings. The statement of objects and purpose of the Act is reproduced below:

With a view to provide for more equitable distribution of land by making the same available to the extent possible to landless agricultural labourers and to provide for cultivation on co-operative basis and to conserve part of the available resources in land so as to increase the production and up reserve stock of food grains against lean years by carrying on cultivation

⁷⁷ *Ambika Prasad* (n 9) [5].

⁷⁸ ‘Report of the Congress Agrarian Reforms Committee’ (The All India Congress Committee 1949) <<https://ia802901.us.archive.org/3/items/in.ernet.dli.2015.275621/2015.275621.Report-Of.pdf>> accessed 30 December 2025.

on scientific lines in State-owned farms, it is expedient to impose ceiling on existing large land holdings. It is necessary to provide some land to the village communities for their common needs, such as [the] establishment of fuel and fodder reserves. The Bill is, therefore, being introduced to promote the economic interest of the weaker section of [the] community and to subserve the common good.⁷⁹

(10) A careful perusal of the statement of objects and the Act shows us that it aligns with the recommendations made by the Kumarappa Committee. The legislation was enacted for the purposes of reducing poverty through reducing inequality in land ownership and putting an end to the exploitative practices of the landlords. This, in turn, would reward those who actually toiled, rather than absentee landlords. The Act is therefore a promise of an equal status, specifically to the rural disadvantaged community of the country.

(11) In 1978, after almost two decades of enactments of land reform legislation across several Indian states, the Report of the Working Group on Land Reforms 1978, issued by Ministry of Agriculture and Irrigation, Department of Agriculture, emphasized the importance of ceilings on holdings, stating that concentration of land in the hands of a few exacerbates inequalities and also has an impact on the overall economic growth.⁸⁰ The report further emphasized a strong connection between ownership of land and a person's social status. Land not only bestows economic advantages but is also intrinsically associated with social advantages. Therefore, redistributive land reforms are considered as an instrument to address socio-economic inequalities.

(12) The meaning and purpose of agrarian reform has been settled by many decisions of the Supreme Court. Hidayatullah J, in the case of *Ranjit Singh v State of Punjab*,⁸¹ explained the scope of land reforms in the following words:

The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions.⁸²

(13) From the above discussion on the history of land reforms in India through precedent, reports, and the Act, we have established that the goal of the Act is to reduce gross inequality in terms of rural land rights. Further, the purpose of land reforms is not just to address inequalities in land-ownership, but since land-ownership is closely tied with other outcomes, the purpose is also to improve the social conditions of rural life.

(14) We have established through the preceding paragraphs that the primary goal of the Act was to reduce gross inequality of rural land rights. Now we come to the nature of the challenges as presented in this petition. We replicate below the provisions of the Act, which are under challenge in these cases:

3. Definitions – In this Act, unless the context otherwise requires . . .

(7) “family” in relation to a tenure-holder, means himself or herself and his wife . . .

(17) “tenure-holder” means a person who is the holder of a holding but [except in Chapter III] does not include –

(a) a woman whose husband is a tenure-holder;

⁷⁹ *Ambika Prasad* (n 9) [4].

⁸⁰ Department of Agriculture, “Report of the Working Group on Land Reforms” (Ministry of Agriculture and Irrigation, Government of India 1978) [2.1]–[2.2].

⁸¹ *Ranjit Singh v State of Punjab* AIR 1965 SC 632.

⁸² *ibid* [27].

(b) a minor child whose father or mother is a tenure-holder;

... Section 5(3). Subject to the provisions of Sub-sections (4), (5), (6) and (7), the ceiling area for purposes of Sub-section (1) shall be—

in the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares, for each of his adult sons, who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;

in the case of a tenure-holder having family of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land.

Explanation: The expression “adult son” in Clauses (a) and (b) includes an adult son who is dead and has left surviving behind him minor sons or minor daughters (other than married daughters) who are not themselves tenure-holders or who hold land less than two hectares of irrigated land.

(15) We must at this stage point out that through a series of judgements, this Court has pronounced that land reforms are immune from constitutional challenges under the fundamental rights provisions. This immunity is afforded by Article 31A of the Constitution.⁸³ Despite the immunity afforded by Article 31A, we would like to examine the merits of the case, as we have established we can do under the basic structure doctrine, and as indeed the majority judgement has done.

(16) Mr Veda Vyas, appearing in WP No 228 of 1979 and SLP No 2599 of 1978, argued that the definition of the family unit and the allocation of ceilings on holdings are patently unconstitutional as they are violative of Article 14. Mr Vyas argued that the provisions of the Act are discriminatory towards women. He urged that the exclusion of adult daughters for additional land and extension of the ceiling is violative of Article 14 of the Constitution. Section 5(3)(a) of the Act enables the acquisition of two additional hectares of irrigated land for each of the tenure-holder’s adult sons. This is not the case for adult married or unmarried daughters. No additional hectares of land are added to the ceiling on account of daughters. Mr Vyas emphasized that this discrimination is not just in theory but has real-world implications. Mr Vyas further urged that Section 3(17) is discriminatory as well, as it makes the husband the tenure-holder even when the wife is the owner of the land.

(17) As the main contention of Mr Vyas is based on Article 14, it is important to examine its scope in relation to the issues raised in the case. This Court and several High Courts have dealt with challenges under Article 14, and we have a series of precedents before us.

(18) In the paragraphs to follow, we set out to examine the facts of the case and a meaningful interpretation of the relevant articles of the Constitution. In doing so, we rely on existing theoretical underpinnings of discrimination and judicial frameworks as

⁸³ *Kameshwar Singh v State of Bihar* AIR 1952 SC 252; *Golak Nath v State of Punjab* AIR 1973 SC 1461.

laid down by this Court. We also place reliance on jurisprudence from the Supreme Court of the United States. As stated by this Court in *State of West Bengal v Anwar Ali*,⁸⁴ Article 14 is modelled upon the Equal Protection clause under the Fourteenth Amendment of the United States Constitution. Therefore, guidance may be sought from United States judgements for the purposes of understanding the general principles of the right to equality.

Scope of Article 14 and Article 15

(19) Below we reproduce the relevant articles of the Constitution for this case:

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 (1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.

(20) Article 14 is an integral part of the “right to equality” framework under the Constitution. Article 14 guarantees a right to an equal status embodying principles of the preamble to the Indian Constitution. The article promises equality before the law and equal protection of the laws. In the case of *Chiranjit Lal Chowdhuri v The Union of India and Ors*,⁸⁵ while discussing the Equal Protection clause, this Court stated the following:

Article 14 of the Constitution, it may be noted, corresponds to the equal protection clause in the Fourteenth Amendment of the American Constitution, which declares that “no State shall deny to any person within its jurisdiction the equal protection of the laws” . . . The inhibition of the Article that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against legislative discrimination amongst equals and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.⁸⁶

(21) Equality under Article 14 encompasses both direct and indirect discrimination. *Griggs v Duke Power Co*⁸⁷ is one of the early cases establishing the anti-discrimination doctrine. In this case, it was held that for a provision to be discriminatory, the intent to discriminate is not necessary. Imposing obligations, penalties, or conditions on one group and not the other, without a *mala fide* intention, resulting in disparate impact, is discrimination as well. Although on the face of it, the provision may seem fair, the effect of the provision can be unfair on one group. This constitutes indirect discrimination. Therefore, the true meaning and spirit of Article 14 can only be realized when both direct and indirect discrimination are recognized, and an unequal status quo is dismantled.

(22) In the case of *Yusuf Abdul Aziz v The State of Bombay and Husseinbhoj*,⁸⁸ this Court explained that Article 14 lays down the general equal protection clause. It, therefore, must be read within the ambit of other fundamental rights clauses. Understanding which constitutional provisions are applicable in the case at hand is hence an important step. Analysing the articles under the equality code of the Constitution (Articles 14–18) brings us to the conclusion that this case needs consideration under Article 15(1). Article 15(1) prohibits discrimination against citizens based on religion, race, caste, sex, place of

⁸⁴*State of West Bengal v Anwar Ali* AIR 1952 SC 75.

⁸⁵*Chiranjit Lal Chowdhuri v The Union of India and Ors* (1950) SCR 869.

⁸⁶*ibid* [88].

⁸⁷*Griggs v Duke Power Co* 401 US 424 (1971) [431], [432].

⁸⁸*Yusuf Abdul Aziz v The State of Bombay and Husseinbhoj* (1954) 1 SCC 341 [6].

birth, or any of them. Mr Vyas has pointed out that the provisions of the Act are discriminatory towards women, as it excludes the presence of adult daughters in the family as a condition to claim additional hectares of land, as opposed to when one has sons. Examining the provisions of the Act, we think that the case should be examined under Article 14 on its own and further read with Article 15(1). While Article 14 does not stipulate the grounds under which a challenge to a provision can be constituted, Article 15(1) specifically deals with discrimination based on certain aspects such as sex, caste, and religion. In other words, while a challenge under Article 14 may or may not encompass the distinct grounds laid down under Article 15 and Article 16, Article 14 will always be incidental to challenges under specific discrimination clauses.

(23) What does discrimination based on sex mean? For this purpose, it is a useful exercise to understand what we mean by sex, gender, and the connection between sex and gender. Many perspectives on sex and gender have emerged in the work of feminist scholars. It was famously said by Simone de Beauvoir, “One is not born, but rather becomes, a woman”.⁸⁹ This quote summarizes the long-standing feminist position that gender is the cultural meaning that a sexed body acquires through social processes. Gayle Rubin’s recent work is pertinent for this purpose.⁹⁰ Rubin distinguishes between sex and gender while making a connection between them. She argues that although sex is biological, gender is socially constructed based on sex. Gender differences and the oppression of women are the results of social divisions that dictate how women and men should behave. While some feminists have found this distinction between sex and gender useful, others argue that the sex/gender distinction is meaningless. Sexed bodies are formed, and the assignment of sex at birth occurs within a context of social meanings and norms.

(24) Even though there are myriad conceptual understandings of sex and gender, feminist scholarship shows us the inherent link between the two. Therefore, to say that discrimination based on “sex” is the only ground under which a challenge under Article 15(1) can be brought would be futile to the spirit of the Constitution. We, therefore, extend the reading of Article 15(1) to cover discrimination based on gender, including gendered assumptions and stereotypes.

(25) In the following sections, we will examine the provisions of the Act under the reasonable classification test.

The reasonable classification test

(26) It is a well-settled proposition of the law that the right to equality under the Indian Constitution is not absolute. Many cases have laid down this principle as stated in the following paragraphs.

(27) In the case of *Western Electric Power and Supply Co Ltd v State of UP and Anr*,⁹¹ the Court said the following:

Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their

⁸⁹ Beauvoir (n 69) 283.

⁹⁰ Gayle Rubin, ‘The Traffic in Women: Notes on the “Political Economy” of Sex’ in Rayna R Reiter (ed), *Towards an Anthropology of Women* (Monthly Review Press 1975) 179.

⁹¹ *Western Electric Power and Supply Co Ltd v State of UP and Anr* (1969) 3 SCR 865, 870.

prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law.⁹²

(28) In the case of *Ramesh Prasad v State of Bihar and Ors*,⁹³ this Court said the following, expounding on Article 14:

Equality is for equals, that is to say, those who are similarly circumstanced are entitled to equal treatment, but the guarantee enshrined in Articles 14 and 16 of the Constitution cannot be carried beyond the point which is well settled by a catena of decisions of the Court.⁹⁴(sic)

(29) Similarly, in the case of *State of Gujarat and Anr v Shri Ambica Mills Ltd*,⁹⁵ this Court emphasized that classification in legislation can be permissible on some grounds. In this case, the Court said that small and big businesses might be treated differently under the law.

(30) From the above discussion on Article 14, we conclude that the right to equality before the law is not an unfettered guarantee under the Indian Constitution. The right is qualified by the principle of the “similarly situated”. In other words, the similarly situated have to be treated similarly, and the differently situated can be treated differently. In the case of *Kathi Raning Rawat v The State of Saurashtra*, this Court held that there is a difference between “discrimination without reason” and “discrimination with reason”.⁹⁶ In relation to this proposition, an important question arises: to what extent must classification be allowed in the law?

(31) Article 14 applies in cases where a classification has been made. Not all classifications can hold legitimacy under Article 14. The test of the “reasonable classification” must be fulfilled for the law to be upheld. This test was formalized in the case of *Anwar Ali*⁹⁷ in the following words:

If the impugned legislation is a special law applicable only to a certain class of persons, the court must further enquire whether the classification is founded on a reasonable basis having regard to the object to be attained, or is arbitrary.⁹⁸

(32) Many cases after the *Anwar Ali* case have explained the reasonable classification test. In the case of *Budhan Choudhry and Ors v The State of Bihar*,⁹⁹ the Court held that the classifying legislation has to fulfil certain conditions to stand the test of Article 14:

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects, occupations, or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.¹⁰⁰

⁹²ibid [7].

⁹³*Ramesh Prasad v State of Bihar and Ors* AIR 1978 SC 327.

⁹⁴ibid [6].

⁹⁵*State of Gujarat and Anr v Shri Ambica Mills Ltd* AIR 1974 SC 1300.

⁹⁶*Kathi Raning Rawat v The State of Saurashtra* AIR 1952 SC 123 [18].

⁹⁷*Anwar Ali* (n 85).

⁹⁸ibid [9].

⁹⁹*Budhan Choudhry and Ors v The State of Bihar* AIR 1955 SC 191.

¹⁰⁰ibid [7].

(33) To summarize, under the reasonable classification test, for a classifying legislation to hold validity under Article 14, two questions must be answered: (i) whether the impugned law's classification is based on an intelligible differentia; and (ii) whether there is a reasonable nexus of this classification with the object of the legislation.

Does a classification exist in the impugned provision?

(34) In the present case, therefore, to answer these questions, we have to examine what classification(s) the Act is making. Examining Sections 5(3)(a) and 5(3)(b), at first blush, we find that there is indeed a classification. The Act classifies tenure-holders into two categories: tenure-holders who have adult sons and tenure-holders who have adult daughters. Further, the rights of a tenure-holder are closely tied to the definition of the family under the Act and, therefore, the rights of a family as such. The tenure-holder does not exist independently of their family. An income in an agricultural set-up is to provide subsistence for the entire family. Hence, when the rights of the tenure-holder are affected, so are the rights of the entire family. Therefore, we extend this logic embedded in the Act to say that the Act classifies families into two categories: a family with adult sons as members and a family with adult daughters as members.

(35) The classifying Act bestows upon a tenure-holder and, as such, their family two additional hectares of irrigated land for each adult son who is not a tenure-holder themselves. Further, in case of adult sons being themselves tenure-holders but holding less than two hectares of land, additional land is allotted to aggregate to two hectares of land per adult son. The maximum additional land allowed is six hectares. There are other qualifications made on the basis of the size of the family, which are not relevant to this case. Further, explanation to Section 5(3) states that an "adult" son includes a deceased adult son who has left behind minor sons or minor daughters, but not married daughters.

(36) Therefore, in reality, three types of classification are made by Section 5(3). The first obvious classification is that a tenure-holder having adult sons is being treated differently from a tenure-holder having adult daughters. Second, as the holding size is determined in accordance with the size of the family and, in a sense, for the benefit of the family unit, the provision treats a family with adult sons differently from a family with adult daughters. Finally, the provision considers whether an adult son is a tenure-holder and whether he holds two hectares or less for the calculation of the additional ceiling. The additional land is indirectly given for a son's benefit, depending on how much land he already holds. Daughters are not considered at all, even if they are not tenure-holders themselves. Therefore, we believe that the provision treats adult sons differently from adult daughters. It is also pertinent to note that child marriages continue to be prevalent, particularly in UP. The exclusion of married minor daughters from the statutory definition of "family" results in differential treatment between married minor daughters and married minor sons. While the Act includes minor unmarried daughters within the definition of the family, the continued incidents of child marriages render this inclusion illusory to a large extent, as a substantial proportion of minor daughters would be excluded.

(37) Further, Section 3(17) of the Act makes two kinds of classifications, by making the husband the tenure-holder in case of land-owning married women, it distinguishes between married men and married women, and unmarried women and married women.

(38) To conclude, we hold that the answer to the first question under the reasonable classification test is yes. The next question is whether the classification is actually discriminatory. To answer this question, we will assess whether the classification has a nexus to the objective of the Act. In the next section, we analyse the abovementioned classifications.

The Basis of Classification

(39) In the case of *Yusuf Abdul Aziz*, this Court held that though sex can be a sound basis of classification, there can be no discrimination on that ground.¹⁰¹ Similarly, in the case of *Dattatraya Motiram More v State of Bombay*, the Bombay High Court held that reservations in favour of women for jobs were allowed under Article 15(3).¹⁰² In this case, the Bombay Municipality had reserved four seats for women in the Jalagaon municipality election. This reservation was challenged on the grounds that it denies equal opportunity to men against the precept of Article 16(1), which provides equal employment opportunities to state offices. Chagla CJ agreed with the Advocate General that without the reservation, women would not get elected, and it was the duty of the state to raise the status of women and have them as councillors in the municipality. The government believed that the women's points of view were essential in the running of the municipality, but societal prejudice and other social and cultural factors kept them from participating in public life. The Court found in favour of the reservation. Harmonizing the general prohibition on sex discrimination in Article 15(1) with the state entitlement to make special provisions for women in Article 15(3), it "held in that" case that the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women".¹⁰³ In other words, while discrimination in favour of men because they are men was not possible, discrimination in favour of women because they are women was.¹⁰⁴

(40) Further, in the case of *Miss CB Muthamma v Union of India*,¹⁰⁵ my brother judge, Krishna Iyer J, acknowledged "the sex prejudice against Indian womanhood"¹⁰⁶ and struck down the discriminatory Indian Foreign Service (Conduct and Discipline) Rules 1961. Rule 8 required women to obtain permission from the government before marriage. It also stipulated that these officers could be asked to resign at any time after marriage, if it was found that their domestic and family duties were getting in the way of their efficient discharge of service. Krishna Iyer J did not hesitate to call out the "naked bias" against female officers.¹⁰⁷ Rule 18, which laid down that a married woman had no entitlement to be appointed to service, was also under challenge. He found that these Rules were a "hangover of the masculine culture of manacling" women and reveal the sad distance between our constitutional ideals and the reality on the ground.¹⁰⁸ He held that although they do not want to universalize or dogmatize that men and women are equal, the rule of equality must govern.¹⁰⁹

¹⁰¹ *Yusuf Abdul Aziz* (n 89) [6].

¹⁰² *Dattatraya Motiram More v State of Bombay* ILR 1953 Bom 842, 848.

¹⁰³ *ibid* [7].

¹⁰⁴ *ibid*.

¹⁰⁵ *Miss CB Muthamma v Union of India* AIR 1979 SC 1868.

¹⁰⁶ *ibid* [1].

¹⁰⁷ *ibid* [5].

¹⁰⁸ *ibid* [6].

¹⁰⁹ *ibid* [7]. The offending rules were withdrawn by the Government of India during the pendency of the case.

(41) It is clear from the precedents that first, sex can be a ground for classification, but for positive discrimination or affirmative action in favour of women. Therefore, as a result, any provision that causes a disadvantage to women is not protected by Articles 15(1) and 15(3). Further, discrimination in favour of men because they are men is not permissible.

(42) Second, “only” on the grounds of sex under Article 15(1) does not preclude the courts from interpreting and including grounds ancillary to it, such as discrimination based on gender and gender stereotypes. We rely on recent precedents from the Supreme Court of the United States to support our position. Following the opinion laid down in *Anwar Ali*, we rely on such cases for guidance. Three cases are of particular interest to us. These are: *Phillips v Martin Corp*,¹¹⁰ *Los Angeles Dept of Water and Power v Manhart*,¹¹¹ and *Oncale v Sundowner Offshore Services, Inc.*¹¹² These three cases have laid the groundwork for a broader interpretation of sex discrimination. In all these cases, it was held that sex discrimination goes beyond discrimination which, in Krishna Iyer J’s words, “discriminates man and woman qua man and woman”.¹¹³ Discriminating based on motherhood (*Phillips*), life expectancy (*Manhart*), and male-on-male sexual harassment (*Oncale*) has been held to be discrimination based on sex.

(43) Further, in the case of *Frontiero v Filliot L Richardson*,¹¹⁴ the Supreme Court of the United States stated that discrimination based on sex has been rationalized by an attitude of “romantic paternalism” which, in practical effect, put women, not on a pedestal, but in a cage. Subba Rao J’s dissent in the case of *Lachman Das v State of Punjab*¹¹⁵ is important in this context. He stated that an “overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the Article of its glorious content”.¹¹⁶

(44) We disagree with the approach taken by Krishna Iyer J and his interpretation of Article 15(1) in this case. In the majority opinion, Krishna Iyer J recognizes the bias in the law and has termed it as the “anti-female kink”.¹¹⁷ He says that the “very definition of family discloses prejudice against the weaker sex by excluding adult daughters without providing for any addition to the ceiling on their account” and that “adult damsels should not be left in distress by progressive legislations geared to land reforms”.¹¹⁸ Further, under Section 3(17) of the Act, Krishna Iyer J finds nothing wrong with the classification made in the case of married women as “married women in our villages do need their husband’s services and speak through them in public spaces, except, hopefully in the secret ballot expressing their independent political choice”.¹¹⁹ We see a patently paternalistic approach and an overemphasis on the doctrine of classification in his reasoning that *Frontiero* and Subba Rao J’s dissent in *Lachman* warned us against.

(45) Krishna Iyer J admits that it raises questions about the attitude of the legislators, the “masculine flavour” of the law, but holds that it is not violative of Article 14 and

¹¹⁰*Phillips v Martin Corp* (1971) 400 US 542.

¹¹¹*Los Angeles Dept of Water and Power v Manhart* (1978) 435 US 702.

¹¹²*Oncale v Sundowner Offshore Services, Inc* (1998) 523 US 75.

¹¹³*Ambika Prasad* (n 9) [25].

¹¹⁴*Frontiero* (n 72) 684.

¹¹⁵*Lachman Das v State of Punjab* AIR 1963 SC 222.

¹¹⁶*ibid* [52] (dissenting opinion of Subba Rao J).

¹¹⁷*Ambika Prasad* (n 9) [23].

¹¹⁸*ibid* [23] and [25].

¹¹⁹*ibid* [27].

Article 15.¹²⁰ He seems to think that because the scheme does not “discriminate between man and woman qua man and woman”, it is not violative of the right to equality even if it “marginally affects (sic) gender justice”.¹²¹

(46) We respectfully disagree with the approach Krishna Iyer J has taken in interpreting Articles 14 and 15. His approach is a limited reading of these articles. Article 15(1) talks about discrimination on the grounds of sex, but does that mean it only covers those acts that discriminate between men and women directly? We believe not. As we have discussed earlier, such a limited reading of the right to equality is against the spirit of the Constitution. Hence, we read Article 15(1) to include discrimination based on gender and gender stereotypes.

(47) Let us look at the impugned provisions, Sections 5(3)(a) and 5(3)(b) of the Act. They give an additional benefit to tenure-holders or, as such, agricultural family units. The reason provided by the majority opinion is that “no woman’s property is taken away any more than a man’s property”,¹²² the scheme is based on “rural realities of agricultural life”, and the definition of the family is based on “a fact of extant societal life”.¹²³ Although the majority opinion does not explain what these “rural realities” or “extant societal life” mean, we are constrained to believe that they are laden with gendered assumptions and stereotypes. A heteronormative framework views women as someone else’s “property”, temporary visitors, and as socially transient in their natal family. In our society, marriage is treated as a given fact of women’s lives and not as an autonomous choice. The majority opinion treats marriage as “a normal custom which is universally practiced”.¹²⁴ A classification based on assumptions about family and marriage is indeed discrimination based on sex. In the impugned provision, an adult son is treated differently from an adult daughter, where an adult son, under some conditions, is included for the calculation of the land ceiling, while adult daughters are not. It also completely ousts minor daughters who may be married from the ambit of law, despite the prevalence of child marriages in the State of UP. The law and the majority opinion do not provide clear reasoning for it. One might assume that the differential treatment is based on the marriage of an adult son versus the marriage of an adult daughter. It is treated as an inevitable fact of a daughter’s life to get married and go to another family. The law’s exclusion of an additional ceiling to tenure-holders/family units who have adult daughters is based on gendered assumptions about family and marriage. This, in our opinion, actually goes against the objective of the Act, which is fair and equitable redistribution of land. How can a law, which is supposed to be based on the premise of equality, justify unequal treatment? A tenure-holder and an agricultural family unit are penalized because of the presence of adult daughters and rewarded based on adult sons. In other words, an adult son’s family is rewarded on his account with additional ceiling, whereas an adult daughter’s family is penalized on the account of her presence. We are therefore of the opinion that Sections 5(3)(a) and 5(3)(b) discriminate between adult sons and adult daughters.

¹²⁰*ibid.*

¹²¹*ibid* [25].

¹²²*ibid.*

¹²³*ibid* [26].

¹²⁴*ibid* [30].

(48) Additionally, Section 3(17), which defines “tenure-holder”, excludes married women from the definition. Even if a married woman is the owner, the husband is considered the tenure-holder. Therefore, under Section 3(17), marriage is treated as a basis for classification, and agency is taken away from married women, and their husbands are made tenure-holders instead. Section 3(17) creates a classification not only between married women and married men but also between married women and unmarried women. The majority opinion says the following: “. . . women in our villages do need their husband’s services and speak through them in public places . . .”.¹²⁵ This is indicative that the majority considers married women’s abilities to conduct themselves in public as distinct from others, construing married women to be dependent on their husbands. This generalized view of dependency strips married women of agentic conduct in terms of land holdings. Is it the Court’s obligation to uphold legal provisions based on traditions and customs even if they perpetuate gendered assumptions and inequality? We think not. Marriage should not be treated as an inevitable, pre-ordained, or necessary course of women’s lives but as an autonomous choice that she is free to make or not make. Further, the choice to marry or the possibility of marriage should not bear unequal consequences and should not penalize women and their families. The provisions under the Act are not supported by any rationale for doing so and hence cannot survive the constitutional test of equality.

(49) In the case of *Re Attorney-General for Alberta and Gares*,¹²⁶ McDonald J of the Alberta Supreme Court, in a case of gender-based wage discrimination, held that discriminatory intent is not necessary to establish discrimination; what matters is the discriminatory result. Further, in the landmark case of *Brown v Board of Education*,¹²⁷ the Supreme Court of the United States held that segregation is inherently unequal and a denial of the equal protection of the laws. The Court further focused on the effect, reality, and impact of segregation and stated that separating children solely because of their race generates a feeling of inferiority as to their status in the community that may affect them in irreparable ways. *Brown* recognizes that legal distinctions can reinforce stigma and inferiority. Drawing from *Brown*, social ramifications of legal provisions should be relevant in assessing the constitutionality of laws. If a law classifies individuals based on other protected categories such as gender, the discriminatory effect and impact should be considered as an important factor. Therefore, it is this Court’s duty to examine the Act closely and see whether the impugned provisions have the effect of imposing obligations, penalties, or conditions on one group and not on the other. In such cases, the said provision must be held to be discriminatory. It is only when we prevent both direct and indirect discrimination that we can realize the full meaning of equality as given by our Constitution. In the case before us, the impugned Act directly discriminates between adult sons and adult daughters. While adult sons are considered for additional land and extension of the ceiling, adult daughters are excluded. Further, it also directly discriminates between minor sons and minor daughters. Although the law includes both minor daughters and sons in the definition of “family”, it excludes married minor daughters.

¹²⁵ *Ibid* [27].

¹²⁶ *Re Attorney-General for Alberta and Gares* (1976) 67 DLR (3d) 635 (Alberta Supreme Court).

¹²⁷ *Brown v Board of Education* (1954) 347 US 483, 494 and 495.

The prevalence of child marriages in UP would result in a substantial number of minor daughters being excluded.

(50) In the present case, by classifying tenure-holders and family units based on the sex of the children, the provisions discriminate against not only the tenure-holders and family units who have adult daughters but also the daughters themselves. The recent work of feminist legal scholar Catharine MacKinnon¹²⁸ is useful in this context. She argues that the perpetuation of inequality is a critical challenge to the equal protection clause. If a policy, practice, or legal provision perpetuates systemic discrimination, subordination of women, and maintenance of an underclass based on their gender, it should be held as discriminatory.¹²⁹ Further, MacKinnon argues that finding distinctions and rationales based on existing social conditions and realities only contributes to the already existing disadvantage a particular group is being subjected to. This proposition has been termed the “non-subordination test” of equality.¹³⁰

(51) There is a lot of merit in MacKinnon’s assertion. We see this problem in Krishna Iyer J’s opinion. His justification of Sections 5 and 3 lies in the existing “rural realities”.¹³¹ These “social realities” that Krishna Iyer J talks about are, in fact, based on social inequalities and gendered assumptions. In such cases, especially, it is the duty of the Court, as the upholders of the Constitution, not to reify them at the very least and attempt to make an impact on such realities through striking down such inequalities. If we agree with Krishna Iyer J’s view, we will be treating daughters and wives as non-entities, non-agentic, and incapable of contributing to the agricultural life and activities of a family. Krishna Iyer J thinks that married women are completely incapable of conducting any public activity and must speak through their husbands. This view only perpetuates the subordination of women and the maintenance of a heteropatriarchal institution.

(52) For these reasons, we allow the writ petition in favour of the petitioners, finding all the impugned provisions to violate Articles 14 and 15(1) of the Constitution. We add “and each of his adult daughters” after “for each of his adult sons” in Sections 5(3)(a) and 5(3)(b). We strike down Section 3(17). Further, we direct the appropriate legislature to evaluate which laws/provisions must remain or, in the future, be placed in the Ninth Schedule.

Disclosure statement

No potential conflict of interest was reported by the author(s).

ORCID

Surabhi Shukla  <http://orcid.org/0000-0002-8466-4490>

Upasana Garnaik  <http://orcid.org/0009-0007-1971-4205>

¹²⁸ Catharine A MacKinnon, *Sexual Harassment of Working Women* (Yale University Press 1979) 117.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ambika Prasad* (n 9) [26].