

CHAPTER-I

STATUS AND RIGHTS OF WOMEN UNDER THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

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AN OVERVIEW

Sexual offences against women, in different biological and psychological forms, have remained in practice, since thousand of years back. However, in the contemporary period they are reported to be increasing every year. It is universally accepted that the root cause of this phenomenon inter-alia, lies in our social system, the historical position accorded to them, the religious myth, the roles modelled for them by the dominant section of the society. Any quest into the sexual offences particularly against women makes it imperative to trace back their position in the history, the roles which were exclusively modelled for them, the social status given to them in a particular period of time. The present chapter thus tries to go back to the history to find out historical and religious reasons responsible for their present status. Status of women also includes within its ambit the legal status which determines their rights. An attempt has been made to find out the rights of women which were enjoyed by them from the dawn of civilization to the present day world. In doing so the present chapter gives an insight into the status and rights to which women are entitled under both the national and international level, simply because without this the present study would be incomplete.

A) STATUS OF WOMEN-A HISTORICAL PERSPECTIVE

i) Status of Women Intellectually

In almost all the societies whether ancient or contemporary, the status accorded to women has been more or less discriminatory and prejudicial. From ancient Greece through nineteenth century Europe and beyond, intellectual leaders justified social and political inequality with reference to the transcendent gift of reason with which only the man is credited.¹ It was recurrently argued in the western political thought that man could reason best and thus were most fit to govern, to control property and its laws, and to make use of lesser creatures. Men should have political power over women because of men's superior ability to

¹ Anita Bernstein, "Treating Sexual Harassment With Respect", *Harvard Law Review*, vol-111, No-2 (December 1997), P. 457.

reason.² The 19th Century physicians commonly believed that black women were brutes, entitled to little recognition as human creatures of reason.³ The ancient Greek philosopher **Aristotle** believed that "the deliberative faculty in the soul is not present at all in a slave; in a female it is present but ineffective; in a child present but undeveloped."⁴ Thus for Aristotle there could be no good life without reason: Thus a women's life is always slavish, never fully human.⁵ **Kant** wrote that women were not capable of principles and their philosophy is not to reason but to sense.⁶ For Hegel women could not attain to the ideal of rational thought: The difference between man and women is like that between animal and plants.⁷ **Rousseau** denounced women as incapable of thought and unsuited to education.⁸ Most part of the world were male dominated and they were considered as a thing of enjoyment of males and in some societies they were considered like chattels contractable, saleable and endowed with the duty to serve the family; they had no material and worthwhile rights. In theory they were considered respectable but in practice they were the subject of cruelty, ill treatment, and all sorts of misbehaviours.

ii) Status of Women in Ancient India

In ancient India, which may be called the Aryan age of history women were respected as mothers, sisters and daughters as Manu said: Where women are respected, divine graces adore that home. But it was a principle of theory and was hardly in practice.⁹ Even Lord **Ram** rebuked **Sita** when she was got freed from the claws of **Ravana** after the Great war of Ramayana. In the times of Mahabharata, **Draupadi** was shared by the five **Pandavas**; she was lost in royal gambling also to the **Kauravas** who insulted her like beasts. The problem is that so many people have heard some thing which became something known as **Smriti**,¹⁰ and that were transferred to the next generation naturally and that became **Smrities** for the next generation or next disciples of that time.

² Diana H. Coole, "Women in Political Theory: From Ancient Misogyny to Contemporary Feminism" 2nd Edition, (1993), p. 28-31&195-96.

³ Charles S. Johnson & Horace M. Bond, "The Investigation of Racial differences Prior to 1910", *Journal of Negro Education*, (1934), p. 328-34 (citing a comparison of black women to monkeys).

⁴ Linda R. Hirshman, "The Book of Aristotle", 70 *Texas Law Review*, (1992), pp.971-980.

⁵ Maricia L. Homiak, "Feminism and Aristotle's Rational Ideal, in A Mind of One's Own: Feminist Essays on Reason and Objectivity", in Louise M. Antony & Charlotte, (Witt Edition, 1993), pp. 1-7.

⁶ Immanuel Kant, "Observations on the Feeling of the Beautiful and Sublime", John T. Goldthwait Translation, (1960), p.81.

⁷ T.M. Knox Translation, "Hegel's Philosophy of Right", (Oxford University Press, 1967), p. 263.

⁸ J.J. Rousseau, Emille, Barbara Roxley translation, (J.M.Deat & Sons 1762), p.1974.

⁹ Manjula Batra, "Women and Law and Law relating to Children in India", 2nd Revised Edition, (Allahabad Law Agency, Faridabad, 2003), p.2.

¹⁰ In the relatively primitive stage of Hinduism.

Even under Mohammedan text of theology and Shariat, women were considered to be the half of the male in status. But, marriages were contracted for dower (Mohr) and kept covered by the Burka with almost devoid of personal liberty and gender equality. This sorry figure certainly betrays the historic inequities to which they were subjected and they are yet to recover from it.

Indian mythology placed women on a very high pedestal and they were worshipped and honoured as Saraswati (Goddess of Learning); as **Laxmi** (Goddess of wealth); as **Parvati** (Goddess of power). Mother Goddess might have held sway over the minds of men in many ancient civilizations, but they lost their importance in all the developed religions excepting Brahmanism. In Islam, Judaism and Christianity, the supreme Godhead is a father figure. Mother **Mary** probably represents a leftover of the mother cult, but in an extremely weakened form. But if we give a close look into our past we will see how an important segment of the society has been marginalized so steadily and brutally. Progress of womankind has not always been in a single straight line. It has rather been in a zigzag way. This is because at every stage of this long journey there has been stiff opposition by various forces operating to maintain the prevalent inequality; to produce disharmony in every framework of the society, be it social, political or legal. Women in India who constitute nearly half the population are still subjected to many disadvantages, disabilities and inequalities in every sphere of their life. The reason is implicit in our traditional social economic and religious structure of the society. The patriarchy of traditional Indian Society since times immemorial has viewed women as a product of history and based on this idea, the patriarchy has registered a milieu of mystification, whereas the reality is that women also actively participate in making history.¹¹ The patriarchy kept women illiterate economically unrecognized, socially inferior and legally helpless and their image in public life had been negatively influenced due to their unvalued and under valued work in economic terms, whereas the reality is that they also contribute in nations building.

Vedic and Puranic tradition ascribed a divine status to women in terms of Lakshmi, Durga, and Saraswati. In the Rig-Vedic civilization, women enjoyed equal status with men. Women received education, observed Bramhacharya and Upanayana and even studied the Vedas. **Ghosh**, **Apala**, **Visharva**, were composers of Vedic hymns. **Gargi** and **Maitreyi** were great women scholars during Upanishad period. But the Vedic period diluted the ancient concept and

¹¹ D.K.Sarkar, "Decentering Women's Development: Politico Administrative and Economic Agents for Reconstruction", in Anil Bhuiyali (ed), *Education Employment and Empowering Women*, (Serial Publications, New Delhi, 2004), p.313.

position of women started deteriorating especially visible in the pre independence and post independence period. They were denied the right of ownership of property and inheritance. A daughter began to be regarded as a curse. Even the earnings the women became the property of the husband and sons. Dowry emerged as an institution during Gupta period; Sati became popular in the 7th century A.D. The period after A.D. 1206 saw the rise of female infanticide, child marriage, purdah, sati and other social evils.¹² It was the effort of some great people like Raja **Rammohun Roy**, Ishawar Chandra **Vidyasagar** and Mahatma Gandhi that the process of emancipation of Indian women started during the British rule.

It is an irony that while Vedic and Puranic tradition ascribed a divine status to women in terms of Lakshmi, Durga, and Saraswati; the complexity of Hindu mind systematically nurtured various crude ideas about women's incapacibilities. Buddha gave the following reasons why women ought not to be entrusted with responsibilities. Women are soon angered, women are full of passion, women are envious, and women are stupid. It has been said that infamous is the land, which owns a women's sway and rule, and infamous are the men who field themselves to women's domination.¹³ It was a common belief that the following categories of persons are to be excluded from the place where a king holds consultation: dwarfs, hump backed persons, lean men, lame and blind man, idiots, eunuchs and women.¹⁴ Women thus were kept together with the retarded and deformed. These were the reasons why women had no place in public assemblies, did not carry on any business or any profession. In other words they were treated as objects and kept together with other items of property- villagers, gold and cows. Manu, Shukra and Chanakya, the ancient lawgivers, confirm this barring of women from any responsibilities. Let alone being considered worthy of any positions of power in society, women were not even considered fit to be witnesses. Manu ruled them out because their understanding is apt to waver. Jahuyavalkya and Vasistha did the same for considering women as lies incarnate.¹⁵ Describing the status of women in ancient India an authority on this subject states:

"In India, subjection was the cardinal principle. Day and night must women be held by their protectors in a state of dependence, says Manu (Hindu law-giver). The

¹² Reshmi Singh, "Towards a Gender Just Indian Society", *Womens Link*, Vol-5, April-June (1999), at p.17: See also Romila Thapar, (1975), p.11.

¹³ In one of the Jataka stories, the Bodhi Satta is made to say.

¹⁴ ¹⁴ Mahavarata Shanti Parva.

¹⁵ Devaki Jain, "Indian Women", (1975), p. 43.

rule of inheritance was agnatic, that is descent traced through males to the exclusion of the females.¹⁶

In Indian scriptures the description of a good wife is as follows:¹⁷

"A woman whose mind, speech and body are kept in subjection acquired high renown in this world, and, in the next, the same abode with her husband."

Manu himself said:

"Men must make their women dependent all the time and keep them under their control. Her father guards her in childhood, her husband guards her in youth, and her sons guard her in old age."¹⁸

Thus the ancient society made the female totally dependent on the male. In childhood a female must be dependent on her father, in youth on her husband and her lord being dead on her son: a woman must never seek independence.

It was only in Shikh religion the religious leader like Guru Nanak never wanted the feminine to be a just figure of speech or a literary devise; the feminine principle was to pervade the life of the Shikhs. From the very inception of the tradition, he took very special care to give women a position of equality with men in matters whether it was related to religion or secular. In Guru Nanak's new community that grew on the banks of the river Ravi, men and women enjoyed complete equality. There was no priesthood, and men were not designated to play any more important role as liaisons between humanity and divinity than were women.¹⁹ When Guru Amar Das,²⁰ organized districts of religious administration, women too were selected to head them. The transformation the Shikh Gurus brought in women's status was truly revolutionary.²¹

Vedic Smrities points out that human beings are not only virtuous but also adorned vices; consequently evil propensities are also a part of human nature irrespective of time and place. Hindu mythology as well as history also proves the point. The abduction of Sita by Ravana is a proof of existence of such evil propensities and reprehensible practice in the early society. The abduction of Angiras, Brahaspati's wife Tara by Soma, the birth of Pururavas out of illicit relationship of Buddha and Illa, the birth of Bharadvaja from the illegitimate relationship with his brother's wife testifies the laxity in sexual relation of ancient time. This however does not mean that those acts were not punishable. The great

¹⁶ Patrick Olivelle, "*Manu's Code of Law- A Critical Edition and Translation of the Manava Dharmasastra*," Reprint Edition, (Oxford University Press, 2005), pp. 150-186.

¹⁷ David and Verma Mace, "*Marriage- East and West*" (London, 1960), p.60.

¹⁸ Supra note 16.

¹⁹ D. Singh, "*Human Rights: Women & Law*" First Edition, (Allahabad Law Agency, Faridabad, 2005), pp.2-5.

²⁰ Third Shikh Guru.

²¹ Vijay Kaushik and Bela Rani Sharma, "*Indian Women Through Ages*" 1998, p.210.

Hindu lawgiver Manu denounces sexual intercourse with wife of other man in strong terms. Thus he says; a) when men violate the wives of others, the king should disfigure their bodies with punishments that inspire terror and then execute them;²² b) in case of adultery everyone other than a Brahmin merits the death penalty;²³ c) a male who defiles a virgin against her will merits immediate execution;²⁴ d) if a man arrogantly violates a virgin by force, two of his fingers should be cut off immediately and should also be fined 600;²⁵ e) if a virgin violates another virgin, she should be fined 200, pay three times the bride price and receive ten lashes;²⁶ f) when a woman, arrogant because of the eminence of her relatives and her own feminine qualities, becomes unfaithful to her husband, the king should have her devoured by dogs in a public square frequented by many. He should have the male offender burnt upon a heated iron bed; they should stack logs and burn up that villain there;²⁷ g) a man who defiles a virgin against her will merits immediate execution.²⁸ He prescribed heavy punishment followed by banishment to such offender. According to Narada, sexual relation with another man's wife is "Sahasa" of highest degree prescribing highest punishment including death as well as amputation of offending limb. Brahaspati lays down that man violating an unwilling woman was to have his penis and scrotum cut off and paraded on an ass after confiscation of his whole property.²⁹

After their arrival in India, the Aryans established a patriarchal society and a layered social system, the law and the castes, with men in safe control of divinity and the mysteries through the Brahmins, and Indian women did not rise their heads again till around the 7th century. The renaissance came through the Bhakti movement from the South where gradually in every temple could be found the symbol of male-female union, man linked with women in eternal cosmic renewal centred in Gajalakshmi or Lalita Devi. Here was the primal women, the ground of creation, ascendant again flanked by the eight elephants, symbols of eight forms of nature triumphant over man's fears; an ally in power, strength and glory.³⁰

²² Patrick Olivelle, "Manu's Code of Law- A Critical Edition and Translation of the Manava Dharma sastra," Reprint Edition, (Oxford University Press, 2005), p 186.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid, p.187.

²⁸ Ibid: Note that as per Medhatithi execution imply death penalty.

²⁹ R.S. Verma and I.B.S. Thokchom, "Commentary on Rape, Kidnapping and Abduction" (1990), p.17.

³⁰ Tara Ali Baig, "Indian Women" (1975), p.61.

Before Islam woman was not a free agent in contracting marriage.³¹ It was the right of her father, brother, cousin or any other male guardian to give her in marriage (whether she was old, young, widow or virgin) to whomsoever he chose. There was even a practice of marrying women by force. There was no restriction on the number of wives an Arab could take. He was likewise; free to release himself from any of his marital ties. His power in this connection was absolute, and he was not required or expected to assign any reason for its exercise; nor was he required to observe any particular procedure. Arab fathers regarded the birth of a daughter as a calamity, mainly due to the degraded status of woman. Female infanticide was, thus widely prevalent, and many fathers used to bury their daughters alive as soon as born. On the death of an Arab his possessions devolved on his male heirs capable of bearing arms; daughters, wives, sisters and mothers did not inherit at all.³²

B) STATUS AND RIGHTS OF WOMEN UNDER INTERNATIONAL INSTRUMENTS

International statistics³³ shows that women constitute half the world's population, perform nearly two-thirds of its work hours, and receive one-tenth of the world's income and less than one-hundredth of the world's property. Women comprise 66 percent of the world's illiterates and 70 percent of the world's poor. This perhaps shows the status and position of the women at the international index. International concern with the position of women and the reflection of that concern in treaties and convention regulating particular field of social activity is not a new phenomenon. Women's issues have been a matter of grave concern for a long time but have attracted, pointed attention only in the past few decades. The international community realized the fact that gender inequities, exploitation of women, violence and torture against women, female feticide, and other crimes against women throughout the world is an out come of their long history of deprivation of socio-economic rights. The last decade of the last century has therefore, seen a growing recognition of women's right as human rights and as an integral and indivisible part of universal human rights. International human rights law is a source of norms and standards for the practice of human rights. Human rights norms are dynamic and are constantly evolving according to the emerging understanding of the content of rights and violations. Women's participation in this dynamic process in recent years has given new meaning to the concept and

³¹ Shamsuddin Shams, "Socio Legal Rights and Privileges of Women in Islam," in Shamsuddin Shams (ed) "*Women Law and Social Change*", (Ashish Publishing House, New Delhi, 1991), at p. 3.

³² Abdur Rahim, "*Muhammadian Jurisprudence*", (1911), p. 9-10 & 15-16.

³³ U.N.Report 1980.

content of rights for women.³⁴ Under the International legal regime women enjoy the following rights and freedoms.

i) Right to life, Liberty and Security of Persons.

Universal Declaration of Human Rights, 1948 says that every one whether men or women has right to life, liberty and security of persons;³⁵ The International Covenant on Civil and Political Rights, 1966 therefore declares that:

“Every one has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”³⁶

Further assertion of the right to life can be seen in the proclamation of the United Nations International Convention on Civil and Political Rights which reaffirms the fact that:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”³⁷

ii) Right to Equality before law and Equal Protection of Law

Women have equal rights with men.³⁸ All human beings whether men or women are born free and therefore equal in dignity and rights.³⁹ Women are entitled to the equal protection of law without any discrimination.⁴⁰ The state is under a duty to take all appropriate measures to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women in particular; a) the principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law; b) the international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.⁴¹ The International Covenant on Civil and Political Rights, 1966 therefore proclaims that:

“All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against

³⁴ Shanti Dairiam, “International Law for the Protection of Women’s Rights: In Domestic Violence and Law”, Report of *Colloquium on Justice for Women Empowerment Through Law*, (2000), p.41.

³⁵ Article 3, of the Universal Declaration of Human Rights, 1948.

³⁶ Article 9 of the International Covenant on Civil and Political Rights, 1966.

³⁷ Article 6 (1) of the International Covenant on Civil and Political Rights, 1966.

³⁸ Preamble of the Universal Declaration of Human Rights, 1948.

³⁹ Article 1 of the Universal Declaration of Human Rights, 1948.

⁴⁰ Article 7 of the Universal Declaration of Human Rights, 1948.

⁴¹ Id, Article 2.

discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.⁴²

iii) Rights against Slavery

No one whether woman or man shall be held in slavery or servitude.⁴³ No one whether men or women shall be held in slavery or servitude.⁴⁴

iv) Rights against Discrimination

Discrimination against women is incompatible with human dignity and with the welfare of the family and society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the services of the country and humanity. Therefore the Declaration on the Elimination of Discrimination Against Women, 1967 proclaims that discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.⁴⁵ Women are entitled to enjoy their right without any distinction as to their race, colour and sex or religion or language.⁴⁶ No discrimination can be made against women on the ground of sex. They are also entitled to equal protection of law against any discrimination⁴⁷. The state is under a duty to repeal all provisions of penal code which discriminates against women.⁴⁸ Women have right against discrimination, distinction, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁴⁹

The discrimination against women violates the principle of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the services of their countries and of humanity.⁵⁰ The international community soon realized that in situations of poverty women have the least

⁴² Article 26 of the International Covenant on Civil and Political Rights, 1966.

⁴³ Article 8 of the International Covenant on Civil and Political Rights, 1966.

⁴⁴ Article 4 of the Universal Declaration of Human Rights, 1948.

⁴⁵ Article 1 of the Declaration on the Elimination of Discrimination Against Women, 1967.

⁴⁶ Article 2 of the Universal Declaration of Human Rights, 1948.

⁴⁷ See Article 2 and 7 of the Universal Declaration of Human Rights, 1948.

⁴⁸ Article 8 of the Declaration on the Elimination of Discrimination Against Women, 1967.

⁴⁹ Article 1 of the Convention of all Forms of Discrimination against Women, 1979.

⁵⁰ Preamble of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

access to food, health, education, training and opportunities for employment and other needs; that the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized; that the social significance of maternity and the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibilities between men and women and society as a whole.⁵¹ It was also felt that the establishment of the new international economic order based on equity and justice would contribute significantly towards the promotion of equality between men and women. A change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.⁵² Considering all these and convinced of the fact that full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women on 18 the December 1979. It finally entered into force on 3rd November 1981 in accordance with Article 27(1).

The convention has 30 Articles and preamble. The state parties to the convention, determined to implement the principles set forth in the convention and for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations. The convention also explains that "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."⁵³

v) Right to Privacy

Women have right to privacy. No woman can be subjected to arbitrary interference with her privacy, family, home or correspondence.⁵⁴ Accordingly the International Covenant on Civil and Political Rights, 1966 declares that:

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, correspondence, nor to unlawful attacks on his honour and reputation. Every one has the right to the protection of the law against such interference or attacks."⁵⁵

⁵¹ Ibid.

⁵² Ibid.

⁵³ Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

⁵⁴ Article 12 of the Universal Declaration of Human Rights, 1948.

⁵⁵ Article 17 of the International Covenant on Civil and Political Rights, 1966.

vi) Right to Family and Marriage

Woman of full age is accorded the right to marry and have the right to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.⁵⁶ The family is the natural and fundamental unit of society and is entitled to protection by society and the State. Accordingly men and women of marriageable age have the right to marry and found a family. The state is under a duty to take appropriate measures to ensure equality of rights and responsibilities of spouses as to marriage, during marriage, and at its dissolution.⁵⁷

vii) Right to Nationality

Every woman has the right to a nationality. She can not be deprived of her nationality nor denied the right to change her nationality.⁵⁸ Women have the same rights as men to acquire, change, or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife by rendering her stateless or by forcing upon her the nationality of her husband.⁵⁹ In 1949 the Commission on the Status of Women expressed the view that a convention on the nationality of married women should be prepared and conducted as soon as possible as it would assure women of equality with men, especially with respect to the right to nationality, and prevents them from becoming stateless upon marriage or at its dissolution. Subsequently the draft convention was prepared by the Commission and in 1957; the General Assembly adopted the Convention on the Nationality of Married Women. As per this Convention Neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during the marriage, shall automatically affect the nationality of the wife. Neither the voluntary acquisition of the nationality of another state nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national. The alien wife of one of its national may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures. However, the grant of such nationality may be subject to such limitations as may be imposed in the interest of national security or public policy.

viii) Right to Favourable Condition of Work

Women like men, are entitled to a just and favourable conditions of work, including the right to equal pay for equal work⁶⁰. The state is under a duty to

⁵⁶ Article 16 of the Universal Declaration of Human Rights, 1948.

⁵⁷ Article 23 of the International Covenant on Civil and Political Rights, 1966.

⁵⁸ Article 15 of the Universal Declaration of Human Rights, 1948.

⁵⁹ Article 5 of the Declaration on the Elimination of Discrimination Against Women, 1967.

⁶⁰ Article 23 of the Universal Declaration of Human Rights, 1948.

take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: a) the right to work as an inalienable right of all human beings; b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeship, advanced vocational training and recurrent training; d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

ix) Right to Education

Women have the right to education. This right includes free elementary education at least at the fundamental stages.⁶¹ No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.⁶² The state is under a duty to ensure to women, equal rights with men in education at all level, equal condition of access to and study in all types of educational institutions.⁶³ It is the responsibility of the state to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women;⁶⁴ a) the same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training; b) access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; c) the elimination of stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of

⁶¹ Article 26 of the Universal Declaration of Human Rights, 1948.

⁶² Article 18 of the International Covenant on Civil and Political Rights, 1966.

⁶³ Article 9 of the Declaration on the Elimination of Discrimination Against Women, 1967.

⁶⁴ Ibid, Article 10.

teaching methods; d) the same opportunities to benefit from scholarships and other study grants; e) the same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; f) the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school permanently; g) the same opportunities to participate actively in sports and physical education; h) access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

x) Civil and Political Rights

The international community recognized the fact that without establishing gender equality it cannot maintain peace and prosperity of a just society. Equality of status of men and women forms the basis of a just society. This realization and the desire to implement the principle of equality of rights of men and women contained in the Charter of the United Nations thus paved the way for the adoption of The Convention on the Political Rights of Women, 1952. The convention therefore recognized that everyone has the right to take part in the government of his country directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his country. It declared the equality of status of men and women in the enjoyment and exercise of political rights, in accordance with the provisions of the Charter of the United Nations and of the Universal Declaration of Human Rights.⁶⁵

Women like men have right to the enjoyment of all civil and political rights. Women are also entitled to the right of self-determination. Every citizen shall have the right and opportunity, without any distinction of any kind, such as race, colour, sex, language, religion, political, other opinion, national or social origin, property, birth or other status, and without unreasonable restriction; a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected at genuine periodic elections which shall be universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; c) to have access, on general terms of equality, to public service in his country.⁶⁶ Women are entitled to exercise these rights on equal terms with men.⁶⁷ The state is under a duty to

⁶⁵ Preamble of the Convention on the Political Rights of Women 1952.

⁶⁶ Article 25 of the International Covenant on Civil and Political Rights, 1966.

⁶⁷ Article 4 of the Declaration on the Elimination of Discrimination Against Women, 1967.

accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity.⁶⁸

xi) Economic, Social and Cultural Rights

Woman as a member of society has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for her dignity and free development of her personality.⁶⁹ Women can freely participate in the cultural life of the community.⁷⁰ The state is under a duty to ensure to women, married or unmarried, equal rights with men in the field of economic and social life. Women have the right to equal remuneration with men and to equality of treatment in respect of work of equal value. They also have the right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work.⁷¹ The state is under a duty to take all appropriate measures to ensure that women like men equally enjoys a) the right to family benefits; b) the right to bank loans, mortgages and other forms of financial credit; c) the right to participate in recreational activities, sports and all aspects of cultural life.⁷² States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"⁷³ which requires mandates the revision of textbooks, school programmes and teaching methods with a view to eliminate stereotyped concepts in the field of education.⁷⁴

xii) Rights against Exploitation

Prostitution and accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community. The Convention for Suppression of Traffic in Persons, 1949 therefore declares trafficking as a punishable offence. Procurement of any person for purposes of prostitution, even with the consent of that person or exploitation of the prostitution of another person even with the consent of that person is declared as

⁶⁸ Article 15 of the Convention on Elimination of Discrimination against Women, 1979.

⁶⁹ Article 22 of the Universal Declaration of Human Rights, 1948.

⁷⁰ Article 27 of the Universal Declaration of Human Rights, 1948.

⁷¹ Article 10 of the Declaration on the Elimination of Discrimination Against Women, 1967.

⁷² Article 13 of the Convention of all Forms of Discrimination against Women, 1979.

⁷³ Article 5 of the Convention of all Forms of Discrimination against Women, 1979.

⁷⁴ Article 10 (c) Convention of all Forms of Discrimination against Women, 1979.

an offence for the protection of women.⁷⁵ Women can not be exploited through any form of slave trade. Slave trade in all form is prohibited.⁷⁶ The state is under a duty to take appropriate measures, including legislation, to combat all forms of traffic in women and exploitation of prostitution.⁷⁷ It is the responsibility of the state to take or to encourage, through its public and private educational, health, social, economic and other related services, and other measures, for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present convention.⁷⁸ This implies that women victim of prostitution are entitled to rehabilitation and social adjustment.

xiii) Rights against Violence

The Nations of the World have become so disturbed at the prevalence of violence against women that a number of important steps have been taken to combat it.⁷⁹ The Committee on CEDAW⁸⁰ placed emphasis while examining the report of the state parties, both on ascertaining the level of violence against women, whether it is condoned or perpetrated by the state and on what measures are in place to combat it. The United Nations appointed a Special Rapporteur on violence against women and that itself had developed a Declaration on the Elimination of Violence Against Women.⁸¹ This Declaration was adopted by the General Assembly in the year 1994.⁸² In that Declaration the General Assembly adopted the affirmation that:

"Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, and (is) concerned about the long standing failure to protect and promote those rights and freedoms in relation to violence against women."⁸³ The Declaration defines violence against women as:

"Any act of gender based violence that result in, or is likely to result in, physical sexual or psychological harm to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life".⁸⁴

Under the Declaration, violence against women shall be understood to encompass, but not limited to, the following;⁸⁵ 'physical, sexual and psychological

⁷⁵ Article 1 of the Convention for Supression of Traffic in Persons, 1949.

⁷⁶ Article 8 of the International Covenant on Civil and Political Rights, 1966.

⁷⁷ Article 8 of the Declaration on the Elimination of Discrimination Against Women, 1967.

⁷⁸ Ibid, Article 16.

⁷⁹ D. Singh, "Human Rights: Women & Law," 1st Edition, (Allahabad Law Agency, 2005), p.40.

⁸⁰ Convention on the Elinination of all forms of Discrimination against Women 1979.

⁸¹ D. Singh, "Human Rights: Women & Law" 1st Edition, (Allahabad Law Agency, 2005) p.40.

⁸² General Assembly Resolution No 48/104, 1994.

⁸³ Preamble of the Declaration on Elimination of Violence Against Women 1993

⁸⁴ Article 1 of the Declaration on Elimination of Violence Against Women 1993.

violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation. Physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution and physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.'

xiv) Rights as to Freedom of movement and Residence

Women like men have the freedom of movement and residence within the borders of each state. This right includes the right to leave any country including one's own and to return to one's own country.⁸⁶ The International Covenant on Civil and Political Rights, 1966 accordingly upholds the mandate of the Covenant that:

"Every one lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own."⁸⁷

xv) Rights as to Freedom of Speech and Expression

Women are entitled to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁸⁸ One can exercise this right either orally, in writing or in print, or in the form of art, or through any other media of his choice.⁸⁹

xvi) Right as to Freedom of Religion

Like men women also enjoys the right to freedom of thought, conscience and religion. This right includes freedom to change her religion or belief and also the manifestation of her belief through teaching, practice, worship and observance.⁹⁰ No one shall be subjected to discrimination on the ground of religion or religious belief.⁹¹

xvii) Reproductive Rights

Women's reproductive right was first convincingly recognized by the International Convention of all Forms of Discrimination against Women, 1979.A

⁸⁵ Ibid, Article 2.

⁸⁶ Article 13 of the Universal Declaration of Human Rights, 1948

⁸⁷ Article 12 of the International Covenant on Civil and Political Rights, 1966.

⁸⁸ Article 19 of the Universal Declaration of Human Rights, 1948.

⁸⁹ Article 19 of the International Covenant on Civil and Political Rights, 1966.

⁹⁰ Article 18 of the Universal Declaration of Human Rights, 1948.

⁹¹ Article 2 of the Declaration of the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, 1981.

proper understanding of maternity as a social function, demanding fully shared responsibility for child-rearing by both sexes was long over due. Accordingly, provisions for, maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas, whether dealing with employment, family law, health care or education, were felt by the intellectuals and also by the United Nations. Society's obligation extends to offering social services, especially child-care facilities that allow individuals to combine family responsibilities with work and participation in public life, which requires special measures for maternity protection. This was felt by the international community which should not be considered discriminatory.⁹² The Convention also affirms women's right to reproductive choice. Notably, it is the only human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process and to develop family codes that guarantee women's rights "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."⁹³ The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women".⁹⁴

C) ACHIEVEMENT OF THE UNITED NATIONS IN THE PROTECTION OF THE HUMAN RIGHTS OF WOMEN

The Charter of the United Nations represents a significant advancement so far as faith in and respect for human right is concerned. The horrendous atrocities committed during the Second World War led to a strong movement for the international protection of fundamental human rights, and the Charter contains various references to them. The provisions concerning human rights run throughout the United Nations Charter "like a golden thread". Much of the credit for this goes to the strong lobbying by non-governmental organization at the San

⁹² See Article 4 of the Convention on Elimination of all Forms of Discrimination Against Women, 1979.

⁹³ Article 16 (e) of the Convention on Elimination of all Forms of Discrimination Against Women, 1979.

⁹⁴ The Preamble of the Convention.

Francisco Conference.⁹⁵ Presently United Nation has six specialized agencies, which are working, in their respective fields. These specialized agencies can be used to assist women related issues and realize human rights of women.

The United Nations since its formation has played a significant role for the recognition, conferrment and protection of human rights. The Charter of the United Nations first in 1945 reaffirmed faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. This was the modest beginning towards the recognition of -equal rights of men and women; dignity and worth of human person; fundamental freedom for all without any distinction as to race, sex, language or religion. At present the United Nations has six specialized agencies, which are inter alia working and assisting in women related issues in their respective fields. The following are the achievements of the United Nations in the field of protection human rights of women since 1945:

i) Committee of the Status of Women

The Committee of the status of women was established in 1946 to promote women's political, economic and social rights. The Commission on the Status of Women is a functional Commission of the ECOSOC⁹⁶ established by the council in 1946. In the beginning the Commission consisted of 9 members, appointed by the ECOSOC for three years term. Then it was increased to 18 members and at present it consists of 45 members. It meets biennially for session of three weeks. As in the case of Commission on human rights, the Commission on the status of women adopts its own resolution its own resolutions and recommends draft resolution and declarations for adoption by the ECOSOC. The Commission submits a report on each session to the council. The Commission on the status of women has done valuable work promoting the rights of women in political, economic, civil, social and educational fields and in achieving the goal of women having rights equal to those of men.⁹⁷ The Commission has requested the International Labour Organization (ILO) to promote the principle of equal work and to complete a convention on this subject. Following this, the ILO adopted special instruments to carry on these measures. It has also requested the UNESCO⁹⁸ to provide equal opportunities for women in education. The Commission on the status of the women initiated: 1) Declaration and Convention on the Elimination of all Forms of Discrimination Against Women; ii) Convention on the Political Rights of Women; iii) Convention on the Nationality of Married

⁹⁵ Dr. S.K. Kapoor, "*Human Rights in International Law*", (1986), p.25-27.

⁹⁶ Economic and Social Council of the United Nations.

⁹⁷ Dr. S.K. Kapoor, "*Human Rights Under International Law and Indian Law*", (2001), p 80-95.

⁹⁸ United Nations Economic and Social Council.

Women; iv) The Convention on the Consent of Marriage; and v) The Convention on the Protection of Women and Children during emergency and armed conflict. All these contributed much to the development of the status of women.⁹⁹

ii) The Committee on CEDAW:

The Committee on the elimination of all forms of discrimination against women was established under Article 22 of the 1979 Convention on the Elimination of All forms of Discrimination Against Women. This Convention is implemented by means of states "reports". It is composed of twenty- three experts serving in individual capacities for four-year terms. It held its first regular session in October 1982 and at its second session examined the reports of seven state parties regarding measures taken to comply with the terms of the Convention. It reports annually to the United Nations General Assembly through ECOSOC. The Committee in addition to hearing states reports makes suggestion and general recommendations, which are included in the report. For example, general recommendations, NO. 5 called upon state parties to make more use of temporary special measures such as positive action, preferential treatment or quota systems to advance women's integration into education, the economy, politics and employment; while general recommendation No. 8 provided that state parties should take further measures to ensure to women, on equal terms with men and without discrimination the opportunity to represent their government at the international level. General recommendation No.12 called upon the state parties to include in their reports information on measures taken to deal with violence against women, while General recommendation No. 19 (1992) dealt at some length with the problem of violence against women in general and specific terms and General recommendation No. 21 is concerned with equality in marriage and family relations. The Committee, however, meets only for two weeks in a year, which is clearly inadequate. There is no right of individual petition or interstate complaint under this convention, although these issues are under consideration. There is no doubt that much remains to be done in order to support and develop the work of this Committee.

iii) Establishment of (UNIFEM) and (INSTRAW)

United Nations General Assembly Established Voluntary Fund for the empowerment of women (UNIFEM) and an UN International Research Institute for the Advancement of Women (INSTRAW) in 1976. UNIFEM was established in response to the demand for a Fund for women within the UN system to work towards gender equality and gender justice and women empowerment, by giving access and control over resources, knowledge, belief systems, values and the

⁹⁹ N. Jayapalan. "Women and Human Rights", (2000), p.20-21.

self; by creating enabling conditions for human well being; by recognizing women as a critical actor in families, communities and economic systems.¹⁰⁰ UNIFEM undertook a unique exercise to include women's voices in the Ninth National Development Plan of India, which has led to the empowerment of women as one of the Plan's objectives. It facilitated a process in which some of the most distinguished and representative leaders of the women's movement came together as a think tank. The think tank helped to raise the voices of hundred of women mobilized from different walks of life to influence the national planning process. This was accomplished at various stages of the planning process through research and study, including a review and evaluation of past plans. This was followed by five regional meetings and a national consultation where the outcome of the regional meetings was presented to the policy makers. This resulted in women sharing their concerns with policy planners, at different stages, with official planning process.¹⁰¹ UNIFEM has discussed and held negotiations with other South Asian governments and the representatives of women's movement. Its mainstreaming activities on human rights have been a logical follow-up to the extraordinary impact women made at the World Conference on Human Rights in Vienna, where they emerged as one of the most dynamic force demanding the inclusion of issues related to the human rights of women, particularly in the area of violence against women. In Asia it has collaborated with UNICEF to produce and launch the joint publication, widely known as "CEDAW KIT."¹⁰² In 1997 the Trust Fund for Action to Eliminate Violence Against Women was established within UNIFEM. It is also pioneering an intervention to train Afghan women-led NGO's based in Pakistan; and in collaboration with a Lahore based NGO, working on a pilot programme with the Lahore school to introduce a human rights curriculum.¹⁰³

iv) Adoption of various Convention & Declaration

The United Nations Organization, since its establishment endeavoured for the protection of human rights. Protection of women's right has been the main thrust of the United Nations. For better protection, acknowledgement, and realization of women's right it has adopted many convention and declarations. The following are some such convention & declaration.

¹⁰⁰ Murlidhar C. Bhandare, "The World of Gender Justice", (1999), p.192-93.

¹⁰¹ Ibid, p. 195-97.

¹⁰² An advocacy tool for both advocates and governments representatives which, examines the role of CEDAW as the Bill of Rights for Women.

¹⁰³ Ibid, p. 199-256.

- a. Adoption of Convention for the suppression of the traffic in persons and the exploitation of the prostitution of others by the General Assembly in 1949.
- b. Adoption of Convention concerning Equal remuneration for men and women workers for work of equal value by the International Labour Organization in the year 1951.
- c. Adoption of Convention on political rights of women including the right to vote, by the General Assembly in 1952.
- d. Adoption of a Convention on consent to marriage, minimum age for marriage and registration of marriages by the General Assembly in 1952.
- e. Adoption of Convention on the nationality of married women in 1957 granting women the right to retain or change their nationality regardless of their husband's action.
- f. Adoption of the Convention regarding discrimination in respect of Employment and Occupation in 1960.
- g. Adoption of a Declaration on the Elimination of Discrimination Against Women in 1967.
- h. Adoption of the First World Plan of Action and Proclamation of the First World Decade for Women; with the theme of equality, development and peace by the World Conference of Women in Mexico city in 1975.
- i. Adoption of the Convention on the Elimination of All Forms of Discrimination Against Women by the General Assembly in 1979.
- j. Second World Conference at Copenhagen in 1980.
- k. Third World Conference at Nairobi in 1985. Adoption of forward looking strategies for the advancement of women to the year 2000 and Voluntary Fund for UN Decade for Women became an autonomous organization within UN Development Programme.
- l. In 1986 First World Survey on the role of women in development was published.¹⁰⁴
- m. In 1991 the World's Women: Trends and Statistics, a compilation of data on the global situations of women was published.¹⁰⁵

¹⁰⁴ D. Singh, "*Human Rights: Women & Law*" 1st Edition, (Allahabad Law Agency, Faridabad, 2005), p.31.

¹⁰⁵ Ibid.

- n. Key role of women in Sustainable Development was recognized in 1992 UN Conference on Environment and Development held in Rio de Janeiro.
- o. In 1993 Declaration on Elimination of Violence against Women was adopted by the General Assembly.
- p. Empowerment of women was seen as an integral part of development for the first time in International Conference on Population and Development at Cairo in 1994.
- q. The Fourth World Conference on Women held in Beijing reviewed and debated critical areas of concern and adopted a proposed Platform for Action in 1995.

D) POSITION & RIGHTS OF WOMEN UNDER THE NATIONAL LEGAL FRAMEWORK

After independence several legislation were passed to remove the constraints hindering the progress of women. In spite of this the women of India are still subjected to many discrimination and exploitation, whereas it is acclaimed by every civilized nation that women's empowerment is a must condition for the advancement of equality, development and peace. The Indian Constitution adopted by the Constituent Assembly on 26 the November 1949 is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity. These objectives specified in the preamble and elsewhere form part of basic structure of the Indian Constitution. The fundamental law of the land assures the dignity of the individuals irrespective of their sex, race, religion, community or place of birth. With regard to the women the Constitution contains many positive and negative provisions, which can go a long way in securing gender justice. While incorporating these provisions, the framers of the Constitution were well aware of the unequal treatment meted out to the fairer sex, from the times immemorial. The history of suppression of women in India is a very long and the same has been responsible for including certain general as well as specific provisions for the upliftment of the status of women.¹⁰⁶ The rights guaranteed to the women are on par with the rights of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions. The general provisions relating to the equal rights available to the women are the right to vote and other political rights, the fundamental rights contained in Part

¹⁰⁶ G.B. Reddy, "Women and The Law" 1st Edition, (Gogia Law Agency,Hydrabad,2004) p.1-2.

III of the Constitution and the Directive principles contained in the Part IV of the Constitution.¹⁰⁷

i) The preamble of the Constitution

The preamble to the Indian Constitution contains various goals. The preamble secures to every citizen-

Justice- social, economic and political;

Liberty- of thought, expression, belief, faith and worship;

Equality- of status and opportunity; and to promote among them all;

Fraternity- assuring the dignity of the individual and unity and integrity of the nation.

This particular goal of achieving, "the equality of status and opportunity" has been incorporated to give equal rights to the women and men in terms of the status as well as opportunity. This has been the basis of many legislation, which aimed at giving equal status and rights to women.¹⁰⁸

ii) Fundamental Rights

Part III of the Constitution contains a long list of fundamental rights. This Chapter of the Constitution has been described as the Magna Carta of India.¹⁰⁹ Even though, all the fundamental rights contained in Part III, Article 12 to 35 are applicable to all citizens irrespective of sex, certain fundamental rights contain specific and positive provision to protect the rights of women.

Articles 14 to 18 of the Constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. Article 14 embodies the idea of equality expressed in the preamble of the Constitution. The succeeding Articles 15, 16, 17 and 18 lay down specific application of the general rules laid down in Article 14.¹¹⁰ Article 15 relates to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article guarantees equality of opportunity in matters of public employment. Article 17 abolishes untouchability, whereas Article 18 abolishes title.

Article 15(3) of the Constitution provides that the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth as contained in Article 15, shall not prevent the State from making any special provisions for women and children. In other words, the state is empowered to make any such provisions and it shall not be violate of Article 15. Article 15(1) prohibits gender discrimination. But women and children require special

¹⁰⁷ Ibid.

¹⁰⁸ Like Modern Hindu Laws.

¹⁰⁹ V.J. Ramchandran, "Fundamental Rights and Constitutional Remedies", Vol-1, (1964), p.1.

¹¹⁰ Dr. J.N. Pandey, "Constitutional Law of India" 35th Edition, (Central Law Agency, 2000), p.69.

treatment on account of their very nature. The reason is that "women's" physical structure and the performance of maternal functions places her at a disadvantage in the struggle for subsistence and her physical well being becomes an object of public interest and care in order to preserve the strength and vigour of race."¹¹¹ Article 15(3), therefore lifts that rigour and permits the State to positively discriminate in favour of women and to make special provision, to ameliorate their social economic and political justice and accords them parity. This special provision for women and children has been widely resorted to, by the States and the courts have always upheld the validity of the special measures in legislation or executive orders favouring women. These provisions could be seen in the sphere of Criminal Law, Labour and Industrial Law, Service Law providing for reservation for women, and Criminal Procedure, and also in the Law of Evidence.

Recently the Supreme Court has upheld the Constitutional validity of Proviso to section 31(1) (a) of the Andhra Pradesh Co-operative Societies Act, 1964 and of the Rules 22(c) and 22-A (3) (a) framed there under relying upon the mandate of Article 15(3). The Proviso read with the said rules provided for the nomination of two women members by the Registrar to the managing committee of the Co-operative Societies with a right to vote and to take part in the meetings of the committee. The court upheld the validity of these provisions on the ground of Article 15(3) of the Constitution, which permits the special provision in favour of women.¹¹² In **Yusuf Abdul Aziz v. State of Bombay**,¹¹³ Section 497 of the Indian Penal Code, which only punishes man for adultery and exempts the woman from punishment even though she may be equally guilty as an abettor was held to be valid since the classification was not based on the ground of sex alone. In **Mst. Choki v State**,¹¹⁴ section 437 of the Code of Criminal Procedure, 1973 enables women and children to be released on bail for non bailable offences in the circumstances under which, a male cannot be released on bail has been held to be consistent with Article 15(3) of the Constitution.

a) Right to Equality:

Article 14 of the Constitution guarantees to women the equality before law as well as equal protection of law. Equality is a dynamic concept with many aspect and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positive point of view, equality is

¹¹¹ Muller v. Oregon, 52 L.Ed. 551.

¹¹² T. Sudhakar Reddy v. Govt of A.P, 1993, Supp.(4) SCC 439.

¹¹³ AIR 1954 SC 321; Soumithri Vishnu v. U.O. I., AIR 1985 SC 1618; Revathi v. U.O.I. AIR 1988 SC 835.

¹¹⁴ AIR 1957, Raj. 10.

antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14."¹¹⁵ This new concept of equality has been applied to protect the Indian womanhood by the Supreme Court in **Air India.v. Nargesh Meerza**,¹¹⁶ struck down the Air India and Indian Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unconstitutional and arbitrary. The Court observed that:

*"The condition that the services of Air Hostesses would be terminated on first pregnancy was most unreasonable and arbitrary provision and liable to be struck down. The regulation did not prohibit marriage after four years and if an Air Hostess after having fulfilled the first condition became pregnant, there was no reason why pregnancy should stand in the way of her continuing in service. The termination of services of Air Hostesses in such circumstances is not only callous and cruel act but an open insult to Indian womanhood- the most sacrosanct and cherished institution"*¹¹⁷

b) Right to life:

Article 21 of the Constitution guarantees to citizen as well as non-citizen the right to life and personal liberty. Our judiciary through its judicial activism expanded the scope of right to life so as to include many other rights without which right to life cannot be exercised meaningfully. The Supreme Court therefore, in **Bodhi Satwa Gautam.v Subhra Chakraborty**,¹¹⁸ held that rape is a crime against the basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution.

c) Right to Privacy and Dignity of Women:

The preamble of the Constitution promises to secure to its entire citizen the dignity of the individual, which also includes the dignity of woman. Article 51A (e) imposes upon the citizen a duty to renounce practices derogatory to the dignity of women. In **State of Maharashtra.v. Madhukar Narain**,¹¹⁹ without referring Article, has held that even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. In **Neera.v.**

¹¹⁵ AIR 1974 SC 555; Maneka Gandhi.v. Union of India, AIR 1978 SC 597.

¹¹⁶ AIR 1981 SC 1829.

¹¹⁷ Ibid.

¹¹⁸ (1996) SCC 490.

¹¹⁹ AIR 1992 SC 392.

L.I.C.¹²⁰ the court has held that, the right to privacy of women would preclude such questions to be put to female candidates as modesty and self-respect may preclude an answer. The court found that such question like the regularity of menstrual cycle, its term therefore, violate the right to privacy of the lady employee and further directed the corporation to delete such columns in the declaration.

In **Gautam Kundu.v.State**,¹²¹ the court refused the husband's application for a blood test to disprove paternity as it would be slanderous embarrassing and humiliating for the women. The Supreme Court rejected the plea of a husband in which he had prayed that his wife should undergo a medical examination to prove her virginity.¹²² The court observed that allowing the medical examination of a woman for her virginity would certainly violate her right to privacy and personal liberty enshrined in the Constitution. Such an order would amount to a roving inquiry against a female who are vulnerable otherwise. No court shall order a roving enquiry and there has to be sufficient material before the court to enable it to exercise such discretion.¹²³ The case of **Rupan Deol Bajaj.v. K.P.S. Gill**,¹²⁴ is the latest in the series upholding the dignity of women. In this case the Apex Court did not allow the blue eyed and the mighty police supreme Mr. Gill to escape judicial scanning of his alleged insult to the modesty of the complainant who was a very sensitive I.A.S officer. Not only this, the Court has ordered for in camera trial of rape cases to save character assassination and humiliation of victim in public.¹²⁵

d) Women Reservation:

Very recently the Supreme Court has observed that the object of Article 15(3) is to strengthen and improve the status of women.¹²⁶ In this case the provisions providing for reservation for women to an extent of 30% made in the State Services by the Andhra Pradesh Government was held valid. In **Union of India .v. K. P. Prabhakaran**,¹²⁷ the Supreme Court upheld the decision of the Railway administration to reserve the posts of Enquiry cum Reservation Clerks in Reservation offices in metropolitan cities of Madras, Bombay, Calcutta and Delhi exclusively for women. It also held that the Reservation offices in the said

¹²⁰ AIR 1992 SC 392.

¹²¹ AIR 1993 SC 2295.

¹²² Surjee Singh.v. Kamaljit Kaur, AIR 2003p&h. 354.

¹²³ Sharda.v. Dharampal, (2003)3 JT (SC) 339.

¹²⁴ AIR 1995 SCW 4100

¹²⁵ State of Punjab.v. Gurmit Singh, AIR 1996SCW 998.

¹²⁶ Government of A.P v. P.B. Vijay Kumar, AIR, 1995 SC 1648.

¹²⁷ (1997) 11SCC638.

metropolitan cities should constitute a seniority unit separate from the rest of the cadre of Enquiry cum Reservation clerks.

e) Women Reservation in Election to Local Bodies:

Several factors inhibit the effective participation of women in the political process and institutional structure of democracy. Women's role in political process again has mainly been confined to the upper strata of our society. A broad based political participation of women has been limited due to various factors such as caste, religion, feudal attitude and family status. Despite several measures being taken up by the government the scenario does not seem to have improved much. Barring a few exception women who constitute the half of India's population have not been adequately represented at the higher level.¹²⁸

The 73rd and 74th Amendments to the Indian Constitution effected in 1992 provide for reservation of seats to the women in election to the Panchayat and Municipalities. The 73rd and 74th Amendments to the constitution of India popularly known as the Panchayati Raj and Nagarpalika Constitution Amendment Acts. Perhaps, this is the first attempt by the Parliament to provide reservation for women in legislature.¹²⁹ According to Article 243D of the Constitution of India, not less than one third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchyat. Not less than one third of the total number of offices of the Chairpersons in the Panchyat at each level shall be reserved for women. Article 243T of the Constitution of India, which was added by the Constitution 74th Amendment Act, 1992 makes the similar provisions for reservation of seats to women in the direct election to every municipality. Therefore, there is a successful reservation of 33% seats for women in local bodies, which acquires poignant importance and is also in consonance with the mandate of Article 15(3). The The 73rd and 74th Amendments to the constitution of India popularly known as the Panchayati Raj and Nagarpalika Constitution Amendment Act is most significant for the reservation for women including Scheduled Castes and Scheduled Tribe women. The Amendment sought to achieve such a political empowerment for women in the wider context of an attempt to promote local self-government and decentralized democracy. It heralded the ascent of nearly 8 lakh women (including those belonging to Scheduled Castes and Scheduled Tribes) to political position in the length and breadth of India at its rural grass root level, where the extent of patriarchy,

¹²⁸ Suman Krisan Kant, "Women's Development and Mutual Co-operation in the Family", *Women's Link*, vol. 48, (April 2001), at p.3.

¹²⁹ G.B. Reddy, "Women and The Law", 1st Edition, (Gogia Law Agency, Hyderabad, 2004), p. 5.

illiteracy, poverty and socio-cultural norms are even deeper and more strangling than in urban areas. Yet, these provisions need to be translated into reality. In fact practices of different states in this regard have not been satisfactory. A few states like, Maharashtra, Kerala, Himachal Pradesh, Andhra Pradesh, West Bengal have given comparatively more representation to women in different tiers of Panchayat as compared to other states.¹³⁰ The tragedy is, that the Panchayat system has thrown up aspiring women candidates who have no upward political mobility. In most of the cases they can be found as proxies for powerful male politician.

f) Women's Reservation in the National and State Legislative Assembly

The Parliament introduced the Constitution 81st Amendment Bill seeking to reserve one third of seats in Lok Sabha and State Assembly for women in 1999. It took another four years for the elected representative of the people to re-introduce it and then shoot it down.¹³¹ The Bill has been referred to a joint committee of Parliament and is yet to be passed. In a way the move is an extension of the 73rd and 74th Constitution Amendments, under which a similar quota has been provided for women in the elected bodies at various levels in the Panchyat Raj and Nagar Palika systems and as such represents a big step towards empowering women to play their rightful part in democratic government and participate in the political process at the decision making level. This measure is towards correcting gender injustice. . Despite several measures being taken up by the government the scenario does not seem to have improved much. Barring a few exception women who constitute the half of India's population have not been adequately represented at the higher level.¹³² Empirical data shows that the first Lok Sabha had 23 women while the 13th Lok Sabha has 49 women M.P.¹³³

g) Right against Exploitation:

Traffic in human being and beggar and other similar forms of forced labour or prostitution were prevalent in India. To deal with the problem the founding father of the Constitution incorporated a provision in Article 23 of the constitution. This Article specifically prohibits traffic in human beings. The prohibition applies not only to the State but also to private persons. Traffic in human being means to deal in men and women like goods, such as to sell or let or otherwise dispose them of. It includes traffic in women and children for immoral or other

¹³⁰ Leena Prasad, "Women Reservation: Some Burning Issues", *Women's Link*, Vol-8.(July.2002) , at p.27.

¹³¹ Editorial, *Asian Age*, 8th May, 2003.

¹³² Suman Krisan Kant, " Women's Development and Mutual Co-oration in the Family", *Women's Link*, Vol-48. (April 2001). at p.3.

¹³³ Women M.P. in the 13th Lok Sabha. Source: Election commission of India.

purposes.¹³⁴ On the strength of Article 23(1) of the Constitution, the legislature has passed the Suppression of Immoral Traffic Act, 1956,¹³⁵ which aims at abolishing the practice of prostitution and other forms of trafficking. This is an Act made in pursuance of the International Convention signed at New York 9 May 1950. Recently the Supreme Court has held that traffic in human beings includes 'devadasi system'.¹³⁶

h) Rights against Sexual Harassment of Women:

One of the evils of modern society is the sexual harassment caused to the women particularly the working women by their male counterpart and other member of the society.¹³⁷ There is however no codified law in India which is adequate to combat this evil of the society. In **Vishaka.v. State of Rajasthan**,¹³⁸ a Division Bench of the Supreme Court speaking through Chief Justice J.S. Verma has emphasized the need for an effective legislation to curb sexual harassment of working women and laid down a number of guidelines to fill the legislative vacuum. The Court has defined, having regard to the Protection of Human Rights Act 1993, " Sexual harassment " as including any unwelcome sexually determined behaviour whether directly or by implication, like physical contact and advances, a demand or request for sexual favour, sexually coloured remark, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. In this case the Court referred to the Convention on the Elimination of All Forms of Discrimination Against Women and also the resultant violation of gender equality under Article 14 & 15 and the right to life and personal liberty of women under Article 21 of the Constitution. Thus as result of this decision now any women employee who is subjected to sexual harassment of any kind can take recourse to initiating criminal proceedings, disciplinary action and also seek compensation from the guilty party or employer and other person responsible for the harassment. **Apparel Export Promotion, Council. A.K. Chopra**¹³⁹ is the first case in which the Supreme Court applied the law laid down in **Vishaka.v. State of Rajasthan**,¹⁴⁰ and upheld the dismissal from service of a superior officer who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article 21 of the Constitution.

iii) Welfare of Women under the Directive Principles of State Policy:

¹³⁴ Raj Bahadur. V. Legal Rememberancer, AIR , 1953 Cal 522.

¹³⁵ Now renamed as The Immoral Traffic (Prevention) Act 1956.

¹³⁶ Vishal Jeet. V. Union of India. AIR. 1990, SC 1412.

¹³⁷ G.B.Reddy, " Women and The Law", 1st Edition,(Gogia Law Agency.Hydrabad. 2004). p. 8.

¹³⁸ (1997) 6 SCC 241.

¹³⁹ AIR 1999 SC 625.

¹⁴⁰ (1997) 6 SCC 241.

The directive principles contained in the part IV of the constitution set out the aims and objectives to be taken up by the states in the governance of the country. This novel feature of the constitution is borrowed from the constitution of Ireland, which had copied it from Spanish constitution.¹⁴¹ Today we are living in an era of welfare state, which has to promote the prosperity and well being of the people. The directive principles lay down certain economic and social policies to be pursued by various governments in India. The main object of enacting the directive principles was to set the standards of achievements before the legislature, executives, the local or other authorities, by which their success or failure can be judged. It may be noted that directive principles does not impose any particular brand or pattern of economic or social order. They lay down the goals, which have to be devised from time to time. The government in a parliamentary system is under a constant fire of criticism. The actions of the government are subject to scrutiny by the masses. Since the directive principles have been embodied in the constitution the governments are bound to implement them. No government can afford to ignore these directive if it is not keen to doom its future. Thus Granville Austin has described the fundamental rights and directive principles as the conscience of our constitution. The Directive Principles of State Policy of our Constitution through its Social and economic charter, Social security charter and Social security charter directs the State to improve the status of women and their protection.

Article 38 provides that the State is under a duty to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political, shall inform all institution of the national life.¹⁴² So this directive only reaffirms what has been in the preamble of the constitution that the state shall try to secure to all its citizens social, economic and political justice. The constitution 44th Amendment Act 1978 inserted Article 38(2) which provides that—the state shall strive to minimize in equalities in income and endeavour to eliminate in equalities of status, facilities, and opportunities; not only amongst the individuals but also amongst groups of people residing in various area or engaged in different vocations. This enables the state to have a national policy to eliminate inequalities in various spheres of life.

In **Air India Statutory Corporation v United Labour Union**,¹⁴³ the court explained the concept of social justice in the following words;

¹⁴¹ Dr. J. N. Pandey, "Constitutional Law of India", 35th Edition, (Central Law Agency, Allahbad, 2000) p. 331.

¹⁴² Article 38(1) of the Constitution of India.

¹⁴³ AIR 1997, SC645.

*"The concept of social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen. Social justice is then an integral part of justice in generic sense. Justice is the genus of which social justice is one of its species. It is a dynamic devise to mitigate the suffering of the poor, weak, dalits, tribals and deprived section of the society and to elevate them to the level of equality to live a life with dignity of person. The aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law therefore, is a potent instrument of social justice to bring equality."*¹⁴⁴

Our Constitution also lays down the principles of policy to be followed by the state for securing economic justice. Article 39(a) says that the state shall direct its policy to securing that; the citizens, men and women equally have the right to an adequate livelihood;¹⁴⁵ that there is equal pay for equal work for both men and women;¹⁴⁶ that the health and strength of workers, men and women, and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter into avocations unsuitable to their age or strength.¹⁴⁷ Pursuant to Article 39(d) the parliament has enacted the Equal Remuneration Act 1976. In **Randhir Shing v Union of India**,¹⁴⁸ the Supreme Court held that the principle of equal pay for equal work though not a fundamental right, is certainly a constitutional goal, and therefore capable of enforcement through constitutional remedies under Article 32 of the constitution. However, the doctrine of equal pay for equal work cannot be put in a straight jacket. This might although find a place in Article 39(d) is an accompaniment of equality clause enshrined in Articles 14 & 16 of the constitution. Reasonable classification based on intelligible criteria having nexus with the object sought to be achieved is permissible. Accordingly in **State of A.P v Sree Nivas Rao**,¹⁴⁹ it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and difference as regards reliability and responsibility.

Article 42 of the Constitution incorporates a very significant provision for the benefit of women. It directs the State to make provision for securing just and human condition of work and for maternity relief. It was in pursuance to this Article that the Maternity Benefit Act 1961 was passed.

¹⁴⁴ Ibid.

¹⁴⁵ Article 39(a).

¹⁴⁶ Article 39(d).

¹⁴⁷ Article 39(e).

¹⁴⁸ AIR, 1982 SC879: D. S. Nakara.v. Union of India, AIR 1983 SC 130: R.K. Ramachandran Iyer.v. Union of India. AIR 1984 SC 541.

¹⁴⁹ (1989) 2SCC 290.

One of the major problems which our country faces is the area of personal laws; an area which, governs the entire family life starting from the birth, guardianship, marriage, divorce, custody of children, maintenance, adoption, inheritance and succession. It is these personal laws, which are replete with gender discrimination.¹⁵⁰ Nevertheless, if we are to conform to the international norms of gender justice it is very necessary that these laws be changed to incorporate the sense of gender justice within them. In fact this is also the Constitutional mandate under Article 44. The Hindus obtained the benefit of Hindu Marriage Act 1955, Hindu Succession Act 1956, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956. However, the task of total reform remained incomplete in the area of personal laws in our country specially in the case of Muslim personal law which is comprised of The Shariat Act, Dissolution of Muslim Marriage Act 1939, The Muslim Women (Protection of Rights on Divorce) Act 1986 and the Holy Quran.. In 1951 the very first year of the Constitution, two distinguished Judges; Justice Chagala and Gajindragadkar held that personal laws were not within the ambit of Article 13(1) of the Constitution in so far as they are inconsistent with Part III of the Constitution under which all laws in force at the commencement of the Constitution shall be void. This is not easy to say that courts have no role to play in developing equality-oriented jurisprudence. They have in fact played a very crucial role in doing so.¹⁵¹ Article 44 directs the State to secure for the citizens a Uniform Civil Code throughout the territory of India. This particular provision was kept in the constitution to achieve the goal of gender justice. Even though the State has not yet made any effort to introduce Uniform Civil Code in India, the judiciary has recognized the necessity of the uniformity in the application of civil laws like law of marriage, divorce, succession, adoption and maintenance etc.¹⁵² The Supreme Court has recently dealt with the validity of the Chotanagpur Tenancy Act 1908 of Bihar which denied the right to succession to Scheduled Tribes women as violative of right to livelihood under Article 21 of the Constitution.¹⁵³ The Majority Judgement however upheld the validity of the legislation on the ground that the enactment was in accordance with the custom of inheritance/ succession of the Scheduled Tribes. But Justice K. Ramaswamy felt that the enactment made a gender

¹⁵⁰ D. Singh, "Human Rights: Women & Law" First Edition, (Allahabad Law Agency, Faridabad, 2005), p.5.

p.55.

¹⁵¹ Justice Sujata V. Manohar, 'The international Regime for Gender Justice: Reflection in the Constitution of India' in *Colloquium on Justice for Women-Empowerment through Law*, (2000), p.29.

¹⁵² Sarala Mudgal. V. Union of India, 3 SCC 635: AIR 1995 SC 1531.

¹⁵³ M. Kishwar.v. State of Bihar (1996) 5SCC 125.

discrimination and as such violative of Article 15, 16 and 21 of the constitution. While giving dissenting opinion the Learned Judge observed that:

*"Legislative and executive actions must be conformable to, and for effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in Part IV of the Constitution. Covenants of the United Nations add impetus and urgency to eliminate gender based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order. Law is an instrument of social change as well as the defender of social change. Article 2(e) of the CEDAW (The Vienna Convention on the Elimination of all forms of Discrimination Against Women which was ratified by the UNO on 18-12-1979 and which was ratified by the Government of India on 19-6-1993) enjoins this Court to breath life into the dry bones of the Constitution, international conventions and the Protection of Human Rights Act, to prevent gender based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights."*¹⁵⁴

This perhaps shows the plight of Indian women and also the necessity of the State action to rectify historical inequity that still discriminates against the women. However, recently the Supreme Court has highlighted the right of women in India to eliminate gender based discrimination particularly in respect of property so as to attain economic empowerment.¹⁵⁵

iv) Fundamental Duties:

Chapter IV-A of the Constitution contains certain fundamental duties, which were added by the Forty Second Constitutional Amendment Act 1976. Article 51-A (e) imposes a duty upon every citizen of India to renounce the practices derogatory to the dignity of women. Since these duties are imposed upon the citizen and not upon the state, legislation is necessary for their implementation as such a writ of mandamus cannot be sought against an individual who does not observe his duties under this Article.¹⁵⁶

E) WOMEN'S RIGHT HUMAN RIGHTS INTERNATIONAL AND NATIONAL CONCERN

The term "women's human rights" and the set of practices that accompanies its use are the continuously evolving product of an international movement to improve the status of women. In the 1980s and 1990s, women's

¹⁵⁴ Ibid.

¹⁵⁵ C.M.Mudaliar.v. Idol of Sri Swaminathaswami Thirukoil,(1996) 8 SCC 525: The case dealt with the right of Hindu female to execute a will in respect of the property acquired or possessed by her under section 14 of the Hindu Succession Act 1956.

¹⁵⁶ Surya Narain.v. Union of India,(1981) 3 SCC 481: AIR 1982 SC 1.

movements around the world formed networks and coalitions to give greater visibility both to the problems that women face every day and to the centrality of women's experiences in economic, social, political and environmental issues. In the evolution of what is becoming a global women's movement, the term "women's human rights" has served as a locus for praxis, that is, for the development of political strategies shaped by the interaction between analytical insights and concrete political practices.¹⁵⁷ Further, the critical tools, the concerted activism, and the broad-based international networks that have grown up around movements for women's human rights have become a vehicle for women to develop the political skills necessary for the twenty-first century.

The concept of women's human rights owes its success and the proliferation of its use to the fact that it is simultaneously prosaic and revolutionary. On the one hand, the idea of women's human rights makes common sense. It declares, quite simply, that as human beings women have human rights. Anyone would find her or himself hard-pressed to publicly make and defend the contrary argument that women are not human. So in many ways, the claim that women have human rights seems quite ordinary. On the other hand, "women's human rights" is a revolutionary notion. This radical reclamation of humanity and the corollary insistence that women's rights are human rights have profound transformative potential.¹⁵⁸ The incorporation of women's perspectives and lives into human rights standards and practice forces recognition of the dismal failure of countries worldwide to accord women the human dignity and respect that they deserve—simply as human beings. A woman's human rights framework equips women with a way to define, analyze, and articulate their experiences of violence, degradation, and marginality. Finally, and very importantly, the idea of women's human rights provides a common framework for developing a vast array of visions and concrete strategies for change.

a) A Short History of Human Rights

The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 outlines what is considered in this century to be the fundamental consensus on the human rights of all people in relation to such matters as security of person, slavery, torture, protection of the law, freedom of movement & speech, religion, and assembly, and rights to social security, work, health, education, culture, & citizenship. It clearly stipulates that these human rights apply to all equally "without distinction of any kind such as race, colour,

¹⁵⁷ Charlotte Bunch and Samantha Frost, *International Encyclopedia of Women: Global Women's Issues and Knowledge*. (Routledge, 2000).

¹⁵⁸ Ibid.

sex, language... or other status."¹⁵⁹ Obviously, then, the human rights delineated by the Universal Declaration are to be understood as applying to women. However, tradition, prejudice, social, economic and political interests have combined to exclude women from prevailing definitions of "general" human rights and to relegate women to secondary and/or "special interest" status within human rights considerations.

Women's equal dignity and human rights as full human beings are enshrined in the basic instruments of today's international community. From the Charter of the United Nations' endorsement of the equal rights of men and women, to the Universal Declaration of Human Rights and the subsequent international treaties and declarations, the rights of women are central to our vision of a democratic society. But the fine words of these documents and of the Vienna Declaration in 1993 and the declaration of Beijing in 1995 stand in sharp contrast to the daily reality of life for millions of women. Of the 1.3 billion people living in poverty, 70 per cent are women; the majority of the world's refugees are women; female illiteracy is invariably higher than male illiteracy.¹⁶⁰ Women and girl-children are treated as commodities in cross-border prostitution rackets and the pornography industry. Millions of girls are still subject to genital mutilation, while women in every country are regular victims of domestic violence. In many countries, women lack access to reproductive health care and every day women are targeted in armed conflicts. Women's economic, social and cultural rights continue to be neglected.¹⁶¹ The female economic activity rate is now nearly 70 per cent of the male rate in developing countries, ranging from 86 per cent in East Asia to 50 per cent in Latin America and the Caribbean.¹⁶² A large part of women's work is in low-paid or unpaid occupations. In agriculture, family enterprises and the informal sector, women have little possibility for savings, credit or investment, and limited security. Women's work is poorly measured in official statistics in spite of its tremendous importance for the well being of families. Women work in different jobs and occupations than men, almost always with lower status and pay. In the industrialized countries, unemployment is higher among women than men, and women account for 75 per cent of unpaid family workers. In many parts of the world, women who are poor remain unable to exercise their right to loans and credit, even though this right is established under the Convention on the Elimination of All Forms of Discrimination against

¹⁵⁹ Article 2 of the Universal Declaration of Human Rights 1948.

¹⁶⁰ Editorial forwarded by the High Commissioner for Human Rights. "Women's Rights are Human Rights", *Special issue on Women's Rights-Spring 2000*:

¹⁶¹ Ibid.

¹⁶² Myrium Tebourbi, "Women's Enjoyment of their Economic, Social and Cultural Rights": For details see, <http://www/unhcr.ch>.

Women and is considered to be a powerful tool in overcoming poverty and economic dependence.¹⁶³

This marginalization of women in the world of human rights has been a reflection of gender inequity in the world at large and has also had a formidable impact on women's lives. It has contributed to the perpetuation, and indeed the condoning, of women's subordinate status. It has limited the scope of what was seen as governmental responsibility, and thus has made the process of seeking redress for human rights violations disproportionately difficult for women and in many cases outright impossible.

The division between the so-called "public" has compounded the difficulties posed by women's peripheral status within international human rights mechanisms and organizations and "private" spheres prevalent in so many societies. The pervasive division of life into "public" and "private" spheres has its roots in the desire to limit the jurisdiction of the government. In many countries, this has meant that what individuals do in the "public" sphere is subject to regulation, while activities taking place in the "private" sphere are thought to be exempt from governmental scrutiny. Since this "public" sphere is seen as the focus of interaction between state actors and citizens, abuses of that relationship have been the focus of international human rights advocacy.¹⁶⁴ Of course, the status of citizen has often been exclusionary, formally or informally entailing gender, racial and socio-economic bias and privileges. Thus, for those citizens—primarily men—who predominate in public and governmental realms and who enjoy gender, racial and economic privilege, the issues of primary concern have tended to be those abuses to which they are most vulnerable—abuses of civil and political aspects of human rights such as the violation of the right to speech, arbitrary detention, torture during imprisonment, and summary execution.

While women have been able to invoke international human rights machinery when they have found themselves in such situations, some of their specifically gender experiences of such human rights abuse—for example, rape in detention—have not been visible within the prevailing definitions of abuse. This is because women have traditionally been relegated to the "private" sphere of the home and family; the typical citizen has been portrayed as male, and thus the dominant notions of human rights abuse have implicitly had a man as their archetype. A major effect of the gender nature of the public/private split is that human rights violations of women that occur between "private" individuals have been made invisible and deemed to be beyond the purview of the state. It is

¹⁶³ For details see, [http:// www.webadmin.hcrgunor.ch](http://www.webadmin.hcrgunor.ch).

¹⁶⁴ Ibid.

particularly important to note that gender is a significant factor in the decisions of governments to intervene in the so-called private sphere to prosecute human rights violations. For example, many activities that take place in the private sphere, such as murder between siblings or the systematic enslavement African peoples in the Americas, are subject to government censure internationally. However, governments overlook much of what happens to women at the hands of men and male family members, for example domestic violence or confinement, even when there are laws against such abuse. Thus, abuses done to women in the name of family, religion, and culture have been hidden by the sanctity of the so-called private sphere, and perpetrators of such human rights violations have enjoyed immunity from accountability for their actions.

The historical emphasis on human rights abuses in the public sphere and the concomitant neglect of the human rights of women were exacerbated by the politics of the Cold War. The United Nations' human rights treaties and mechanisms developed after the horrors of World War II and consolidated during the Cold War. The purpose of many human rights organizations that developed along with them was to monitor the treatment of citizens by their governments and to ensure respect for citizens' human rights as they worked for democratic governance. As positions polarized during the Cold War, western governments attributed priority to civil and political rights, which they believed were integral to a prosperous free market economy. Meanwhile, the socio-economic rights to work, shelter, and health, for example, became identified with the socialist bloc and were thus suspect to many in the West. Thus, human rights bodies dominated by western conceptions of human rights priorities focused on violations within the civil and political realm—the "public" sphere. So, in addition to the obstacles for women posed by the split between so-called public and private spheres, the predominance of civil and political rights within human rights organizations eclipsed the ways in which women often do not enjoy the social and economic conditions that make possible the exercise of civil and political rights and participation in public life.¹⁶⁵

b) The Concept of Women's Human Rights

During the United Nations Decade for Women (1976-1985), women from many geographical, racial, religious, cultural, and class backgrounds took up organizing to improve the status of women. The United Nations-sponsored women's conferences, which took place in Mexico City in 1975, Copenhagen in 1980, and Nairobi in 1985, were convened to evaluate the status of women and

¹⁶⁵ *Ibid.*

to formulate strategies for women's advancement. These conferences were critical venues at which women came together, debated their differences and discovered their commonalities, and gradually began learning to bridge differences to create a global movement. In the late eighties and early nineties, women in diverse countries took up the human rights framework and began developing the analytic and political tools that together constitute the ideas and practices of women's human rights.

Taking up the human rights framework has involved a double shift in thinking about human rights and talking about women's lives. In other words, it has entailed examining the human rights framework through a gender lens, and describing women's lives through a human rights framework. In looking at the human rights framework from women's perspectives, women have shown how current human rights definitions and practices fail to account for the ways in which already recognized human rights abuses often affect women differently because of their gender. This approach acknowledges the importance of the existing concepts and activities, but also points out that there are dimensions within these received definitions that are gender-specific and that need to be addressed if the mechanisms, programs, and the human rights framework itself are to include and reflect the experiences of the female half of the world's population.

When people utilize the human rights framework to articulate the vast array of human rights abuses that women face, they bring clarifying analyses and powerful tools to bear on women's experiences. This strategy has been pivotal in efforts to draw attention to human rights that are specific to women that heretofore have been seen as women's rights but not recognized as "human" rights. Take, for example, the issue of violence against women. The Universal Declaration states: "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." This formulation provides a vocabulary for women to define and articulate experiences of violence such as rape, sexual terrorism and domestic violence as violations of the human right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment. The recognition of such issues as human rights abuses raises the level of expectation about what can and should be done about them. This definition of violence against women in terms of human rights establishes unequivocally that states are responsible for such abuse. It also raises questions about how to hold governments accountable for their indifference in such situations and what sorts of mechanisms are needed to expedite the process of redress.

The Universal Declaration of Human Rights defines human rights as universal, inalienable, and indivisible. In unison, these defining characteristics are tremendously important for women's human rights. The universality of human rights means that human rights apply to every single person by virtue of their humanity; this also means that human rights apply to everyone equally, for everyone is equal in simply being human. In many ways, this universality theme may seem patently obvious, but its egalitarian premise has a radical edge. By invoking the universality of human rights, women have demanded that their very humanity be acknowledged. Voices were raised that acknowledgement and the concomitant recognition of women as bearers of human rights-mandates the incorporation of women and gender perspectives into all of the ideas and institutions that are already committed to the promotion and protection of human rights. The idea that human rights are universal also challenges the contention that the human rights of women can be limited by culturally specific definitions of what count as human rights and of women's role in society.¹⁶⁶

The idea of human rights as inalienable means that it is impossible for anyone to abdicate her human rights, even if she wanted to, since every person is accorded those rights by virtue of being human. It also means that no person or group of persons can deprive another individual of her or his human rights. Thus, for example, debts incurred by migrant workers or by women caught up in sex trafficking can never justify indentured servitude (slavery), or the deprivation of food, of freedom of movement, or of compensation. The idea of inalienable rights means that human rights cannot be sold, ransomed, or forfeited for any reason. The idea of inalienability has also been important in negotiations over the priority given to social, religious and cultural practices in relation to human rights. For decades, work to transform practices which are physically or psychologically damaging to women and that have often been "protected" under the rubric of religion, tradition or culture has been particularly difficult, given both the integrity of culture guaranteed by the Universal Declaration and the history of Northern domination in much of the world. Thus it was important that both the Vienna Declaration and Programs of Action from the World Conference on Human Rights held in Vienna in 1993, and the United Nations Declaration Against Violence Against Women passed by the General Assembly the same year, affirmed that in cases of conflict between women's human rights and cultural or religious practices, the human rights of women must prevail.

The indivisibility of human rights means that none of the rights that are considered to be fundamental human rights is more important than any of the

¹⁶⁶ Ibid.

others more specifically, that they are inter-related. Human rights encompass civil, political, social, economic and cultural facets of human existence; the indivisibility premise highlights that the ability of people to live their lives in dignity and to exercise their human rights fully depends upon the recognition that these aspects are all interdependent. The fact that human rights are indivisible is important for women, since their civil and political rights historically have been compromised by their economic status, by social and cultural limitations placed on their activities, and by the ever-present threat of violence that often constitutes an insurmountable obstacle to women's participation in public and political life. The idea of indivisibility has provided women with a common framework through which to emphasize the complexity of the challenges they face, and to highlight the necessity of including women and gender conscious perspectives in the development and implementation of policy. By calling upon the indivisibility of women's human rights, women have rejected a human rights hierarchy, which places either political or civil rights or socio-economic rights as primary. Instead, women have charged that political stability cannot be realized unless women's social and economic rights are also addressed; that sustainable development is impossible without the simultaneous respect for, and incorporation into the policy process of women's cultural and social roles in the daily reproduction of life; and that social equity cannot be generated without economic justice and women's participation in all levels of political decision-making.

c) The Movement for Women's Human Rights

The term "women's human rights" does not refer simply to the theoretical approaches that women have used to transform human rights concepts, programs and agendas. In addition to being instrumental in the formulation of the conceptual challenges and demands levied by women, the idea of women's human rights has had immense impact as a tool for political activism. The concept of women's human rights has opened the way for women around the world to ask hard questions about the official inattention and general indifference to the widespread discrimination and violence that women experience everyday. Whether used in political lobbying, in legal cases, in grassroots mobilization, or in broad-based educational efforts, the idea of women's human rights has been a rallying point for women across many boundaries and has facilitated the creation

of collaborative strategies for promoting and protecting the human rights of women.¹⁶⁷

While women have raised questions for a long time about why their rights are seen as ancillary to human rights, a coordinated effort to change this attitude using a human rights framework gained particular momentum in the early part of the 1990s. The opening of space for new debates afforded by the end of the Cold War facilitated the exchange of ideas and experiences among women around the world that led to strategizing about how to make women's human rights perspectives more visible. As women's activities developed globally during and following the United Nations' Decade for Women, more and more women raised the question of why "women's rights" and women's lives have been deemed secondary to the "human rights" and lives of men. The informal slogan of the Decade of Women became "Women do two-thirds of the world's work, receive 10 percent of the world's income and own one percent of the means of production."¹⁶⁸

Over the past decade, a movement around women's human rights has emerged to challenge limited notions of human rights, and it has focused particularly on violence against women as a prime example of the bias against women in human rights practice and theory. The United Nations World Conference on Human Rights held in Vienna in 1993 was the first such meeting since 1968, and it became a natural vehicle to highlight the new visions of human rights thinking and practice being developed by women. Its initial call did not mention women nor did it recognize any gender-specific aspects of human rights in its proposed agenda. Since the conference represented an historic reassessment of the status of human rights, it became the unifying public focus of a worldwide Global Campaign for Women's Human Rights—a broad and loose international collaborative effort to advance women's human rights. The campaign launched a petition calling upon the World Conference "to comprehensively address women's human rights at every level of its proceedings" and to recognize "gender violence, a universal phenomenon which takes many forms across culture, race, and class... as a violation of human rights requiring immediate action." The petition was eventually translated into 23 languages, and was used by over 1,000 sponsoring groups who gathered a half million signatures from 124 countries.¹⁶⁹ The petition and its demands instigated discussions about why women's rights and gender-based violence in particular, were left out of

¹⁶⁷ For details see. <http://www.globalissues.org/HumanRights/WomensRights.asp>.

¹⁶⁸ Richard H. Robbins, *Global Problems and the Culture of Capitalism*. (Allyn and Bacon, 1999), p.354.

¹⁶⁹ Id.

human rights considerations, and served to mobilize women around the World Conference. Women acted to inject issues of women's human rights into the entire pre-conference preparatory process: Women from all regions demanded that women's human rights be discussed at the preparatory meetings held in Tunis, San Jose, and Bangkok, as well as at other non-governmental and national preparatory events. The idea of women's human rights was a framework for women to articulate and collaborate around broad and similar concerns about the status of women; it also provided women with a way to elaborate on the most pressing human rights issues specific to particular political, geographic, economic, and cultural contexts.

By the time the World Conference convened, the idea that "women's rights are human rights" had become the rallying call of thousands of people all over the world and one of the most discussed "new" human rights debates. The Vienna Declaration and Program of Action, which is the product of the conference and is meant to signal the agreement of the international community on the status of human rights, states unequivocally that:

"The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights."¹⁷⁰

Women continued to lobby for and gain wider recognition of women's human rights at subsequent United Nations Conferences. So, for example, at the International Conference on Population and Development in Cairo in 1994, women's reproductive rights were explicitly recognized as human rights. A particularly significant development was the way in which the Platform for Action at the IV World Conference on Women in Beijing in 1995 became virtually an agenda about the human rights of women. This signalled the successful mainstreaming of women's rights as human rights.

The agreements that are produced by such conferences are not legally binding; however, they do have ethical and political weight and can be used to pursue regional, national, or local objectives. Conference documents can also be used to reinforce and interpret international treaties such as the Covenant on Civil and Political Rights, or the Covenant of Social, Economic and Cultural Rights. These covenants, when signed by a country, do have the status of international law and have been used in courts by lawyers seeking redress for human rights violations. The most important international treaty specifically addressing women's human rights is the Convention on the Elimination of All Forms of

¹⁷⁰ The Vienna Declaration, 1993.

Discrimination Against Women (CEDAW), which was initiated during the UN Decade for Women and has been ratified by over 130 countries. Further, local women's groups have integrated the women's human rights framework into their legal literacy programs and legal strategies.

Although the framework of women's human rights has been tremendously useful in efforts to lobby for legislative and policy changes at local, national and international levels, it has been an equally as important tool for grassroots organizing.¹⁷¹ Women's human rights not only teach women about the range of rights that their governments must honour; it also functions as a kind of gestalt by which to organize analyses of their experiences and plan action for change. The human rights framework creates a space in which the possibility for a different account of women's lives can be developed. What is so useful about this framework is that it provides women with principles by which to develop alternative visions of their lives without suggesting the substance of those visions. The fundamental principles of human rights that accord to each and every person the entitlement to human dignity give women a vocabulary for describing both violations and impediments to the exercise of their human rights. The large body of international covenants, agreements and commitments about human rights gives women political leverage and a tenable point of reference. Finally it must be said that, the idea of women's human rights enables women to define and articulate the specificity of the experiences in their lives, at the same time it provides a vocabulary for women to share the experiences of other women around the world and work collaboratively for change.

d) National Concern for Human Rights:

India's concern for women's human right and its protection is manifested by fact of its participation and adoption and ratification of a number of International Convention, Conferences and Declaration. Following are International Covenants/ Conventions/ Treaties Ratified/ Acceded/ Signed by India.¹⁷²

- i. The Universal Declaration of Human Rights (UDHR).
- ii. The International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁷³ The International Covenant on Civil and Political Rights (ICCPR).¹⁷⁴

¹⁷¹ Charlotte Bunch and Samantha Frost, "International Encyclopedia of Women: Global Women's Issues and Knowledge", (Routledge, 2000).

¹⁷² National Human Rights Commission, "Human Rights in India – Overview": For details see, National Human Rights Commission Report 2002-03.

¹⁷³ Ratified on 10th April, 1979.

- iii. The International Convention on Elimination of all forms of Racial Discrimination.¹⁷⁵
- iv. The Convention on Rights of the Child.
- v. The Convention on Elimination of all Forms of Discrimination Against Women.¹⁷⁶
- vi. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷⁷
- vii. International Covenant on Suppression and Punishment of the Crime of Apartheid.¹⁷⁸
- viii. The Convention on the Prevention and Punishment on the Crime on Genocide.¹⁷⁹
- ix. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.¹⁸⁰
- x. Slavery Convention.¹⁸¹
- xi. Protocol amending the Slavery Convention.¹⁸²
- xii. Supplementary Convention on the Evolution of Slavery, Slave Trade and Institutions and Practice similar to Slavery.¹⁸³
- xiii. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others.¹⁸⁴
- xiv. Convention on the Nationality of the Married Women.¹⁸⁵
- xv. Convention on the Political Rights of the Women.¹⁸⁶

In India, a number of legislations to give various protectional rights to women of the country have been framed and passed. Thus we have the following laws, which may be presented in the tabular form. (See Table 1:1)

¹⁷⁴ Acceded on 10th April, 1979.

¹⁷⁵ Ratified on 3rd December, 1968.

¹⁷⁶ Signed on 30 July, 1981.

¹⁷⁷ Signed on 8th October, 1997.

¹⁷⁸ Acceded on 22nd September, 1977.

¹⁷⁹ Ratified on 27th August, 1959.

¹⁸⁰ Signed on 12th January, 1971.

¹⁸¹ Ratified on 18th June, 1927.

¹⁸² Signed at Geneva on 25th September, 1926.

¹⁸³ Ratified on 23rd June, 1960.

¹⁸⁴ Ratified on 9th January, 1953.

¹⁸⁵ Signed on 15th May, 1957.

¹⁸⁶ Ratified on 1st November, 1961.

Table-1:1
Legislation Giving Certain Protectional Rights to Women

Name of the Act/Code	Year of Passing
Indian Penal Code	1860
The Code of Criminal Procedure	1973
The Indecent Representation of Women(Prohibition) Act	1986
The Commission of Sati (Prevention) Act	1987
The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act	1994
The Medical Termination of Pregnancy Act	1971
Equal Remuneration Act	1976
Maternity Benefit Act	1948
Factories Act	1952
Mines Act	1952
Employees State Insurance Act	1948
Child Marriage Restraint Act	1929
Immoral Traffic Prevention Act	1956
The Suppression of Immoral Traffic in Women and Girls (Amendment) Act	1986
Child Labour (Prohibition and Regulation) Act	1986
The National Commission for Minorities Act	1990
The National Commission for Women Act	1990
The National Commission for S.Cs & STs(Amendment) Act	1990
The National Commission for Backward Classes Act	1993
The Protection of Human Rights Act	1993
Persons with disabilities(Equal opportunities, Protection of Rights and full Participation Act	1995
The criminal Law (Amendment) Act	1983
The Criminal Law (Amendment) Act	2005

The above legislations are indicative of the fact that, our country has given great emphasis on the protection of women's rights and has taken steps for the realization of women's human rights to fulfil its international obligation and commitment. It has passed several legislations for the protection of weaker section of the society, which inter alia protects certain rights of the women. Some of the above, legislations provide for certain Special Institutional Arrangements for weaker & vulnerable sections. The following are some of such institutional arrangements, which, look into grievances and complaints made by the people; make inquiry into the violation of human rights; recommend measures for better protection of those rights:

- i. National Commission for Women.
- ii. National Commission for Scheduled Castes and Scheduled Tribes.
- iii. National Commission for Minorities.
- iv. National Commission for Safai Karmacharis.
- v. National Human Rights Commission.

These bodies advise the Governments in the respective matters. The protection of Human Rights Act also provides for the establishment of State Human Rights Commission in every State and Human rights Court in every district. Ten State Governments already set up Commission - Assam, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Manipur, Punjab, Rajasthan, Tamil Nadu, West Bengal. In 1993 an Exclusive Human Rights Cell was set up by the Government in the Ministry of Home Affairs to co-ordinate and implement the policy matters on Human rights.

e) The Protection of Human Rights Act, 1993:

The Indian parliament has enacted the Protection of Human Rights Act, 1993 for the constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts for Better protection of human rights and for matters connected therewith or incidental thereto.¹⁵⁹ The provision of the Act is applicable to armed forces and also the State of Jammu & Kashmir. The Act defines human right as the "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."¹⁶⁰ The above definition limits the scope of in the functioning of the National Human Rights Commission.¹⁶¹ India has ratified two Covenants; International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, but these covenants are not directly enforceable as law before the Indian Courts. The references to these covenants in the Act are purely cosmetic. The decisive words are: "and enforceable by the Courts in India." furthermore these words limit human rights strictly to the fundamental rights embodied in Part III of the Constitution. The fact is that they are more limited than human rights in the Covenant.¹⁶² Further the Commission's mandate does not extend to those human rights, which have been recognized in international treaties signed and ratified by India besides the fundamental rights. A pertinent question arises as to why the

¹⁵⁹ The National Human Rights Commission was initially constituted under the Human Rights Ordinance of 28th September 1993. This Ordinance was subsequently converted into Act. Known as the Protection of

¹⁶⁰ Section 2(d) of the Protection of Human Rights Act, 1993.

¹⁶¹ Dr. H.O. Agarwal, "Human Rights", 5th Edition, (Central Law Agency, 2002), p.218.

¹⁶² Ibid.

Commission was established for the protection of fundamental rights when they being constitutional rights are enforceable before the Courts. Again the section excludes the social and economic rights from enforceability.

f) National Human Rights Commission:

The Protection of Human Rights Act, 1993 provides for the setting up of a National Human Rights Commission (NHRC) and Human Rights Courts to meet the growing concern for human rights in the country. The Act makes the constitution of State Human Rights Commission for all the State Governments. Chapter II of the Act provides for the constitution of the National Human Rights Commission. It lays down that the Central Government shall constitute a body to be known as the National Human Rights Commission, which shall have eight members and will be headed by a Chairperson who has been the former Chief Justice of the Supreme Court.¹⁶³ The other members of the Commission shall be a sitting or retired Judge of the Supreme Court, a serving or a retired Justice of the High Court, two prominent persons having knowledge or practical experience in the sphere of human rights and the Chairperson of the National Commission for Minorities, the Scheduled Castes and Scheduled Tribes and Women. The Chairperson and the member of the Commission shall be appointed by the President on the recommendation of a six member Committee headed by the Prime Minister.¹⁶⁴ The Commission may appoint other administrative, technical and scientific staff as considered necessary in conformity with the rules made by the Central Government in this behalf. The Commission shall have its headquarters in New Delhi and with the permission of the Central Government may establish offices in other places in India.¹⁶⁵ The Commission exercised the following power and function¹⁶⁶:

- a. It has the power to inquire suo moto or on a petition presented to it by a victim or any person on his behalf, into complaints of (a) violation of human rights or abatement thereof; or (b) negligence in the prevention of such violation by a public servant.
- b. The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court of law with the approval of such court.

¹⁶³ Section 3 of the Protection of Human Rights Act, 1993.

¹⁶⁴ Section 4 of the Act. Other members of the Committee shall be the speaker of the House of the People, Minister in charge of the Ministry of Home affairs in the Government of India. Leader of the Opposition in the House of People. leader of the Opposition in the Council of States and the Deputy Chairman of the Council of States.

¹⁶⁵ Section 3 of the Act.

¹⁶⁶ Section 12 of the Act.

- c. The Commission can visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living condition of the inmates and make recommendation thereon.
- d. The Commission reviews the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommends the measures for their effective implementation.
- e. It can also reviews the factors, including the acts of terrorism, the inhibit exercise of one's human rights as well as the safeguards currently in force and can make recommendation.
- f. The Commission studies the treaties and other international instruments on human rights and makes recommendations for their effective implementation.
- g. It has a duty to undertake and promote research in the field of human rights.
- h. The Commission spreads human rights literacy among various section of society and promotes awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means.
- i. It encourages the efforts of non-governmental organizations and institutions working in the field of human rights.
- j. The Commission may perform any other function, as it may consider necessary for the promotion of human rights.
- k. The Commission has a duty to submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.
- l. The Commission shall perform functions pursuant to the direction issued by the Supreme Court in the exercise of the jurisdiction under Article 32 of the Constitution.¹⁶⁷
- m. In deciding matters referred by the Supreme Court, National Human Rights Commission is given a free hand and is not circumscribed by any condition. Therefore the jurisdiction exercised by the National Human Rights Commission in these matters is of

¹⁶⁷ Paramjit Kaur.v. State of Punjab. AIR,SC 340.

special nature not covered by enactment or law, and thus sui generis.¹⁶⁸

- n. The Commission while enquiring enjoys all the power of a Civil Court trying a suit under the Code of Civil Procedure of 1908, and in particular in respect of the following matters: a) Summoning and enforcing the attendance of witness and examining them on oath; b) discovery and production of any document; c) receiving evidence on affidavit; d) requisitioning any public record or copy thereof from any court or office; f) issuing commissions for the examination of witnesses or documents; g) any other matter which may be prescribed.¹⁶⁹
- o. The Commission may after completing the inquiry recommend to the appropriate Government or authority to take action against the person concerned where the inquiry discloses violation of human rights.¹⁷⁰
- p. It may recommend the appropriate Government or authority for the grant of any interim relief to the victim or his family members.¹⁷¹
- q. It may approach the Supreme Court or the concerned High Court to pass such directions, orders or writs, as the Court may deem necessary.¹⁷²

The National Human Rights Commission investigates the complaints on reports of serious violations by the Commission. The Commission during the year 1996-97, investigated or monitored 1047 cases as against 876 cases in 1995-96.¹⁷³ Out of these, 296 were investigated by the Commission's own wing and the remaining 751 were sent to other agencies. During the year 1997-98, the Commission directed its Investigation Division to look into 1755 complaints, of which 1503 cases called for the collection of facts and monitoring 252 called for field investigation of these complaints, 1097 proceedings were closed after processing. Similarly during the year 1998-99, the Commission directed its Investigation Division to look into 2296 complaints, of which 2114 cases were called for the collection of facts and monitoring and 155 called for field investigation of these complaints, 1946 cases of fact collection and 140 cases of spot inquiries were disposed of.

¹⁶⁸ Ibid, p.343-44.

¹⁶⁹ Section 13(1) of the Protection of Human Rights Act 1993.

¹⁷⁰ Ibid, section 13(3).

¹⁷¹ Ibid, section 18(3).

¹⁷² Ibid, Section 18(2).

¹⁷³ Dr. H.O. Agarwal. "Human Rights". 5th Edition. (Central Law Agency. 2002). p.224.

During the year 2002-2003, the Commission registered 68,779 new cases and thus it had a total of 1,25,241 cases to consider, of which 56,462 were cases from earlier years.¹⁷⁴ During the period 1 April 2002 - 31 March 2003, the Commission disposed of 82,231 cases. At the end of the reporting period i.e. as on 31 March 2003, the total number of cases pending before the Commission was 43,010, which included 9763 cases awaiting preliminary consideration and 33,247 cases in respect of which reports were either awaited from the authorities concerned or the reports had been received and were pending further consideration within the Commission. Of the total number of 82,231 cases disposed of in 2002-2003, 26,128 were dismissed 'in limini', 17,262 were disposed of with directions to the appropriate authorities for remedial measures and 38,438 cases were disposed of after calling for reports from the concerned authorities. During this period, the Commission also disposed of 118 cases specifically alleging that the dignity of women had been violated, 159 cases alleging sexual harassment, 289 cases alleging abduction, rape and murder, 845 cases relating to dowry deaths, 448 cases of dowry demand, 200 cases alleging the exploitation of women and 400 cases alleging the rape of women.¹⁷⁵ Since its establishment in October 1993, the Commission has directed that compensation in the amount of Rs. 9,76,68,634/- be paid in 559 cases. During the year 2002-03, the Commission recommended that compensation amounting to Rs.31,40,000/- be paid in 39 cases. Further, the Commission directed that disciplinary action/ prosecutions be undertaken in 5 cases.¹⁷⁶

g) National Commission for Women

Successive Commission on women had noted in their reports that unequal status of women obtaining in every sphere of life and had suggested the setting up of an agency to fulfill the surveillance function as well as to facilitate redressal of their grievances. Several women activists and voluntary action group had also been making persistent demand for setting up of a commission for women. The Commission for Women Bill was passed by the both Houses of Parliament and it received the assent of the President on 30th August 1990 and came into force on 31st January 1992.¹⁷⁷ The Commission consists of a Chairman, five members and a member secretary.¹⁷⁸ The other offices and employees of the Commission is

¹⁷⁴ Annual Report of the National Human Rights Commission, 2002-2003. p.181:For details see. www.nhrc.nic.in.

¹⁷⁵ Ibid. p.182.

¹⁷⁶ Ibid. p. 183.

¹⁷⁷ Statement of Object and reason (Act 2 of 1990).

¹⁷⁸ Section 2 of the National Commission for Women Act, 1990.

appointed by the Central Government. The Commission performs all or any of the following functions:

- a. Examines all matters related to safeguard provided for women under the Constitution and other laws;
- b. Presents reports to the Central Government on the working of safeguards;
- c. Makes recommendation for the effective implementation of safeguards;
- d. Suggests legislative measures to meet any lacunae;
- e. Takes up the women related issues with the appropriate authorities;
- f. Takes up the suo-moto notice of the matters relating to deprivation of women's rights;
- g. Carries on special studies of the women related issues and problems;
- h. Carries on education research to suggest ways of ensuring the representation of women in all spheres;
- i. Participates in the planning process of socio-economic development of women;
- j. Evaluates the progress of development of women under the union and any state;
- k. Inspects any jail, remand home, women's institution etc to take up remedial action;
- l. Makes periodical report to the government on any women related issues;

The National Commission for Women has done the following things with regard to the following matters:

- a. The Commission recommended for the enactment of a uniform law relating to marriages. It has drafted The Marriage Bill 1994, Providing for the compulsory registration of marriages, with the aim of preventing child marriages and also polygamy in the society.

- b. Prepared a draft Bill "The Domestic Violence to Women (Prevention) Bill, 1994" providing for wider protection to the women; immediate relief to the Women; appointment of Domestic violence prevention officers.
- c. Codification of Criminal Laws Relating to Women (Amendment) Bill, 1994
- d. The Commission had organized National Seminars on Codification of Criminal laws related to women at New Delhi and Hyderabad,(1996-97).
- e. Received overwhelming support towards the codification of Laws from various sections.
- f. Commissioned a project on "Codification of criminal laws related to women" to the NLSIU, Bangalore.
- g. Prepared The Criminal Laws (Amendment) Ordinance, 1996 (with reference to child rape) providing for Amendment of Indian penal Code (1860), Indian Evidence Act, 1872 and Representation of People's Act 1951 Providing for severe punishment for the offence of child rape and incest; safeguards to the victims of rape.
- h. Dowry Prohibition Act 1961 providing for the first time new draft rules were framed and sent to Government for consideration; Provided for appointment of dowry prohibition officers; Provides for constitution of boards etc.
- i. It has taken steps to Prevent Sexual Harassment of Women at Work Place
- j. Commissioned a project on "Sexual harassment of women at work place" in various cities.
- k. Carried on a Study which reveals that nearly 60% of the working women are not aware of the guidelines given by Hon'ble Supreme Court of India in Vishakha case. It has found that even many of the employers are not aware of the Supreme Court guidelines and have not constituted a committee in pursuance of the guidelines.
- l. The NCW had prepared the code of conduct at work place in pursuance of the Supreme Court guidelines and circulated the same to all the ministries, educational institutions, public and private sector undertakings and various NGOs for information and implementation.

- m. The Commission in collaboration with the University of Madras had formulated a code of conduct for application to the students and staffs of the educational institutions.
- n. Prepared a Draft Scheme / Legislation providing compensation to and rehabilitation of victims of rape and sexual assault in pursuance of the Hon'ble Supreme Court of India's Judgments in Delhi Domestic Women's Forum V's. Union of India & Others.¹⁸⁷
- o. Drafted SAARC Regional Convention on Prevention and Combating Trafficking in Women and Children.
- p. The Commission after reviewing the situation had recommended for the adoption of the above convention among the SAARC Nations to prevent apart from others the trans-border trafficking.
- q. Co-ordinated among SAARC Nations on issues relating to trafficking.
- r. Very recently the National Commission has prepared 'The Sexual Harassment of Women at Workplace (Prevention and Redressal) Bill, 2006.
- s. The Commission has also devised a scheme for relief and rehabilitation of victims of rape.

F) A Sum Up

1. It may be submitted that in almost all the societies whether ancient or contemporary, the status accorded to women has been more or less discriminatory and prejudicial. The status of women varied to a great extent from time to time. Whereas the Vedic and Puranic tradition ascribed a divine status to women in terms of Lakshmi, Durga, and Saraswati, the latter development diluted this position of women. Their position started deteriorating visibly in pre-independence and early post independence period. Women were denied the right of ownership of property and inheritance. They were treated as objects and kept together with the retarded and deformed. The patriarchy started keeping women illiterate economically unrecognized, socially inferior and legally helpless. Their image in public life had been negatively influenced due to their unvalued and under valued work in economic terms.
2. At the international level, the emergence of human right paved the way for women's right. In the late nineteen hundred sixties women's issues became more specific and were clearly visible at the international level.

¹⁸⁷ [WP (CrI) No.362/93.]

Various international convention and declaration at least acknowledged equality of status and opportunity for women is a must for the development of a nation and for the peace progress and prosperity of the universe. Much of the credit goes to the international body namely the United Nations for its relentless endeavour for the realization and protection of human rights-that also encompasses the human rights of women. The United Nations along with its various specialized agencies through various convention, conferences, declaration and action plan made it clear that the rights of women are central to their vision of a democratic society.

3. At the national level it is only the constitution which became the sole repository of the protectional rights and status of the women. During post independence period, our legislature has been a late starter with regard to the women's status and rights. It was only during nineteen hundred nineties separate legislations dealing with women's issues came to be passed by the legislature and separate bodies were established or constituted for the protection of women's rights. At the national level the real reprieve for the women with regard to their status and rights came from the highest court of the country which had taken various clues from the constitution and various international instruments to which India was a signatory. The application of human rights jurisprudence by the judiciary not only clarified the status and position of women but also raised their equality of status and opportunity. Now the Indian society acknowledges that women also contribute in nations building.
4. The position of Indian women is no better compared to their counterparts in other parts of the world. Indian women have largely remained bereft of the advances in science and technology basically due to the pariah status historically accorded to them. Various macro indicators related to their education, employment, health and participation in economic activities attest that gender inequalities and women's vulnerability stand stark, numerous initiatives notwithstanding.