Right to Health and Social Security of Women in India: A Study under Various Laws

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Introduction:

The Preamble of the Indian Constitution is a sole-repository of social security measures and provide for establishment of socialist state. According to the SupremeCourt of India the Principle aim of socialism is to eliminate inequality of income, status and standard of life and to provide a decent standard of living to the working people. It is designed to secure social, economic and political justice to all its citizens. Social justice is said to be signature tune of Indian Constitution.[2] Social security is the security that state furnishes against the risks which an individual of small means cannot, today, stand up to by himself even in private combination with his follows.[3]

The quest for social security and freedom from want and distress has been the consistent urge of man through the ages. The urge has assumed several forms according to the needs of the people and their level of social consciousness, advancement of technology and the peace of economic development.[4] The concept of 'Social Security' is based on ideals of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his countries welfare should be given protection against certain hazardous.[5] Social Security measures are significant from two view points. First they constitute an important step towards the goal of a welfare state. Secondly, they enable workers to become more efficient and thus reduce wastage arising from industrial disputes.

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[2]. *Quoted by Suresh* v *Nadagoudar*, "Social Security for workers in the un-organized sector" XXVIII (4) IBR (2001) *see also,*Article 38 of the Constitution states to secure order for promotion of welfare of the people, The State shall strive to promote by securing and protecting as efficiently as it may be a social order in which justice social, economic and political shall in form all the institutions of national life.

[3]. *V.V. Giri*, Labour problems in India Industry at 247.

[4]. Report of National Commission on Labour, (1969) 162.

[5]. I.L.O. Approaches to Social Security (1942) at 80 quoted in report of National Commission of Labour (1969) at 162.

The number of social security measures forwomen workers have been provided in the form of compensation for employment injury[6], Pension,[7] Gratuity,[8] and Maternity benefit etc.[9]

(a) Right to Health and Women

. "Health is a Wealth" is the adage, though from time immemorial has assumed more significance in contemporary societies across the globe and importantly in third world countries. No Nation could develop and prosper and also defend its integrity unless a society is physically, morally and politico legally sound and healthy.The "Right to health" is central to all human rights, and denial of health right would mean denial of all human rights. Health is central to long term development of individual and society at large. Women's health is inextricably linked to their social status. In many parts of the world, including India, discrimination against women starts before birth and continues till death. The reason for women's ill health often lies within the gender roles they play. Evidence shows that women are biologically more robust than men, and consequently have a natural edge in terms of expected life span. But in our country, this biological advantage is completely cancelled by women's social disadvantage. In most regions of India, women are denied the rights and privileges afforded to their male counter parts, both within and beyond the domestic sphere. Throughout their lives women firmly bear discrimination based on gender, the manifestations of which range from preferential treatment of boys in provision for food and health care to rape, dowry death and female infanticide. Women

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[6]. Sec 3(1) of Workmen's Compensation Act 1923 provides the liability of the employer to pay compensation for the following four conditions:-

i. Personal injury must have been caused to a workman.
ii. Such injury must have been caused by an accident.
iii. The accident must have been arisen out of and in the course of employment.
iv. The injury must have resulted either in death of the workmen or in his total or partial disablement for a period exceeding three days.

[7]. Section 6(a) provides Employees Pension Scheme-The Central Govt. may be notification in the official Gazette from a scheme to be called the Employees.Pension Scheme for the purpose of providing for—

a. Superannuation, pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this act applies and
b. Widows or widowers pension, children pension of orphan pension payable to the beneficiaries of such employers.

[8]. See 11(1) of the payment of Gratuity Act 1972- provided that Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, (a) on his superannuation or (b) on his retirement or resignation or (c) on his death or disablement due to accident or disease.

[9]. Section 5 of the Maternity Benefit Act 1961:- Provides that the maternity benefit to which every women shall entitled and her Employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately proceeding and including the day of her delivery and for sic weeks immediately following that day.In addition the judiciary has played significant role by providing social security to the workers.

are expected to eat last, leave the best food for the men of the family and to ignore their own illness while managing the entire household. In India, majority of women suffer from chronic energy deficit due to insufficient daily calorie intake (500-700 calories less than the recommended daily adult minimum intake of 2,250 calories; UNICEF 1996)[10].

This often results in mal-nutrition and is one of the main reasons behind high rate of morbidity and mortality of women in India. Further, Indian women suffer greatly from a lack of access to health care, based not only on an absolute lack of health facilities-particularly in rural areas but also on the relative inaccessibility of such facilities to them. They often face traditional taboos, based on cultural practice and religious belief against consulting doctors. A survey, in India, for instance, found that the decision for pregnant or post-natal woman to seek medical care is most often made by woman's husband and in some cases by her mother-in-law; the women themselves are very rarely involved in the decision-making.[11]

Health statistics in India clearly indicates the gender discrimination. Majority of women die annually due to pregnancy and birth- related complications. Norms of early marriage continue to predominate, and a large majority of girls become mothers before the age of twenty. In India, the most common diseases for women are diarrheal diseases, respiratory infections and perinatal condition (complications or diseases which occur at or after twenty-eight weeks of gestation or within first seven days after child birth.[12]

(i) Missing Women

India is one of the very few countries of the world, in addition to China and some parts of Arab World, where men outnumber women. In India, there are only 938 women per 1000 men.[13] This unfavorable ratio is primarily a consequence of high levels of mortality among young girls and women in their child-bearing years. Moreover, introduction of prenatal screening methods such as ultra sonography and amniocentesis are also contributing factors to this problem. In those parts of India, where female education and employment opportunities are relatively high, the female-to-male ratio is comparable to that of developed countries. For example, in the *State of*

[10]. Mahbub UL Haq, Health of girls and Women, Human Development in South Asia (2000), 118.
[11]. Source UNFPA, quoted in Ibid at 118.
[12] Source World Bank 1996, Quoted in Ibid at 119.
[13]. *Id.* at 120.

Kerala, there are 104 women for every 100 men in 1999.[14] This proves that a lady, who is educated and employed, takes much care of her own health, as her economic freedom makes her capable of taking the major decisions of her own life.

The main reason behind the declining male-female ratio in India may be the female infanticide and foeticide. Female infanticide- the practice of killing female children because they are female is taking root in India society. Girl children are got rid of after birth by crude techniques-such as- feeding them poisoned milk, choking them with salt or sand, stuffing coarse gains in their mouths, giving poisonous plant extracts or by suffocating them. This practice of female infanticide is most prevalent in Indian States of Tamil Nadu, Gujarat, Bihar and Rajasthan.[15]Today girl child can be got rid of before her birth. This has become possible with the help of new scientific innovations of ultra sound and amniocentesis. Originally these medical techniques have been developed to discover the birth defects. But they are now being used to determine the sex of the child before the birth of the child. The process of ending up the pregnancy if the fetus is female have become so popular, that everyone seems to know about them, be it an illiterate maid servant or an educated professional. Hence advancements in modern medical science have helped quicken the pace of death for the girl child; female foeticide is a burning example of what can happen when modern science collides with the forces of traditional society. Today thousands of girls are denied even the right to be born. The constant decline in the female-to-male ratio over the last century can provide a broad picture of the incidence of this practice. According to the Indian Population Census 1941, the sex ratio of children in the 0-6 years was 1010 females per 1000 male children. This had declined to 945 females per 1000 males in 1991.[16]

(ii) Nutritional Challenges

The majority of Indian women are chronically ill as a result of under and mal-nutrition, lack of adequate health care and frequent child-bearing. About 60 percent of women in their child-bearing years in India are under-weight, stunted by inadequate nutrition during their own childhood.[17] Both the quantity and quality of food intake determine nutritional status of an

[14]. *Id.*
[15]. *Id.* at 122
[16].*Id.*
[17] . Source: UNFPA, Quoted in *Ibid* at 124.

individual. In India, there is widespread evidence of inequitable feeding practices for boys and girls starting at infancy. Boys are breast fed more frequently and for longer periods than girls and girls usually receive less food than boys after breast feeding.[18] The male bias in feeding practices continues to adulthood and results in chronic under-nutrition in girls and women. A study conducted in the largest cities of India reveals that in the 6-14 age group, 66.7 percent females in Hyderabad, 95.3 percent in Calcutta and 73.3 percent in New Delhi suffered from anemia.[19]

Poverty is a major contributing factor to the ill health and malnutrition of women, because in the traditional societies of India, poverty affects women disproportionately. Whatever food is available within the household tends to be distributed in such a way that women get a smaller share. In India, the tradition of sequential feeding is practiced, i.e. male adults eat first followed by male children, then female adults and finally female children. Such a condition takes a heavy toll on the health of young girls. Even in families that eat together, adult women often allocate the portions of food and these allocations are illustrative of gender bias.

In households where there is enough food to eat, women are still the most disadvantaged in terms of food consumption. There are traditional notions that prohibit women from consuming certain foods that may be essential for them. For instance, young girls often are not given certain foods because it is thought that they should not grow fast or too much.[20] Hence high protein foods like milk, eggs and meat and foods with greater fat content are considered to be the privilege of male children, while girls are given cereals. A study in Indian Punjab found that although most pregnant women realize the need for a more nutritious diet during pregnancy and lactation, they are not provided with a special diet and their inferior status in the household makes it difficult for them to demand it.[21]

Children under 5 years of age are most susceptible to six deadly diseases- polio, diphtheria, whooping cough, tetanus, measles and tuberculosis. Throughout the world, campaigns and programmes have been developed to immunize children against these deadly diseases. There is some evidence of discrimination against female in terms of immunization. In India, for instance more boys than girls were vaccinated in 1993-94.[22] A study of one rural area

[18] . *Id.* at 125.
[19] . Source: World Bank 1996, Quoted in, *Id.* at 124.
[20] . *Id.* at 125.
[21] . Source: World Bank 1996, Quoted in *Id.*
[22] *Id.*

reported that over a one week period roughly three times as many boys as girls were brought to the primary health center for treatment.

(iii) Women Medical Negligence

Right to life is guaranteed under Article 21 of the Indian Constitution. This right has been couched in the negative form and when read literally; it empowers the state to interfere with the enjoyment of life and liberty according to procedure established by law. A new fact was given in *Maneka Gandhi* v. *Union of India*,[23] when by its interpretation; the SupremeCourt changed the scenario from one that calls for procedural rights to one that provides for substantial rights. While constitutionalizing these substantial rights with the aid of Article 21, the SupremeCourt has drawn support from the International convention on Human Right. Now the State is to provide to persons all rights essential for the enjoyment of the right to life its various perspectives. Of late, the right to health and access to medical treatment has been included in the plethora of rights brought under the ambit Article 21[24].

The judicial observation from *Vincent Panikulanagara*[25]to *PaschimBanga*[26] give a clear picture that access to medical treatment has become a Part of Article 21 of the Constitution. The approach in PaschimBanga[27] is more remarkable because the state and, the Central Government are directed to provide basic medical facilities along with the sophisticated medical treatment.

In *Shanta*v*State*[28]it has been well established that right to health and health-care is protected under *Article 21* of the Constitution and *Article 21* castes the obligation of the state to preserve life. A doctor at the Government hospital positioned to meet this state obligation is, therefore, duty bound to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statues or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore give away.[29]

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[23]AIR (1978) SC 597
[24]Vide AIR 1997 (*Journal*) 103, 104.
[25]*Vincent Panikulanagara*v*Union of India*, AIR (1987) SC 990
[26]*PaschimBangaKhetMazoorSamiti* v. *State of West Bengal*, AIR (1996) SC 2426.
[27]Id.
[28] . AIR 1998, A.P. 51
[29] . *Pt.ParamanandKatara*v *Union of India* 1990 (2) Bom.CR 96 at 101, 102.

Accordingly even when lack of adequate resuscitative facilities and trained staff responsible for death of a patient opting for tubectomy operation, not the negligence of the concerning doctor; the state became vicariously liable to pay compensation of a Rs.1 lakh to husband of the deceased.[30]

(iv) HIV/AIDSandWomen

The advent of HIV/AIDS has added a new dimension to the already poor health situation of the population, with specific and serious implications for women's health. By the year 2002, it was estimated that over 40 million women and men were infected with HIV. The pandemic is concentrated in the poorest parts of the world with 90 per cent of those who are HIV-positive living in the developing world.[31]

Data, though limited, show a rapidly increasing number of HIV/AIDS cases, including those among women, particularly adolescent girls and women involved in sex-trade. India has been hit the worst by the HIV/AIDS pandemic, where between 3.5 million and 4.1 million people are HIV-positive, almost 40 percent of them are women. In India, in every 3,300 children under 15 years of age has lost his/her mother or both parents to AIDS. A Mumbai antenatal clinic reported that 5 percent of pregnant teenagers consulting the clinic are HIV-positive.[32]

Women in India are vulnerable to HIV primarily because they are unable to insist on safe sexual practices with their spouses or partners. This vulnerability arises due to a number of factors. Biologically, there is a great likelihood of HIV infection passing from man to woman in unprotected sexual relation than from woman to man. Economically the status of women is subordinate to that of men. Most women are financially dependent on the male members of the family. Women are often unable to access information and services like health care and this has a direct impact on their ability to protect themselves from HIV infection. Moreover, Indian law does not recognize marital rape if the wife is above 15 years. In case of forcible sex, the wife does not have any remedy except to sue the husband for divorce on the ground of "cruelty". The inferior status of women in domestic sphere often prevents her to take decisions about use of contraceptives.

[30] *Rajmal* v *State of Rajasthan* , AIR 1996, Raj 81.
[31] Health of Girls and Women, *Human Development in South Asia* 2000, 129, 130.
[32] Source: The Nation 1999; UNFPA 1999;Quoted in *Id*.129-130.

(v) HIV Infection and Pregnancy of Women

Most of the women come to know about their HIV positive status only when they are tested for HIV at the antenatal stage usually late on the pregnancy. If they are tested HIV positive, they are left with little option but to deliver the child, as they cannot abort at that late stage.[33] Most hospitals do not offer adequate medical intervention to reduce the chance of HIV transmission from mother to child, even though HIV testing is done in antenatal stage. For the interventions to be carried on, the HIV status of the mother has to be determined. This required ante natal testing of pregnant woman. This can only be done with informed consent of the woman. It has to be done voluntarily. This involvespre-test and;post-test counseling. Before the test is done the health care worker would be required to provide the pregnant mother with the necessary information regarding the implication of testing HIV positive, the chances and risks of infection being transmitted to the and the medical intervention (with alternatives) necessary for reducing the transmission if she opts for delivery. She would also have a choice for abortion within the permissible period under the Medical Termination of Pregnancy (MTP) Act, 1971.

(vi) Refusal to Treatment

Can the pregnant HIV positive mother refuse medical treatment for her unborn child? At common law, the state has the right to protect the rights of the child already born under the doctrine of *parenspatriae.* But no such right exerts in the case on an unborn child.In case the child is already born, different considerations arise. The child already born has right of her/his own, say to be administered medical treatment, despite opposition from her/his parents. In *re C (a child)* (HIV test)[34] the question was whether the Court can order an HIV test of a child. The *mother,* after discovering that she was HIV positive, became pregnant. She believed in alternative medicines and not allopathic ARV therapies. She rejected the advice of administering ARV therapy during pregnancy, had natural water birth at home and breast fed the baby immediately after birth. The mother then rejected the advice of testing the baby for HIV. The local authorities commenced proceedings to have the baby tested for HIV.

[33]Anand Grover and VeenaJohari, Legal issues: Pediatric HIV Infection, *Lawyers collective,* Nov. 2001,at 21.
[34]. *In re C* (1999), TNLR 652, (14th Sept. 1999).

In a famous American case[35], a 4-year old HIV-positive son of HIV-positive parents was advised to undergo Highly Active Anti-Retroviral Therapy (HAART) an experimental therapy at that time. The mother refused to let her son undergo HAART. The state moved that the son be protected and receive the said therapy and the mother in refusing to allow the therapy was jeopardizing the son's health and welfare. The Court held that it was incumbent on the state to prove that the mother in refusing to allow the son to undergo HAART constituted imminent threat of serious harm to her son. Since the state did not prove-the benefit of the therapy and that harm would result if the son did not undergo the therapy; the decision to undergo HAART was left to the discretion of the parents.

(vii) Refusal to Treat HIV

This issue that remains of grave importance is the refusal of health care workers to treat HIV positive people, particularly in the private sector. Under the Indian Constitution, the public health care sector is bound by equality provisions and is therefore duty bound to treat all patients. The equality provisions of the Constitution do not apply to the private health care sector. Unfortunately, most private health care institutions providers do not carry out deliveries after the woman is tested HIV positive. Pregnant HIV-positive women are referred to public sector hospitals for deliveries. The discriminatory attitude of the health care workers makes health more and more inaccessible to the vast majority of population. What is needed is anti-discriminatory legislation that would mandate the private sector to follow anti-discriminatory practices.In this regard, the famous judgment of US SupremeCourt in the *Bragdon*case[36], may be remembered. It has held that it is illegal under the Americans with Disabilities Act (ADA) for a dentist to refuse to treat a patient with HIV based on the fear of HIV transmission from a patient to dentist.

The question today in the HIV scenario is how to empower the women so as to enable her to insist on having safer sex with her spouse or partner. By empowering the woman in areas that are still considered taboo, we may be able to take a positive step towards reducing the transmission of HIV and the overall development of society as a whole. Further, it is pertinent to prevent mother to child transmission so as to reduce pediatric AIDS and a healthy future generation. Mass education and information, education on hygiene and sanitation are the need of the hour. The more delay in the government awareness, the worse the situation will get,

[35]. *Re Nikolas E.* Maine Supreme Judicial Court, United States, 1998.
[36]. *Bragdon*v*Abbott*, 118 SC 2196.

considering the fact that health care in rural areas is minimal and in urban areas, out of the reach of the poor. The time to act is now, else, it might be too late even to repent.

(viii) Family Planning

Family planning is a National Programme. It is being implemented through the agency of various hospitals and health centers and at some places through the agency of Red Cross. It is expected that everybody involved in the implementation of programme will perform his duty in all earnestness and dedication so that the national programme may be successfully completed and purpose sought may bear fruit. It is well awarded fact that India is the second most populous country in the world and in order that it enters into an era of prosperity progress and complete self-dependence, it is necessary that the growth of population is arrested. It is with this end in view that the family planning programme has been launched by the Government which has not only endeavored to bring about an awakening about the utility of the family planning among masses but has also attempted to motivate people to take recourse to family planning through any of the known devices or sterilization operation.

It is to be remembered here, that Indian women often have little power to make decisions concerning the number of children they will have. The decisions to adopt methods of family planning almost always lie with the husband. Under these circumstances, when a poor woman co-operates by offering herself voluntarily for sterilization, it is reasonably expected that after undergoing such operation she would be able to avoid further pregnancy and consequent birth of an additional child. If family planning fails due to the negligent performance of duties by the government medical officer, do they become liable of sabotaging a scheme of national importance?

One Smt. Santra had offered herself for complete sterilization. The doctor who performed the operation acted in a negligent manner. The possibility of conception by Smt. Santra was not completely ruled out as her left fallopian tube was not touched, Smt. Santra did conceive and gave birth to an unwanted child.[37]

The question which was to be decided by the SupremeCourt was "*who has to bear the expenses in bringing up the unwanted child"*. The explanation offered by the officers of

[37]. *State of Haryana* v*Santra*(2000) 5 SCC 182.

appellant State was that at the time of the sterilization operation, only the right Fallopian tube was operated upon and left fallopian tube was untouched. This explanation was rejected by the trial Court on the ground that Smt. Santra had gone to the hospital for complete and total sterilization and not for partial operation. This decision was confirmed by the High Court. When the case came up to the SupremeCourt on appeal it was contended by the State that:

(i) The negligence of the Medical Officer in performing the unsuccessful sterilization operation would not bind the state Government and the Government would not be liable vicariously for any damages and

(ii) The expenses awarded for rearing the child and for her maintenance could not have been legally decreed as there was no element of "tort" involved in it nor had the petitioner suffered any loss which could be compensated in terms of money.

While deciding the case, the SupremeCourt found domestic legal scenario on this question almost silent except one or two stray decisions of the High Court[38]. So on this particular issue, the Court had to consider the decisions of Courts of various countries around the globe and discovered that Courts in the different countries are not unanimous in allowing the claim for damages for rearing the unwanted child out of a failed sterilization operation. In some cases[39], the Courts refused to allow this claim on the ground of public policy, while in many others, the claim was offset against the benefits derived from having a child and the pleasure in rearing that child.[40] In many other cases, if the sterilization was undergone on account of social and economic reasons, particularly in a situation where the claimant had already many children, the Court allowed the claim for rearing the child.[41]

(ix) Women's Reproductive Health

[38] In *State of M.P.* v*Asharam*1997 ACJ 1224 (MP) the High Court allowed the damages on account of medical negligence in the performance of a family planning operation on account of which a daughter was born after fifteen months of the date of operation.

[39]. *Undale*v. *Bloomsbury Area Health Authority* (1983) 2 All. ER 522; *Johnson* v. *University Hospital of Cleveland* (1989) 540 NE 2nd 1370 (Ohio).

[40]. *CES* v. *Superclinics (Australia)* Pty Ltd. (1995) 38 NSWLR 47.

[41]. In South African case in *Administrator Natal* v. *Edouard*(1990) 3 SA 581 damages were awarded for the cost of maintaining the child in a case where sterilization of the wife did not succeed. It was found in that the wife had submitted for sterilization for socio-economic reasons and in that situation the father of the child was held entitled to recover the cost likely to be incurred for maintaining the child.

The socio-biological processes of conception, child birth and child-rearing are profoundly affected by broader social and cultural factors, particularly by inequalities between the sexes in the household. In India, these factors can act as threats to women's vulnerable health status, especially within contexts of socio-cultural restriction and economic scarcity.

(a) Maternal Mortality and Morbidity

If a pregnancy goes wrong, lack of obstetrical care can be fatal. Millions of Indian women continue to face this risk every year. The average Indian women is 100 times more likely to die of maternity related causes than a woman in the industrial world; about 15 percent of pregnant women in India develop life threating complications during pregnancy[42]. This picture represents an important indicator of the social and economic inequalities between women in industrialized and developing countries. In industrialized countries, maternal mortality is rare and can be as low as 13 deaths per 1, 00,000 live births[43]

Maternal mortality rate vary between regions within a country. In areas where health facilities are not easily available and cultural traditions limit women's mobility and freedom to access health services, rates are much higher. Again, high maternal mortality rates are a consequence of the overall ill-health and nutritional deficiencies in women if India. Anemiairon deficiency is one of the major causes for high maternal death rate. The ill effects of these nutritional deficiencies are exacerbated by the barriers that women face in gaining access to antenatal and post natal care and emergency obstetric care. In addition to limited access to antenatal care, three delays account for a large proportion of maternal deaths in India; delay in seeking care; delay in reaching a health institution; delay in receiving medical care at the health centre.

Maternal death not only means death of a woman, but also a difficult life for surviving children. For instance, a study in India found that a mother's death sharply increased the chances of death of her children upto the age of ten years, particularly of her girl children, whereas the death of a father had no significant effect on his children's morality rate.[44]

[42] Health of Girls and Women, *Human Development in South Asia*(2000) 127
[43] *Id.*at128
[44]. Source: Tinker (1993), Quoted in *Id.*

Maternal morbidity is also very high in India. The major reasons for morbidity include a lack of pre and post natal professional health care, exacerbated by the low socio-economic status of women within the household. For every woman who dies of a pregnancy related cause in India, there are 541 cases of morbidity. Almost 5 percent of Indian women report at least one life-threatening illness during pregnancy and puerperium. Tetanus toxoid is one of the most common diseases contractible by both the mother and the new born child; Practices such as spreading cow dung on the floor and applying it to the newly-born umbilical cord, and cutting the umbilical cord with un-sterilized implements are common causes of tetanus. Although noe-natal tetanus can be prevented by immunizing the mother, it accounts for more infant deaths in this region than any region of the world.[45]

(b) Economic Empowerment of Women

Women constitute the half of the world population, perform nearly two thirds of work hours, receive one-tenth of the world's income and own less than one-hundred percent of world's property[46]. This information shows how women are discriminated in all spheres of life and have been subjected to all inequalities. Actually, women's work has never been considered as work. The invisibility of women's work, domestic chores and other tasks are part of a cultural/traditional attitude which views man as the primary bread winners. The comfortable stereotype which man has created: it is he who carries the major burden of economic work. Women's work carries no economic value. Such work may be essential but banish the thought that it should ever enter national income accounts, or even surface in separate satellite accounts. It is no doubt a successful conspiracy to reduce women to economic non-entities. Surprisingly, women also report themselves as non-workers because they tend to regard their Labour as "domestic responsibilities" and therefore outside market related or remunerated work.[47]

(c) Human Rights and Women

Human Right of women is those minimal rights without which a woman cannot live with dignity. A dignified life of a woman is possible only when she takes the decisions of her life on her own and this is possible only if her personality is developed. The two ways to do that is to

[45]. Source: UNICEF (1996), Quoted in *Id.*
[46]. As quoted in, *C. MasilmaniMadaliar*, v *Idol of Swaminathaswami, Thirukoil,* AIR, 1996, SC 1697.
[47]. Women and the economy, *Human Development in South Asia* 2000, 55.

educate her properly and to make her economically independent by providing suitable job opportunities and giving her property rights[48]. If anyone is in search of the answer of the question: why economic empowerment has become a human right issue in India? He has to take a look over the following information:

> *Indian employees feel themselves to be at a disadvantageous position to employ women workers who have to be given many benefits. Because it has been found that the provisions of maternity benefits[49], or welfare amenities like crèches[50] and separate sanitary facilities often increases the cost of employment female workers.*
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> *Women of India work for longer hours and contribute more than men in terms of total labour energy spent by household members. Average hours of unpaid work done by married women outside the home vary from 6.13 to 7.53 hours per day, with some women working more than 10 hours per day. Apart from domestic duties, women engaged in agricultural operation work on average 12 hours a day doing farm work and taking care of cattle.*[51]

Economic and social empowerment of women as human right issues havebeen recognized globally and India also does not work lag behind. Our Constitutional fathers were well aware of the inferior status of women within and outside the domestic spheres. That is why our Preamble which aims at equality of status and opportunity starts with the words "we, the people…" this obviously includes the women also.

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[48]. *Article* 11 of Convention on the Elimination of All forms of Discrimination Against Women, 1979 speaks for the economic empowerment of women in the following languages: Women should get the right of same employment opportunity, free choice of profession and employment; A women should get the right to social security, particularly in cases of retirement, unemployment sickness, invalidity and old age in other incapacity to work, as well as the right to paid leave; she should not be discriminated against in case of remuneration and equal treatment should be given to her in respect of work equal value. She should also expected to have the right to protection of her health and safety to working conditions, including the safeguarding of the function of reproduction.

[49] The maternity Benefit Act, 1961.

[50]*Section* 48 of the Factories Act 1948, *Section* 12 of Plantation Labour Act, 1961, *Sectio*n 14 of the Beedi and Cigar Workers (condition of employment) Act, 1966. The Contract labour (Regulation and Abolition) Central Rules, 1971 and the Mines Crèches Rules have provided for Crèches for children of women workers under six years of age.

[51]Women and Economy, *H.D.S.A.* 2000, 54.

Indian Constitution guarantees not only equality of status and opportunity to women[52] but also confers certain affirmative rights. On the one hand, it is provided in Indian Constitution that state shall not discriminate against any citizen on the grounds of sex and at the same time states are vested with powers of making any special provisions for the protection of women.[53] Indian Constitution also secures to every person right to a life which is something more than mere animal existence.[54]The Directive Principles of State Policy contained in Part IV of the Constitution direct the state to protect the human rights of women including the right to equal pay for equal work,[55]the right to health and work in hygienic conditions, the right to maternity benefits.[56] Our Directives are absolutely in tune with the declarations embodied in the Universal Declarations of Human Rights.[57] Although these Directives are not justiciable, they are not mere pious declarations. They are the basis of all legislative and executive action.

It is the duty of the Court to respond to the human situations to meet the felt necessities of the time and social needs, make meaningful the right to life and give effect to the Constitution and the will of the legislature. Accordingly, the SupremeCourt in 1997 had recognized, highlighted and enforced the right to economic empowerment of weaker section as a Fundamental right.*[58]* The Court observed that right to life should be interpreted in such a way so as to bring about the ideals set down in the Preamble of the Constitution aided by Part III and Part IV. Therefore, Fundamental right to life must include within its ambit economic empowerment of weaker section.

(d) Right to Employment and Women

The right to work and employment is the most essential requirement of life. One has to make his livelihood through his work or employment. Therefore, it is important to give a broad recognition to right to work. The United Nation Charter aims at promoting the higher standard of

[52]*Article* 14, Constitution of India.
[53]*Article* 15(3)Constitution of India
[54]*Article*21, Constitution of India
[55]*Article*39(d), Constitution of India
[56]*Article*42, Constitution of India
[57] Universal Declaration of Human Rights, 1948
[58]. *Ashok Kumar Gupta* v *State of U P* (1997) 5, SSC 2001.*See* also *MadhuKishwar*v. *State of Bihar*, AIR 1996 SC 1864. *Nazar Sings* v. *JagjitKaur*, AIR 1996 SC 855

living and full employment.[59] It is also well recognized in the Universal Declaration of Human Rights, "every person has the right to life, liberty and security of person.[60]

When the women stepped in the outer world to become economically independent, their path was not at all flowery. The job opportunities for women were very limited because of their poor literacy rate. Majority of Indian illiterate and economically active women[61] are involved in agriculture. Though women's labour and knowledge of agro economic system are being utilized, women are excluded from the ownership of the means of production, they are also excluded from the decision-making about the allocation of material and economic resources. Beside agriculture, women labour force are gradually entering in other areas also, such as in plantations, mines and factories.[62] Limited opportunities for education has hampered women's progress from the very beginning. Be it in public sector or in Private, only lower leveled jobs have been offered to them.[63]

Though, the Constitution of India provides for equal access irrespective of sex, in reality, access to "sensitive" and "prestigious" positions in service is not available to women. Whenever women were about to secure good position on the ground of their marriage or pregnancy. (Which is a natural phenomenon in women's life)? Wage discrimination between two sexes whether in organized or unorganized sector is the fashion of Indian employers.

(D) Difference in Wages

The Problem in this area is that men and women are though doing "same or similar work" nature being differently paid by the employers by introducing an artificial difference in the nature of work.[64] Work for women are generally classified as women's work and occupational segregation of work leads to the disadvantage of women workers.

The preamble of Indian Constitution strikes at the very root of this problem of wage discrimination when it speaks of "securing to all citizens of India equality of status and of

[59] *Article*55(a), The United Nation Charter.
[60] *Article*3, The Universal Declaration of Human Rights 1948.
[61] In India, 78 percent of the female labourers work in agriculture, women and the Economy, *HDSA*,2000, 58.
[62] Most of the female labour force in India is concentrated in the informal or unorganized sector, Gender and Governance, *HDSA*,2000, 157.
[63] In Private sector, only 13 percent of women are in managerial and influential position. Though 48 percent of women in the formal sector are working in the Government offices, most of them have occupied only lower leveled position and mostly in local bodies.
[64] *M/s Mackinnson Mackenzie and Co. Ltd* v. *Audry D Costa*, AIR 1987, SC 1281.

opportunity as well as justice, social economic and principles of equal pay for equal work is not expressly declared by our Constitution to be a Fundamental right but it certainly is a Constitutional right[65] which must colour the interpretation of Article 14 and 16 so as to elevate it to the rank of Fundamental rights, denial of which must result in an "irrational classification.[66]

However the passing of equal Remuneration Act[67] during International Women's Decade is the testimony of the fact that Government of India is determined to confer equal status and equal pay for men and women as is envisaged in the Constitution of India. Indeed the pressing needs of the social and economic development can be met most effectively only with the active participation of women along with men and through the social and economic equality which may perhaps change the concept of equality of life in and outside the homes.

The case brought by Air India against their employers highlighted the weakness of having the test of "equal pay for same or similar work" in the Equal Remuneration Act.[68] It was contended on behalf of the air hostesses that they were being discriminated as against assistant flight pursers who did more or less the same kind of work on flight, had better service conditions, later date of retirement and other facilities.

In order to set at rest all doubts with regard to violation of the provisions of the equal remuneration Act, the government issued that the "difference in regard to pay etc, (of air hostesses and flight pursers of these categories of employees) are based on different conditions of service and not on the difference of sex."[69] The Supreme Court endorsed this declaration and held that if at the threshold the basic requirements of two classes were absolutely different and poles apart even though both the classes might during the flight, work as cabin crew, they would not become one class of service.The Court while granting some marginal concessions to the air hostesses like raising their age of retirement and declaring the provision requiring termination of service as unconstitutional upheld the other discriminatory conditions of service even as it

[65]*Article* 39(d) Directive Principles of state policy envisages that equal pay for equal work should be given to men and women doing equal work.
[66]*Randhir Singh* v *Union of India,* AIR 1982, SC 879
[67]Equal Remuneration Act, 1976, was passed to implement the Constitutional mandate and Equal Remuneration Convention of 1951.
[68]*Air India* v*NergeshMirza,* AIR 1981 SC 1829.
[69]*Id.* at 1847

conceded that "the functions of the two though obviously different overlap on same points but the difference, if any is one of degree rather than of kind.[70]

However, in *M/s Mackinnson Mackenzie & Co. Ltd*. v. *Audrey D Costa*,[71] the Court held that in deciding whether the work is of same or similar nature and in ascertaining whether the differences are of any practical importance the authority should take a broad view of the matter. This is because the very concept of similar work implies "differences in detail". These differences should not defeat the claims of equality on trivial grounds but look at the duties actually performed and not those theoretically possible.[72] The Court further held that there should be proper job evaluation whenever sex discrimination is alleged.[73] This, the Court directed, should be done on the basis of non-discriminatory criteria which look directly to the nature and extent of the demands made by the job and do not apply different values for men and women on the same job. If it is found that men and women employed on this jobs are paid differently than sex discrimination clearly arises.[74]

Applying these criteria to the case on one hand the Court was of the opinion that if the lady stenographers were doing work of the same kind as the male stenographers irrespective of the place where they were working, the employers was obliged to pay equal remuneration. It was held that unless women were shown as not fit to do the work of male stenographers, the employer could not create such conditions of work so as to drive away women from a particular work which they could otherwise perform in order to pay them less wages.[75]

Conclusion

The cases of violence against women are often considered as legal issues[76] yet the health consequences should not be ignored. The women who are the victims of violence often need immediate and long-term medical assistance. Not only that, sometime such fearful experience shatters a woman's confidence and leaves her in need of psychological support and counseling.

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[70]. *Id.* at 1845
[71]. AIR (1987) SC 1281
[72]. *Id.* at 1287
[73]. *Id.* at 1286
[74]. *Id.* at 1287
[75]. *Id.*
[76]. Health of girls and women,*Human development in South Asia*, 2000, 119.

There is often a lack of support from immediate family and friends of victims. In patriarchal society of India, it is often seen that women have been conditioned to suffer in silence. In this context, there is a serious need to spend more resources on the mental health aspect of violence.

Thus, we may conclude that the issue of women's health is one of human rights violation, exploitation and oppression. Is it not a tragedy that our country which has nuclear power does not have the ability to prevent epidemics and provide appropriate health care to women? The emergence of concepts like globalization and latest economic trends hitting the Indian market, low priority to health must not be tolerated. When a country projecting itself as a nuclear power to the world, one cannot excuse it for the primitive procedure and process which affect public health specially women's health[77].

However, Indian Government has adopted various plans and programmes of actions to achieve the targets and goals of the International Conference for Population and Development (ICPA)[78]. Main features of these plans of Action include a call for:

- Gender equity and empowerment of women
- Integration of family planning in reproductive health
- Increasing men's role and responsibility in bringing about gender equity and equality.
- Recognition of reproductive health needs of adolescents as a group.
- Family, basic unit of society, to be strengthened and protected.

These plans and programmes aim to improve the health situation and condition of Indian women and focus on the life cycle approach of women's health. But the most important of all, is to increase women's participation in herhealth related issues. She should be given the full opportunity to exercise the right to have children by choice. For this a lot of struggle is due on part of women and they have to go a long way to achieve equality and to live with dignity.

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[77]. Shalu Nigam, Denial of Right to Health to Women, *Legal News & Views*, April 1999, 11.

[78]. The International Conference for population and Development (ICPD) were held in Cairo from 5 to 13th September 1994. The ICPD program me of Action agreed on a comprehensive and detailed strategy for population and development in the next 20 years. The main feature of the program of Action is that it places human rights and wellbeing of women explicitly at the center of all population and sustainable development activities. It establishes that population issues cannot be dealt with in isolation, but must be seen in a broader context of sustainable development, *Human Development in South Asia* 2000, 131.